

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Ms. Elina Steinerte (Latvia)
Vice-Chair on communications: Dr. Miriam Estrada-Castillo (Ecuador)
Ms. Leigh Toomey (Australia)
Mr. Mumba Malila (Zambia)
Ms. Priya Gopalan (Malaysia)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Ahnaf Jazeem,
Citizen of Sri Lanka

v.

Government of the Democratic Socialist Republic of Sri Lanka

Petition for Relief Pursuant to Human Rights Council Resolutions 1991/42, 1994/32, 1997/50, 2000/36,
2003/31, 2006/102, 6/4, and 24/7

Submitted by:

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**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR
DETENTION**

I. IDENTITY

1. *Family Name:* Jazeem
2. *First Name:* Ahnaf
3. *Sex:* Male
4. *Age at the Time of Detention:* 26
5. *Nationality:* Sri Lankan
6. (a) *Identity document (if any):* Unknown
(b) *Place of Issue:* N/A
(c) *On (date):* N/A
(d) *No.:* N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Poet and educator.
8. *Address of usual residence:*
[redacted]

II. ARREST

1. *Date of arrest:* May 16, 2020
2. *Place of arrest (as detailed as possible):* Ahnaf Jazeem was arrested at his address of usual residence.
3. *Forces who carried out the arrest or are believed to have carried it out:* Officer of the Counter-Terrorism and Investigation Division.
4. *Did they show a warrant or other decision by a public authority?* No. Although no warrant was issued at the time of detention, the authorities did provide an “arrest receipt” at the time of arrest. A “Detention Order” was not issued until May 19, 2020 (see below).
5. *Authority who issue the warrant or decision:* Although no warrant was issued, the “arrest receipt” was issued by K.K.J. Anurashantha, Inspector of Police, Counter-Terrorism and Investigation Division, Vavuniya.
6. *Reasons for the arrest imputed by the authorities:* Jazeem allegedly promoted “extremism” and “racism” through his published poetry and by teaching students, as per the arrest receipt.
7. *Legal basis for the arrest including relevant legislation applied (if known):* The arrest receipt did not specify a legal basis for the arrest.

III. DETENTION

1. *Date of detention:* Arrested on May 16, 2020.
2. *Duration of detention (if not known, probable duration):* Jazeem has been detained since the time of his arrest and is currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Jazeem is held under the custody of the Counter-Terrorism and Investigation Division based in Colombo, Sri Lanka.
4. *Places of detention (indicate any transfer and present place of detention):* On May 16, 2020, Jazeem was taken to the Mannar Police Station after his arrest. The following day, May 17,

2020, Jazeem was transported to the TID head office, located at the New Secretariat Building, Colombo – 01. Jazeem was subsequently transferred to TID’s Tangalle Detention Center, where he was held until June 11, 2021. On June 12, 2021, he was transferred Colombo Remand Prison, where he is currently detained.

5. *Authorities that ordered the detention:* A Detention Order, under Sri Lanka’s Prevention of Terrorism Act, was issued by the President of Sri Lanka on May 19, 2020, ordering that Jazeem be held in custody.¹
6. *Reasons for the detention imputed by authorities:* Jazeem allegedly promoted terrorism through his published poetry and taught extremism to students by showing videos and lectures with extremist content.
7. *Legal basis for the detention including relevant legislation applied (if known):* Section 9(1) of the Prevention of Terrorism Act.

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

A. Statement of Facts

Part 1 of this Statement of Facts details the current political climate in Sri Lanka in order to demonstrate the government’s patterns of violating the substantive and procedural rights of its citizens. Part 2 of this Statement of Facts details the circumstances surrounding the arrest and detention of Mr. Ahnaf Jazeem.

1. The Social, Legal, & Human Rights Context in Sri Lanka

Sri Lanka’s modern history has been marked by communal violence, often involving clashes between the Sinhalese (Buddhist) majority and Tamil (South Indian/Sri Lankan Hindu) minority ethnic groups. Recently, in response to the Easter Sunday terrorist attacks occurring in April 2019, Sri Lanka has expanded executive authority under the guise of amplified national security needs.²

This executive expansion has coincided with rampant detention via the Prevention of Terrorism Act (PTA).³ The Prevention of Terrorism Act (PTA) has been used extensively following the 2019 Easter Sunday attacks.⁴ The PTA allows courts to admit as evidence any statements made by the accused at any time and provides no exception for confessions extracted by torture.⁵ This act permits government authorities to enter homes and monitor communications without judicial or other authorization.⁶ Interviews conducted by human rights organizations found that torture and excessive use of force by police, particularly to extract confessions pertaining to the PTA, remained endemic.⁷ Ministry of Justice officials noted that due to the limited judicial infrastructure, human resources, and legal constraints, in many cases, the requisite informing the detained individual of the reason for his or her arrest surpasses the 72-hour mark required by the PTA.⁸ Under the PTA, detainees may be held for up to 18 months without being produced before a judge. In practice authorities have held

¹See Detention Order, No. MOD/LEG/PTA/63/2020, issued by the President of Sri Lanka (May 19, 2020).

²U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *2020 Country Reports on Human Rights Practices: Sri Lanka*, (Mar. 30, 2021), available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>. [*hereinafter* U.S. Department of State Report 2020].

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷*Id.*

⁸*Id.*

prisoners for as long as ten years.⁹ Judges require approval from the Attorney General’s Department to authorize bail for persons detained under the PTA, which the office normally did not grant.¹⁰

Recently, there has been increased marginalization and discrimination targeting Sri Lanka’s Muslim community.¹¹ Sri Lankan authorities have used the PTA and other similar penal statutes to oppress ethnic minority communities.¹² The endemic application of the PTA under the pretense of combatting ethnic strife has resulted in the detention of countless members of the Muslim minority community of Sri Lanka. In response to such allegations, the United Nations Human Rights Council Core Group has expressed concern over a lack of progress regarding religious minorities in Sri Lanka.¹³ Furthermore, the European Parliament has enacted a resolution condemning continued application of the PTA in Sri Lanka.¹⁴

a. *Mr. Jazeem’s Background*

Ahnaf Jazeem is a 26-year-old published poet and educator. Jazeem has completed a prestigious degree program from the Naleemiah Institute of Islamic Studies, Beruwela.¹⁵ Since his enrollment, Jazeem has published poems and short stories, which he writes under the pen name Mannaramuthu Ahnaf.¹⁶ Jazeem has been recognized and awarded for his poetry.¹⁷

In 2017, Jazeem published his first book of poetry in Tamil titled *Navarasam*, which translates to “Nine Moods.”¹⁸ The work is a compendium of poems written by Jazeem,¹⁹ and the collection is divided into nine chapters, each representing a different emotion: wonder, humor, valor, peace, fury, happiness, fear, shame, and kindness.²⁰ Jazeem held a book release event at the Main Hall of Mn/Pandaraweli Muslim Maha Vidyalaya, which was attended by almost one thousand people.²¹ This was the first launch of its type at the school.²²

The compendium contains a wide range of topics within private and social life. Specifically, it examines love, drugs, motivation, self-discipline, success, peace, war, Islamic history, current affairs, God, and much more.²³ The work is not banned by any court.²⁴ On or about July 1, 2019 Jazeem began employment as a teacher of

⁹*Id.*

¹⁰The Prevention of Terrorism Act, Section 7(1).

