



Joint statement on the ongoing trial of lawyer and human rights defender **Hejaaz Hizbullah**

16 June 2023

Lawyers for Lawyers, the Bar Human Rights Committee, the International Bar Association's Human Rights Committee (IBAHRI), International Commission of Jurists, the Law Society of England and Wales, and Lawyers' Rights Watch Canada, the International Federation for Human Rights (FIDH), and the World Organisation Against Torture (OMCT) are concerned about the ongoing violations of fair trial rights in the ongoing trial of Sri Lankan lawyer and human rights defender Hejaaz Hizbullah. Key witnesses have been subject to threat, coercion, intimidation and arrest.

We have strong reasons to believe Mr Hizbullah is being persecuted for his work to defend the rights of persons from the Muslim community in Sri Lanka in his capacity as a lawyer and human rights defender. Mr Hizbullah's next trial date is scheduled for 14 July 2023, but given recent reports of witness intimidation and coercion, we have grave concerns that he will be denied a fair trial.

Mr Hizbullah is a lawyer and human rights defender known for advocating for the members of the minority Muslim Community in Sri Lanka. He has advised and represented victims of discrimination, particularly in the form of hate speech and hate-based violence in Sri Lanka since 2012.

On 14 April 2020, Mr. Hizbullah was arrested by the Criminal Investigation Department (CID) under the Prevention of Terrorism Act (PTA) of 1978. No reasons for his arrest were provided to him and his family at the time of his arrest. During the first eight months of this pre-trial detention, he was denied access to a lawyer. It was almost a year after his arrest on 3 March 2021 that Mr. Hizbullah was officially charged with "inciting communal disharmony" under the PTA, for "advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" under the International Covenant of Civil and Political Rights Act of 2007 and for conspiracy and abetment charges under the Penal Code. These charges all relate to a speech that Mr Hizbullah was alleged to have made at the Al-Zuhriya

Arabic College in August 2018. Mr Hizbullah denies having made the speech and evidence is available for his whereabouts at the time of the alleged speech.

Mr. Hizbullah was detained for almost two years following arrest. He was initially refused bail at a court hearing on 28 January 2022, even though the Attorney-General did not object to his release, because the Puttalam High Court claimed to not have jurisdiction over bail decisions under the PTA. It was only on 7 February 2022 that Mr Hizbullah was able to successfully challenge his refusal of bail, but his charges remain, and he is due to appear in court again on 14 July 2023.

The prolonged detention without charge or access to lawyers constitute a violation of rights under article 9 the International Covenant on Civil and Political Rights, to which Sri Lanka is a party.

We are deeply concerned to hear reliable reports of witness intimidation and coercion in Mr Hizbullah's case. Four children aged between 11 and 14 complained to the Supreme Court that they were subject to extreme pressure through threats by CID agents to give incriminating evidence against Mr Hizbullah. An administrator supporting the work of the Arabic College who was arrested after Mr Hizbullah was arrested was allegedly threatened with long term detention if he did not incriminate Mr Hizbullah of having engaged in hate speech and terrorism. The administrator was later also arrested by the CID on 3 May 2020, given bail in 2022, but only discharged on 7 June 2023. The principal of the college was also arrested in 2020, and consequently given bail in 2021, but the criminal charges against him have not been dropped. Two teachers at the Arabic College who were arrested in 2021 have complained that they were pressured to implicate Mr Hizbullah in exchange for early release from executive detention. The two teachers were granted bail in 2022, but to date also still have criminal charges filed against them.

On 18 May 2023, four more people connected to the Arabic College who are potential defence witnesses for Mr Hizbullah were also arrested under the PTA by the CID, acting on advice of the Attorney-General. We understand that the synopsis of evidence was only produced against them when they were produced before the Court on 31 May 2023. Two of these witnesses were subsequently released on 7 June 2023, but two, both teachers at the Arabic College, were retained and criminally charged under the ICCPR Act of 2007.ⁱ We are concerned that these arrests are designed to deprive Mr Hizbullah of credible witnesses to challenge the case of the prosecution. All key defence witnesses have now been subjected to arbitrary arrests and detention under the PTA and/or ICCPR Act of 2007 in the past years. Several still face criminal charges.

