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**Human Rights Council**  
**Working Group on Arbitrary Detention**

## **Opinions adopted by the Working Group on Arbitrary Detention at its ninety-third session, 30 March–8 April 2022**

### **Opinion No. 22/2022 concerning Ahnaf Jazeem (Sri Lanka)**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the mandate of the Working Group. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The Council most recently extended the mandate of the Working Group for a three-year period in its resolution 42/22.

2. In accordance with its methods of work,<sup>1</sup> on 21 December 2021 the Working Group transmitted to the Government of Sri Lanka a communication concerning Ahnaf Jazeem. The Government has not replied to the communication. The State is a party to the International Covenant on Civil and Political Rights.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his or her sentence or despite an amnesty law applicable to him or her) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the Covenant (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights 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 (category III);

(d) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings (category V).

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<sup>1</sup> [A/HRC/36/38](#).

## Submissions

### *Communication from the source*

4. Ahnaf Jazeem is a Sri Lankan national who was 26 years old at the time of his arrest. Mr. Jazeem is a published poet and educator. He usually resides at Pandaraveli, Silavatturai, Sri Lanka.

5. Mr. Jazeem completed a prestigious degree program from the Naleemiah Institute of Islamic Studies, Beruwela. In July 2019, he became a teacher of Tamil Language and Literature at the School of Excellence, an international private school at Azhar Nagar, Sembatte. Mr. Jazeem has been awarded for his poetry published under the pen name of Mannaramuthu Ahnaf. In 2017, he published his first book of poetry in Tamil titled *Navarasam (Nine Moods)*, a compendium of a wide range of poems on topics relating to both private and social life. He held a book release event at the Mn/Pandaraweli Muslim Maha Vidyalaya school, which almost one thousand people attended. The work is not banned by any court.

#### a. Background

6. According to the source, the modern history of Sri Lanka has been marked by communal violence, often involving the Sinhalese majority and Tamil minority ethnic groups. In response to the Easter Sunday terrorist attacks of April 2019, the executive authority has been expanded, coinciding with widespread application of the Prevention of Terrorism Act (the Act) and the detention of countless members of the Muslim minority community.

7. The source reports that the Act 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 many cases, informing the detained individual of the reason for his or her arrest reportedly exceeds the 72-hour period required by the Act. Detainees may be held under the Act for up to 18 months without being produced before a judge. In practice, the authorities have held prisoners for as long as 10 years. Judges require approval from the Attorney-General's Department to authorize bail for persons detained under the Act.<sup>2</sup>

8. The source recalls that a Human Rights Council core group expressed concern over a lack of progress regarding religious minorities in Sri Lanka.<sup>3</sup> In its resolution 2021/2748 (RSP), the European Parliament condemned the continued application of the Act.<sup>4</sup>

#### b. Arrest

9. According to the source, officers from the Criminal Investigation Department obtained a copy of Mr. Jazeem's book of poetry, *Navarasam*, and other poems as early as 3 May 2020. Although the officers could not have read Tamil poetry, several of Mr. Jazeem's poems criticizing Islamic State allegedly served as the basis for his arrest.

10. On 16 May 2020, Mr. Jazeem was arrested at his home at approximately 8:30 pm by officers from the Counter-Terrorism and Investigation Division (the Division), a specialized division of the Criminal Investigation Department. The source states that the officers of the Division did not provide Mr. Jazeem with a warrant or other order from an independent judicial body authorizing his arrest. Instead, its Inspector of Police in Vavuniya issued an arrest receipt dated 16 May 2020, which stated that Mr. Jazeem was arrested on suspicion of having published books on and taught his students extremism and racism. However, Mr. Jazeem has published only one book, *Navarasam*.

11. At the time of the arrest, the officers searched Mr. Jazeem's home and seized 100 copies of *Navarasam* and approximately 50 additional written works, including Arabic and Tamil language books and poetry collections. Although they could not read Mr. Jazeem's

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<sup>2</sup> Sect. 7 (1), Prevention of Terrorism Act No. 48 of 1979, as amended.

<sup>3</sup> See <https://economynext.com/unhrc-core-group-concerned-over-sri-lankas-lack-of-progress-on-human-rights-83340/>.

<sup>4</sup> See [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0290\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0290_EN.html).

book, the arresting officers confiscated his works. Following his arrest, Mr. Jazeem was transported to the Mannar Police Station on the night of 16 May 2020. On 17 May 2020, he was transferred to the Division's head office in Colombo.

c. Pretrial detention

12. The source recalls that although the Criminal Procedure Code of Sri Lanka requires that an arrested individual be produced before the nearest magistrate within 24 hours of arrest, an exception to this requirement exists under section 9 (1) of the Prevention of Terrorism Act. This provision permits the Government to detain an individual under suspicion of violating the Act for 90 days if the Minister of Defence issues a detention order in relation to the detainee.

13. On 19 May 2020, a detention order was issued for Mr. Jazeem under the Act for a period of 90 days and was signed by the President of Sri Lanka. According to the source, the detention order was provided to Mr. Jazeem's family approximately two months later. Initially, no subsequent detention order or extension of the original detention order was provided to Mr. Jazeem's family or his lawyers. In late July 2021, officials of the Division revealed the existence of copies of subsequent orders authorizing the extension of Mr. Jazeem's detention.

14. Given that the basis for Mr. Jazeem's arrest relied upon a detention order issued under the Act, he was not presented to a court to review the legality of his detention for over one year. During the period, Mr. Jazeem was never physically brought before a magistrate. On 11 December 2020, the Director of the Counter-Terrorism and Investigation Division showed Mr. Jazeem to Magistrate's Court No. 8 in Colombo via videoconference, with the aim of compelling him to make a self-incriminating statement. During that appearance, Mr. Jazeem was not legally represented and the court did not consider the legality of his detention.

15. According to the source, a court did not review Mr. Jazeem's detention until 12 June 2021, at which point he was remanded into custody at Colombo Remand Prison. Mr. Jazeem was not physically produced at the hearing, purportedly for coronavirus disease (COVID-19) precautionary reasons.

16. For the first two weeks of his detention, Mr. Jazeem was held on the second floor of the Division's new secretariat building in Colombo and was permanently handcuffed to a chair. For a period thereafter, he was handcuffed to a table while sleeping, which caused severe arm pain, leading Mr. Jazeem to complain to officers on multiple occasions.

17. Mr. Jazeem was unable to speak or interact with family members for long periods throughout his detention. When provided the opportunity to speak with his family over the telephone, at least one officer listened to the conversation. The source alleges that officers attempted to use access to his family as a means of coercing a confession from Mr. Jazeem. On 20 February 2021, officers asked Mr. Jazeem's family member to visit the prison to "record a statement", but no statement was reportedly recorded. However, officers attempted to coerce Mr. Jazeem's confession by informing the family member that the only way Mr. Jazeem could be released was by making a self-incriminating confession, thereby becoming a "State witness".

