الأمم المتحدة

A/HRC/22/G/9

الجمعية العامة

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مجلس حقوق الإنسان
الدورة الثانية والعشرون
البند ٣ من جدول الأعمال
تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

رسالة مؤرخة ٢٦ شباط/فبراير ٢٠١٣ موجهة من البعثة الدائمة لسري لانكا لدى مكتب الأمم المتحدة في جنيف إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان

البعثة الدائمة لجمهورية سري لانكا الاشتراكية الديمقراطية لدى مكتب الأمم المتحدة بجنيف والمنظمات الدولية الأخرى في سويسرا تهدي تحياتها إلى مفوضية الأمم المتحدة السامية لحقوق الإنسان، ويشرفها أن تقدم طيه رسالتين وجهتهما السفيرة/الممثلة الدائمة لبعثة سري لانكا لدى مكتب الأمم المتحدة في جنيف، رافيناثا أرياسينها، إلى المكلفين بالولايات التالية، وذلك على النحو التالي:

(أ) رسالة مؤرخة ١٤ شباط/فبراير ٢٠١٣، موجهة إلى المقرر الخاص المعني بالحق في حرية الرأي والتعبير، فرانك لا ري، رداً على رسالته المؤرخة ٣٠ كانون الثاني/يناير ٢٠١٣، التي كان قد وجهها إلى حكومة سري لانكا بشأن مسألة حرية الرأي والتعبير في سري لانكا؛

(ب) رسالة مؤرخة ١٥ شباط/فبراير ٢٠١٣، موجهة إلى رئيس – مقرر الفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي، أوليفييه دو فروفيل، وإلى المقرر الخاص المعني بتعزيز وحماية الحق في حرية الرأي والتعبير، فرانك لا ري، وإلى المقرر الخاص المعني بالحق في التجمع السلمي وتكوين الجمعيات، ماينا كياي، وإلى المقررة الخاصة المعنية

بحالة المدافعين عن حقوق الإنسان، مارغاريت سيكاغايا، وذلك رداً على النداء العاجل المشترك المؤرخ ١٠ كانون الأول/ديسمبر ٢٠١٢ الذي وجهوه إلى حكومة سري لانكا بشأن مزاعم مفادها أن أعضاء الاتحاد الآسيوي لمناهضة الاختفاء القسري تعرضوا للاعتقال في كولومبو.

وستكون البعثة الدائمة لسري لانكا ممتنة لو تفضلت المفوضية السامية بتعميم ونشر الرسالتين المشار إليهما أعلاه والمرفقتين طيه*، بوصفهما وثيقتين من وثائق الدورة الثانية والعشرين لمجلس حقوق الإنسان، وإصدارهما بجميع اللغات الرسمية.

* استُنسخت الرسالتان في المرفق كما وردتا، باللغة التي قُدمتا بها فقط.

Annex I

[English only]

Letter dated 14 February 2013 from the Permanent Mission of Sri Lanka to the United Nations Office at Geneva addressed to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

Dear Mr. La Rue,

I write with reference to your letter of 30th January 2013 addressed to me with regard to the issue of freedom of expression and opinion in Sri Lanka.

I note that in page 2, third paragraph of your letter, reference is made to the mandate granted to you by the Human Rights Council resolution 19/2 on Promoting Reconciliation and Accountability in Sri Lanka in carrying out your work in relation to issues concerning your mandate, with regard to the reconciliation process in Sri Lanka. I also note that in page 2, last paragraph of your letter, you have made reference to your previous requests to visit Sri Lanka, with the last such request made in August 2009. You have in this paragraph made a further request to undertake an official visit to Sri Lanka to consult government and other stakeholders and to gather information relevant to your mandate. It is further noted that the Report of the OHCHR (A/HRC/22/38), in its paragraph 8, also refers to your letter of 30th January 2013 addressed to the Government of Sri Lanka 'to offer services and support pursuant to Council resolution 19/2.'

I hereby wish to inform you that your previous requests to visit Sri Lanka were transmitted to the relevant authorities for processing. However, with regard to your latest request to undertake an official visit to Sri Lanka, in the context of the mandate granted to you by the resolution 19/2 should have been made, as per due process, either immediately after the adoption of the resolution 19/2 in March 2012 or within a reasonable timeframe thereafter.

I further note in this regard that the Report of the OHCHR pursuant to operative paragraph 3 of resolution 19/2 (A/HRC/22/38), is now completed and ready to be submitted to the upcoming 22nd session of the Human Rights Council, as per the scheduled timeline. In this context, it is evident that the relevant timeframe has lapsed for any special procedures mandate holder to request to visit Sri Lanka in fulfillment of the mandate of resolution 19/2.

I hereby wish to draw your kind attention to resolution 5/2 which established the Code of Conduct for Special Procedures Mandate holders of the Human Rights Council, and in particular to the following articles therein:

- Article 3(a) which calls upon mandate holders to 'act in an independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts based on internationally recognized human rights standards, and free from any kind of extraneous influence, incitement, pressure, threat or interference, either direct or indirect, on the part of any party,…'
- Article 6(b) which calls upon mandate holders to 'take into account in a comprehensive and timely manner, in particular information provided by the state concerned on situations relevant to their mandate.'
- Article 11(a) which calls upon mandate holders to 'ensure that their visit is conducted in compliance with the terms of reference of their mandate'.

