

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

REFERENCE:  
AL LKA 2/2021

8 July 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Special Rapporteur on freedom of religion or belief; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 43/16, 43/4, 44/8, 43/8, 43/36, 40/10 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received in relation to the continued detention of human rights defender Mr. Hejaaz Omer Hizbullah, who has been charged with terrorism-related offences.

Mr. **Hejaaz Omer Hizbullah** is a prominent lawyer and a human rights defender, and member of the Muslim minority in Sri Lanka. Mr. Hizbullah is a strong advocate against hate speech in the country and has been involved in a number of high-profile cases, including with regard to violence and discrimination towards the Muslim minority in Sri Lanka. He notably acted as counsel in complaints brought against Venerable Galagodaaththe Gnanasara Thero of the Bodu Bala Sena, a Sinhalese-Buddhist nationalist organisation.

Mr. Hizbullah was the subject of one previous communication sent to your Excellency's Government on 22 June 2020 (LKA 4/2020). In this communication we expressed concern over the arrest and detention of Mr. Hizbullah on 14 April 2020 and his lack of access to legal counsel. Mr. Hizbullah was initially under investigation for his alleged involvement in the Easter Sunday attacks of 2019, before the focus of the investigation was changed to his involvement with the Save the Pearls charity. We deeply regret that no reply has been received to this communication and respectfully urge your Excellency's Government to engage in full cooperation with the mandates of the Special Procedures of the Human Rights Council.

We have also raised our concerns on the Prevention of Terrorism Act of 1978 and its application including serious effects on the enjoyment of human rights and fundamental liberties in Sri Lanka on two letters sent to your Excellency's Government on 26 October 2018 (LKA 5/2018) and 26 February 2019 (LKA 1/2019). We also reiterate our recommendation to review the legislation to bring it in line with international human rights standards. We regret that no reply has been received to

date.

According to the information received:

On 19 August 2020, the Criminal Investigations Department (CID) filed a report regarding an ongoing investigation into Mr. Hizbullah's activities. The report allegedly claimed that Mr. Hizbullah had acted as counsel on several occasions for individuals involved in terrorism and unlawful activity, and that he had been collecting data and information on various attacks on Muslims.

As previously communicated, the evidence allegedly incriminating Mr. Hizbullah was related to phone calls he made with a suicide bomber at the Easter Sunday attacks. It has been alleged that Mr. Hizbullah made 14 phone calls to this individual over a period of five years, being his legal representative in civil property dispute cases.

Mr. Hizbullah later faced accusations that he radicalised children at the charity, Save the Pearls. He is the only member of the organisation that has been arrested. Since his arrest, leading figures of the organisation have sworn affidavits attesting to the falsity of rumours that children were radicalised. and The former Head of Counter-Terrorism at the State Intelligence Services of Sri Lanka, who is also a member of the organisation, has sworn an affidavit attesting to the fact that the activities of the charity were entirely legitimate, in housing and educating vulnerable children.

During the first nine months of his arrest and detention that took place on 14 April 2020, Mr. Hizbullah was permitted just four visits from his legal counsel, all of which were supervised by the authorities. His lawyers filed a petition to the Court of Appeal, which was granted on 15 December 2020, allowing him to speak with his lawyers confidentially for the first time since his arrest. His access to lawyers is still reportedly limited and he can speak only occasionally to his family over the phone.

On 8 January 2021, at 2pm, Mr. Hizbullah was due to make his first appearance before the Colombo Fort Magistrate. At 1:55pm, Mr. Hizbullah's lawyer was informed that Mr. Hizbullah had contracted COVID-19 and would be taken to a quarantine centre. No further information was given about Mr. Hizbullah's condition or recovery. On 18 January 2021, Mr. Hizbullah was returned to his original cell.

On 18 February 2021, Mr. Hejaaz Hizbullah was produced before the Colombo Fort Magistrate's Court. The court decided the extension of his custody until 3 March 2021.