¹¹Human Rights Watch, *Sri Lanka: Joint Statement Calls for Immediate Release of Poet Detained for a Year Without Charge*, (May 16, 2021), available at <https://www.hrw.org/news/2021/05/17/sri-lanka-joint-statement-calls-immediate-release-poet-detained-year-without-charge#>. [hereinafter HRW Joint Statement].

¹²*Poetic Injustice: Another Writer Languishes in Prison Under PTA*, Wijeya Newspapers, (Dec. 14, 2020), available at <https://www.ft.lk/news/Poetic-injustice-Another-writer-languishes-in-prison-under-PTA/56-710172>.

¹³Mahadiya Hamza, *UNHRC core group concerned over Sri Lanka’s lack of progress on human rights*, economynext, (June 24, 2021), available at <https://economynext.com/unhrc-core-group-concerned-over-sri-lankas-lack-of-progress-on-human-rights-83340/>.

¹⁴European Parliament, *Resolution of 10 June 2021 on the situation in Sri Lanka, in particular the arrests under the Prevention of Terrorism Act*, (June 10, 2020), available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0290_EN.html

¹⁵The Republic.lk, *TID Case Against Poet Ahnaf Fixed for 02nd March* (Feb. 23, 2021), <https://therepublic.lk/2021/02/23/tid-case-against-poet-ahnaf-fixed-for-02nd-march/>.

¹⁶Human Rights Watch, *Sri Lanka: Joint Statement Calls for Immediate Release of Poet Detained for a Year Without Charge*, (May 16, 2021), <https://www.hrw.org/news/2021/05/17/sri-lanka-joint-statement-calls-immediate-release-poet-detained-year-without-charge>.

¹⁷*Id.*

¹⁸Confidential Source, on file with author.

¹⁹*Id.*

²⁰See Ahnaf Jazeem, *Navarasam* (English Translation), on file with author, and available upon request.

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴Action Committee for the Defence of Freedom of Art and Expression, *Defend Sri Lankan Poet Ahnaf Jazeem*, World Socialist Web Site, (May 21, 2021), available at <https://www.wsws.org/en/articles/2021/05/22/jaze-m22.html>.

Tamil Language and Literature at the “School of Excellence,” an international private school at Azhar Nagar, Sembatte, Madurankulia, Puttala, Sri Lanka.²⁵

b. *Arrest*

Officers from the Criminal Investigations Department (“CID”), Sri Lanka’s primary investigative arm of the police, obtained a copy of Jazeem’s book of poetry *Navarasam* and other poems as early as May 3, 2020, according to facts subsequently disclosed in court proceedings. Although officers could not have read Jazeem’s Tamil poetry, several of Jazeem’s poems criticizing the Islamic State (“ISIS”) allegedly served as the basis for his arrest.²⁶ These poems are titled, “A Poem for Gathering,” “How can I Celebrate Eid, and “Not a Day of Resurrection, but a Day of Life Loss.”²⁷ The poems’ accompanying photograph illustrated an ISIS fighter in uniform.²⁸

On May 16, 2020, Jazeem was arrested at his home at approximately 8:30 pm local time by officers from the Counter-Terrorism and Investigation Division (“TID”), which is a specialized division of CID.²⁹ TID officers did not provide Jazeem with a warrant or other order from an independent judicial body authorizing his arrest. Instead, officers provided Jazeem with an Arrest Receipt, dated May 16, 2020, which states that Jazeem was arrested on suspicion of having “published books on and taught his students ‘extremism’ and ‘racism.’”³⁰ However, Jazeem has published only one book, *Navarasam*.

At the time of Jazeem’s arrest, officers searched his home and seized 100 copies of *Navarasam* and approximately 50 additional written works including Arabic and Tamil language books and poetry collections.³¹ Although they could not read Jazeem’s book, the arresting TID officers confiscated Jazeem’s works.³²

Upon arrest, Jazeem was transported to the Mannar Police station the night of May 16. The following day, he was transferred to the TID head office in Colombo.³³

c. *Pre-Trial Detention*

Although the Criminal Procedure Code of Sri Lanka requires that an arrested individual be produced before the nearest Magistrate within 24 hours of his or her arrest,³⁴ an exception to this requirement exists under Section 9(1) of the Prevention of Terrorism Act. Article 9(1) of the PTA permits the government to detain an individual under suspicion of violating the PTA for ninety days if the Minister of Defense issues a detention order on the detainee.³⁵

On May 19, 2020, a Detention Order was issued for Jazeem under the authority of PTA. This order, labeled, Detention Order MOD/LEG/PTA/63/2020, was issued against Jazeem for a period of ninety days and was

²⁵Confidential Source, on file with author.

²⁶*Id.*

²⁷*Id.*

²⁸*Poetic Injustice: Another Writer Languishes in Prison Under PTA*, Wijeya Newspapers, (Dec. 14, 2020), available at <https://www.ft.lk/news/Poetic-injustice-Another-writer-languishes-in-prison-under-PTA/56-710172>.

²⁹Confidential Source, on file with author.

³⁰ Arrest Receipt for Ahanf Jazeem (May 16, 2020), issued by K.K.J. Anurashantha, Inspector of Police, Counter-Terrorism and Investigation Division, Vavuniya.

³¹ Confidential Source, on file with author.

³²*Poetic Injustice: Another Writer Languishes in Prison Under PTA*, Wijeya Newspapers, (Dec. 14, 2020), available at <https://www.ft.lk/news/Poetic-injustice-Another-writer-languishes-in-prison-under-PTA/56-710172>.

³³ Confidential Source, on file with author.

³⁴*Id.*

³⁵*Id.* At the time of the issuance of this order, the Minister of Defense was the only authority authorized to issue a Detention Order under the PTA. With the passage of the 20th Amendment of the Sri Lankan Constitution, this authority changed. However, such changes were not in force at the time Jazeem’s detention order was issued.

signed by the President of Sri Lanka.³⁶ This detention order issued on May 19, 2020 was provided to his family approximately two months later.³⁷ Initially, no subsequent detention order or extension of the initial detention order was provided to either Jazeem’s family or his counsel.³⁸ It was not until late July 2021 that the TID officials revealed the existence of copies of subsequent detention orders authorizing Jazeem’s detention.³⁹

Because the basis for Jazeem’s arrest relied upon a detention order issued under the auspices of the PTA, Jazeem was not presented to a court to review the legality of his detention for over a year. During this period, Jazeem was never physically brought before a Magistrate.⁴⁰ On December 11, 2020, Jazeem was shown via video conference to Colombo Magistrate Court No. 8 by the Director of the TID, Prasantha de Silva with the aim of compelling Jazeem to make a self-incriminating statement to the court.⁴¹ During this appearance, Jazeem was not represented by counsel and the court did not consider the legality of his detention.