18. For the first 10 months of his detention, the authorities denied Mr. Jazeem's access to counsel. After multiple written requests, Mr. Jazeem was finally permitted to meet with his lawyers on 8 March 2021 for about 20 minutes. Mr. Jazeem's counsel was not initially aware that the entire conversation was audiorecorded and noted down by observing officers. In response to subsequent objections from Mr. Jazeem's counsel, an officer warned, "There is nothing to worry about if you have not spoken anything unnecessary and talked only about the case." Following Mr. Jazeem's first visit with his lawyers, he was denied contact with his family and lawyers for two weeks.

d. Investigation

19. The source reports that as part of its investigation of Mr. Jazeem, the authorities sanctioned a literal translation of *Navarasam*, which was not conducted by an individual with credible experience translating poetry. Following receipt of the Government's translation by

a sworn translator, a court ordered that the translation be evaluated by child psychiatrists at the Lady Ridgeway Hospital for Children. On the basis of the literal translation, the psychiatrists concluded that the book incited violence, aroused sexual feelings, promoted suicide, glorified death, talked of perceived injustice against Muslims across the world and incited hatred against the perpetrators of violence. As stated in the psychiatrists' report, their conclusion was not a direct assessment of the meaning of the text, but purported to be an assessment of the potential influence that the text might have on children and adolescents, owing to the reader's intelligence, disposition, upbringing and environment.

20. Tamil literature experts familiar with *Navarasam* and Mr. Jazeem's work have publicly expressed disagreement with the Government's expert assessment. Tamil language scholars noted the lack of extremist ideology within *Navarasam* and commended Mr. Jazeem's commitment to religious morality and humanity. An independent translation of *Navarasam* revealed that Mr. Jazeem's poems do not promote any extremist ideology. To the contrary, his poetry explicitly condemns extremism, including the two poems in *Navarasam* which reference Islamic State and condemn its violence.

e. Pretrial proceedings

21. The source alleges that Mr. Jazeem was held in detention for over a year without being officially charged with a crime. The Government opened two parallel proceedings (see paras. 22 and 23) against Mr. Jazeem, both related to the alleged promotion of Muslim extremism to youth via *Navarasam* and his teaching.

22. On 17 June 2020, officials of the Division opened a case against Mr. Jazeem before the Fort Magistrate's Court. At the time, Mr. Jazeem did not appear before the court and was not legally represented. On 27 January 2021, after 256 days in detention, Mr. Jazeem's lawyers first appeared on his behalf before the court. His lawyers appeared at four additional hearings, providing evidence to demonstrate the baseless nature of the Division's claims and filing motions for two court orders, one compelling the Division to physically produce Mr. Jazeem in court, and the second compelling it to submit a summary of the evidence against Mr. Jazeem. On 3 March 2021, representatives of the Division requested that the proceedings before the Fort Magistrate's Court be closed because the it was conducting a parallel case against Mr. Jazeem before the Colombo Magistrate's Court. As a result, the defence motions were dismissed, and proceedings before the Fort Magistrate's Court were discontinued.

23. On 11 December 2020, officials of the Division opened an inquiry against Mr. Jazeem before Colombo Magistrate's Court No. 8, concerning an investigation into allegations that Mr. Jazeem taught extremism to his students. On that date, Mr. Jazeem was presented before a magistrate via videoconference and without legal representation for the purpose of having him make statements to the court. However, none of the statements that Mr. Jazeem made at that hearing were recorded. On 23 February 2021, Mr. Jazeem's lawyers attempted to appear before the court, but the magistrate was absent, further delaying proceedings. On 2 March 2021, the lawyers appeared before the court, but it refused to hear defence motions because the Division opened the case for the limited purpose of having Mr. Jazeem make a statement under section 127 of the Criminal Procedure Code,<sup>5</sup> and not to commence a trial against him. The court adjourned the proceedings indefinitely until the Division was prepared to resume.

24. On 11 June 2021, Mr. Jazeem was brought to Colombo from Tangalle Detention Centre. On 12 June 2021, the Colombo Magistrate's Court held a remand hearing concerning whether Mr. Jazeem would be detained under section 7 (2) of the Act. The court ordered Mr. Jazeem's continued detention and he was transferred to Colombo Remand Prison. Neither Mr. Jazeem's family nor his lawyers were notified of this remand hearing. Mr. Jazeem's lawyers learned of the hearing on 14 June 2021, and his lawyers were notified that the next hearing was scheduled for 22 June 2021.

25. On 22 June 2021, the Colombo Chief Magistrate's Court first held hearings concerning challenges raised by the defence as to the legality of Mr. Jazeem's detention and the absence of a factual basis for proceedings against him. Citing COVID-19 restrictions, Mr.

<sup>5</sup> Sect. 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.

Jazeem was not physically brought to the courtroom. Over the following weeks, the court heard argument on defence motions challenging the legality of Mr. Jazeem's pretrial detention. On 13 July 2021, the court denied defence motions to release Mr. Jazeem on the grounds that the detention lacked a legal basis. The court also denied defence requests for a summary report of the evidence against Mr. Jazeem. The court subsequently suspended the proceedings indefinitely pending a decision by the Attorney-General on whether an official indictment would be filed against Mr. Jazeem.

26. Mr. Jazeem remained in detention in unhygienic conditions, including being bitten by a rat on one occasion, experiencing exposure to COVID-19 on multiple occasions, and suffering from urethral stones without adequate rest to recover.

f. Indictment and trial proceedings

27. The source reports that on 26 October 2021, the Counter-Terrorism and Investigation Division filed a secret indictment in the Puttalam High Court against Mr. Jazeem under section 2 (1) (h) of the Act. That provision criminalizes any person who, by words either spoken or intended to be read or by signs or by visible representations or otherwise, causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups. Mr. Jazeem's lawyers were not made aware of the indictment until 5 November 2021, and it was not until 19 November 2021 that Mr. Jazeem was formally served with the charges.

28. On 8 December 2021, Mr. Jazeem filed a request for pretrial release on bail, which was granted by the Puttalam High Court on 15 December 2021. The primary bail conditions required Mr. Jazeem to post bail of three sureties in the amount of 500,000 Sri Lanka rupees; report to the Division's office in Puttalam between 9:00 am and 12:00 am on the first and last Sunday of each month; and appear in court for every hearing of the case. The court ordered the immigration department of Sri Lanka not to issue a passport to Mr. Jazeem. He currently does not possess a passport.

29. Despite receiving authorization from the Puttalam High Court, Colombo Remand Prison refused to release Mr. Jazeem on 15 December 2021. Prison officials required confirmation from the High Court that the bail that had been granted was related to the case that had initially been registered before the Colombo Magistrate's Court but was subsequently dropped. The High Court refused to provide this confirmation, as the case file before the Magistrate's Court was not available to the High Court. However, on 16 December 2021, Colombo Remand Prison honoured the bail order and released Mr. Jazeem. The proceedings against Mr. Jazeem under section 2 (1) (h) of the Act are ongoing. If convicted, Mr. Jazeem will face a return to detention.

g. Analysis of violations

i. Category I

30. The source argues that Mr. Jazeem's detention falls under category I because the authorities arrested and detained him in violation of Sri Lankan law, held him incommunicado and lacked a sufficient evidentiary basis for his arrest.