On 3 March 2021, Mr. Hizbullah was charged with "inciting communal disharmony" under Sri Lanka's Prevention of Terrorism Act section 2(1)(h). A few days later, on 9 March 2021, the Government issued a regulation expanding the application of the Prevention of Terrorism Act. According to the text of the regulation - The Prevention of Terrorism (De-radicalisation from holding violent extremist religious ideology) Regulations No. 1 of 2021 – persons suspected of acts of, or incitement to violence or religious, racial or communal disharmony, would be held in custody and undergo a process of

“rehabilitation” at an undefined “Centre” for a maximum period of two years, instead of having the relevant authorities instituting the established judicial procedures against them.

Mr. Hizbullah was scheduled to appear in court on 18 March 2021, however this was later postponed. He was due to appear in court again on 11 June, but he was reportedly not produced in court on the day, which authorities claimed was due to the new wave of COVID-19 infections in the country. His case is scheduled to be called on 2 July 2021.

Allegations have emerged that some children who received Save the Pearls scholarships have been taken to the CID premises, threatened, and forced to sign false statements. There are reports that members of the clergy have also reportedly been pressured to falsely testify against Mr. Hizbullah.

Mr. Hizbullah is being held in a cell measuring six feet in length, three feet in width and seven feet high. He reportedly has no bed and is only permitted to leave his cell to use the bathroom. There is reportedly no ventilation in the cell.

While we do not wish to prejudge the accuracy of these allegations, we wish to reiterate our deep concern regarding the detention and investigation into Mr. Hejaz Omer Hizbullah, which may have been used as a means to prevent him from further engaging with ongoing human rights cases in relation to rising hate speech, violence and discrimination against the Muslim minority in Sri Lanka, during the last few years and for which our mandates have expressed serious concerns through a number of letters addressed to your Excellency’s Government in 2017 (LKA 3/2017), 2018 (LKA 1/2018), 2019 (LKA 3/2019) and 2020-21 (LKA 8/2020). We are deeply concerned by the vague terrorism charges brought against Mr. Hizbullah and believe that his previous human rights work and practice of his legal profession may have been wrongly conflated with terrorism. We find this particularly concerning in light of the changing focus of the investigation and allegations that minors and clerics have been pressured to give false statements.

We are furthermore concerned by the reported irregularities in due process, partly facilitated by the PTA which allowed Mr. Hizbullah to be held without charge for almost a year with severely restricted access to lawyers. We find additionally concerning that the COVID-19 pandemic has been used on multiple occasions as an apparent pretext of bypassing due process, reportedly without sufficient notice or explanation, leaving Mr. Hizbullah for a prolonged period of time in inadequate prison conditions.

OHCHR and several United Nations Special Rapporteurs have also repeatedly raised concerns<sup>1</sup> about how the application of the PTA has resulted in numerous arbitrary detentions and facilitated the torture of detainees. We have asked your Excellency’s Government to repeal the PTA and replace it with legislation that meets international standards for due process. The UN Special Rapporteurs have further expressed grave concerns that the PTA has been frequently applied in a discriminatory manner against individuals working on specific issues such as disappearances, land rights, access to resources and livelihoods. They have also

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<sup>1</sup> AL LKA 1/2021, LKA 4/2020, OL LKA 1/2019, OL LKA 5/2018, UA LKA 4/2018 and LKA 3/2016

described the definition of terrorism contained in section 2 of the PTA as ‘overly broad and vague’.<sup>2</sup> Moreover, section 9 of the PTA has been found to be particularly problematic given the duration of detention for preventative or investigatory purposes, all the more so, given the concerns concerning safeguards against ill-treatment in custody.<sup>3</sup> Such “lengthy administrative detention without any satisfactory judicial involvement is a clear violation of the prohibition of arbitrary deprivation of liberty and of the right to judicial review of the lawfulness of detention, both of which are non-derogable”.<sup>4</sup> We further express concern about the recent expansion of this detention period to two years for those who “incite religious disharmony” under your Government’s new regulation Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021, promulgated on 9 March 2021. We reiterate the need to ensure that detention is not arbitrary and in line with due process rights under international standards.

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 comments you may have on the above-mentioned allegations.
2. Please provide detailed information on the factual and legal grounds for the arrest and detention of Mr. Heejaz Omer Hizbullah.
3. Please provide clarification about how the charges against Mr. Hizbullah are in line with a strict understanding of the definition of terrorism as elucidated by international law norms, including but not limited to United Nations Security Council Resolution 1566 (2004) and the model definition put forward by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
4. Please provide information on the rationale for previously preventing Mr. Hizbullah from communicating and consulting with his lawyers without interception or censorship and in full confidentiality, and explain how the measures allegedly adopted were compatible with international standards relating to the right of detained person to have prompt access to a lawyer of their choice.
5. Please provide information on the conditions in which Mr. Hizbullah is being held in prison and explain how they are consistent with and how they are consistent with the Standard Minimum Rules for the Treatment of Prisoners, also known as the ‘Mandela Rules’.

