

4 November 2020

STATEMENT

SRI LANKA: Detention of human rights lawyer Hejaaz Hizbullah

The Bar Human Rights Committee of England and Wales (BHRC) is concerned at reports of the continued detention of prominent human rights lawyer, Hejaaz Hizbullah, under Sri Lanka's Prevention of Terrorism Act (PTA). We note that Mr Hizbullah is a member of the Muslim minority in Sri Lanka. He has been involved in a number of significant constitutional cases against the government and has acted for the rights of Muslim minorities in the country. He is known for his moderate and reformist views within that community.

Mr Hizbullah was arrested on 14 April 2020 by the Criminal Investigation Department (CID) of the police and placed under a detention order issued by the President of Sri Lanka, purportedly under section 9 PTA, which stipulates that it is the Minister of Defence who has the legal competence to sign and issue a detention order. No reasons for the arrest were disclosed to him or his family. Some of his case files were removed. He has been detained for more than six months without charge, without being brought before a court, and without meaningful access to legal counsel and family members. No detention order was given to him until 25 April 2020. Domestic law mandates that a person arrested under the PTA must be produced before a magistrate within 72 hours if no valid detention order is issued.

The detention order is reportedly vague, citing the detention of Mr Hizbullah for alleged involvement in the Easter Sunday 2019 terrorist attack in Colombo and for engaging in "activities detrimental to religious harmony among communities". Subsequent to his arrest, he has also been alleged to have misused a charity, 'Save the Pearls', for the indoctrination of children into extremism. Notwithstanding these serious allegations, no evidence has been produced to a court, nor any specific charges formulated against Mr Hizbullah in support of these allegations. In particular, BHRC understands that four children have petitioned the Supreme Court alleging that they were intimidated after Mr Hizbullah's arrest into making false statements relating to the activities of the charity.

The detention order was renewed on 14 October 2020. The listing of his case before a Magistrate on 28 October 2020 was postponed to February 2021 reportedly due to the COVID-19 pandemic. Notwithstanding the clear risks of remaining in prison during the pandemic, Mr Hizbullah remains detained and has not been granted bail. The Magistrate is not in any event empowered to grant bail which is contingent on the Attorney General's consent. As of 29 October 2020, the CID is said to have completed its investigations. The matter is now being investigated by the Terrorism Investigation Division of the police. No charges have yet been proffered.

BHRC is concerned that Mr Hizbullah appears to have been arrested and detained arbitrarily and unlawfully. Furthermore, he appears to have been targeted in connection with his work as a lawyer in cases challenging the government under the Constitution and hate speech, violence and discrimination against the Muslim community.

Sri Lanka is bound by Chapter III of its Constitution and by its international human rights obligations, including under the International Covenant on Civil and Political Rights (ICCPR), to ensure the freedom from arbitrary arrest and detention of all its people. In particular, Article 9(1) of the ICCPR prohibits the arbitrary arrest and detention of a person, and Article 9(3) requires pretrial detainees to be brought to trial promptly. Further, Article 14 guarantees the right to a fair trial, including the right of access to legal counsel.

2020 marks the 30th anniversary of the UN Basic Principles on the Role of Lawyers which upholds the rights of lawyers to be able to carry out their professional responsibilities. BHRC draws attention to Principles 16, 18, 22 and 23 in particular. 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." Moreover, lawyers should not be identified with their clients or their clients' causes as a result of discharging their functions and client confidentiality should be respected and recognised by governments. BHRC also notes that lawyers, like other citizens, are entitled to freedom of expression, belief, association or assembly.

BHRC is concerned that the arrest of Mr Hizbullah forms part of a larger trend of using emergency legislation to limit the effectiveness of the work of human rights defenders. On 22 June 2020, six UN Special Rapporteurs also stated their "regret that this case seems to illustrate a broader pattern of discrimination towards the Muslim minority in Sri Lanka" in a communication to the Government.

BHRC urges the Sri Lankan government to release Hejaaz Hizbullah from detention, to uphold the rule of law and its international legal obligations and to take all necessary steps to ensure that lawyers in Sri Lanka are able to carry out their professional duties without fear of reprisal, hindrance, intimidation or harassment.

ENDS.

NOTES FOR EDITORS

1. For an interview with our spokesperson, please contact Josie Fathers, Project Officer on coordination@barhumanrights.org.uk or +44 (0)7854 197862
2. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
3. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.