



COUNTER-TERRORISM

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

In its first review, Sri Lanka accepted recommendations relating to; sharing experiences on how to overcome terrorism, seeking assistance of the international community on counter-terrorism strategies and implementing UN human rights recommendations to ensure that measures to combat terrorism comply with international human rights law. In the second cycle, Sri Lanka accepted to protect its people from acts of terrorism but noted the recommendation to amend the Prevention of Terrorism Act to ensure that detainees are held only in recognized places of detention, with regularized procedures and safeguards to protect detainees including access to legal representation and systematic notification to families of the whereabouts of detainees.

NATIONAL FRAMEWORK

The Constitutional provisions on arbitrary arrest and detention can be limited on the grounds of national security and arrest and detentions are deemed legal if it follows the due processes enacted by law. As such arrest and detentions under the Prevention of Terrorism Act (PTA) are deemed legal, regardless of the long periods of detention and the susceptibility to torture. Torture is a non-derogable freedom guaranteed by the Constitution.

The Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, as amended by Act Nos. 10 of

1982 and 22 of 1988) has been in operation for over 30 years and a majority of those affected by the assault on civil liberties permitted under the act are from the Tamil ethnic community.

The current Sri Lankan government committed in UN Human Rights Council (UNHRC) Resolution 30/1 of October 2015 to repeal the PTA and replace it with anti-terrorism legislation in line with "contemporary international best practice". The Cabinet of Ministers approved a draft Counter Terrorism Act (CTA) which was later amended.

CHALLENGES

The Prevention of Terrorism Act (PTA) continues to create conditions for human rights violations.

IMPACT

The PTA is inconsistent with contemporary human rights standards and not merely permits, but also encourages the pervasive violation of fundamental rights otherwise protected by the Constitution of Sri Lanka. The draconian Prevention of Terrorism Act of 1978 has been used by successive Sri Lankan governments to quash dissent and penalize resistance to the state. It has been employed disproportionately against Tamils, including journalists, political activists and human rights defenders. Compounded by the endemic delay of laws in Sri Lanka,, it has been deployed to deprive the basic civil liberties and inflict physical harm and mental distress on thousands of Sri Lankan citizens of all communities.



CHALLENGES

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The proposed draft Counter Terrorism Act (CTA) is

IMPACT

The PTA permits confessions to be admitted as sole evidence and that the burden is on the suspect to prove that the confession was not extracted as a result of torture and ill treatment. Report by the Special Rapporteur on Counter Terrorism and Human Rights, in July 2017, states that 80% of those most recently arrested under the Prevention of Terrorism Act in late 2016 complained of torture and physical ill-treatment following their arrest.

The CTA exceptionalizes protection provided to suspects, it has an overly broad definition of terrorism, it permits the military and non police officials to arrest and detain civilians, it recategorizes certain ordinary law criminal offences as terrorism related offences and thereby attracts a harsher policing regime which is not subject to judicial scrutiny. As it is common practice for police to use the threat of detention under the PTA to detain suspects for long periods, to frame false charges and secure 'guilty pleas' to false charges, it is entirely possible for this practice to continue under the CTA.

RECOMMENDATIONS

1. Repeal the Prevention of Terrorism Act of 1979.
2. Withdraw the proposed Counter Terrorism Act.
3. Devise a system of emergency legislation that permits exceptional powers.
4. Ensure protection of rights (including right to an attorney, right to inform family or friend of arrest, details pertaining to the arrest, a maximum of 24 hour period of detention by in police custody, judicial supervision of treatment of suspect at time of arrest and thereafter) of all suspects at time of arrest, questioning, investigation and during prosecution.