

UN Working Group on Arbitrary Detention Declares Detention of Sri Lankan Author Violated International Law

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Working alongside [Freedom Now](#), a nonprofit organization dedicated to advocacy for prisoners of conscience around the world, Proskauer obtained a victory before the United Nations Working Group on Arbitrary Detention (the “Working Group”) for our client, Shakthika Sathkumara, an award-winning author who had been detained by Sri Lankan authorities for the publication of a fictional short story.

Our petition to the Working Group alleged that Mr. Sathkumara’s detention was arbitrary and therefore impermissible under international law. As such, we requested that the Working Group direct the Sri Lankan government to cease its prosecution of Mr. Sathkumara’s case and end all restrictions imposed upon Mr. Sathkumara’s freedom of movement.

In a recent [decision](#), the Working Group determined that Mr. Sathkumara’s detention violated international law on all of the grounds alleged in Proskauer’s petition.

Our client’s story

Mr. Sathkumara is a prominent Sri Lankan author and has been the recipient of numerous prizes awarded by Sri Lanka’s Department of Cultural Affairs. In February of 2019, Mr. Sathkumara published a short story to Facebook in a post that was publicly viewable. The story, titled “Ardha,” depicts a young ex-monk who has recently quit the monastic life and who moves into the boarding house of a lay friend while pursuing a university degree. “Ardha” contains themes of homosexuality, religion, and sexual assault in a Buddhist temple.

On February 25, 2019, a group of Buddhist monks lodged a complaint with the Inspector General of Police in Colombo, demanding that Mr. Sathkumara be arrested and that the publication of his short story be halted. On April 1, 2019, despite agreeing to settle the matter with the monks by issuing a statement of apology, the Chief Inspector arrested Mr. Sathkumara for offenses under Section 291B of the Sri Lankan Penal Code and Sections 2(1) and 3(1) of Sri Lanka's International Covenant on Civil and Political Rights Act No. 56 of 2007.

Following his arrest, Sri Lankan courts ordered that Mr. Sathkumara be held in pre-trial detention without bail. Mr. Sathkumara was subsequently taken to a prison where approximately 800 prisoners were held and forced to share facilities designed to hold only 200 individuals. A series of subsequent hearings repeatedly postponed rendering a decision on Mr. Sathkumara's indictment, delaying any progress in his case.

After 127 days in detention, Mr. Sathkumara was released from prison pending his upcoming trial.

While currently released on bail, Mr. Sathkumara still faces the threat of arrest and further detention for charges which have yet to be formally issued against him.

Additionally, Mr. Sathkumara is required to meet harsh bail conditions.

Filing the petition

In December of 2019, Proskauer filed a petition with the Working Group on Mr. Sathkumara's behalf.

The Working Group is a body overseen by the UN Human Rights Council tasked with investigating instances of imprisonment or detainment of individuals in violation of their rights under international law. In furtherance of its mandate, the Working Group issues both general country reports as well as opinions on individual cases submitted by petition for its review, such as Mr. Sathkumara's case. After soliciting a response from the accused government, the Working Group renders an opinion on whether arbitrary detention has occurred. If the Working Group finds that the detention under review is arbitrary, its opinion includes recommendations for the government to correct the situation and to bring the state's actions and policies into compliance with international law.

Our petition alleged that Mr. Sathkumara's detention was arbitrary and in violation of international law on several grounds:

- First, the statutes used by the Sri Lankan government to charge Mr. Sathkumara are vague and overbroad. The facially vague nature and overly broad application of these statutes violated Mr. Sathkumara's right to know the content of the law and what conduct violates it as guaranteed under Article 15(1) of the International Covenant on Civil and Political Rights (the "ICCPR") and Article 11(2) of Universal Declaration of Human Rights ("UDHR").
- Second, Mr. Sathkumara's prosecution and detention violated his fundamental rights to freedom of expression and freedom of thought, conscience and religion guaranteed under the ICCPR and UDHR.
- Finally, Sri Lanka's proceedings against Mr. Sathkumara failed to meet minimum international standards of due process as established in the UDHR, the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment, and the United Nations Standard Minimum Rules for the Treatment of Prisoners.

The Working Group determined that Mr. Sathkumara's detention violated international law on all of the grounds alleged in Proskauer's petition.

The Working Group requested that the Sri Lankan government bring its laws into conformity with international law, recommended the payment of reparations to Mr. Sathkumara, and urged a full investigation by the Sri Lankan government into its handling of this case. While the Working Group's decision does not have binding legal force upon the Sri Lankan government, we are hopeful that the international scrutiny that accompanies the decision will deter the government from further prosecution of Mr. Sathkumara's case and that Mr. Sathkumara will remain free from the threat of further deprivations of his liberty.

I was honored to work with Freedom Now and Proskauer associate Anabelle North in bringing this case to the attention of the United Nations.

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- **Joshua Spector**
Associate