Unlawful detention order under Sri Lankan law

31. According to officials of the Counter-Terrorism and Investigation Division, Mr. Jazeem's detention was authorized by a detention order issued under the Prevention of Terrorism Act. However, the Government failed to adhere to the clear requirements of the Act to obtain a lawful detention order. As a result, the detention order obtained on 19 May 2020 fails to comply with Sri Lankan law, rendering the detention without legal basis. Under the Criminal Procedure Code of Sri Lanka, an arrestee must be presented before the nearest magistrate within 24 hours to review the legality of the detention. Section 9 (1) of the Act permits an individual to be detained for 90 days if the Minister of Defence issues a "detention order". The Act does not grant the Minister power to delegate this authority to any other individual. Prior to the passage of the twentieth amendment to the Constitution of Sri Lanka

in October 2020, the President of Sri Lanka was unable to hold ministerial positions, such as Minister of Defence.

32. According to the source, the detention order of 19 May 2020 purportedly justifying Mr. Jazeem's initial period of detention was signed by the President of Sri Lanka, and not by the Minister of Defence. As a result, the detention order was not well founded under Sri Lankan law, as it was issued by an institution that lacked the legal authority to do so. At the time of Mr. Jazeem's arrest, no Minister of Defence had been appointed by the President. Accordingly, between the time of Mr. Jazeem's arrest and the passage of the twentieth amendment, there could have been no lawful detention orders issued against Mr. Jazeem under the Act. As Mr. Jazeem was not permitted access to a lawyer, 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 those defects in the legal basis for his detention.

33. The initial detention order issued against Mr. Jazeem lasted for a period of 90 days. The authorities did not provide Mr. Jazeem, his family or his lawyers with any evidence that subsequent detention orders justified holding Mr. Jazeem until 12 June 2021, the date of his remand hearing. Such secret detention orders do not comply with the right to know what the law is and cannot have a basis in law. There is a lack of any legal basis under Sri Lankan law to justify holding Mr. Jazeem in detention between the date of his arrest and 12 June 2021.

34. For the reasons mentioned above, the detention order of 19 May 2020 does not provide a legal basis for Mr. Jazeem's detention. His detention between 19 May 2020 and 12 June 2021 was arbitrary under category I.

#### Incommunicado detention

35. The source submits that Mr. Jazeem was held without meaningful judicial review of his detention and without access to either his family or his lawyers for prolonged periods. The first occasion on which a judge ruled on whether to hold Mr. Jazeem in pretrial detention was on 12 June 2021, over a year after his arrest. Mr. Jazeem's only prior court hearings involved attempts by the Division to pressure him into making self-incriminating statements, and did not involve judicial review of his detention. Lack of access to a court prevented Mr. Jazeem from raising serious legal issues concerning his detention, including key procedural defects, his mistreatment during detention and lack of access to a lawyer, and the absence of a genuine evidentiary basis for his detention.

36. Mr. Jazeem was not permitted access to a lawyer until 8 March 2021, 10 months after his detention. Following Mr. Jazeem's first visit with his lawyers, he was denied contact with his family and lawyers for two weeks. The attempts to deprive Mr. Jazeem for prolonged periods of his rights to judicial review of his detention and to contact with the outside world amount to incommunicado detention, rendering his detention arbitrary under category I.

#### Lack of a sufficient evidentiary basis for arrest

37. The source argues that at the time of the arrest and throughout Mr. Jazeem's pretrial detention, the authorities possessed no evidence that he had committed a crime. Mr. Jazeem's actions were entirely peaceful and protected under well-established principles of human rights law, and he had never engaged in violent activities. The justification for detaining Mr. Jazeem results from the publication of his book, *Navarasam*, and his use of the book in teaching. The Government had in its possession, or was aware of, *Navarasam* on or before 3 May 2020, prior to Mr. Jazeem's arrest. At the time of the arrest, the authorities were aware, or should reasonably be expected to have been aware, that the poetry book did not advocate or promote Islamic extremism. As such, the authorities lacked a reasonable evidentiary basis that Mr. Jazeem had violated the Act. The Division has not provided any independent evidence to demonstrate that Mr. Jazeem was "teaching extremism" to his students. As a result, Mr. Jazeem's detention lacked a sufficient evidentiary and legal basis, falling within category I.

## ii. Category II

38. The source argues that the authorities arrested and detained Mr. Jazeem owing to his exercise of the rights to freedom of expression and to freedom of thought, conscience and religion, rendering his detention arbitrary under category II.

## Freedom of expression

39. The source submits that Mr. Jazeem was detained because of his expression as manifested in his collection of poetry, *Navarasam*, and in his alleged use of the book in his courses. Both the publication and the teaching of poetry fall well within protected expression under article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. The detention of Mr. Jazeem amounts to a restriction of his right to freedom of expression.

40. While freedom of expression is not absolute, the authorities can restrict this right only under the limited conditions specified in article 19 (3) of the Covenant. The exceptions to freedom of expression do not apply in the present case, as Mr. Jazeem's poetry and teaching did not infringe upon, or in any way threaten, the rights or reputations of others or the protection of national security or public order, or of public health or morals. Although the Government alleges that Mr. Jazeem's poetry contains extremist aspects, *Navarasam* is expressly condemnatory of extremism. Even if a legitimate justification exists, the authorities must specify the threat posed by Mr. Jazeem's poetry. The authorities have offered no evidence beyond *Navarasam* to justify why Mr. Jazeem's freedom of expression should be curtailed or why he was detained for over one year in pretrial detention. His detention and continued prosecution violate article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant. Freedom of expression is also guaranteed under article 14 (1) (a) of the Constitution of Sri Lanka.

## Freedom of thought, conscience and religion

41. The source states that Mr. Jazeem's poetry dealt with Islamic and other religious themes. The authorities targeted Mr. Jazeem in the context of a broader crackdown on Muslims within the country. If Mr. Jazeem's poetry had not concerned Islamic themes, it is unlikely that he would have been investigated. His detention resulted from his religious expression.

42. Freedom of religion may be limited only 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. For the reasons stated above, these exceptions do not apply to the present case. Mr. Jazeem's detention and continued prosecution violate article 18 of the Universal Declaration of Human Rights and article 18 of the Covenant. Freedom of religion is also guaranteed under article 10 of the Sri Lankan Constitution.

## iii. Category III

43. The source argues that the arrest, detention and prosecution of Mr. Jazeem failed to meet minimum standards of due process, rendering his detention arbitrary under category III.

