

SRI LANKA

Human Rights Committee Consideration of the 6th Periodic Report of Sri Lanka

Submission for the Review of the State report of Sri Lanka by the Lawyers for Lawyers Foundation

Amsterdam, The Netherlands
30 May 2022

Lawyers for Lawyers
P.O. Box 15732
1001 NE Amsterdam
The Netherlands

T +31(0)207171638
E Info@lawyersforlawyers.org
@ www.lawyersforlawyers.org

Submission to the Human Rights Committee
July 2022

Sri Lanka

I. INTRODUCTION

Submitting Party

1. Lawyers for Lawyers ('L4L') is an independent, nongovernmental organization, supported by contributions from private individuals and organizations related to the legal profession. Established in 1986, Lawyers for Lawyers has had special consultative status with ECOSOC since 2013.
2. Lawyers for Lawyers promotes and protects the independence of the legal profession through the support and empowerment of lawyers around the world who face reprisals, improper interferences, and undue restrictions, as a result of discharging their professional functions.¹ In doing so, we advocate for adherence to core values underpinning the legal profession, in conformity with internationally recognized human rights laws, norms and standards, including but not limited to the International Covenant on Civil and Political Rights ('ICCPR')³ and the United Nations (UN) Basic Principles on the Role of Lawyers ('Basic Principles')².

Concerning

3. On 22 February 2019, Sri Lanka submitted its Sixth Periodic Report on its implementation of the ICCPR.³ On the 10th of July 2020, the Human Rights Committee ('**the Committee**') adopted a List of Issues in relation to the sixth periodic report of Sri Lanka ('**State party**').⁴
4. During its 135th session, from 27 June to 29 July 2022, the Committee will consider the sixth report submitted by Sri Lanka under Article 40 of the Covenant and adopt concluding observations that will assist Sri Lanka in the implementation of the Covenant. In this context, Lawyers for Lawyers wishes to contribute to review by the Committee by submitting information on the situation of lawyers in Sri Lanka, particularly the obstacles to the independent exercise of the legal profession and violations committed against them.

Executive summary

5. This submission outlines L4L's key areas of concern about the failure of the Sri Lanka government to comply with its international human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR.
6. This submission highlights the following issues that give rise to Lawyers for Lawyers concerns:
 - A. Harassment of lawyers
 - B. Criminal prosecution of lawyers
 - C. Access to clients in detention and lawyer-client confidentiality

¹ For more information visit our website: <http://www.advocatenvooradvocaten.nl/about-us/>

² Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 ('Basic Principles').

³ Sixth Periodic Report submitted by Sri Lanka under Article 40 of the Convention, 25 April 2019, CCPR/C/LKA/6.

⁴ List of issues in relation to the sixth periodic report of Sri Lanka, Human Rights Committee, 10 July 2020, CCPR/C/LKA/Q/6.

7. Due to these issues, the professional rights and privileges of lawyers in the State party are violated. This impairs their ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and for ensuring effective justice for all persons.
8. In addition to the violations of their professional rights and privileges under article 14 of the ICCPR, these violations also encroach upon other rights that lawyers, like other citizens, are entitled to, including the rights to security of person (article 9).
9. Given the vital role of lawyers in the protection of the rule of law and the protection of rights, and the fact that lawyers in the State party are specifically targeted because of their work as lawyers, L4L would like to recommend the Committee to specifically address the position of lawyers, whenever appropriate, when reviewing the State party's implementation of the ICCPR.

Methodology

10. Lawyers for Lawyers has been closely following the situation of lawyers in Sri Lanka. The information for this submission is collected through ongoing desk-research, interviews and engagement with and reports from Sri Lankan lawyers and other local and international stakeholders.

II. SUBSTANTIVE PART

Effective Mechanisms for the Protection of Human Rights

11. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are able to carry out their professional activities independently. This follows from – amongst other international instruments - the ICCPR.
12. Interference in the work of lawyers may lead to violations of the right to a fair trial under Article 14 of the Covenant, as has been recognized by the Committee.⁵ In particular, the Committee has stated that *'lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter'*.⁶ Lawyers should also be able to *'meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications'*.⁷
13. The right to a fair trial also entails the principle of equality of arms. In view of the Committee, this means that *'the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant'*.⁸

⁵ Human Rights Committee, General Comment No.32, CCPR/C/GC/32, para.34. See also Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, especially article 12.

