



BY EMAIL

President and Minister of Defense
His Excellency Gotabaya Rajapaksa
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Amsterdam, 26 January 2022

Subject: trial and ongoing detention of Hejaaz Hizbullah

Your Excellency,

Lawyers for Lawyers is an independent and non-political foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. Lawyers for Lawyers has Special Consultative status with the UN Economic and Social Council since 2013.

Lawyers for Lawyers is concerned about the ongoing detention of lawyer and human rights defender Hejaaz Hizbullah. Mr. Hizbullah is a minority rights advocate and legal counsel for many Muslim victims of human rights violations.

On 14 April 2020, Mr. Hizbullah was arrested by the Criminal Investigation Department (CID) under the Prevention of Terrorism Act (PTA). No reasons for the arrest were provided to Mr. Hizbullah or his family at the time of the arrest. He has remained in detention ever since. It has been reported that the detention order states that Mr. Hizbullah is being investigated for allegedly “aiding and abetting” the Easter Sunday bombers and for engaging in activities deemed “detrimental to the religious harmony among communities”. On 3 March 2021, Mr. Hizbullah was officially charged with “inciting communal disharmony under” under the PTA, for “advocating national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence” under the ICCPR Act of 2007 and for conspiracy and abetment charges under the Penal Code.

On 10 December 2020, Mr. Hizbullah’s lawyers filed a writ petition before the Court of Appeal seeking release from detention and access to Mr. Hizbullah. The lawyers submitted and the court noted that Mr. Hizbullah did not have access to his lawyers maintaining confidentially since September 2020. In the Petition, Mr. Hizbullah’s lawyers stated that were given access to their client on only four occasions and that the authorities were present on all occasions around the lawyers and Mr. Hizbullah. During the Appeal Court hearing on 15 December 2020, the Attorney General agreed to grant Mr. Hizbullah confidential access to counsel.

According to our information, on 19 November 2021, the bail hearing of Mr. Hizbullah took place at the Puttalam High Court. During this hearing, the judge stated that the High Court does not have the jurisdiction to grant bail under the PTA, and additionally pointed towards an inconsistency between the PTA and the constitution, which should be dealt with on a higher level and the legislative branch of government.

Mr. Hizbulah's revision application against the order refusing him bail was taken up in the Court of Appeal on 21 January 2022. The State informed the Court that the prosecution would consent to bail being granted to Hejaaz at the conclusion of proceedings on 28 January 2022 in the Puttalam High Court, if the Defence were to make such an application.

Lawyers for Lawyers is concerned that the charges brought against Mr. Hizbulah and his ongoing detention are aimed at curbing his legitimate activities as an attorney.

Mr. Hizbulah is the first lawyer to have been detained under the PTA. The Sri Lankan Government has continuously pledged to reform the PTA, but has failed to do so until this moment. In the meantime, several institutions/bodies (amongst which the European Parliament¹ and a number of Special Rapporteurs of the United Nations²) have urged Sri Lanka to reform the PTA, considering that it is a law that violates Sri Lanka's international human rights obligations.

We draw your attention to the United Nations Basic Principles on the Role of Lawyers,³ in particular, Article 16 which states that :

16. 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, Lawyers for Lawyers respectfully urge you to immediately:

- Release Mr. Hizbulah and drop all charges against him unless credible evidence is presented in proceedings that respect fair trial guarantees and put an end to all acts of harassment against him, including at the judicial level;
- Guarantee in all circumstances that all lawyers in Sri Lanka are able to carry out their legitimate professional activities without fear of reprisals and free of all restrictions including judicial harassment.

Thank you for your attention to this very important matter. We look forward to receiving your response and assurance that the government of Sri Lanka will give the situation of Mr. Hizbulah the attention and

¹ 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.

² 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 \(7.2021\)](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?glid=26863), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?glid=26863>

³ 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.

remedial action required by international human rights law binding on Sri Lanka. We will continue to monitor this case closely.

Yours sincerely,

Lawyers for Lawyers

CC.

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