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<sup>2</sup> A/HRC/40/52/Add.3, para. 12.

<sup>3</sup> Id, para 13.

<sup>4</sup> Id, para 16.

6. Please provide information on measures in place to ensure that witness statements are taken freely and without duress from authorities or other individuals.
7. Please indicate what measures have been taken to ensure that human rights defenders in Sri Lanka, and in particular those advocating and working for the rights of persons belonging to religious minorities, are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and persecution of any sort.
8. Please provide information on the steps taken to tackle allegations of rising hate speech and discrimination against Muslims and other ethnic or religious minorities in Sri Lanka.

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.

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Fernand de Varennes  
Special Rapporteur on minority issues

E. Tendayi Achiume  
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In particular we would like to refer to the international standards relating to the freedoms of thought, conscience and religion or belief, opinion and expression, the rights of persons belonging to minorities and the principle to non-discrimination, the rights and responsibility of human rights defenders, as well as international standards relating to counter-terrorism.

Article 19 of the Covenant protects the right to freedom of opinion and expression. We would also like to respectfully recall article 18 of the ICCPR, which stresses that "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom [...] either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching." The freedom of opinion is absolute and the freedom of expression is subject to limitations only in accordance with article 19 paragraph 3. Under both articles 18 and 19, all restrictions must pursue a legitimate aim, in accordance with the law that is sufficiently clear, and conform to the requirements of legality, necessity and proportionality.

We would like also to respectfully remind your Excellency's Government of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (A/RES/36/55), which in its Article 2 (1) stipulates that "[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief." In Article 4 (1), the General Assembly further states that: "All States shall take effective measure to prevent eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms [...]" Furthermore, we would like to refer to Article 4 (2) according to which: "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter."

Furthermore, we wish to refer to article 27 of the ICCPR, which provides for the protection of the rights of ethnic, religious or linguistic minorities, and to the 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted in General Assembly resolution 47/135. The Declaration refers to the obligation of States to protect the existence and the identity of minorities within their territories and to adopt measures to that end (article 1) as well as to adopt the required measures to ensure that persons belonging to minorities can exercise their human rights without discrimination (article 4). Article 2 further establishes that persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private and in public, freely, without any interference or any form of discrimination and provides for the effective participation of minorities in cultural, religious, social, economic and public life, as well as in decision-making processes on matters affecting

them.

We also wish to refer to your Excellency Government's obligations under the Convention on the Elimination of All forms of Racial Discrimination (ICERD), ratified by your Government Excellency's 1982. We recall that Article 2 (1) of ICERD obliges States Parties to prohibit and eliminate any act or practice of racial discrimination against persons and/or groups. Article 5 prohibits discrimination on the basis of race, colour, descent, nationality or ethnic origin and guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law. The ICERD makes clear that Article 5 on equality without distinction guarantees extend to the enjoyment of all human rights, including (a) 11 the right to equal treatment before the tribunals and all other organs administering justice (Art. 5(a)); rights to freedom of opinion and expression (Art. 5(viii)), and rights to freedom of peaceful assembly and association (Art. 5(ix)).

Similarly, we also would like to draw your Excellency's Government attention to the recommendations of the sixth session of the Forum on Minority Issues on "Guaranteeing the rights of religious minorities" (A/HRC/25/66) and in particular Recommendation 17, which calls on States to ensure that "there is no discriminatory treatment in regard to the legal and administrative recognition of all religious and belief groups. Any registration and administrative procedures, including those relating to the property and the functioning of places of worship and other religious-based institutions, should be conducted according to non-discrimination standards. International standards do not allow non-recognition of religious or belief groups to result in denial of their rights. Such standards require an inclusive approach to be taken".