A court did not review Jazeem’s detention until June 12, 2021, at which point he was remanded into custody at the Colombo Remand Prison.⁴² Jazeem was not physically produced at the hearing, purportedly for COVID-19 precautionary reasons.⁴³

For the first two weeks of his detention, on the 2nd Floor of the TID’s New Secretariat Building in Colombo, Jazeem was permanently handcuffed to a chair. For a period thereafter, he was handcuffed to a table while sleeping.⁴⁴ This caused severe arm pain, about which Jazeem on multiple occasions complained to officers.⁴⁵ His complaints did not yield a change in conditions.⁴⁶ The exact date of the end of such conditions is not known to the Source.

Jazeem has been unable to speak or interact with family members for long periods of time throughout his detention.⁴⁷ When he is provided the opportunity to speak with his family over the phone, at least one Tamil-speaking officer listens to the conversation.⁴⁸ Officers attempted to use access to his family in order to coerce a confession from Jazeem. On February 20, 2021, officers asked Jazeem’s father to visit the prison to “record a statement.”⁴⁹ As far as the Source is aware, no statement was recorded.⁵⁰ However, officers attempted to compel Jazeem to make an incriminating admission.⁵¹ Officers attempted to coerce this confession by informing the father that the only way Jazeem could be released is by making a self-incriminating confession, thereby becoming a “state witness.”⁵²

For the first 10 months of his detention, Sri Lankan authorities denied Jazeem’s access to lawyers.⁵³ After multiple written requests made on numerous occasions beginning in January 2021, Jazeem was finally permitted to meet with his lawyers on March 8, 2021.⁵⁴ This meeting ended a ten-month detention without

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Confidential Source, on file with author.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Amnesty International, *Increased Marginalization and Targeting of Sri Lanka’s Muslim Community* (Mar. 19, 2021), <https://www.amnesty.org/download/Documents/ASA3738662021ENGLISH.pdf>.

representation.⁵⁵ A conversation between Jazeem and his attorney lasted close to twenty minutes.⁵⁶ Originally unbeknownst to counsel, the entirety of the conversation was audio-recorded and noted down by observing officers.⁵⁷ In response to counsel's objections upon discovery that the conversation had been recorded, supervising officer Mr. Gunsekera (IP) warned, "there is nothing to worry about if you have not spoken anything unnecessary and talked only about the case."⁵⁸ Furthermore, following Jazeem's first visit with his attorneys, he was denied any contact with either his family or his attorneys for the following two weeks.⁵⁹

d. *Government Investigation into Navarasam*

As part of the government's investigation of Jazeem, authorities sanctioned a translation of *Navarasam*.⁶⁰ The translation of Jazeem's poetry was a literal translation of the words and was not conducted by a poet or an individual with credible experience translating poetry.⁶¹

Following receipt of the government's translation by a sworn-translator, a court ordered that the translation of *Navarasam* be evaluated by child psychiatrists at the Lady Ridgeway Hospital for Children.⁶² Based upon the literal translation provided to them, the psychiatrists concluded that the book "incites violence, arouses sexual feelings, promotes suicide, glorifies death, talks of perceived injustice against Muslims across the world, and incites hatred against the perpetrators of violence."⁶³ As stated in the psychiatrists' own report, their above conclusion was not a direct assessment of the meaning of the text, but purports to be an assessment of the potential influence that the text might arouse in children and adolescents, due to the reader's intelligence, disposition, upbringing, and environment.⁶⁴

Tamil literature experts familiar with *Navarasam* and Jazeem's work have publicly expressed disagreement with the government's expert assessment. Tamil language scholar and retired Professor of Tamil at the University of Peradeniya, M.A. Nuhman, noted the lack of extremist ideology within *Navarasam* and commended Jazeem's commitment to religious morality and humanity.⁶⁵ Dr. Ahilan Kadirgamar, a Senior Lecturer at the Department of Sociology, University of Jaffna, echoed Nuhman's sentiment.⁶⁶ Kadirgamar noted a lack of incendiary language and therefore baseless detention of Jazeem.⁶⁷

An independent translation of *Navarasam* prepared by Professor Sumathy Sivamohan,⁶⁸ Dr. Thiruvaragan Mahendran,⁶⁹ and Somasundarampillai (Sopa) Padmanadan,⁷⁰ reveal that Jazeem's poems do not promote any

⁵⁵*Id.*

⁵⁶Confidential Source, on file with author.

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰Colombo Page News Desk, *Human Right[sic] Groups Calls on Sri Lanka for Immediate Release of Poet Detained for a Year Without Charge*, ColomboPage: Sri Lanka Internet Newspaper, (May 16, 2021), available at http://www.colombopage.com/archive_21A/May16_1621138328CH.php. [*hereinafter* ColomboPage].

⁶¹ Confidential Source, on file with author.

⁶²*Id.*

⁶³*Id.*

⁶⁴Petitioner Report, *P11 & P12*, available at <https://www.scribd.com/document/507697895/Magistrate-Court-Further-Reports-and-Proceedings-filed-as-P11-P12-with-Poet-Ahnaf-Jazeem-s-FR-Petition>.

⁶⁵Sri Lanka Brief, *Arrest of Mannar poet Ahnaf Jazeem under PTA: Academics, writers and activists cry foul* (March 17, 2021), <https://www.themorning.lk/the-silenced-poet/>; The Sunday Morning, *The Silenced Poet* (May 14, 2021), <https://www.themorning.lk/the-silenced-poet/>.

⁶⁶Sri Lanka Brief, *Arrest of Mannar poet Ahnaf Jazeem under PTA: Academics, writers and activists cry foul* (March 17, 2021), <https://www.themorning.lk/the-silenced-poet/>;

⁶⁷ *Id.*

⁶⁸Professor at the Department of English at the University of Peradeniya.

⁶⁹Professor at the Department of Linguistics & English at the University of Jaffna.