⁶ Ibid, par. 34.

⁷ Ibid, par. 34.

⁸ Ibid, par. 13.

14. In its task of promoting and ensuring the proper role of lawyers, the State Party should respect and take into account the Basic Principles within the framework of its national legislation and practice.⁹ Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.¹⁰
15. It is the State party's duty under the ICCPR to respect and guarantee that all persons within its jurisdiction have effective and equal access to lawyers of their own choosing, and that lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference from any quarter, or be threatened with sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
16. The State party must also ensure that lawyers are adequately protected when their security is threatened because of carrying out their legitimate professional duties, and that they are not identified with their clients or their clients' causes.¹¹ In addition, the State party must recognize and respect that all communications and consultations between lawyers and their clients within their professional relationships are confidential.¹² The Basic Principles affirm that lawyers, like other citizens, are entitled to the right to freedom of expression and assembly.¹³
17. However, Lawyers for Lawyers has received information that the State party fails to fully respect and ensure the guarantees for the proper functioning of lawyers under Articles 9 and 14 of the ICCPR. This impairs their ability to provide effective legal representation and consequently severely undermines the proper functioning of the rule of law and the adequate protection of rights to which all persons are entitled, including the rights to effective remedy and fair trial. The work of lawyers is indispensable for the public confidence in the administration of justice and for ensuring effective justice for all persons.

A. Harassment of lawyers

18. In its List of Issues, The Committee has requested the Sri Lankan authorities to respond to continued reports of harassment, intimidation, surveillance and attacks against human rights defenders.¹⁴ To this the State party replied that it is committed to protecting and promoting freedom of expression and civil society space and that there are no restrictions on civil society space in any part of Sri Lanka.¹⁵ The government also states that parties that have experienced harassment can submit their complaints to different national mechanisms that can investigate such claims.¹⁶
19. However, it has been reported that lawyers in the State party were increasingly the subject of harassment and intimidation. In his report of June 2021, the Special Rapporteur on the rights to freedom of peaceful assembly and of association stated that *"lawyers and legal practitioners play a crucial role in helping to ensure full respect for the rights to freedom of peaceful assembly and access to justice. They do so (...) by working to ensure that individuals and groups are protected against violations and abuses; by holding those responsible for rights violations to account; by pursuing remedies for those whose human rights have been violated in the context of assemblies; and by promoting structural*

⁹ Basic Principles, Preamble, paragraph 11.

¹⁰ Basic Principles, Preamble, paragraph 9.

¹¹ *Idem*, Principles 17 and 18.

¹² Human Rights Committee, General Comment No.32, CCPR/C/GC/32, paragraph 34. In particular, the Committee has stated that lawyers should also be able to "meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications." See also Principle 22 of the Basic Principles.

¹³ Principle 23 of the Basic Principles.

¹⁴ List of issues in relation to the sixth periodic report of Sri Lanka, Human Rights Committee, 10 July 2020, CCPR/C/LKA/Q/6, par. 26.

¹⁵ Replies of Sri Lanka to the list of issues in relation to its sixth periodic report, Human Rights Committee, 11 May 2022, CCPR/LKA/RQ/6, par. 117, 119.

¹⁶ Replies of Sri Lanka to the list of issues in relation to its sixth periodic report, Human Rights Committee, 11 May 2022, CCPR/LKA/RQ/6, par. 117, 118.

*changes oriented towards the reform of rights violating systems*¹⁷. In April 2022 a large number of protesters started a non-violent and peaceful protest in response to the ongoing economic crisis in the State party. Lawyers have played a crucial role in safeguarding the right to assembly of the protesters, with at some point more than 300 lawyers coming together to represent arrested protesters.¹⁸ Lawyers have also represented protesters in opposing applications from the police to forcefully remove (peaceful) protesters from the protest site.