## Arbitrary arrest

44. The source alleges that Mr. Jazeem was not provided with a warrant at the time of his arrest. The detention order issued on 19 May 2020 did not comply with procedures established under the Act. The failure to present Mr. Jazeem before a judge to rule on his pretrial detention was not in accordance with domestic law. As a result, his arrest was arbitrary, in violation of article 9 of the Universal Declaration of Human Rights, article 9 (1) of the Covenant, and principles 2 and 36 (2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).<sup>6</sup> Article 13 (1) of the Sri Lankan Constitution prohibits arrest except in accordance with legal procedure.

<sup>6</sup> General Assembly resolution 43/173, annex.

#### Habeas corpus

45. The source claims that Mr. Jazeem was held for over a year before a court ruled on the legality of his detention on 12 June 2021. When Mr. Jazeem's remand order was issued on 12 June 2021, he was not physically produced before the judge, and his legal representatives were not notified of the hearing. Owing to the defective detention order issued under the Act, the authorities violated the requirement under Sri Lankan law to bring Mr. Jazeem before a court to review the legality of his detention within 24 hours of his arrest. Since his arrest, Mr. Jazeem has been held incommunicado for long periods, in violation of his right to be brought promptly before a judge enshrined in article 9 (3) of the Covenant.

#### Trial without undue delay

46. The source argues that Mr. Jazeem was held without formal charges and bail for over a year. Mr. Jazeem's lawyers have appeared before a court during his detention, but the courts have repeatedly avoided issuing orders against the Division to reduce the period of detention. The key evidence, namely Mr. Jazeem's poetry and statements obtained from his students, were in the possession of the Division before his detention. Owing to the substantial delays in Mr. Jazeem's trial and the failure of the authorities to provide legitimate grounds for the length of the proceedings, Mr. Jazeem's right to be tried without undue delay under article 14 (3) (c) of the Covenant was violated.

#### Release pending trial

47. According to the source, Mr. Jazeem's detention between 16 May 2020 and 12 June 2021 was based upon the Act, rather than on an individualized determination by a court regarding his case. During this period, there was no independent judicial review of whether Mr. Jazeem presented a flight risk or might repeat his alleged offence. Subsequent judicial review of Mr. Jazeem's case does not meet the requisite international standard, as there is no evidence that he is a threat to public safety. He has never engaged in violent activity. There is nothing to suggest that Mr. Jazeem could destroy evidence. There were no circumstances that could reasonably justify the excessive period of detention without trial or formal charges. The authorities violated article 9 (3) of the Covenant and principles 38 and 39 of the Body of Principles.

#### Prohibition of coerced testimony

48. The source submits that the risk of coerced testimony in Mr. Jazeem's case is high, given that the Act allows courts to admit as evidence any statements made by the accused at any time and provides no exception for confessions extracted by torture. Throughout his detention, Mr. Jazeem was exposed to unsanitary conditions. Early in his detention, he was permanently handcuffed to a chair and subsequently handcuffed to a table while sleeping. This occurred while Mr. Jazeem was held incommunicado. During this period, officers of the Division attempted to coerce Mr. Jazeem into making self-incriminating statements before Colombo Magistrate's Court No. 8, in violation of article 14 (3) (g) of the Covenant and principle 21 (2) of the Body of Principles.

#### Communication with legal counsel

49. According to the source, for the first 10 months of his detention, Mr. Jazeem had no access to legal representation. Additionally, for two months between January 2021 and March 2021, Mr. Jazeem's legal representatives were denied access to him, despite multiple requests. Once his lawyers were permitted to meet with him, the authorities observed and recorded the meetings. The authorities violated articles 14 (3) (b) and (d) of the Covenant, principles 18 (1) and (3) of the Body of Principles, and rule 119 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).<sup>7</sup>

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<sup>7</sup> General Assembly resolution 70/175, annex.

### Family visits

50. The source argues that Mr. Jazeem was held without access to his family for prolonged periods during his pretrial detention, in violation of principle 19 of the Body of Principles, rules 43, 58 and 106 of the Nelson Mandela Rules and article 9 (3) and 9 (4) of the Covenant.

#### iv. Category V

51. The source submits that the act of detaining Mr. Jazeem, a Muslim poet and teacher with no history of violent activity, under anti-terrorism legislation should be subjected to close scrutiny, given the Government's history of using such laws to unjustifiably target Muslims. Mr. Jazeem was targeted during a broad crackdown on the Muslim minority population in Sri Lanka. He has been accused of promoting terrorism despite clear evidence in his work demonstrating his condemnation of terrorist acts and of the groups that he is accused of promoting. In providing a justification for detaining Mr. Jazeem, the Government has relied on a literal translation of a poetic work and has selectively ignored the testimony of Tamil experts when evaluating the content of the work, which amounts to linguistic and cultural discrimination. Mr. Jazeem's detention was based on discriminatory attitudes and practices.

52. The source concludes that Mr. Jazeem's arrest and detention violate national and international law. His expression through his poetry and teaching is protected under the Covenant and other sources of international and national law. Mr. Jazeem was arrested in a manner incongruous with national law and subjected to lengthy pretrial detention, the conditions of which also violated international law.

53. The source reports that on 22 May 2020, a complaint was filed on Mr. Jazeem's behalf with the Human Rights Commission of Sri Lanka. No action has been taken by the Commission so far. On 10 April 2021, Mr. Jazeem's lawyers filed a petition before the Supreme Court in Colombo asserting that his fundamental rights had been violated. The Supreme Court was scheduled to hear the case on 8 March 2022.

#### *Response from the Government*

54. On 21 December 2021, the Working Group transmitted the source's allegations to the Government under its regular communication procedure, requesting the Government to provide detailed information by 21 February 2022 about the situation of Mr. Jazeem. The Working Group requested the Government to clarify the legal provisions justifying his detention and its compatibility with international human rights law.

55. The Working Group regrets that it did not receive a response from the Government to its communication, nor did the Government request an extension of the time limit for its reply, as provided for in paragraph 16 of the Working Group's methods of work.

#### **Discussion**

56. In the absence of a response from the Government, the Working Group has decided to render the present opinion, in conformity with paragraph 15 of its methods of work.

57. The Working Group welcomes the release of Mr. Jazeem from pretrial detention on 16 December 2021. According to paragraph 17 (a) of its methods of work, the Working Group reserves the right to render an opinion on whether the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned. Mr. Jazeem was allegedly subjected to serious human rights violations, including being detained for the exercise of his freedom of religion and expression, and being denied due process. Although Mr. Jazeem is currently released on bail, charges are pending against him under section 2 (1) (h) of the Act, and he faces the possibility of further detention if convicted at trial. Accordingly, the Working Group considers that it is important to render an opinion in the present case.

58. In determining whether Mr. Jazeem's detention was arbitrary, the Working Group has regard to the principles established in its jurisprudence to deal with evidentiary issues. If the source has presented a prima facie case of breach of the international law constituting arbitrary detention, the burden of proof should be understood to rest upon the Government if

it wishes to refute the allegations.<sup>8</sup> In the present case, the Government has chosen not to challenge the prima facie credible allegations made by the source.