⁷⁰An acclaimed poet, translator, and writer.

extremist ideology.⁷¹ To the contrary, Jazeem’s poetry explicitly condemns extremism and acts of violence. For example, the two poems in *Navarasam* explicitly referencing ISIS condemn their violence. The poem titled “A Poem for Gathering” reads in relevant part,

I have come to tell the story of the ISIS’s cruelty, their violence and the suffering they have caused. . . .When you shove people, who cannot even get up on their own, into the bounded pond, cage them in it, kill them and later say, ‘our way is the Prophet’s way,’ could one call it justice?⁷²

Additionally, the second poem referencing ISIS, “How Can I Celebrate Eid?” is also strongly condemnatory of the organization, reading “Black attire. Hatred upfront. Spewing fire! We shall slipper them! The ISIS is responsible for it all. Who is to check them and say No?”

e. *Pre-Trial Proceedings*

Despite being held in detention for over a year, Jazeem has not been officially charged with a crime.⁷³ The government, however, has nevertheless detained Jazeem under the PTA for alleged promotion of Muslim extremism to youth via *Navarasam* and his teaching. The government opened two parallel proceedings against Jazeem, both related to the above allegations. One case was filed with the Fort Magistrate Court and the other with the Colombo Magistrate Court. A summary of each case and relevant developments are provided below.

i. Proceedings Before the Fort Magistrate Court

On June 17, 2020, CID officials opened a case (No. B13101/19) against Jazeem before the Fort Magistrate Court, in which the CID named Jazeem as a suspect in an ongoing investigation.⁷⁴ At the time, Jazeem did not appear before the court and was not represented by counsel.⁷⁵

On January 27, 2021, after 256 days in detention, Jazeem’s lawyers first appeared on his behalf, before the Fort Magistrate Court.⁷⁶ Following this hearing, Jazeem’s lawyers appeared four additional times and filed two motions before the Fort Magistrate Court. During these hearings, Jazeem’s representatives provided evidence to the court to demonstrate the baseless of the CIDs claims. Additionally, Jazeem’s lawyers moved for the court to issue two orders: the first, an order compelling the TID to physically produce Jazeem in court; and the second, an order compelling the CID to submit a summary of the evidence against Jazeem. On March 3, 2021, CID representatives requested that the proceedings against Jazeem before the Fort Magistrate Court be closed on the grounds that the TID was conducting a parallel case against Jazeem before the Colombo Magistrate Court.⁷⁷ As the result, the defense motions were dismissed, and proceedings against Jazeem before the Fort Magistrate Court were discontinued.⁷⁸

ii. Proceedings Before the Colombo Magistrate Court

On December 11, 2020, TID officials opened an inquiry case (No. B44230/08/2020) against Jazeem before the Colombo Magistrate Court No. 8. The case concerned an investigation against Jazeem for allegations that he taught extremism to his students.⁷⁹ On the date that the case was opened, Jazeem was presented before a Magistrate judge, via video conference and without legal representation, for the purpose of having Jazeem

⁷¹See Ahnaf Jazeem, *Navarasam* (English Translation), on file with author, and available upon request.

⁷²See Ahnaf Jazeem, *Navarasam* (English Translation), on file with author, and available upon request.

⁷³*Id.*

⁷⁴Confidential Source, on file with author.

⁷⁵*Id.*

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸*Id.*

⁷⁹The Republic, *TID Case Against Poet Ahnaf Fixed for 02nd March* (Feb. 23, 2021), <https://therepublic.lk/2021/02/23/tid-case-against-poet-ahnaf-fixed-for-02nd-march/>.

make statements to the court.⁸⁰ However, none of the statements that Jazeem made at that hearing were recorded.⁸¹

On February 23, 2021, Jazeem’s lawyers attempted to appear on his behalf before the Colombo court, but the judge overseeing the case was absent, which further delayed proceedings.⁸² On March 2, 2021, Jazeem’s lawyers appeared before the court, but the presiding judge refused to hear motions from Jazeem’s attorneys on the grounds that the TID opened the case before the court for the limited purposes of having Jazeem make a statement to the court under Section 127 of the Criminal Procedure Code,⁸³ and not to commence a trial against Jazeem.⁸⁴ The court adjourned proceedings indefinitely until the TID is prepared to resume.⁸⁵

On June 11, 2021, Jazeem was brought to Colombo from Tangalle Detention Center, and on June 12, 2021, the Colombo Magistrate Court held a remand hearing concerning whether Jazeem was to be detained in custody under Section 7(2) of the PTA. The Court ruled to continue to detain Jazeem, and he was transferred to the Colombo Remand Prison. Neither Jazeem’s family nor his lawyers were notified of this remand hearing. Jazeem’s lawyers learned of the hearing on June 14, and his lawyers were notified that the next hearing is scheduled for June 22.

On June 22, 2021, the Colombo Chief Magistrate Court first held hearings concerning challenges raised by defense counsel concerning the legality of Jazeem’s detention and the absence of a factual basis for proceedings against him.⁸⁶ Citing COVID-19 restrictions, Jazeem was not physically brought to the courtroom.

Over the next several weeks, the court heard argument on motions by the defense challenging the legality of Jazeem’s pre-trial detention.⁸⁷ On July 13, 2021, the Colombo court denied defense motions to release Jazeem on the grounds that detention lacked a legal basis in law.⁸⁸ Furthermore, the court denied defense requests to be provided a summary report of the evidence against Jazeem.⁸⁹ the Colombo court again suspended proceedings indefinitely, as the court waits for the decision from the Attorney General as to whether an official indictment against Jazeem would be filed.⁹⁰

f. *Current Status*

As of the filing of this petition, Jazeem remains in pretrial detention, without official charge.⁹¹ Furthermore, the government has yet to present evidence that substantiates its allegations that Jazeem promoted extremism.⁹²

Jazeem remains detained in unhygienic conditions.⁹³ Among other issues, he has been bitten by a rat on one occasion, been exposed to COVID-19 on multiple occasions, and suffered from urethral stones.⁹⁴ Jazeem was unable to receive adequate rest prescribed to recover from the urethral stones.⁹⁵

⁸⁰ *Id.*

⁸¹ Confidential Source, on file with author.

⁸² *Id.*

⁸³ Section 127 of the Criminal Procedure Code provides that “any magistrate may record any statement made to him at any time before the commencement of any inquiry or trial.”

⁸⁴ Confidential Source, on file with author.

⁸⁵ *Id.*

⁸⁶ TheRepublic.lk, *Poet and Teacher Ahnaf Jazeem’s PTA case called in Courts Today*, (June 22, 2021), available at <https://therepublic.lk/2021/06/22/poet-and-teacher-ahnaf-jazeems-pta-case-called-in-courts-today-6-june/>.

⁸⁷ Confidential Source, on file with author.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Confidential Source, on file with author.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

B. Legal Analysis

The arrest and detention of Mr. Jazeem is arbitrary under Categories I, II, III, and V of the Working Group's Revised Methods of Work.⁹⁶ The detention is arbitrary under Category I because Jazeem was detained without sufficient legal justification. The detention is arbitrary under Category II because Jazeem's detention resulted from and amounted to reprisal for the legitimate exercise of his rights to freedom of thought, conscience and religion, as well as his right to freedom of expression. The detention is arbitrary under Category III because the Sri Lankan government's arrest, detention and prosecution of Jazeem failed to meet minimum standards of due process. Lastly, the detention is arbitrary under Category V because the Sri Lankan government's arrest, detention and prosecution of Jazeem resulted from discrimination against Jazeem.