20. After 9 May 2022, the protests turned violent.¹⁹ Shortly hereafter, images blaming the legal community for hindering the police in removing the protesters and thereby allowing the violence to occur were shared on social media.²⁰ Also the Bar Association of Sri Lanka raised concern about the “*concerted effort by certain parties interested in discrediting the judiciary and the Bar by falsely accusing judges and members of the legal profession of promoting violence*” in a letter to the Chief Justice and Attorney General on 18 May 2022.²¹
21. In accordance with Principle 16(a) of the Basic Principles, governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”. The rhetoric creates a risk for lawyers carrying out their legitimate professional activities and fulfilling their crucial role in safeguarding protesters. This rhetoric could have a deterring effect on lawyers and decrease the access to justice of protesters.
22. L4L was furthermore informed that lawyers who belong to a minority group find themselves more likely to be subject to harassment. They are subject to more frequent and more severe harassment and intimidation than Sinhalese or Christian lawyers, inside and outside the court room. Also female lawyers have indicated facing harassment in relation to their gender: being a female lawyer often entails sexual harassment by (often more senior) male lawyers.

B. Criminal prosecution of lawyers

23. In accordance with Principle 16(c) of the Basic Principles, governments must ensure that lawyers “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”. L4L has received reports of criminal prosecution of some lawyers in relation to their legitimate professional activities. This is illustrated by the case of Hejaaz Hizbullah:

Hejaaz Hizbullah

Mr. Hizbullah is a minority rights advocate and legal counsel for Muslim victims of human rights violations in Sri Lanka. On 14 April 2020, Mr. Hizbullah was arrested under the Prevention of Terrorism Act (PTA) law and later officially charged with ‘inciting communal disharmony’ under the PTA law, 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

¹⁷ Guidelines for lawyers in support of peaceful assemblies, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 29 June 2021, A/HRC/47/24/Add.3.

¹⁸ EconomyNext, ‘Over 300 Sri Lanka lawyers flock to represent 53 arrested protesters’, 2 April 2022, retrieved from: <https://economynext.com/over-300-sri-lanka-lawyers-flock-to-represent-53-arrested-protesters-92397/>. NewsWire, ‘Over 300 lawyers at Mirihana Police to represent arrested protesters free of charge’, 1 April 2022, retrieved from: <https://www.newswire.lk/2022/04/01/00-lawyers-in-mirihana-police-to-represent-arrested-protesters-free-of-charge/>.

¹⁹ A. Pal & U. Jayasinghe, ‘Sri Lanka protesters call for new government a day after clashes kill eight’, 11 May 2022, retrieved from: <https://www.reuters.com/world/asia-pacific/sri-lankas-colombo-calm-after-clashes-that-killed-five-2022-05-10/>.

²⁰ See for example this tweet by @jehan_hameed, 15 May 2022, retrieved from: https://twitter.com/jehan_hameed/status/152579193772412931?s=20.

²¹ Bar Association of Sri Lanka, ‘Letter by the Secretary, Ministry of Public Security to this lordship the Chief Justice’, 18 May 2022, retrieved from: <https://basl.lk/letter-by-the-secretary-ministry-of-public-security/>. The Bar Association wrote the letter in response to a letter written by the Secretary of Public Security to the Chief Justice which allegedly accused judges of being responsible for the violence that had occurred after 9 May 2022. As stated above, L4L has been informed that this rhetoric is also actively used against lawyers who are defending protesters’ rights.

abetment charges under the Penal Code. The State Prosecutor based his case on the statement of one boy who stated that Mr. Hizbullah had come to his school and held a speech advocating for violence against Catholics. The boy's statement was inconsistent over the course of the trial and has since been retracted. Despite the lack of evidence, the charges against Mr. Hizbullah were not dropped.