#### *Category I*

59. The source alleges that Mr. Jazeem was arrested at his home by officers of the Division on 16 May 2020. Mr. Jazeem was not provided with a warrant or other order from a judicial body authorizing his arrest. He was provided with an “arrest receipt” dated 16 May 2020, issued by the Division’s Inspector of Police in Vavuniya, which stated that Mr. Jazeem was being arrested on suspicion of having published books on, and having taught, extremism and racism to his students. Notably, the Government did not respond to these allegations.

60. According to article 9 (1) of the Covenant, no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. The source provided credible information, which was not rebutted by the Government, that Mr. Jazeem was arrested without an arrest warrant, in violation of article 9 (1).<sup>9</sup> In the absence of an explanation from the Government regarding the nature of an “arrest receipt”, the Working Group considers that it cannot take the place of a warrant. The arrest receipt appears to be an acknowledgement by the police that an arrest has taken place, not an order authorizing the arrest.<sup>10</sup> As a result, the authorities did not establish a legal basis for Mr. Jazeem’s arrest.

61. The source further alleges that Mr. Jazeem was detained for over a year following his arrest on 16 May 2020 without formal charges. The Division filed a secret indictment against Mr. Jazeem under section 2 (1) (h) of the Act in the Puttalam High Court on 26 October 2021. Mr. Jazeem’s lawyers were not made aware of the indictment until 5 November 2021, and Mr. Jazeem was served with the charges only on 19 November 2021. The lengthy delay in notifying Mr. Jazeem violated his right under article 9 (2) of the Covenant to be promptly informed of the charges. The purpose of prompt notification of the charges is to facilitate the determination of whether detention is appropriate.<sup>11</sup> Prompt notification did not occur in this case, restricting Mr. Jazeem’s ability to challenge the legality of his detention.

62. In addition, the source claims that Mr. Jazeem was held in pretrial detention from the time of his arrest on 16 May 2020 until 12 June 2021 – over one year – without judicial review of his detention. A hearing was held on 11 December 2020 by videoconference with the Colombo Magistrates’ Court No. 8, but the court did not consider the legality of Mr. Jazeem’s detention, as the purpose of the hearing was to compel him to make a self-incriminating statement before the court.

63. According to article 9 (3) of the Covenant, anyone arrested or detained on a criminal charge shall be brought promptly before a judge. As the Human Rights Committee has noted, 48 hours is ordinarily sufficient to satisfy the requirement of bringing a detainee “promptly” before a judge following his or her arrest; any longer delay must remain absolutely exceptional and be justified under the circumstances. In the absence of any justification or explanation from the Government, the Working Group finds that Mr. Jazeem was not brought promptly before a judicial authority following his arrest, in violation of article 9 (3) of the Covenant. Article 9 (3) of the Covenant is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control.<sup>12</sup> This requirement was not met in this case, and the authorities failed to establish the legal basis for Mr. Jazeem’s detention.

64. In concluding that Mr. Jazeem’s right to be brought promptly before a judicial authority was violated, the Working Group takes note of the source’s submission that the Criminal Procedure Code of Sri Lanka requires that an individual be produced before the nearest magistrate within 24 hours of arrest. According to the source, an exception to this requirement exists under section 9 (1) of the Act, which permits the Government to detain an

<sup>8</sup> A/HRC/19/57, para. 68.

<sup>9</sup> That there is a law authorizing arrest is not sufficient. The authorities must invoke that legal basis and apply it through an arrest warrant. See opinions No. 44/2019, para. 52, and 45/2019, para. 51.

<sup>10</sup> General Assembly resolution 43/173, annex, principles 2, 4 and 9.

<sup>11</sup> Human Rights Committee, general comment No. 35 (2014), para. 30; and opinion No. 40/2021, para. 63.

<sup>12</sup> General comment No. 35 (2014), paras. 32 and 33.

individual under suspicion of violating the Act for 90 days if the Minister of Defence issues a detention order. In Mr. Jazeem's case, a detention order was issued under the Act on 19 May 2020 for an initial 90-day period and was subsequently extended. As the Working Group has stated, even when the detention of a person is carried out in conformity with national legislation, the Working Group must ensure that the detention is also consistent with the relevant provisions of international law.<sup>13</sup> Any legislative provision purporting to deny the right to prompt judicial review is inconsistent with international human rights law.<sup>14</sup> Moreover, the Working Group considers the 90-day period to be disproportionate for detention based on a mere suspicion of violating the Act.

65. According to the source, extensions of the detention order made against Mr. Jazeem on 19 May 2020 under the Act were not provided to his family or counsel. It was only in late July 2021 that officials of the Division revealed the existence of copies of subsequent detention orders authorizing his detention. The source argues that the detention of Mr. Jazeem between 16 May 2020 and his remand hearing on 12 June 2021 was based on secret detention orders and cannot have a basis in law. In the view of the Working Group, the failure to provide Mr. Jazeem with the subsequent detention orders indicates that the authorities did not follow the necessary procedures to ensure that his detention was well founded under the law.<sup>15</sup>

66. Furthermore, the Working Group takes note that, even when Mr. Jazeem's detention was reviewed by the Colombo Magistrate's Court on 12 June 2021, he was not physically produced at the hearing owing to COVID-19 precautionary measures. Article 9 (3) of the Covenant requires that a person who has been arrested appear physically before the court for review of the detention, as this allows for an assessment to be undertaken of his or her treatment in custody.<sup>16</sup> While having Mr. Jazeem appear by the use of technology, such as videoconferencing, might have been a reasonable accommodation during a public health emergency,<sup>17</sup> it is unclear whether such technology was used for this particular hearing (unlike the hearing of 11 December 2020 where videoconferencing was used). In addition, Mr. Jazeem's lawyers were not notified of the hearing on 12 June 2021. Mr. Jazeem was deprived of legal assistance, an essential safeguard in reviewing the legality of his detention.<sup>18</sup>

67. The source alleges that Mr. Jazeem was not granted access to a lawyer until 8 March 2021, 10 months after his arrest. Mr. Jazeem was also denied contact with his family for prolonged periods and was held incommunicado. The Working Group considers these allegations to be credible, noting that the Government has not contested the source's claims. As the Working Group has stated, holding persons incommunicado violates their right to challenge the lawfulness of detention before a court.<sup>19</sup> By holding Mr. Jazeem incommunicado, the authorities violated his right under article 9 (4) of the Covenant to take proceedings before a court to determine the legal basis of his detention. The right to bring proceedings under article 9 (4) applies from the moment of arrest, and any substantial waiting period before a detainee can bring a first challenge to detention is impermissible.<sup>20</sup> Given that Mr. Jazeem could not challenge his detention, his right to an effective remedy under article 8 of the Universal Declaration of Human Rights and article 2 (3) of the Covenant was also violated. Furthermore, Mr. Jazeem was held outside the protection of the law, in violation of article 6 of the Universal Declaration of Human Rights and article 16 of the Covenant.

