

17 November 2020

LAWASIA STATEMENT OF CONCERN ON THE ARREST AND PROLONGED DETENTION OF HEJAAZ HIZBULLAH

LAWASIA, the law association for Asia and the Pacific, expresses deep concern over the arbitrary and unlawful arrest, and prolonged detention, of prominent Sri Lankan human rights lawyer, Mr Hejaaz Hizbullah.

LAWASIA's objectives include the promotion of the administration of justice, the protection of human rights and the maintenance of the rule of law within Asia and the Pacific region.¹ The current situation in Sri Lanka indicates serious violations of international human rights law and standards, which LAWASIA calls on the Sri Lankan Government to remedy.

LAWASIA understands that Mr Hizbullah, a prominent Muslim lawyer and human rights defender in Sri Lanka, was arrested on 14 April 2020, under the stringent Prevention of Terrorism Act, on charges relating to his conversations with a contact person for a former client, and vague allegations of 'indoctrination', relating to a charity he is engaged with.²

LAWASIA understands that, to date, Mr Hizbullah has not been formally charged. There appears to be a lack of due process in relation to the circumstances of his arrest and detention. We understand that during his arrest, key due process provisions within the Prevention of Terrorism Act were not complied with, and several of his case files were seized, which, if true, amounts to a severe impingement of attorney-client privilege.³ Throughout his detention, it appears that Mr Hizbullah has been denied meaningful access to his lawyers and family.⁴ He continues to be detained at the Criminal Investigations Department Headquarter in Colombo, without any credible evidence being put before a court, and the order detaining him was renewed on 14 October 2020. The cases relating to his arrest and detention face significant delays, and the listing of his case before a Magistrate has been postponed to 27 February 2021, reportedly due to the COVID-19 pandemic.⁵

¹ Region is defined in LAWASIA's Constitution as "jurisdictions and territories which are, or may become, regional or associate members of the United Nations Economic and Social Commission for Asia and the Pacific".

² Amnesty International, *On Hejaaz Hizbullah: The latest victim of Sri Lanka's draconian Prevention of Terrorism Act*, 15 July 2020 <<https://www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act/>>.

³ Meera Srinivasan, *Concerns grow over 'lapses' in Sri Lanka's Easter attack probe*, THE HINDU, 21 June, 2020, <<https://www.thehindu.com/news/international/concerns-grow-over-adherence-to-due-process-in-easter-probe/article31884006.ece>>.

⁴ Amnesty International, *Sri Lanka: Prominent human rights lawyer arbitrarily detained for six months must be released*, 16 October 2020, <<https://www.amnesty.org/en/latest/news/2020/10/sri-lanka-prominent-human-rights-lawyer-arbitrarily-detained-for-six-months-must-be-released/>>.

⁵ *Hejaaz's case postponed to next year*, COLOMBO GAZETTE, 28 Oct. 2020 <<https://colombogazette.com/2020/10/28/hejaazs-case-postponed-to-next-year/>>.

LAWASIA is concerned that Mr Hizbullah's arbitrary arrest and continued detention may be a form of state reprisal for his legal practice and advocacy for the constitutional rights of the Sri Lankan Muslim minority community. Mr Hizbullah, a senior lawyer and human rights defender, has, over his 15 years of practice, taken on several important cases on behalf of victims of abuse of state power, human rights abuses and hate speech, including a challenge to the dissolution of Parliament in 2018. His interventions have been pivotal in upholding the rule of law, constitutional rights and human rights in Sri Lanka.⁶

LAWASIA calls on the Sri Lankan authorities to release Mr Hizbullah and ensure his due process and substantive rights are protected. LAWASIA draws attention to the human rights obligations of Sri Lanka under the *Universal Declaration of Human Rights 1948*, *International Covenant on Civil and Political Rights 1966* (Sri Lanka acceded to the ICCPR on 11 June 1980), under the United Nations *Basic Principles on the Role of Lawyers*,⁷ and the United Nations *Declaration on Human Rights Defenders*.⁸

In particular, LAWASIA draws attention to the rights guaranteed under Article 3 (right to life and liberty), Article 5 (prohibition on torture) and Article 9 (prohibition against arbitrary arrest) of the *Universal Declaration of Human Rights*; Article 7 (prohibition against torture), Article 9 (right against arbitrary arrest and detention), Article 14(3)(b) (right to equality, and access to counsel), Article 18 (right to freedom of conscience or thought), Article 19 (right to freedom of expression) and Article 26 (right against discrimination) of the *International Covenant on Civil and Political Rights*, and Principles 16, 17, 18, 22 and 23 of the *UN Basic Principles on the Role of Lawyers*,⁹ and Principles 1, 2, 6, 9(c) and 12 and 13 of the *UN Declaration on Human Rights Defenders*.¹⁰

LAWASIA is concerned that the use of Sri Lanka's draconian Prevention of Terrorism Act exceeds the principle of legality, under which anti-terror laws must be applied in carefully circumscribed contexts, and for specific charges. We are concerned that the Sri Lankan Government's use of its anti-terror law has the effect of criminalising peaceful and legitimate human rights work and could cause a chilling effect on those involved in peaceful dissent and human rights advocacy. This is inimical to the rule of law and contrary to the Human Rights Council's interpretation that anti-terror legislation should not be used to deter legitimate human rights work.¹¹

LAWASIA is also concerned that the proliferation of prejudicial narratives against Mr Hizbullah in the media threaten to violate the basic principle of the presumption of innocence, enshrined in Article

⁶ Usaid Siddiqui, *Why Sri Lanka jailed a Muslim lawyer without charge for 6 months*, AL JAZEERA, 15 October 2020, <<https://www.aljazeera.com/news/2020/10/15/sri-lanka-muslim-lawyer>>.

⁷ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers* (Sept. 7, 1990).

⁸ UN General Assembly, Fifty-third Session, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (March 8, 1999) [A/RES/53/144].

⁹ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, art. 16, 18 (Sept. 7, 1990).

¹⁰ UN General Assembly, Fifty-third Session, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (March 8, 1999) [A/RES/53/144].

¹¹ Human Rights Council Resolution 22/6, *Protecting Human Rights Defenders*.

13(5) of the Sri Lankan Constitution and in international human rights law.¹² LAWASIA draws the Sri Lankan authorities' attention to their responsibility to ensure that the media is given appropriate guidance on reporting pending cases, while protecting freedom of expression.

LAWASIA calls on the Sri Lankan Government to release Mr Hizbullah, and to ensure that it meets its obligation to protect Mr Hizbullah's work as a lawyer and his right against arbitrary detention. The Sri Lankan Government must ensure Mr Hizbullah has unfettered access to legal counsel. Without further evidence, we consider there is no justification for keeping Mr Hizbullah in detention for such a long period, particularly during a pandemic, and LAWASIA calls on the Sri Lankan Government to ensure that he is released. The Sri Lankan Government must ensure that it respects the Rule of Law, and not Rule by Law.

Chunghwan Choi
President, LAWASIA

¹² *Hizbullah's Family Decries "Vicious" Media Campaign After Confidential Statements Provided To Judge Leaked!* COLOMBO TELEGRAPH, 14 May 14 2020, <<https://www.colombotelegraph.com/index.php/hizbullahs-family-decries-vicious-media-campaign-after-confidential-statements-provided-to-judge-leaked/>>.