After his arrest, Mr. Hizbullah was held in custody with very limited access to his family and without being able to speak with his lawyers confidentially for almost two years. During the bail hearing of 19 November 2021, a year and a half after his initial arrest, the Puttalam High Court refused to grant him bail under the PTA, claiming it no jurisdiction to grant bail under the PTA. Mr. Hizbullah appealed against this decision, and although the state informed that the prosecution would consent to bail being granted, the High Court still refused to grant bail during the court hearing on 21 January 2022. Finally, on 7 February 2022 Mr. Hizbullah was granted bail and was released on 9 February. However, the charges against him have not been dropped. The next hearing in Mr. Hizbullah's case is scheduled for 10 June 2022.

24. In its list of Issues, the Committee has requested the authorities of the State party to report on the progress made in repealing and replacing the Prevention of Terrorism Act No. 48 of 1979 (PTA) with regulations that are compatible with the Covenant and to elaborate on the content of any counter-terrorism bill under consideration.²² In its reply to the list of issues dated 11 May 2022, the government of the State party replied that the PTA Amendment Bill was passed in Parliament on 22 March 2022 and that these amendments are an interim measure towards the promulgation of a more comprehensive anti-terror legislation.²³ The example of Hejaaz Hizbullah, who is the first lawyer who was prosecuted under the PTA, illustrates that the vague wording of national security legislation like the PTA law allows for arbitrary arrests and prosecution. According to the PTA law, when a police officer has '*reasonable cause to suspect*' that an arrested person has committed an offence, a report is sent to the Minister of Defense to consider whether the person should be detained on a detention order under the PTA for the purpose of investigation.

C. Access to clients in detention and lawyer-client confidentiality

25. Pursuant to Article 14 of the ICCPR, the government of Sri Lanka must uphold the right to a fair trial, including the right to communicate with a legal counsel. Furthermore, according to Principle 8 of the Basic Principles on the Role of Lawyers, governments must ensure 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*". Moreover, Principle 8 states that "*such consultations may be within sight, but not within hearing, of law enforcement officials.*" Article 22 of the Basic Principles on the Role of Lawyers states that "*Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.*"
26. Lawyers in Sri Lanka have reported that they are encountering difficulties accessing their clients when they are detained. This is especially the case when their clients are from minority backgrounds, or prosecuted under the PTA law. Also in relation to arrested protesters, lawyers report having difficulty locating arrested protesters.
27. There is no written law in Sri Lanka which prescribes that lawyers should be able to speak with their clients confidentially. Lawyers in Sri Lanka also report not being able to have individual consultations

²² List of issues in relation to the sixth periodic report of Sri Lanka, Human Rights Committee, 10 July 2020, CCPR/C/LKA/Q/6, par. 9.

²³ Replies of Sri Lanka to the list of issues in relation to its sixth periodic report, Human Rights Committee, 11 May 2022, CCPR/LKA/RQ/6, par. 41.

with their clients when they are detained. More often than not, lawyers are not allowed to speak with their detained clients in private, let alone without the presence of surveillance software.

Hejaaz Hizbullah

Mr. Hizbullah stated that there were a number of police officers initially present when he spoke to his lawyers. Only after an application was made to the court of appeal was Mr. Hizbullah allowed to speak with his lawyers without the presence of anyone else, to which the police agreed. However, Mr. Hizbullah reports that the conversations were still monitored by a surveillance camera and a microphone.

28. Additionally, L4L has been informed that lawyers in Sri Lanka have strong concerns regarding surveillance of their personal and professional communications.

III. RECOMMENDATIONS

- **Sri Lanka should take measures to prevent the harassment of lawyers and attempts to impede or interfere on improper grounds with their defence of clients, in accordance with Article 14 of the Covenant and articles 16 and 18 of the Basic Principles on the Role of Lawyers.**
- **Sri Lanka should take all necessary measures to prevent that lawyers suffer or be threatened with prosecution, disciplinary action or other sanctions on improper grounds, in accordance with article 14 of the Covenant and article 16 of the Basic Principles on the Role of Lawyers.**
- **Sri Lanka should recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential in accordance with article 14 of the Covenant and article 22 of the Basic Principles on the Role of Lawyers and not force lawyers to act as a witness in cases in which they represent their clients.**