1. Arbitrary Deprivation of Liberty under Category I

A detention is arbitrary under Category I when there is no legal basis or justification for it.⁹⁷ The Working Group has found a lack of legal basis for the purposes of Category I under the following conditions: (1) when the government lacks legal authority for the detention;⁹⁸ (2) when the government holds an individual *incommunicado*;⁹⁹ and (3) when the government arrests without substantive evidence to justify the arrest.¹⁰⁰ In the present case, Jazeem's detention is arbitrary under Category I because the government arrested and detained Jazeem in violation of Sri Lankan law, because the government held Jazeem *incommunicado*, and because the government lacked a sufficient evidentiary basis for his arrest.

⁹⁶ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty exception on such grounds and in accordance with such procedures as are established by law." International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), UNTS vol. 999, p.171, at art. 9(1), (Dec. 16, 1996) [hereinafter "ICCPR"]. An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; *See also Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at art. 9, (1948) [hereinafter "UDHR"] ("No one shall be subjected to arbitrary arrest, detention or exile."); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49, at principle 2 [hereinafter "Body of Principles"] ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law. . .").

⁹⁷ Report of the Working Group on Arbitrary Detention, 16th session, A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement> [hereinafter "Revised Work Methods"]

⁹⁸ *See, e.g., Mohamed Ould Ghadde v. Mauritania*, UN Working Group on Arbitrary Detention, Opinion No. 33/2018, para. 55 (June 28, 2018), <https://undocs.org/A/HRC/WGAD/2018/33>.

⁹⁹ *Wang Quanzhang et al. v. China*, UN Working Group on Arbitrary Detention, Opinion No. 62/2018, paras. 55-56 (Aug. 24, 2018), <https://undocs.org/a/hrc/wgad/2018/62>.

¹⁰⁰ *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://undocs.org/a/hrc/wgad/2016/58>.

b. *The Detention Order Issued for Jazeem was Unlawful under Sri Lanka Law*

As stated in the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, the deprivation of liberty is regarded as unlawful when it is not on such grounds and in accordance with procedures established by law.¹⁰¹

According to TID officials, Jazeem's detention was authorized by a Detention Order issued under the authority of PTA. However, the government failed to adhere to the clear requirements required under the PTA to obtain a lawful detention order, and thus the Detention Order obtained on May 19, 2020 for Jazeem fails to comply with Sri Lankan law, rendering his detention without legal basis.

Under the Criminal Procedure of Sri Lanka, an arrestee must be presented before the nearest Magistrate within 24 hours to obtain judicial review of the legality of the arrestee's detention. Section 9(1) of the PTA permits an individual to be detained for 90 days if the Minister of Defense issues a "detention order." The PTA does not grant the Minister the power to delegate this authority to any other individual. Moreover, prior to the passage of the 20th Amendment of the Sri Lankan Constitution in October 2020, the President of Sri Lanka was unable to hold ministerial positions, such as the Minister of Defense.

In the present case, the May 19, 2020 Detention Order purportedly justifying Jazeem's initial period of detention was signed, not by the Minister of Defense, but instead by the President of Sri Lanka. As a result, the Detention Order was not well founded under Sri Lankan law, as it was issued by an institution, the Presidency, that lacked the legal authority to do so. Furthermore, at the time of Jazeem's arrest, no Minister of Defense had been appointed by the President. Accordingly, between the time of Jazeem's arrest and until the passage of the 20th Amendment, there could have been no lawful PTA detention orders issued against Jazeem. As Jazeem was not permitted access to an attorney nor was he able to challenge the legality of his detention before a court for over a year, he had no meaningful opportunity to challenge these defects in the legality of his detention.

Moreover, the initial detention order issued against Jazeem lasted for a period of 90 days. The government did not provide Jazeem, his family, or his counsel with any evidence that subsequent detention orders justifying holding Jazeem until June 12, 2021, the date of his remand hearing. Such secret detention orders do not comply with one's right to know what the law is and cannot be considered to have a basis in law. Accordingly, the government lacks any legal basis under Sri Lanka law to justify holding Jazeem in detention between the date of his arrest and June 12, 2021.

For these reasons, the May 19, 2020 Detention Order against Jazeem does not provide a legal basis for his detention. Accordingly, Jazeem's detention between May 19, 2020 and June 12, 2021 lacks a legal basis, rendering his detention arbitrary under Category I.

c. *The Government Detained Jazeem Incommunicado*

The Working Group has consistently held that detaining a person incommunicado is a form of arbitrary detention under Category I on the grounds that such detention violates the right to challenge the lawfulness of one's detention before a competent tribunal, as protected under articles 8, 10, and 11 of the Universal Declaration of Human Rights.¹⁰² Incommunicado detention occurs where an individual is "deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus."⁹³ In this context, the Working Group has affirmed

¹⁰¹ UN Working Group on Arbitrary Detention, *United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court*, UN Doc. A/HRC/30/37, para. 12 (July 6, 2015), <https://undocs.org/A/HRC/30/37>.

¹⁰² *Wang Quanzhang et al. v. China*, Opinion No. 62/2018, para. 55.

that “secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human being under customary international law.”¹⁰³

In the present case, Jazeem was held without meaningful judicial review of his detention and without access to either his family or legal counsel for prolonged periods of time. The first occasion that a judge ruled on whether to hold Jazeem in pre-trial detention was on June 12, 2021, over a year after his initial detention. Jazeem’s only prior court hearings involved attempts by the TID to pressure Jazeem into making self-incriminating statements, and did not involve judicial review of his detention. The lack of access to a court prevented Jazeem from raising serious legal issues concerning his detention, including key procedural defects with his detention, his mistreatment during detention, his lack of access to an attorney, and the absence of any genuine evidentiary basis for his detention.

Furthermore, Jazeem was not permitted to access an attorney until March 8, 2021, 10 months after his detention. Following Jazeem’s first visit with his attorneys, he was denied any contact with either his family or his attorneys for the following two weeks. The government’s attempts to cut off Jazeem from judicial review of his detention and from the outside world for prolonged periods of time amount to *incommunicado* detention, and accordingly render his detention arbitrary for lack of legal basis under Category I.

d. *The Government Lacked a Sufficient Evidentiary Basis for Jazeem’s Arrest*

The Working Group has found that Category I detention occurs when authorities lack evidence such that there is “no justified grounds for the detainees arrest.”¹⁰⁴ Both at the time of Jazeem’s arrest and throughout the course of his pre-trial detention, the government has possessed no evidence that Jazeem has committed a crime that was also not protected under well-established principles of human rights law. Jazeem’s actions have been entirely peaceful. He has never engaged in violent activities, and the government does not allege that he, himself, has done specific violent actions.

