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Hon Nimal Siripala de Silva
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5 May 2020

Open letter of intervention to the Minister of Justice of Sri Lanka from the International Bar Association's Human Rights Institute

Your Excellency,

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern over the due process rights of the Sri Lankan lawyer Hejaaz Hizbullah.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The IBAHRI has previously intervened with regards to the erosion of the rule of law in Sri Lanka. In 2013, following a rapid-response fact-finding mission, the IBAHRI published a report highlighting a 'long-standing official hostility' towards members of the legal profession who express criticism of the government that is legitimate and protected by the Constitution.¹ This intervention follows previous reports to the IBAHRI from Sri Lankan lawyers, that regular acts of intimidation are a persistent problem for lawyers taking on politically sensitive or human rights cases as part of their professional duties.

According to reports received by the IBAHRI, Mr Hejaaz Hizbullah, a former state counsel and prominent lawyer in Sri Lanka, was arbitrarily arrested and detained by the Criminal Investigation Department (CID) on 14 April 2020.² He was among six individuals arrested for their alleged involvement in the 2019 Easter Sunday terrorist

¹ <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=C90B7A2F-5EE2-4E5B-BE6C-F7FCB9864E81>

² <http://www.jdslanka.org/index.php/news-features/human-rights/941-sri-lanka-arrest-of-muslim-lawyer-for-easter-sunday-bombings-illegal-and-arbitrary>



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attack in the country,³ reportedly under the Prevention of Terrorism Act⁴ (PTA) which allows for warrantless entry, search of premises and arrest of persons.⁵ The PTA was introduced in 1979 as a temporary measure, but was made permanent in 1982. In 2017, the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism found that the PTA ‘has fostered the endemic and systematic use of torture. Entire communities have been stigmatised and targeted for harassment and arbitrary arrest and detention’.⁶

In a gross violation of due process, Mr Hizbullah was reportedly not informed of the reason for his arrest;⁷ was not served a detention order until 25 April 2020; and was not presented before a magistrate within the requisite 72 hours as required by sections 7 and 9 of the PTA.⁸ Further, he has been denied access to legal counsel after being permitted only three brief meetings on 15, 16 and 28 April 2020. These meetings took place in breach of legal professional privilege, in the presence of a CID official who insisted that the conversation take place in the Sinhala language.⁹ A *habeas corpus* petition filed on 17 April 2020, on behalf of Mr Hizbullah, said that CID officers had searched his office and opened legal case files related to his professional clients, in further clear violation of legal professional privilege.¹⁰ Mr Hizbullah’s arrest follows his involvement in a number of high-profile human rights cases, including a challenge to the dissolution of parliament in 2018.¹¹ His detention also comes during a time of rising discrimination against the Muslim minority and political dissidents during the Covid-19 crisis. Whilst entirely necessary for the Sri Lankan government to investigate the Easter Sunday attacks, international law, the Sri Lankan Constitution and due process must be observed in this process.

The IBAHRI is committed to raising concerns of due process, upholding the rights of lawyers and defending the independence of the judiciary. Such actions by the CID are

³ <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims>

⁴ [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/\\$FILE/Prevention%20of%20Terrorism%20Act.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/$FILE/Prevention%20of%20Terrorism%20Act.pdf)

⁵ <https://www.icj.org/sri-lanka-icj-raises-concerns-about-the-arbitrary-arrest-and-detention-of-lawyer-hejaaz-hizbullah-calls-for-repeal-and-replacement-of-the-prevention-of-terrorism-act/>

⁶ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>

⁷ http://www.ft.lk/news/Habeas-corpus-application-filed-on-behalf-of-lawyer-arrested-on-allegations-of-links-to-Easter-attacks/56-698937#.XppxxqvX8_w.twitter

⁸ [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/\\$FILE/Prevention%20of%20Terrorism%20Act.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/a24d1cf3344e99934125673e00508142/8a597180e56d83edc125773700393abb/$FILE/Prevention%20of%20Terrorism%20Act.pdf)

⁹ <https://www.icj.org/sri-lanka-icj-raises-concerns-about-the-arbitrary-arrest-and-detention-of-lawyer-hejaaz-hizbullah-calls-for-repeal-and-replacement-of-the-prevention-of-terrorism-act/>

¹⁰ <http://www.ft.lk/news/Habeas-corpus-application-filed-on-behalf-of-lawyer-arrested-on-allegations-of-links-to-Easter-attacks/56-698937>

¹¹ <https://www.colombotelegraph.com/index.php/president-gota-strikes-against-prominent-lawyer-while-tamed-basl-maintains-silence/>



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grave violations of the fundamental rights guaranteed both under the Constitution of Sri Lanka and under international human rights law.

The IBAHRI wishes to remind the Sri Lankan government of the following fundamental rights guaranteed to all citizens under [Chapter III of the Constitution of Sri Lanka](#); freedom against arbitrary arrest, detention and punishment under Article 13; the protection of the freedom of thought, conscience and religion under Article 10; and the protection of the freedom of speech under Article 14.

Failure to follow due process in arrest and detention, restrictions on freedom of speech and expression, and discrimination on the grounds of religion also directly contravene Sri Lanka's international human rights law obligations, such as Article 9 of the [International Covenant on Civil and Political Rights](#) which states that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; and Article 14 of the International Covenant on Civil and Political Rights that entitles anyone charged with a criminal offence to have adequate time and facilities for the preparation of his defence, and to communicate with counsel of his own choosing.

Further, unlawful arrests also violate the [UN Basic Principles on the Role of Lawyers](#), which provide that, 'Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention'. Moreover, the [IBA Standards for the Independence of the Legal Profession](#) upholds that lawyers must be guaranteed privileges to fulfil their professional responsibilities effectively, 'including protection of the lawyer's files and documents from seizure or inspection', and defends the rights of lawyers 'to take part in public discussion of matters concerning the law and the administration of justice.' The IBAHRI urges the Government of Sri Lanka to observe and uphold these principles, and ensure they are not rendered illusory during the investigation of the 2019 Easter Sunday terrorist attack.

The IBAHRI calls upon the Government of Sri Lanka to follow due process in the detention of lawyer Hejaaz Hizbullah, to allow him regular access to his legal counsel and respect legal professional privilege. Whilst the eyes of the world are diverted to addressing the Covid-19 pandemic, the IBAHRI is committed to upholding the rule of law and defending human rights.

We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.

Yours sincerely,

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