

**Mandates of the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism**

Ref.: AL LKA 2/2024  
(Please use this reference in your reply)

8 April 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 53/12, 52/9, 52/4 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the seemingly arbitrary and unlawful arrest and detention of Mr. **Hejaaz Omer Hizbullah**.

Mr. Hizbullah is a well-known lawyer and a human rights defender, championing the rule of law and minority rights in Sri Lanka. He has also served as a lecturer in Muslim law to students at the Sri Lanka Law College. He has been involved in various high-profile cases including those relating to violence and discrimination towards the Muslim minority in Sri Lanka.

We would like to recall joint communication AL LKA 4/2020 sent on 22 June 2020 and AL LKA 2/2021 sent on 8 July 2021 concerning the arrest and alleged arbitrary and prolonged detention of Mr. Hejaaz Omer Hizbullah on terrorism-related charges following allegations of his involvement in the 2019 Easter Sunday terrorist attack in the country. We welcome the response of the Government to AL LKA 2/2021, including the update on the case and proposed revisions to counter-terrorism laws. We would like to however recall that Special Procedures experts have expressed concern on specific provisions of the Prevention of Terrorism Act, its regulations as well as its subsequent suggested amendments, and have called for a moratorium (see OL LKA 4/2023, LKA 7/2021 and LKA 3/2021).<sup>1</sup>

According to the information received:

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<sup>1</sup> See also <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and> ; and <https://www.ohchr.org/en/press-releases/2023/10/un-experts-say-sri-lankas-counter-terrorism-bill-fails-heed-their>.

On 14 April 2020, Mr. Hizbullah was arrested under the Prevention of Terrorism Act (PTA) and held in executive detention for 10 months. On 18 February 2021, he was transferred to judicial custody and on 9 February 2022, after 22 months in custody, he was released on bail.

The charges were that during the month of August 2018, Hejaaz Hizbullah was alleged to have gone to the Al Zuhriya Madrasa in Karativu, Puttalam and spoken to the children there and told them, 'In Israel Christians have seized our mosques. If we attack the Catholics in Sri Lanka they will get scared'. Hate speech punishable under section 3(1) of the International Covenant on Civil and Political Rights Act No: 56 of 2007<sup>2</sup> and section 2(h) and 2(2)(ii) of the Prevention of Terrorism Act No: 48 of 1979.

In July 2021, Mr. Hizbullah was indicted before the High Court of Puttalam in connection with this speech the authorities alleged he had made at the Al-Zuhriya Arabic College in Puttalam district in August 2018. The charges raised against him were, “‘inciting communal disharmony’ under the PTA; ‘advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’ under the International Covenant on Civil and Political Rights (ICCPR) Act; and conspiracy and abetment charges under the Penal Code. However, Mr. Hizbullah denied making any such speech and also provided mobile call records showing that he was in Colombo, not at the College, at the time the alleged speech was made.

At his trial, the prosecution’s case was based on witness testimony provided by two persons, students at the Al-Zuhriya Arabic College. While around 40 students studied at the Arabic College at the relevant time period (August 2018), no other student has been put forward by the prosecution as a witness.

Moreover, the content of the testimony of the two witnesses, who were minors when they gave their original statements to the Criminal Investigation Department (CID), is reported to have shifted from time to time, with different and contradictory versions of facts being narrated in each statement and in their testimony before the court. At the time that this information was communicated, it was reported that the first witness had concluded his testimony while the second witness was under cross-examination, which was set to recommence on the next trial date, on 14 July 2023.

In addition, it is reported that several incidents of witness intimidation and coercion have occurred throughout the investigation process with the alleged aim of forcefully incriminating Mr. Hizbullah including by putting undue pressure on the minors, using torture and threats of indefinite detention as well as coercing witnesses with the promise of an early release from executive detention if they implicated Mr. Hizbullah.

