

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the right to privacy

REFERENCE:
AL LKA 5/2020

13 July 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 34/18, 35/15, 41/12, 34/5 and 37/2.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning alleged acts of harassment and violation of the right to privacy of journalist Dharisha Bastians.

Ms. **Dharisha Bastians** is a journalist and human rights defender, the former Editor in Chief of Sunday Observer newspaper and a reporter for the New York Times. Throughout her career, she has written extensively on human rights, extrajudicial killings and the legacy of Sri Lanka's civil war, alleged political corruption, impunity, democracy and political rights in Sri Lanka. Ms. Bastians has notably worked on several important cases of human rights violations, including the murder of The Sunday Leader Editor Lasantha Wickrematunge in 2009, and the alleged illegal detention of 11 young Tamil men abducted by a gang of Sri Lanka Navy personnel, and eventually killed in a Navy base in 2008-2009. These cases which remain unresolved, have implicated high ranking members of the present Sri Lankan Government, and perpetrators remain at large.

According to the information received:

On 9 June 2020, officers of the Criminal Investigation Department entered the home of Ms. Dharisha Bastians in Colombo, produced a warrant and searched the premises and her personal belongings and seized her personal computer. It is reported that the search was conducted in relation to an ongoing investigation carried out over the alleged abduction of a Swiss embassy staffer in Colombo in November 2019. Since December 2019, the Criminal Investigation Department has tried to link Ms. Bastians and others to this inquiry, in an attempt to prove some sort of involvement in the incident. The next court hearing on the matter is scheduled for 21 July 2020.

Reportedly, this is not the first time that Ms. Bastians and her family have been the subject of acts of harassment, allegedly related to her journalistic work. Officers from the Criminal Investigation Department reportedly attempted to seize the personal computer of Ms. Bastians on 29 May and 4 June 2020, but did not have a warrant to do so. On a previous occasion, in the course of the abovementioned investigation, the Criminal Investigation Department obtained the Call Data Records of Ms. Bastians without a court order, scrutinized the records and subsequently exposed the information. In December 2019, a close associate of Ms. Bastians was also questioned by the Criminal Investigation Department regarding the phone/sim card used by Ms. Bastians since 2011.

Furthermore, according to the information we received, the husband of Ms. Bastians, a career diplomat of 13 years with the Ministry of Foreign Affairs in Sri Lanka, was summarily recalled to Colombo soon after the authorities linked his wife's name to the criminal investigation involving the employee of the Swiss Embassy, and has since been dismissed from service. On 21 June 2020, a member of her family was also summoned to appear in court in connection to the abduction case of the employee of the Swiss Embassy.

In the past few months, the family of Ms. Bastians has reportedly received repeated visits from the police, while pro-government media have reportedly conducted a smear campaign against Ms. Bastians and her family, supported by attacks on social media, labelling her as a traitor and a criminal.

Previously, Ms. Bastians was called a traitor on multiple instances by supporters and family members of former President Mahinda Rajapaksa, who threatened legal action against her. This threat was allegedly related to an article she contributed to regarding Chinese ownership of a harbour in the south of Sri Lanka.

Without prejudging the accuracy of the allegations, we express our serious concern at the various forms of intimidation and harassment against Ms. Bastians and her family, which seems directly related to the exercise of Ms. Bastians' right to freedom of expression and defence of human rights. We are particularly concerned that these

measures may be aimed at discrediting her work, in an effort to stop her reporting on Sri Lankan political and human rights affairs. Serious concern is also expressed that the reported seizure of her personal and professional equipment and the exposure of her call data records, which could adversely affect her work and could seriously endanger and compromise her sources. We are also concerned that the reported acts of harassment and violation of the right to privacy against Ms. Bastians may deter other journalists from reporting on issues of public interest, and human rights, which are particularly pertinent at this time of global pandemic.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations
2. Please provide detailed information about the legal and factual basis of any investigation involving Ms. Dharisha Bastians and how these comply with your Excellency's Government obligations under international human rights law.
3. Please provide detailed information about the legal basis for the search and the confiscation of the computer of Ms Dharisha Bastians, as well as how such measures comply with international human rights norms and standards. If any investigation were to suggest any incompatibility with international human rights law, please provide information on the return of the material seized.
4. Please indicate what independent authority, if any, is in charge of effective oversight of any state entity carrying out surveillance, whether a law enforcement or national security agency; and if no such an independent authority exists, which are the specific explicit safeguards and what is the legal basis in the case of privacy-intrusive measures such as search and seizure of electronic equipment such as laptops, tablets and smartphones.
5. Please indicate what measures have been taken to ensure that Ms Dharisha Bastians and all journalists and human rights defenders in Sri Lanka are able to carry out their legitimate work and exercise of freedom of expression and protect their right to privacy in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

6. Please indicate the extent to which Ms Dharisha Bastians' treatment by State's entities, including the police, has been in compliance with the recommendations made by the Special Rapporteur on the right to privacy in his report to the Human Rights Council on privacy and gender (A/HRC/43/52).

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Joseph Cannataci
Special Rapporteur on the right to privacy

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to refer your Excellency's Government to articles 19 and 21 of the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka acceded in 1980, which guarantee the right to freedom of opinion and expression and the right to freedom of peaceful assembly. In particular, we wish to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the aim pursued.

Concerning allegations that Ms Dharisha Bastiansha is being targeted in retaliation of her journalistic work, we would like to recall that any restrictions on freedom of expression must be strictly limited and meet the high threshold set out in article 19(3) of the ICCPR, be determined by law and be necessary and proportionate to the aim pursued. In its General Comment No. 34 (CCPR/C/GC/34), the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions referred to above as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination. Further, the Human Rights Committee made clear that "It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information".

Furthermore, we would like to bring to the attention of your Excellency's Government Article 12, paragraphs 2 and 3 of the UN Declaration on Human Rights Defenders which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to draw your attention to the right to privacy, which is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, which state that no one should be subjected to "arbitrary or unlawful interference with his privacy, family, home or correspondence".

We would like to draw the attention of your Excellency's Government to Human Rights Council resolution 34/7 "Recognizing that the right to privacy can enable the enjoyment of other rights and the free development of an individual's personality and identity, and an individual's ability to participate in political, economic, social and cultural life, and noting with concern that violations or abuses of the right to privacy might affect the enjoyment of other human rights, including the right to freedom of expression and to hold opinions without interference" and which notes "with deep

concern that, in many countries, individuals and organizations engaged in promoting and defending human rights and fundamental freedoms are frequently subject to threats, harassment and insecurity as well as to unlawful or arbitrary interference with their right to privacy, as a result of their activities”.