Mr Hizbullah is the first lawyer to be prosecuted and be subject to prolonged pre-trial detention under the PTA. The PTA has faced severe international criticism for undermining the right to a fair trial and the freedom of expression, and for suppressing political dissent. The European Parliamentⁱⁱ and several Special Rapporteurs of the United Nationsⁱⁱⁱ have urged Sri Lanka to reform the PTA due to its failure to comply with international human rights obligations. The Sri Lankan Government has continuously pledged to reform the PTA but has failed to implement meaningful amendments.^{iv}

Given the nature of the charges against Mr Hizbullah, his prolonged pre-trial detention, intimidation to key witnesses, the undersigned organisations have strong reasons to believe that he is subject to politically-motivated criminal proceedings on spurious grounds and his fair trial rights are severely undermined. We are concerned that the charges brought against Mr Hizbullah are aimed at curbing his legitimate activities as a lawyer and a human rights defender, and an attempt to suppress freedom of expression, including political dissent in Sri Lanka.

The United Nations Basic Principles on the Role of Lawyers^v, in particular to Article 16, which states that:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (...) and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

In view of the above, we urge the government of Sri Lanka to:

- Ensure that Mr Hizbullah is afforded all the elements of a fair trial under international law;
- End all acts of harassment against Mr Hizbullah;
- Immediately stop the arbitrary arrest, threat of arrest, coercion and other intimidation of witnesses in his case;
- Immediately release the remaining two potential defence witnesses who were arrested on 18 May;
- Reform the PTA and bring it in line with Sri Lanka's international human rights obligations;
- Ensure that all lawyers and human rights defenders in Sri Lanka are able to carry out their legitimate professional activities without fear of reprisals and free of undue interference.

Lawyers for Lawyers

The Bar Human Rights Committee

The International Bar Association's Human Rights Committee (IBAHRI)

International Commission of Jurists

The Law Society of England and Wales

Lawyers' Rights Watch Canada

The International Federation for Human Rights (FIDH), within the framework of the Observatory for the Protection of Human Rights Defenders

The World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

ⁱ Both the Prevention of Terrorism Act and the International Covenant of Civil and Political Rights Act (ICCPR Act) of 2007 have been criticized by UN Human Rights experts for failing to comply with Sri Lanka's human rights standards. Communication from various United Nations Special Rapporteurs, including the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to the Sri Lankan government on the importance of meaningful reform of the PTA, 9 December 2021, [OL LKA \(7.2021\)](#), available

at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26863>

ⁱⁱ European Parliament, Motion for a resolution with request for inclusion in the agenda for a debate on cases of breaches of human rights, democracy and the rule of law pursuant to Rule 144 of the Rules of Procedure on the situation in Sri Lanka, in particular the arrests under the Prevention of Terrorism Act (2021/2748(RSP), 8 June 2021, available at: https://www.europarl.europa.eu/doceo/document/B-9-2021-0356_EN.html.

ⁱⁱⁱ Communication from various United Nations Special Rapporteurs, including the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, to the Sri Lankan government on the importance of meaningful reform of the PTA, 9 December 2021, [OL LKA \(7.2021\)](#), available

at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26863>

^{iv} Communication of various United Nations human rights experts. Sri Lanka: UN experts call for swift suspension of Prevention of Terrorism Act and reform of counter-terrorism law, 2 March 2022, available at: <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>. On 10 March 2022, an amendment bill to the PTA was passed by the parliament of Sri Lanka that according to human rights experts falls short of complying fully with Sri Lanka's human rights standards.

^v The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on 7 September 1990. Subsequently, the UN General Assembly "welcomed" the Basic Principles in their 'Human rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.