The government’s seeming justification detaining Jazeem primarily results from the publication of his book *Navarasam* and his use of this book in teaching. The government had in its possession or was aware of Jazeem’s poetry book *Navarasam* on or before May 3, 2020, prior to Jazeem’s arrest. Accordingly, at the time of Jazeem’s arrest, authorities either were in fact aware, or at minimum reasonably should be expected to have been aware, that the poetry book did not contain advocacy or promotion of Islamic extremism. Authorities lacked a reasonable evidentiary basis for believing that Jazeem violated the PTA. The TID has also not provided any independent evidence to show that Jazeem was “teaching extremism” to his students. As a result, Jazeem’s detention lacked a sufficient evidentiary basis for his arrest, and his detention lacks adequate legal basis, amounting to arbitrary detention under Category I.

2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of thought, conscience and religion.¹⁰⁵ The Government arbitrarily arrested and detained Jazeem on the basis of his exercise of both these rights.

¹⁰³ *Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, p. 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur’s report has been recognized by the Working Group as identifying the extent of human rights violations associated with incommunicado detention. See UN Working Group on Arbitrary Detention, *Report of the Working Group*, UN Doc. A/HRC/22/44, fn. 27 (Dec. 24, 2012), <https://undocs.org/A/HRC/22/44>.

¹⁰⁴ See, e.g., *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://undocs.org/a/hrc/wgad/2016/58>.

¹⁰⁵ Revised Methods of Work, Category III, at para. 8b.

a. *The Government violated Jazeem's Right to Freedom of Expression*

Article 19(2) of the Covenant provides, "Everyone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."¹⁰⁶ The same right is protected under Article 19 of the UDHR. Freedom of expression is also guaranteed in the Sri Lankan Constitution under Article 14(1)(a).¹⁰⁷ The right to freedom of expression as provided in Article 19(2) of the Covenant is not limited by form or subject matter. As General Comment No. 34 explains, the right protected by Article 19(2) "includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others... It includes... cultural and artistic expression, teaching, and religious discourse."¹⁰⁸ Moreover, all forms of expression are covered, including electronic and internet based modes of expression.¹⁰⁹

In the present case, Jazeem was explicitly arrested and detained because of his expression as manifested in collection of poetry, *Navarasam*, and in his alleged use of this book in his courses. The publication of poetry and the teaching of poetry both fall well within the scope of protected expression as outlined under Article 19 of the ICCPR and UDHR. Accordingly, any detention of Jazeem on the basis of such activities amounts to a restriction on his right to freedom of expression.

While the right to freedom of expression is not absolute, the state can only place restrictions on the freedom under limited conditions. Article 19(3) of the Covenant provides that freedom of expression may only be restricted when provided by law and necessary for the respect of the rights or reputations of others, protection of national security or public order, health or morals.¹¹⁰ The UNHCR has held that such government limitations in accordance with Article 19(3) must "meet a strict test of justification."¹¹¹

Here, the exceptions to the right to freedom of expression do not apply. Jazeem's poetry and teaching did not infringe upon or in any way threaten "the rights or reputations of others, protection of national security or public order, health or morals." Although the government alleges that Jazeem's poetry contains extremist aspects, the reality is that *Navarasam* is expressly condemnatory of extremism.

Moreover, even if a legitimate justification had existed, the Sri Lankan government has a duty to specify the manner of the threat posed by Jazeem's poetry. Under the UNHRC's jurisprudence, "the State party must demonstrate in specific fashion the precise nature of the threat to any of the enumerated purposes . . ." ¹¹² Sri Lanka has offered no evidence beyond *Navarasam* to justify why Jazeem's right to free expression should be curtailed and why he should be detained for over one year in pre-trial detention. Accordingly, no exceptions apply to the government's restrictions on Jazeem's right to freedom of expression, and the government's detention and continued prosecution of Jazeem amount to a violation of Article 19 of the ICCPR and UDHR.

b. *The Government Violated Jazeem's Right to Freedom of Thought, Conscience and Religion.*

¹⁰⁶ ICCPR, art. 19(2).

¹⁰⁷ Sri Lanka Constitution, art. 14(1).

¹⁰⁸ UN Human Rights Committee, General Comment No. 34, Article 19 (Freedom of Opinion and Expression), para. 11 (July 29, 2011) [hereinafter General Comment No. 34].

¹⁰⁹ *Id.*, at para. 12.

¹¹⁰ ICCPR, art. 19(3).

¹¹¹ Communication No. 628/1995, *Park v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3 (1998), <http://hrlibrary.umn.edu/undocs/session64/view628.htm>.

¹¹² Communication No. 926/2000, *Shin v. Republic of Korea*, U.N. Doc. CCPR/C/80/D/926/2000, ¶ 7.3 (2004), <http://ccprcentre.org/wp-content/uploads/2013/02/926-2000-Shin-v.-Republic-of-Korea-.2004.pdf>.

The right to freedom of thought, conscience and religion is an essential tenet of international law as expressed in Article 18 of the Covenant¹¹³ and of Sri Lankan domestic law under Article 10 of the Constitution. The rights contained in Article 18 of the Covenant include the “freedom to have or to adopt a religion or belief of [one’s] choice, and freedom, either individually or in community with others and in public or private, to manifest [one’s] religion or belief in worship, observance, practice and teaching.”¹¹⁴ In its General Comment No. 22 to the Covenant, the UNHRC explains that Article 18 “encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief...”¹¹⁵ Moreover, the UNHRC states that the “freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief.”

Sri Lanka has violated Jazeem’s right to freedom of thought, conscience, and religion. Jazeem’s arrest and detention stem from a collection of poetry, *Navarasam*, and alleged use of this book in his courses. Jazeem’s poetry dealt primarily with Islamic and other religious themes. The government targeted Jazeem in the context of a broader crackdown on Muslims within the country, and were Jazeem’s poetry not concerned with Islamic themes, it is unlikely that he would be the subject of investigation. Accordingly, the basis of his detention results, in part, from his religious expression.

The right to freedom of religion may only be limited by the State when such restrictions are “prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.”¹¹⁶ For the reasons stated above with respect to the right to freedom of thought, these exceptions do not apply to the present circumstances. As no exception applies to the government’s restriction of Jazeem’s right to freedom of religion, the government’s detention and continued prosecution of Jazeem amounts to a violation of Article 18 of the ICCPR and UDHR.

3. Arbitrary Deprivation of Liberty under Category III

According to Category III of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹¹⁷ Due Process is at the core of the right to a fair trial. The minimum international standards of due process are established in the UDHR, the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).¹¹⁸

a. *The Government Violated Jazeem’s Right Not to Be Subjected to Arbitrary Arrest*

Article 9(1) of the Covenant, which confirms the right to liberty and freedom from arbitrary detention, states, “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”¹¹⁹ This right is reiterated by principles 2 and 36(2) of the Body of Principles¹²⁰ and

¹¹³ UDHR, art. 18.