In this context, I would be happy to provide information to you with regard steps taken to implement the National Action Plan for the implementation of the LLRC recommendations, relevant to your mandate, as part of our continuing and legitimate process of engagement with the special procedures mandate holders.

Please accept the assurances of my highest consideration.

(*signed*) Ravinatha Aryasinha
Ambassador, Permanent Representative

Annex II

[English only]

Letter dated 15 February 2013 from the Permanent Mission of Sri Lanka to the United Nations Office at Geneva addressed to the Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Olivier de Frouville, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, and the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggaya

Draft Response for the Joint Urgent Appeal sent by UN Special Procedures.

01. I write with reference to your Joint Urgent Appeal dated 10th December 2012 addressed to me regarding the information you have received on the alleged arrest of members of the Asian Federation against Involuntary Disappearances (AFAD) in Colombo, Sri Lanka.

02. I wish to make the following observations on the contents of your communication under reference:

i. According to the information received from the authorities in Sri Lanka, the factual sequence of events with regard to this matter is as follows;

a. On 3rd December 2012, Mr. Nimal Lanza, Provincial Council Member informed the Superintendent of Police, Negombo that Mr. Brito Fernando, a Trade Union leader and a group of foreigners had gathered at Lagoon View hotel, Negombo, and made a presentation of certain videos of HE the President of Sri Lanka.

b. On receipt this information, the Head Quarters Inspector, Negombo Police visited the Lagoon View hotel in the night of 3rd December 2012 and ascertained that an organization called 'Right Law Collect Force Country' had organized the meeting.

c. Mr. Sudharshana Abeywardhana Nishantha, an Attorney at Law explained the purpose of the meeting to the Police and he re-played the video at the request of the Police. It contained a videography of a series of meetings conducted by HE the President of Sri Lanka and Hon Maithripala Sirisena, a Cabinet Minister of the present government, in the year 1987, against the disappearance of persons.

d. Mr. Sudharshana Abeywardhana Nishantha also showed the Police a book in Sinhala entitled 'Legalize the enforced disappearances as a legal offence' which had been published by an entity by the name of Families of Disappeared (FOD).

e. Since the Police were of the view that the persons who gathered at Lagoon View hotel had not committed any offence, the Police did not make any arrest in this regard.

In this connection the Government of Sri Lanka wishes to respond to the specific points raised in the Joint Urgent Appeal under reference:

The above information indicates that the information detailed in the case is not accurate. It may be further noted that Mr. Brito Fernando has made the following statement to "International Society for Human Rights", an NGO based in Stockholm on the same incident, thus contradicting the information detailed in the case as noted in the Joint Urgent Appeal.

"the officers also demanded a copy of the documentary. After being held in the Jeep for an hour the groups were eventually let go without arrest after the FOD chairperson Mr. Brito Fernando arrived and argued with the officer".

1. A complaint has not been lodged by or on behalf of the alleged victims

2. Does not arise

3. Does not arise

4. Does not arise

03. Having carefully ascertained the fact of the case under reference as detailed above, I also wish to draw your kind attention to the resolution 5/2 which established the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council;

a. In the resolution, "Article 3 – General principles of conduct" (a) states that, the Mandate holders shall act in their independent capacity, and exercise their functions in accordance with their mandate, through a professional, impartial assessment of facts based on internationally recognized human rights standards, and free from any kind of extraneous influence, incitement, pressure, threat or interference, either direct or indirect, on the part of any party, whether stakeholder or not, for any reason whatsoever, the notion of independence being linked to the status of Mandate-holders, and to their freedom to access the human rights questions that they are called upon to examine under their mandate.

b. The "Article 6 - Prerogatives" (a) states that, the mandate-holders shall always seek to establish the facts, based on objective, reliable information emanating from relevant credible sources that they have duly-cross checked to the best extent possible.

c. The "Article 10 - Urgent appeals" indicate that, the mandate-holders may resort to urgent appeals in cases where the alleged violations are time-sensitive in terms of involving loss of life, life-threatening situation or either eminent or on going damage of a very grave

nature to victims that cannot be addressed in a timely manner by the procedure under Article 9 of the present Code (Article 9 – letters of allegation)

04. Furthermore, the Chapter II (B) (3) (paragraph 43) of the Manual of operations of the Special Procedures of the human Rights Council adopted in August 2008 states that urgent appeals are used to communicate information in cases where the alleged violations are time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or on going damage of a very grave nature to victims that cannot be addressed in a timely manner by the procedure under letters of allegation. The intention is to ensure that the appropriate state authorities are informed as quickly as possible of the circumstances so that they can interview to end or prevent a human right violation.

However, in the present incident, there is no allegation of any person being subjected to prolong detention, thereat to physical integrity, safety or to their lives.

In the above context, the Government of Sri Lanka notes that, regrettably, the "Article 10 - Urgent Appeals" of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council and the Chapter II (B) (3) (paragraph 43) of the Manual of Operations of the Special Procedure of the Human Rights Council have not been adhered to by the Special Procedures mandate-holders under reference in this particular case, and it therefore does not warrant under any circumstances the issuance of an Urgent Appeal or a Joint Urgent Appeal.

In conclusion, the Government of Sri Lanka looks forward to continuing its constructive engagement with the special mandate holders in adherence to the rules of procedure governing the Council and its mechanism.

(*signed*) Ravinatha Aryasinha
Ambassador, Permanent Representative