On 18 May 2023, it is reported that the CID arrested additional individuals, under the PTA. The information suggests that all the arrested persons are potential defence witnesses who would be in a position to contradict the testimonies of the two witnesses brought by the prosecution. Therefore, the

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<sup>2</sup> No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Attorney-General's decision to arrest these persons has reportedly raised further concerns regarding the impartiality of the investigation and prosecution, and the upholding of fair trial rights and other relevant human rights norms in the proceedings. It is reported in particular that there has been no fair or full investigation of the statements obtained and that the Attorney-General had ignored circumstantial evidence regarding Mr. Hizbullah's cell tower records that contradict the evidence of the prosecution witnesses. Moreover, the Attorney-General has allegedly failed to take into consideration the fact that all witness statements were recorded around a week after Mr. Hizbullah's arrest so as to implicate him.

Reports indicate that on July 7, 2023, one of the witnesses against Mr. Hizbullah admitted in court that he lied to the Court, at the behest of another witness and that on October 19, 2023, admitted that everything he had said in evidence to the CID and the High Court were lies. The prosecution moved to charge him as a hostile witness and to initiate contempt charges against him.

Further, on September 19, 2023, the Deputy Inspector General of Police in charge of the CID stated in a TV talk show that investigations carried out during his tenure as Director in the immediate aftermath of the Easter Sunday bomb blast did not show any connection between Mr. Hizbullah and the Easter Sunday bombers. He stated that in fact an investigation was carried out to see if he had any links and the conclusion was that there was no such connection.

These continued arrests several years after the initial witness statements were recorded are reportedly viewed to suggest that the arrests are not part of any genuine investigation, but rather a continuation of the harassment and persecution of Mr. Hizbullah, designed to deprive him of credible witnesses to contradict the case of the prosecution. The arrests are reportedly viewed to have been made solely to discredit and intimidate the witnesses and to set a chilling precedent that would, in future, silence human rights defenders, lawyers, journalists, and activists.

Lastly, it has been reported that certain provisions of the PTA breach Sri Lanka's ICCPR obligations under articles 7, 9 and 14, due to, *inter alia*, the overly broad and vague definition of terrorism; detention without charge for extended periods of time at irregular places of detention; admissibility of "confessions" in judicial proceedings that may have been unlawfully obtained; and the shifting of the evidential burden of proof to the defendant, and disproportionate penalties."

While we do not wish to prejudge the accuracy of these allegations, we express our grave concern over the seemingly arbitrary arrest and prolonged detention of Mr. Hizbullah, under the PTA, which, if proven to be true, would be inconsistent with Sri Lanka's international human rights obligations. In addition, we raise concerns about what may be a reprisal for his legal work and human rights advocacy, as his recent arrest and detention may have been used as a means to prevent him from further engaging with fundamental rights cases in Sri Lanka.

The potential criminalization of the legitimate work of a human rights lawyer and human rights defender, as well as the alleged violation to his right to hold and

express opinions and carry out his work independently and without fear of intimidation, harassment or reprisals, is troubling. Moreover, we are deeply concerned about the reportedly unfounded charges which were brought against Mr. Hizbullah, alleging that he was involved in ‘inciting communal disharmony’; ‘advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’; and conspiracy and abetment charges, which is not substantiated by the evidence that was shared with us. We further express concern about the charge related to the inciting communal disharmony, which, by its broad nature, seems irreconcilable with the principle of legal certainty, enshrined in Article 15 of the ICCPR and Article 11 of the Universal Declaration of Human Rights.

We also express our serious concern over the reported lack of fair trial guarantees provided to Mr. Hizbullah, contrary to article 14 of the ICCPR. Similarly, we are concerned by the lack of a clear legal basis for the arrest of potential defence witnesses, as it is reported that while they were initially being charged under the PTA, the PTA charges against them were later amended and instead, two of the suspects were charged under the ICCPR Act.

Concerning the Prevention of Terrorism Act, we recall that several Special Procedures mandate-holders have repeatedly raised concerns about how the application of the PTA that has led, on certain occasions, to arbitrary detentions, enforced disappearances and acts of torture and other acts of cruel, inhuman or degrading treatment of detainees. We recall that the definition of terrorism, provided in section 2 of the PTA contravenes the principle of legal certainty due to its broad and vague scope. In this respect, we recall that States must ensure that counter-terrorism legislation is limited to criminalizing conduct that is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and Security Council resolution 1566 (2004) and is strictly guided by the principles of legality, necessity, proportionality and non-discrimination (CCPR/C/GC/34).