¹¹⁴ *Id.*

¹¹⁵ UN Human Rights Committee, General Comment No. 22, Article 18 (Freedom of Thought, Conscience or Religion), UN Doc. CCPR/C/GC/22, para. 9 (July 30, 1993), *available at* <https://www.refworld.org/docid/453883fb22.html>.

¹¹⁶ *Id.*

¹¹⁷ Revised Methods of Work, Category III, para. c.

¹¹⁸ *Id.*, Category III, paras. 7(a)-(b).

¹¹⁹ ICCPR, art. 9(1).

¹²⁰ UDHR, at art. 9.

Article 9 of the UDHR.¹²¹ Article 13(1) of the Sri Lankan Constitution similarly prohibits arrest except in accordance with legal procedure.¹²²

At the time of Jazeem’s arrest, he was not provided a warrant. Furthermore, the Detention Order issued subsequent to Jazeem’s arrest on March 19, 2020 was not issued pursuant to the proper procedures established under the PTA, as described in Section IV.B.1.a above. As a result, the government’s failure to present Jazeem before a judge to rule on whether he should be held in pre-trial detention was not in accordance with the domestic law regarding pre-trial detention. Accordingly, Jazeem’s arrest was arbitrary in violation of Article 9(1) of the Covenant, Article 9 of the UDHR, and principles 2 and 36(2) of the Body of Principles.

b. *The Government Violated Jazeem’s Right to Habeas Corpus*

Article 9(3) of the ICCPR provides, in part, that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”¹²³ The Human Rights Committee has stated that any detention lasting longer than 48 hours “must remain absolutely exceptional and be justified under the circumstances.”¹²⁴ The Human Rights Committee has also explained that “[i]ncommunicado detention that prevents prompt presentation before a judge inherently violates paragraph 3” of article 9.¹²⁵

A detained individual has the right to challenge the arbitrariness of his detention. Article 9(4) of the ICCPR provides that “[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”¹²⁶ The right to challenge the lawfulness of detention is also enshrined in Principle 1 of the Body of Principles.¹²⁷ Indeed, the Working Group has held that this right “is not derogable under international law.”¹²⁸ Incommunicado detention inherently violates the right to challenge the lawfulness of detention,¹²⁹ as well as Rules 58 and 61 of the Mandela Rules which require a State to permit a prisoner to have contact with family members and legal counsel, respectively.¹³⁰

Here, the government held Jazeem for over a year before a judicial tribunal ruled on the legality of his detention till June 12, 2021. Moreover, even when Jazeem’s remand order was issued on June 12, 2021, he was not physically produced before the judge, and his legal representatives were not notified of the hearing. Because of the defective Detention Order issued under the PTA, the government violated the requirement under Sri Lankan law to bring Jazeem before a court to review the legality of his detention within 24 hours of his arrest. Furthermore, since the time of arrest, Jazeem has been held *incommunicado* for long periods which is inherently a violation of his right to be promptly brought before a judge to determine the lawfulness of his detention.¹³¹ As a result, the government violated Jazeem’s rights as enshrined in article 9(3) of the ICCPR to be promptly brought before an independent judicial tribunal within a reasonable time to determine the lawfulness of his detention.

¹²¹ Body of Principles, at principles 2 and 36(2).

¹²² *Sri Lanka Constitution*, art. 13(1).

¹²³ ICCPR, art. 9(3).

¹²⁴ UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and Security of Person), UN Doc. CCPR/C/GC/35, para 33 (Dec. 16, 2014), available at <https://undocs.org/ccpr/c/gc/35> [hereinafter “General Comment No. 35”]

¹²⁵ *Id.* at para. 35.

¹²⁶ ICCPR, art. 9(4).

¹²⁷ Body of Principles, Principle 1, para. 19.

¹²⁸ Body of Principles, Principle 4, para. 22.

¹²⁹ General Comment No. 35, para 35.

¹³⁰ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, Rules 58 & 61, G.A. Res. 70/175, 70th Sess., U.N. Doc. A/RES/70/175 (Jan. 8, 2016), <https://undocs.org/A/RES/70/175>.

¹³¹ General Comment No. 35, para. 35.

c. *The Government Violated Jazeem' Right to Be Tried Without Undue Delay*

Article 14(3)(c) of the Covenant guarantees that each individual subject to arrest shall “be tried without undue delay.”¹³² The UNHRC has explained that, “[a]n important aspect of the fairness of a hearing is its expeditiousness,”¹³³ and “in cases where the accused are denied bail by the court, they must be tried as expeditiously as possible.”¹³⁴ The right to be tried without undue delay is reiterated by Principle 38 of the Body of Principles.¹³⁵

Here, Jazeem has been held without bail for over a year, and to date formal charges have yet to be filed in the High Court by the Attorney General. Counsel has been able to appear before a court during the period of his detention, but courts repeatedly avoided issuing orders against TID to reduce the period of his detention. Moreover, the key evidence in Jazeem’s case, namely his poetry, and purported statements obtained from Jazeem’s students have been in TID’s possession since before his detention. Due to the substantial delays in Jazeem’s trial and due to the failure of the government to provide legitimate grounds for the length of proceedings, the government has violated Jazeem’s right to be tried without undue delay in violation of Article 14(3)(c) of the ICCPR.

d. *The Government Violated Jazeem’s Right to Release Pending Trial*

Article 9(3) of the Covenant provides the right to an individual’s release pending trial.¹³⁶ Pretrial detention under this provision should be the exception not the norm, and must be justified based on the circumstances. The UNHRC has found that “[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”¹³⁷ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.¹³⁸

Here, Jazeem is currently held without formal charges or a right to bail. Jazeem’s detention between March 16 2020 to June 12, 2021 was based upon authority under the PTA rather than an individualized determination regarding Jazeem’s case, made by a court. During this period, there was no independent judicial review of whether Jazeem represented a flight risk or risked repeating his supposed offense. Furthermore, even subsequent judicial review of Jazeem’s case does not meet the requisite international standard, as there is no evidence to suggest that Jazeem is a threat to public safety as he has never engaged in violent activity in the past. Moreover, there is no evidence that Jazeem could destroy any evidence in the case or that he is a flight risk. As such, there were no circumstances present that could reasonably justify the excessive period of detention without trial or even formal charges.

Accordingly, the government violated Jazeem’s rights under Article 9(3) of the ICCPR, as well as principles 38 and 39 of the Body of Principles.

e. *The Government Violated the Prohibition on Coerced Testimony*

¹³² ICCPR, art. 14(3)(c).

¹³³ UN Human Rights Committee, *General Comment No. 32, Article 14 (Right to Equality Before Courts and Tribunals and to a fair trial)*, UN Doc. CCPR/C/GC/32, para. 27 (Aug. 23, 2007), available at <https://undocs.org/CCPR/C/GC/32>.