United Nations (UN) human rights instruments recognize the right of access to counsel. Article 14(3)(b) of the International Covenant on Civil and Political Rights (ICCPR) protects the right of anyone facing a criminal charge "to communicate with counsel of his own choosing."<sup>5</sup> The UN Human Rights Committee (HRC) has interpreted this right to include prompt access to counsel, private and confidential attorney-client meetings and communications, and freedom of attorneys from "restrictions, influence, pressure or undue interference from any quarter."<sup>6</sup> ICCPR art. 14 is derogable in emergencies; however, the HRC has asserted that "The guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights."<sup>7</sup>

The Basic Principles on the Role of Lawyers provide that all persons "are entitled to call upon the assistance of a lawyer of their choice", and that adequate protection of human rights and fundamental freedoms requires "that all persons have effective access to legal services provided by an independent legal profession". They recognise that the primary obligation to protect lawyers and enable them to exercise their functions freely lies with the State authorities. States are required to adopt all appropriate measures to ensure that lawyers are able to perform all of their professional functions "without intimidation, hindrance, harassment or improper interference". Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities (Principles 16

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<sup>5</sup> International Covenant on Civil and Political Rights art. 14(3)(b), Dec. 16, 1966, 999 U.N.T.S 171.

<sup>6</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32, ¶ 34(2007).

<sup>7</sup> Id. ¶ 6.12 Un Body of Principles, Principle 18(2).

(a) and 17).

Furthermore, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that “[a] detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel” and provides for “[t]he right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel.”<sup>8</sup> Only in the most exceptional circumstances may a State restrictor otherwise suspend this right, and such a restriction or suspension must be specified by law and “considered indispensable by a judicial or other authority in order to maintain security and good order.”<sup>9</sup> State violations of the right to confidential communication involve the deliberate monitoring or surveilling of lawyer-client communications. Protections for the right to confidential communication and consultation with legal counsel are also enshrined in the UN Basic Principles on the Role of Lawyers, which stipulate that communications and consultations with legal counsel should occur “without delay, interception or censorship and in full confidentiality.”<sup>10</sup>

In addition, we would like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 5(c), 6, 9 and 12. In regard to the use of terrorism-related charges against a human rights defender, we would like to recall Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.

We would also like to remind your Excellency’s Government’s that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. (A/70/371, para 46(c)). We stress, that as a matter of international law, the imperative of effective counter-terrorism cannot lawfully be misused as an excuse to quash public advocacy by peaceful critics, human rights activists and members of minority groups.

The Committee against Torture and the Human Rights Committee have consistently found that conditions of detention can amount to inhuman and degrading treatment. We refer to the Standard Minimum Rules for the Treatment of Prisoners (“Mandela Rules”), adopted unanimously by the UN General Assembly (resolution 70/150 of November 2015), which provide for appropriate accommodation (rules 12 to 17).

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<sup>8</sup> [UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment] Principle 18(3).

<sup>9</sup> (Principle 18(3)).

<sup>10</sup> [UN Basic Principles on the Role of Lawyers]. Included under special safeguards in criminal justice matters, Principle 8 states, “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality.”



We would like to refer to Article 9 (1) of the ICCPR, which establishes that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. Article 9 (2) and (3) specify that anyone who is arrested shall be informed, at the time of the arrest, of the reasons for such arrest and be brought promptly before a judge for the purpose of legal assessment and challenge of the detention. Article 14 (3) stipulates that, in the determination of any criminal charge, everyone should have adequate time and means to communicate freely with counsel of choice and to effectively prepare their defence. We would like to refer your Excellency's Government of the Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court (A/HRC/30/37). These principles and guidelines, elaborated by the Working Group on Arbitrary Detention at the request of Member States of the Human Rights Council, provide universal guidance applicable to persons deprived of their liberty.

Finally, we wish to refer to the 2019 official visit to Sri Lanka by the Special Rapporteur on freedom of religion of belief, during which he highlighted serious concerns about the vagueness of certain provisions of the Penal Code and the use of the Prevention of Terrorism Act to target minorities, critics of the Government, journalists and political opponents among others, with proscribed offences which are overly broad and ambiguous leaving ample room for misinterpretations. He recommended that Sri Lanka repealed the Prevention of Terrorism Act and revised the provisions of the Penal Code that relate to various offences on religious-related matters (A/HRC/43/48/Add.2).