68. In addition, the source argues that there were procedural defects in the detention order issued against Mr. Jazeem under the Act on 19 May 2020. The order was signed by the President of Sri Lanka, and not by the Minister of Defence, contrary to Sri Lankan law at the

<sup>13</sup> Opinion No. 36/2021, para. 70. See also opinions No. 20/2018, No. 37/2018, and No. 50/2018.

<sup>14</sup> Opinions No. 46/2018, paras. 50 and 51, and No. 36/2020, para. 50; and [CAT/C/LKA/CO/5](#), paras. 17 and 21–22.

<sup>15</sup> [A/HRC/46/20](#), para. 36.

<sup>16</sup> General comment No. 35 (2014), para. 34; and opinion No. 18/2018, paras. 54 and 55.

<sup>17</sup> Deliberation No. 11 ([A/HRC/45/16](#), annex II), paras. 20 and 21.

<sup>18</sup> Opinions No. 40/2020, para. 29, and No. 61/2020, para. 70; and general comment No. 35 (2014), para. 46.

<sup>19</sup> Opinions No. 16/2020, para. 62, and No. 36/2020, para. 53. See also general comment No. 35 (2014), para. 35.

<sup>20</sup> General comment No. 35 (2014), para. 42; and [A/HRC/30/37](#), principle 8 and guideline 7.

time. The order could not have formed the legal basis for Mr. Jazeem's detention. The source also argues that there was no sufficient evidentiary basis that Mr. Jazeem violated the Act. His actions were entirely peaceful and he has never engaged in violent activities. While the Working Group determines whether detention has taken place in accordance with international standards, it does not assess the compliance of the authorities with national laws or the sufficiency of the evidence presented against a defendant.<sup>21</sup> As a result, the Working Group is not in a position to determine whether national requirements were violated or whether there was sufficient evidence against Mr. Jazeem. However, the fact that Mr. Jazeem was not able to raise these serious legal issues concerning his detention before a national court for over a year strengthens the Working Group's conclusion that his rights to judicial review of the legality of his detention under article 9 (3) and (4) of the Covenant were violated.

69. According to the source, Mr. Jazeem's detention was based upon the Act, rather than on an individualized determination by a court regarding his case. From 16 May 2020 to 12 June 2021, there was no independent judicial review of whether he represented a flight risk or would commit a further offence. Subsequent judicial review of his case has not met the requisite international standard, as there is nothing to suggest that Mr. Jazeem is a threat to public safety. The Government has not addressed the preceding allegations.

70. Under article 9 (3) of the Covenant, pretrial detention must be the exception and not the rule, and should be ordered for as short a time as possible.<sup>22</sup> Detention pending trial must be based on an individualized determination that it is reasonable and necessary, for such purposes as to prevent flight, interference with evidence or the recurrence of crime.<sup>23</sup> Courts must examine whether alternatives to pretrial detention, such as bail, would render detention unnecessary.<sup>24</sup> In the present case, the first review of the legality of Mr. Jazeem's detention took place on 12 June 2021. There was no individualized consideration by a court of Mr. Jazeem's circumstances to justify his detention between the time of his arrest on 16 May 2020 and his first remand hearing before the Colombo Magistrate's Court on 12 June 2021. It is also unclear whether such an individualized consideration took place at the hearing on 12 June 2021. Mr. Jazeem's lawyers were not notified of the hearing and presumably could not place information on his circumstances before the court. Moreover, as the source notes, the courts require approval from the Attorney-General to authorize bail for persons detained under the Act, which is rarely given, significantly limiting the ability of judges to take into account the circumstances of each detainee and, in effect, serving as a form of mandatory pretrial detention.<sup>25</sup> As a result, Mr. Jazeem's pretrial detention was not properly constituted and had no legal basis.<sup>26</sup>

71. Finally, Mr. Jazeem filed a request for release on bail, which was granted by the Puttalam High Court on 15 December 2021. However, Colombo Remand Prison did not release him until 16 December 2021. While this represented a delay of one day in complying with a judicial order, the Working Group reiterates that maintaining a person in detention after release has been ordered by a court competent to exercise control over the legality of detention is a manifest violation of article 9 of the Universal Declaration of Human Rights and article 9 of the Covenant and renders the detention arbitrary because it lacks legal basis.<sup>27</sup>

72. The Working Group concludes that Mr. Jazeem's pretrial detention had no legal basis and was arbitrary under category I.

<sup>21</sup> Opinions No. 75/2018, para. 73, No. 64/2019, para. 89, and No. 46/2020, para. 62.

<sup>22</sup> [A/HRC/19/57](#), paras. 48–58; and opinions No. 62/2019, paras. 27–29, and No. 64/2020, para. 58.

<sup>23</sup> General comment No. 35 (2014), para. 38; and opinion No. 45/2016, para. 51.

<sup>24</sup> General comment No. 35 (2014), para. 38; and opinion No. 3/2019, para. 57.

<sup>25</sup> [A/HRC/39/45/Add.2](#), paras. 35, 36 and 84 (c).

<sup>26</sup> Opinions No. 36/2020, para. 51, and No. 64/2020, para. 58.

<sup>27</sup> Opinion No. 8/2020, para. 53.

*Category II*

73. The source contends that Mr. Jazeem was detained for exercising his rights to freedom of thought, conscience and religion and freedom of expression under articles 18 and 19 of the Universal Declaration of Human Rights and articles 18 and 19 of the Covenant.

74. The source submits that Mr. Jazeem's arrest was based on his collection of poetry, *Navarasam*, and the use of the book in his courses. According to the source, the poetry dealt with Islamic and other religious themes. The authorities targeted Mr. Jazeem in the context of a crackdown on Muslims in Sri Lanka. If Mr. Jazeem's poetry had not concerned Islamic themes, it is unlikely that he would have been investigated and detained. The Government did not respond to those submissions.

75. Freedom of thought, conscience and religion, under article 18 (1) of the Covenant, encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others.<sup>28</sup> The Working Group considers that Mr. Jazeem's poetry, *Navarasam*, and its use in his teaching are protected under article 18 (1) of the Covenant, and that Mr. Jazeem's detention resulted from peacefully exercising this right.

76. Article 19 (2) of the Covenant provides that everyone has the right to freedom of expression; this right includes freedom to seek, receive and impart information and ideas of all kinds. Freedom of expression includes teaching and religious discourse through all means of expression, including books.<sup>29</sup> The Working Group considers that Mr. Jazeem's poetry and teaching are protected under article 19 of the Covenant and that he was detained for peacefully exercising this right. In reaching this conclusion, the Working Group considered its findings in a similar case from Sri Lanka in which the publication of a short story on Buddhist philosophy was protected under articles 18 (1) and 19 (2) of the Covenant.<sup>30</sup>

77. The Government did not explain the threat posed by Mr. Jazeem's poetry and teaching to the legitimate interests that a State might invoke under articles 18 (3) and 19 (3) of the Covenant or how the arrest and detention of Mr. Jazeem was necessary to protect any of those interests. The source claims that the Government's translation of the poetry was literal, and that an independent translation revealed that the poetry condemns extremism. The Government had the opportunity to contest these claims, but did not do so. The Working Group is not convinced that detaining Mr. Jazeem for 19 months and prosecuting him under the Act was a proportionate response to his activities.