¹³⁴ *Id.*, at para. 35.

¹³⁵ Body of Principles, Principle 38.

¹³⁶ ICCPR, at art. 9(3).

¹³⁷ General Comment No. 35, para. 38.

¹³⁸ Body of Principles, at principles 38 and 39.

Article 14(3)(g) of the ICCPR specifically prohibits State coercion of testimony.¹³⁹ Furthermore, Principle 21(2) the Body of Principles guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”¹⁴⁰

In Jazeem’s case, the risk of the introduction of coerced testimony is high, as the PTA allows courts to admit as evidence any statements made by the accused at any time and provides no exception for confessions extracted by torture. In light of this risk, throughout the course of his detention, Jazeem has been exposed to unsanitary conditions. For periods early in his detention, Jazeem was permanently handcuffed to a chair and for a period thereafter, he was handcuffed to a table while sleeping. This treatment occurred while Jazeem was being held incommunicado and without access to legal representation. At this point, TID officers attempted to coerce Jazeem into making self-incriminating statements before the Colombo Magistrate Court No. 08 in case number B44230/8/20. These attempts by officers amount to a violation of the prohibition of coercing testimony. Accordingly, the government violated 14(3)(g) of the ICCPR and 21(2) of the Body of Principles.

f. *The Government Violated Jazeem’s Right to Counsel and to Communicate with Counsel*

Article 14(3)(d) of the ICCPR guarantees the right to defense, by stating that a criminal defendant has the right to “be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.” In addition, Article 14(3)(b) of the ICCPR guarantees a criminal accused the right “to communicate with counsel of his own choosing.”¹⁴¹ The Human Rights Committee has clarified that such guarantee “requires that the accused is granted prompt access to counsel,”¹⁴² and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”¹⁴³ The Committee further states that “Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”¹⁴⁴ Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to “communicate and consult with his legal counsel,” and that such right “may not be suspended or restricted save in exceptional circumstances.”¹⁴⁵ Rule 119 of the Mandela Rules also provides for the right to access legal advice.¹⁴⁶

In the present case, for the first 10 months of Jazeem’s detention, he was not provided access to legal representation. Additionally, for two months, between January 2021 and March 2021, Jazeem’s legal representatives were denied access to Jazeem despite making multiple requests to meet with him. Once Jazeem’s attorneys were permitted to meet with him, authorities observed and recorded the meetings, failing to provide Jazeem with confidential access. Accordingly, the government has violated Articles 14(3)(b) and 14(3)(d) of the ICCPR, principles 18(1) and (3) of the Body of Principles, and Rule 119 of the Mandela Rules.

g. *The Government Violated Jazeem’s Right to Be Visited by Family*

¹³⁹ ICCPR, art. 14(3)(g).

¹⁴⁰ Body of Principles, prin. 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess. . .” *Id.* at prin. 21(1).

¹⁴¹ ICCPR, art. 14(3)(b).

¹⁴² UN Human Rights Committee, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to a Fair Trial)*, UN Doc. CCPR/C/GC/32, para. 32 (Aug. 23, 2007), available at <https://undocs.org/CCPR/C/GC/32>.

¹⁴³ General Comment No. 35, para. 35.

¹⁴⁴ *Id.* at para 34.

¹⁴⁵ Body of Principles, prin. 18(1), (3).

¹⁴⁶ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175, rule 119, available at <https://undocs.org/A/RES/70/175> [hereinafter “Mandela Rules”] (stating “If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay”).

Principle 19 of the Body of Principles provides that “detained or imprisoned persons shall have the right to be visited by and to correspond with, in particular, members of his family . . . subject to reasonable conditions and restrictions as specified by law or lawful regulations.”¹⁴⁷ The UN Human Rights Committee has observed that “certain conditions of detention (such as denial of access to counsel and family) may result in procedural violations of paragraph 3 and 4 of article 9 [of the ICCPR].”¹⁴⁸ Similarly, this right is protected by the Mandela Rules 43, 58, and 106.¹⁴⁹ As noted above, Jazeem has been held without access to his family for long periods during of his pre-trial detention. Accordingly, the government has violated Principle 19 of the Body of Principles, as well as Rules 43, 48, and 106 of the Mandela Rules and Article 9(3) and 9(4) of the ICCPR.

4. Arbitrary Deprivation of Liberty under Category V

According to Category V of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on . . . ethnic or social origin, language, [or] religion . . .”¹⁵⁰ Importantly, Category V detention occurs when the underlying discrimination “aims towards or can result in ignoring the equality of human beings.”¹⁵¹

Here, the act of detaining Jazeem—a Muslim poet and teacher with no history of violent activity—under anti-terrorism legislation should be subjected to close scrutiny in light of the government’s history of using anti-terrorism laws to unjustifiably target Muslim. Jazeem was targeted in the midst of, and as part of, a broad crackdown on the Muslim minority population in the country. Furthermore, he is accused of promoting terrorism despite clear evidence in his work demonstrating his condemnation of terrorist acts and the groups that he is accused of promoting. Moreover, in providing justification for detaining Jazeem, the government relies on a literal translation of a poetic work and selectively ignores the testimony of Tamil experts when evaluating the content of Jazeem’s work, which amounts to linguistic and cultural discrimination. As a result, the government’s detention of Jazeem is based in discriminatory attitudes and practices, and thus his detention is arbitrary under Category V.

5. Conclusion

For the above reasons, Jazeem’s arrest and detention violated Sri Lankan and international law. Jazeem’s expression through his poetry and teaching is protected under the applicable provisions of the Covenant, as well as other sources of international and Sri Lankan law. By arresting Jazeem in a manner incongruous with Sri Lankan law and subjecting him to a lengthy pre-trial detention, the conditions of which also violated international law, the Sri Lankan government has arbitrarily detained Jazeem.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THEIR REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THERE WERE NOT TAKEN.

On May 22, 2020, Jazeem’s father filed a complaint with the Human Rights Commission of Sri Lanka on Jazeem’s behalf. The complaint is registered under the file number HRC/MN/029/2020. So far, no action has been taken by the Commission on Jazeem’s case. On April 10, 2021, Jazeem’s counsel filed a petition

¹⁴⁷ Body of Principles, Principle 19.

¹⁴⁸ General Comment No. 35, ¶ 59.

¹⁴⁹ Mandela Rules, Rules 43, 58, 106.

¹⁵⁰ Revised Work Methods, para. 8(e).

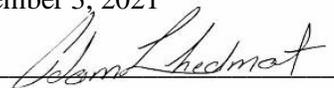
¹⁵¹ *Id.*

asserting Jazeem's fundamental rights have been violated to the Supreme Court of Colombo. The Supreme Court is schedule to hear the case on September 8, 2021.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).

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Date: September 3, 2021

Signature:  _____