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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

22.06.2016

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Public Statement

The Human Rights Commission welcomes the Directives issued by His Excellency President Maithripala Sirisena on the arrest and detention of persons under the Prevention of Terrorism Act No 48 of 1979 (PTA) and a state of emergency when in force. The Directives would facilitate the Commission exercise its powers, functions and duties in this regard and would without doubt reinforce the protection afforded to persons subject to arrest and detention under extraordinary laws.

The Commission also welcomes the government's decision to repeal the PTA and wishes to bring to the attention of the government the need to ensure that the national security legislation, which is being proposed to replace the PTA, adheres to international human rights standards.

In this regard the Commission recommends the following elements that have been identified by the UN Special Rapporteur on Protecting and Promoting Human Rights While Countering Terrorism (hereinafter the Special Rapporteur), which should be an integral part of any future national security legislation that is drafted. These recommendations are contained in the Rapporteur's various reports that are available at <http://www.ohchr.org/EN/Issues/Terrorism/Pages/Issues.aspx>

Those recommendations have been shared with the Hon. Prime Minister in the hope the Commission will be able to engage in dialogue with, and extend its support to, the government to ensure national security laws adhere to international human rights standards and policies:

1. **Definition of terrorism:** terrorism means an action or attempted action where:

i The action:

- (a) Constituted the intentional taking of hostages; or
- (b) Is intended to cause death or serious bodily injury to one or more members of the general population or segments of it; or
- (c) Involved lethal or serious physical violence against one or more members of the general population or segments of it; and

ii The action is done or attempted with the intention of:

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- (a) Provoking a state of terror in the general public or a segment of it; or
- (b) Compelling a Government or international organization to do or abstain from doing something; and

iii. **The action corresponds to:**

- (a) The definition of a serious offence in national law, enacted for the purpose of complying with international conventions and protocols relating to terrorism or with resolutions of the Security Council relating to terrorism; or
- (b) All elements of a serious crime defined by national law.

2. **Burden of proof** - if, 'under the most exceptional circumstances, a present, direct and imperative threat is invoked to justify the detention of persons... the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed by alternative measures, and that burden increases with the length of the detention.'
3. **Judicial review of detention:** review by a court of such detention in a prompt and regular manner is imperative to prevent any violation of the detainee's rights. In this regard, a court must always have the power to assess the merits of the case based on legal criteria and decide whether the detention is justified, and if not, should be empowered to release the detainee. Judicial review of detention would be integral to preventing enforced disappearances.
4. **Right to fair trial-** the right to fair trial, including right of access to courts of the detainee should be recognised and respected fully. It should be noted that in addition to being recognised in human rights conventions, the right to a fair trial is recognized in international humanitarian law, international criminal law, counter- terrorism conventions and customary international law.
5. **Use of capital punishment for terrorist offences:** Since there is no evidence to demonstrate capital punishment acts as a deterrent, any future security law should not impose the death penalty as a punishment for terrorist offences. It should be noted the death penalty could not be imposed under the PTA. The HRCSL has already called for the abolition of the death penalty.
6. **Admissibility of confessions:** enabling the admissibility of confessions coupled with prolonged periods of administrative detention creates space for torture and ill-treatment. Hence, any confession or statement obtained in violation of Article 7 of the International Covenant on Civil & Political Rights (ICCPR), i.e. prohibition against torture, should not be used as evidence in

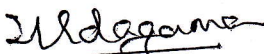
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Chairperson
Human Rights Commission of Sri Lanka

any legal proceeding. Only confessions voluntarily made to a judicial officer should be admissible in evidence.

7. **Access to independent legal representation:** it is imperative to ensure detainees have access to independent legal counsel, and are able to have private and unmonitored consultations with the legal counsel.
8. **Disclosure of evidence:** the state should also disclose to the detainee at the minimum the crux of the evidence on which the decision to detain him/her was made.

It should be kept in mind recognizing the need to protect human rights during states of emergencies is not unique to international human rights law and is found in Sri Lanka jurisprudence as well. For instance, the Supreme Court in *Sunil Kumar Rodrigo v. Chandrananda de Silva* (Supreme Court minutes of 19 August 1997) held that the right of a person to be informed of reasons for arrest at the time of arrest, and the right of a detainee to be produced before a judicial authority within a reasonable period of time, had to be respected even in cases of detention under emergency regulations.

In conclusion, the Commission reiterates the need to be guided by the principle that any limitation on rights should adhere to the tests of necessity and proportionality, and should be subject to judicial review when drafting national security legislation.


Dr. Deepika Udagama
Chairperson

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