Moreover, section 9 of the PTA has found to be particularly problematic given the excessive duration of detention for preventative or investigatory purposes, which, in our views, do not allow for a fair trial. This “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>3</sup>”. In view of the above, we reiterate our concerns and encourage your Excellency’s Government to align its counter-terrorism legislation with international human rights law.

We are also concerned at the information that suggests that the domestic ICCPR Act has reportedly been abused in recent years and used to arrest dissidents and other individuals critical of the government, indicating a shrinking space for freedom of expression in Sri Lanka.

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.

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<sup>3</sup> A/HRC/40/52/Add.3, para 16.

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 comment(s) 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. Hizbullah. In addition, please provide clarification about the exact nature of the charges that have been levied against him under the PTA, the ICCPR Act and the Penal Code.
3. Please provide information as to the measures put in place to guarantee Mr. Hizbullah a fair and impartial trial in line with international standards. Similarly, please provide clarification with regard to the conduct of the CID and the Attorney-General concerning the intimidation, harassment and coercion of witnesses and explain the measures have been adopted to guarantee an impartial investigation and prosecution, and the compatibility of these measures with the criminal Procedure Code as well as international law.
4. In view of the concerns expressed by several Special Procedures mandate holders on the Prevention of Terrorism Act and its suggested amendments, please indicate the manner in which this piece of legislation is compatible with Sri Lanka's international human rights obligations, including the principles of necessity, proportionality, non-discrimination, due process, and judicial protection.
5. Please indicate the measures your Excellency's Government intends to take to ensure that the ICCPR Act is compatible with your Excellency's Government's international obligations under the various UN human rights treaties ratified by Sri Lanka, in particular with regards to freedom of expression.
6. Please indicate the measures that have been taken to ensure that human rights defenders in Sri Lanka 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.

We would appreciate receiving a response within 60 days. Past 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.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

Margaret Satterthwaite

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Ben Saul

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 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.

We would like to refer to the international standards relating to the freedoms of thought, conscience and religion or belief, opinion and expression, the right of persons to individual liberty as well as the rights and responsibility of human rights defenders.

In particular, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), ratified by Sri Lanka on 11 June 1980. Article 19 of the Covenant protects the right to freedom of opinion and expression. The freedom of opinion is absolute, and the freedom of expression is subject to limitations only in accordance with article 19 paragraph 3. Under article 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 also like to recall that in its General Comment No. 35, the Human Rights Committee has found that arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the Covenant is arbitrary, including freedom of opinion and expression (art. 19).

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. In addition, article 14 provides a set of procedural guarantees that must be made available to persons charged with a criminal offence so as to uphold the right to a fair trial and equality of all persons before the courts and tribunals. Article 14 (3) stipulates that, in the determination of any criminal charge, everyone should have adequate time and means to prepare his defence and to communicate with counsel.

We also wish to recall that United Nations 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." The UN Human Rights Committee (HRCttee) 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." Article 14 of the ICCPR is derogable in emergencies; however, the HRCttee 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."

Moreover, principle 18(3) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that, “The 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 may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.”

Similarly, the principle 8 of the UN Basic Principles on the Role of Lawyers states that, “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 also like to refer your Excellency’s Government to 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.

We would also like to refer your Excellency’s Government to principle 16 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990) which requires governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

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 (a) and 17).

Finally, 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 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

We would like to draw particular attention to the following provisions of the Declaration:

- article 5(c), which guarantees the right to communicate with non-governmental or intergovernmental organisations for the purpose of promoting and protecting human rights and fundamental freedoms;
- article 6, which guarantees the right of everyone, individually and in association with others, to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms; freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- article 9, paragraph (3) (c), which guarantees the right to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms; and
- article 12, paragraphs (2) and (3), which provide 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.