78. Mr. Jazeem is being prosecuted under section 2 (1) (h) of the Act, which criminalizes any person who, by words either spoken or intended to be read or by signs or by visible representations or otherwise, causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups. The Special Rapporteur on freedom of religion or belief considers that this provision is overly broad and ambiguous, leaving no legal certainty as to how an offence is interpreted.<sup>31</sup> The Working Group agrees, noting that the provision is so broad that it could, as in the present case, result in charges being brought against individuals who had merely exercised their rights under international law. The Working Group refers this case to the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

79. The principle of legality requires that laws be formulated with sufficient precision so that individuals can access and understand the law and regulate their conduct accordingly.<sup>32</sup> In some circumstances, laws may be so vague and overly broad that it is impossible to invoke a legal basis justifying the deprivation of liberty.

80. The Working Group concludes that Mr. Jazeem's arrest and detention resulted from the peaceful exercise of his rights to freedom of thought, conscience and religion and freedom

<sup>28</sup> General comment No. 11 (1993), para. 1.

<sup>29</sup> General comment No. 34 (2011), paras. 11 and 12.

<sup>30</sup> Opinion No. 8/2020, paras. 59 and 61.

<sup>31</sup> [A/HRC/43/48/Add.2](#), para. 74. See also [A/HRC/40/52/Add.3](#), para. 12.

<sup>32</sup> Opinion No. 41/2017, paras. 98–101.

of expression. His detention was arbitrary under category II. The Working Group refers this case to the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

### *Category III*

81. Given its finding that Mr. Jazeem's pretrial detention was arbitrary under category II, the Working Group emphasizes that no trial of Mr. Jazeem should take place in the future. The information submitted by the source discloses fair trial violations in the pretrial proceedings. Notably, the Government did not respond to any of the allegations.

82. The source alleges that for the first 10 months of his detention, Mr. Jazeem was denied access to legal counsel. After multiple written requests, he was permitted to meet with his lawyers on 8 March 2021 for about 20 minutes. The conversation was audiorecorded and noted down by observing officers without informing Mr. Jazeem's lawyers. After that visit, Mr. Jazeem was denied any contact with his lawyers for two weeks.

83. All persons deprived of their liberty have the right to legal assistance by counsel of their choice at any time during their detention, including immediately after their apprehension, and such access must be provided without delay.<sup>33</sup> The failure to provide Mr. Jazeem with confidential access to his lawyers from the outset, and throughout his pretrial detention, seriously impaired his ability to prepare a defence. Legal consultations may be within sight but not within hearing of the authorities, and all communications with counsel must remain confidential.<sup>34</sup> As a result, Mr. Jazeem's right to adequate time and facilities for the preparation of his defence and to communicate with a lawyer of his choice under article 14 (3) (b) of the Covenant was violated.

84. The source further alleges that Mr. Jazeem was held in pretrial detention until his release on 16 December 2021, that is, for a period of 19 months following his arrest. The key evidence, namely Mr. Jazeem's poetry and statements obtained from his students, was in the possession of the authorities before his detention. According to the source, the authorities did not provide any legitimate grounds for the excessive length of the proceedings.

85. The reasonableness of any delay in bringing a case to trial must be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the authorities.<sup>35</sup> The Government offered no justification for the delay. It is not disputed that the book, *Navarasam*, was written by Mr. Jazeem and was available to the authorities well before his arrest. While there was a need for the poetry to be translated, this does not explain why Mr. Jazeem was held in pretrial detention for 19 months, nor does it explain the delay in bringing charges or the ongoing delay in the proceedings. The parallel proceedings brought against Mr. Jazeem in the Fort Magistrate's Court and Colombo Magistrate's Court likely contributed to the delay.

86. The Working Group considers that the delay in bringing Mr. Jazeem's case to trial has been, and continues to be, unacceptably long, in violation of articles 9 (3) and 14 (3) (c) of the Covenant. Given that Mr. Jazeem's detention was arbitrary under category II since it resulted from the peaceful exercise of his rights, any delay in trying his case is unreasonable.<sup>36</sup> As the Working Group noted during its visit to Sri Lanka in December 2017, lengthy pretrial detention and undue delay in trials may lead to arbitrary detention.<sup>37</sup> There is a pressing need for non-custodial measures, such as bail, to be implemented.<sup>38</sup>

87. Individuals investigated under the Act face significant challenges in accessing bail, which is only possible with the agreement of the Attorney-General, whose consent is rarely

<sup>33</sup> A/HRC/30/37, principle 9 and guideline 8; A/HRC/45/16, para. 51; and CAT/C/LKA/CO/5, paras. 27 and 28.

<sup>34</sup> General Assembly resolution 70/175, annex, rule 61 (1); General Assembly resolution 43/173, annex, principle 18 (3); and A/HRC/30/37, principle 9 and guideline 8.

<sup>35</sup> General comment No. 35 (2014), para. 37, and general comment No. 32 (2007), para. 35.

<sup>36</sup> Opinions No. 8/2020, para. 75, No. 16/2020, para. 77, and No. 10/2021, para. 78.

<sup>37</sup> A/HRC/39/45/Add.2, paras. 21, 22 and 24; and CCPR/C/LKA/CO/5, paras. 17 and 18.

<sup>38</sup> A/HRC/39/45/Add.2, paras. 23 and 83(a)–(c).

given. During its visit to Sri Lanka, the Working Group found that this results in the de facto exclusion of such suspects from the ordinary bail regime. Once a person has been arrested under the Act, they must remain in pretrial detention until the completion of proceedings.<sup>39</sup> The requirement of obtaining the Attorney-General's consent to bail deprives detainees of alternatives to detention, contrary to the presumption of innocence. Furthermore, it removes from the judiciary the essential function of assessing the necessity and proportionality of detention in each case. The Working Group urges an immediate moratorium on use of the Act, and reiterates calls for its repeal.<sup>40</sup> Any new legislation must comply with international human rights standards, including provision for bail applications that are not subject to veto by the executive branch.<sup>41</sup>

88. Finally, the source submits that the risk of coerced testimony in Mr. Jazeem's case is high, given that the Act allows courts to admit as evidence statements made by the accused without any exception for confessions extracted by torture. For the first two weeks of his detention, Mr. Jazeem was permanently handcuffed to a chair and subsequently handcuffed to a table while sleeping, causing severe arm pain. This occurred while Mr. Jazeem was held incommunicado. During this period, officers of the Counter-Terrorism and Investigation Division attempted to coerce Mr. Jazeem into making self-incriminating statements before the Colombo Magistrate's Court, and attempted to use access to his family as a means of coercing a confession.

