

A. Introduction

1. Lawyers for Lawyers (“**L4L**”) submits this report on the state of human rights in the Democratic Socialist Republic of Sri Lanka (“**Sri Lanka**”), particularly in respect of the legal profession, with recommendations for the 42nd session of the Universal Periodic Review (UPR) Working Group in the UN Human Rights Council in February 2023.
2. L4L is an independent and non-political foundation based in the Netherlands, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.

B. Executive Summary

3. This submission highlights key concerns regarding Sri Lanka’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyersⁱ (“**Basic Principles**”) and other international rights instruments, focusing on the following issues:
 - a) Harassment of lawyers (section D)
 - b) Criminal prosecution of lawyers (section E)
 - c) Access to clients in detention and lawyer-client confidentiality (section F)

C. Normative and Institutional Framework of the State

4. 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 free to carry out their professional duties independently of the government and political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“**ICCPR**”). In particular, the protection and the independence of justice actors is a key component to ensure the well-functioning of justice systems and to combat impunity. This is a precondition to the right to a fair trial, protected by Article 14 of the ICCPR.
5. Furthermore, on 22 June 2017, the Human Rights Council (“**HRC**”) passed a resolution condemning in general “the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.ⁱⁱ

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6. In its task of promoting and ensuring the proper role of lawyers, the Government of Sri Lanka should respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. 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.ⁱⁱⁱ
7. During the third UPR cycle in 2017, Sri Lanka received^{iv} and accepted^v some recommendations concerning the need to ensure the ongoing process of consolidating democracy and the rule of law^{vi} and ensuring that its citizens can operate in a safe and enabling environment where it can exercise its rights. Sri Lanka supported one recommendation to comply with its international human rights obligations and to improve its judicial system, as well as the application of its laws in the areas of the rights of national and religious minorities^{vii}. It also supported several recommendations focusing on the protection of human rights defenders^{viii}, and supported to guarantee the fundamental separation of powers and the independence of the judiciary and the courts^{ix}. Sri Lanka opted not to submit a mid-term report for the assessment on the implementation of recommendations made during the UPR cycle in 2017.
8. Reports gathered by L4L, including information received from lawyers in Sri Lanka demonstrate that Sri Lanka does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

D. Harassment of Lawyers

9. It has been reported that lawyers in Sri Lanka 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 changes oriented towards the reform of rights violating systems”*.^x In April 2022 a large number of protesters started a non-violent and peaceful protest in response to the ongoing economic crisis in the Sri Lanka. 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.^{xi} Lawyers have also represented protesters in opposing applications from the police to forcefully remove (peaceful) protesters from the protest site.
10. After 9 May 2022, the protests turned violent.^{xii} 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.^{xiii} Also the Bar Association of Sri Lanka raised concern about the *“concerted effort by certain parties interested in*

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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.^{xiv}

11. 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.
12. 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.

E. Criminal Prosecution of Lawyers

13. 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 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

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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 22 August 2022.

14. 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.
15. UN human rights experts have criticized the PTA law stating that "there is a grave risk to the rights and liberties of people who may be detained arbitrarily, especially religious and ethnic minorities, and the use of the law may curtail political dissent with no effective due process guarantees".^{xv} The experts urged the Sri Lankan government to suspend the law and to make amendments to remedy the vague nature of the current PTA law provisions.

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

16. According to Principle 8 of the Basic Principles, 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.*" Principle 22 of the Basic Principles states that "*Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.*"
17. 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.
18. 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 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.

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

G. Recommendations to the Government of Sri Lanka

- a. Take immediate measures to ensure sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity.**
- b. Refrain from harassment of lawyers, persecution of lawyers on improper grounds, and undue interference in their work.**
- c. Take immediate measures to ensure that lawyers have full access to their clients and to ensure full confidentiality of communication between lawyers and their clients.**

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ⁱ 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 September 7 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 December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

ⁱⁱ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.

ⁱⁱⁱ During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^{iv} Report of the Working Group on the Universal Periodic Review of Sri Lanka, A/HRC/37/17, 29 December 2017.

^v *Ibid*, pp. 10-23.

^{vi} Recommendation 116.59 (Nepal): Continue the ongoing process of consolidating democracy and the rule of law in the country.

^{vii} Recommendation 116.60 (Russian Federation): Continue carrying out the policy aimed at bringing legislation in line with its international human rights obligations, and improving judicial and penitentiary systems, as well as the application of laws in the area of the rights of national and religious minorities.

^{viii} Recommendation 116.105 (Norway): Ensure a safe and enabling environment for civil society and human rights defenders.

Recommendation 116.106 (Finland): Ensure in line with international human rights the protection of women human rights defenders – including through human rights training of the police – so that they can fully participate in society without fear of harassment or violence.

Recommendation 116.107 (Ireland): Take measures to adequately protect human rights defenders, to ensure proper investigation into alleged attacks and to prosecute those found responsible.

Recommendation 117.46 (Austria): Adopt a national policy on the protection of journalists and human rights defenders to combat intimidation and violence, and to ensure effective investigation of such acts and prosecution of perpetrators.

^{ix} Recommendation 117.16 (Haiti): Guarantee that the new constitution clearly and expressly recognizes the fundamental principle of separation of powers, establishes checks and balances and guarantees the independence of the judiciary and the courts, while ensuring that all stakeholders have a place at the table when drafting the new constitution.

^x 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.

^{xi} 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/>.

^{xii} 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/>.

^{xiii} See for example this tweet by @jehan_hameed, 15 May 2022, retrieved from: https://twitter.com/jehan_hameed/status/1525791937772412931?s=20.

^{xiv} 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.

^{xv} United Nations Office of the High Commissioner for Human Rights, ‘Sri Lanka: UN experts call for swift suspension of Prevention of Terrorism Act and reform of counter-terrorism law’, 2 March 2022, retrieved from: <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>.