89. The Working Group does not have sufficient information to determine whether Mr. Jazeem actually gave a confession or self-incriminating statements to the authorities. It appears that the alleged attempts to secure such testimony were not successful. Given that the handcuffing allegedly occurred early in Mr. Jazeem's pretrial detention, it is not clear whether it affected his ability to participate in his defence. However, the Working Group takes this opportunity to reiterate that according to article 14 (3) (g) of the Covenant, no one may be compelled to testify against him or herself or to confess guilt. The burden is on the State to prove that any statements by the accused were given of their own free will.<sup>42</sup> Noting the allegation that Mr. Jazeem was not legally represented when attempts were made to coerce his testimony, the Working Group emphasizes that confessions made in the absence of legal representation are not admissible as evidence in criminal proceedings.<sup>43</sup>

90. The Working Group refers the allegations regarding Mr. Jazeem's treatment to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

91. The Working Group concludes that the fair trial violations were of such gravity as to give Mr. Jazeem's detention an arbitrary character under category III.

#### *Category V*

92. The source contends that Mr. Jazeem was detained because he is a Muslim poet and teacher. In addition, in justifying the detention of Mr. Jazeem, the Government has relied on a literal translation of his poetry, ignoring the testimony of Tamil experts when evaluating the content of his work. This amounts to linguistic and cultural discrimination.

93. Despite having no history of violent activity, Mr. Jazeem was arrested under the Act during a crackdown on the Muslim minority in Sri Lanka. The arresting officers could not have read Tamil poetry, but Mr. Jazeem's poems served as the basis for his arrest, suggesting that factors other than the content of his work resulted in his detention. Two parallel

<sup>39</sup> Ibid, para. 35.

<sup>40</sup> In February 2021, and again in March 2022, Special Procedures mandate holders who had visited Sri Lanka since 2015 called for various reforms, including repeal of the Prevention of Terrorism Act. See <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26715&LangID=E> and <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-un-experts-call-swift-suspension-prevention-terrorism-act-and>.

<sup>41</sup> A/HRC/39/45/Add.2, para. 84 (c), and A/HRC/40/52/Add.3, paras. 13 and 15. In September 2021, the United Nations High Commissioner for Human Rights referred to Mr. Jazeem's case. See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27447&LangID=E>.

<sup>42</sup> General comment No. 32 (2007), para. 41; and A/HRC/40/52/Add.3, paras. 17–20.

<sup>43</sup> Opinion No. 41/2020, para. 70; and A/HRC/45/16, para. 53, and A/HRC/39/45/Add.2, paras. 31–40.

proceedings were brought against him, as well as charges under section 2 (1) (h) of the Act. Mr. Jazeem is accused of promoting Muslim extremism despite independent analysis demonstrating that his work condemns terrorist acts and the groups that he is accused of promoting. Given the above-mentioned circumstances, and in the absence of an explanation from the Government, the Working Group concludes that Mr. Jazeem was targeted for arrest because he is a Muslim. He was subjected to lengthy pretrial detention and ongoing prosecution because the Government did not take into account the testimony of Tamil language scholars.

94. The Working Group considers that Mr. Jazeem was detained on the basis of his religion and use of the Tamil language, contrary to articles 2 and 7 of the Universal Declaration of Human Rights and articles 2 (1) and 26 of the Covenant. His detention was arbitrary under category V. The Working Group refers this case to the Special Rapporteur on minority issues.

#### *Concluding remarks*

95. The source alleges that Mr. Jazeem was detained in unhygienic conditions, including being exposed to COVID-19. Mr. Jazeem suffers from urethral stones and was unable to have adequate rest. He was held without access to his family for prolonged periods.

96. The Working Group recalls the obligation of the Government under article 10 (1) of the Covenant to treat all persons deprived of their liberty with humanity, including ensuring that detention conditions meet international standards<sup>44</sup> and that health care is available in accordance with rules 24–35 of the Nelson Mandela Rules. The authorities must ensure that detainees are able to maintain regular contact with family members in accordance with rule 58 of the Nelson Mandela Rules and principles 15 and 19 of the Body of Principles.

#### **Disposition**

97. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ahnaf Jazeem, being in contravention of articles 2, 6, 7, 8, 9, 10, 11(1), 18 and 19 of the Universal Declaration of Human Rights and articles 2(1), 2(3), 9, 14, 16, 18, 19 and 26 of the International Covenant on Civil and Political Rights, was arbitrary and falls within categories I, II, III and V.

98. The Working Group requests the Government of Sri Lanka to take the steps necessary to remedy the situation of Mr. Jazeem without delay and bring it into conformity with the relevant international norms, including those set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

99. The Working Group considers that, taking into account all the circumstances of the case, the appropriate remedy would be to unconditionally release Mr. Jazeem and accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>45</sup>

100. The Working Group urges the Government to ensure a full and independent investigation of the circumstances surrounding the arbitrary detention of Mr. Jazeem and to take appropriate measures against those responsible for the violation of his rights.

101. In accordance with paragraph 33 (a) of its methods of work, the Working Group refers the present case to the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on minority issues, for appropriate action.

<sup>44</sup> CAT/C/LKA/CO/5, paras. 35 and 36; and CCPR/C/LKA/CO/5, para. 18.

<sup>45</sup> Deliberation No. 10 (A/HRC/45/16, annex I).

102. The Working Group requests the Government to disseminate the present opinion through all available means and as widely as possible.

#### **Follow-up procedure**

103. In accordance with paragraph 20 of its methods of work, the Working Group requests the source and the Government to provide it with information on action taken in follow-up to the recommendations made in the present opinion, including:

- (a) Whether Mr. Jazeem has been unconditionally released and, if so, on what date;
- (b) Whether compensation or other reparations have been made to Mr. Jazeem;
- (c) Whether an investigation has been conducted into the violation of Mr. Jazeem's rights and, if so, the outcome of the investigation;
- (d) Whether any legislative amendments or changes in practice have been made to harmonise the laws and practices of Sri Lanka with its international obligations in line with the present opinion;
- (e) Whether any other action has been taken to implement the present opinion.

104. The Government is invited to inform the Working Group of any difficulties it may have encountered in implementing the recommendations made in the present opinion and whether further technical assistance is required, for example through a visit by the Working Group.

105. The Working Group requests the source and the Government to provide the above-mentioned information within six months of the date of transmission of the present opinion. However, the Working Group reserves the right to take its own action in follow-up to the opinion if new concerns in relation to the case are brought to its attention. Such action would enable the Working Group to inform the Human Rights Council of progress made in implementing its recommendations, as well as any failure to take action.

106. The Working Group recalls that the Human Rights Council has encouraged all States to cooperate with the Working Group and has requested them to take account of its views and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty, and to inform the Working Group of the steps they have taken.<sup>46</sup>

*[Adopted on 4 April 2022]*

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<sup>46</sup> Human Rights Council resolution 42/22, paras. 3 and 7.