

---

# Advance Unedited Version

Distr.: General  
23 July 2018

Original: English

---

## Human Rights Council

Fortieth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism**

**Addendum**

**Mission to Sri Lanka**

## **Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism on his mission to Sri Lanka**

### Contents

	<i>Page</i>
I. Introduction .....	3
II. General context.....	3
III. Key human rights challenges in countering terrorism.....	4
A. The counter-terrorism legal framework .....	4
B. Impunity for human rights violations under the PTA .....	11
C. Dealing with past PTA cases and the right to a fair trial .....	12
D. Transitional Justice .....	13
E. Non-discrimination and stigmatisation .....	14
F. Rehabilitation .....	16
IV. Conclusions and Recommendations .....	16
A. Conclusions.....	16
B. Recommendations .....	17

## I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson, conducted a visit to Sri Lanka from 10-14 July 2017, at the invitation of the Government, to assess the progress Sri Lanka has achieved in its policies, laws, and practices in the fight against terrorism since the end of its internal armed conflict, as measured against international human rights law. Progress in these areas is key to Sri Lanka's efforts in ensuring accountability, an end to the rule of impunity, reconciliation and thus pave the way for a lasting peace in the country.

2. The Special Rapporteur expresses his appreciation to the Government for its invitation and commends the transparency and the largely courteous, constructive and co-operative way in which it facilitated this official visit, which allowed a frank and open dialogue on all issues of concern. The Special Rapporteur is particularly grateful for the efforts made by the Ministry of Foreign Affairs in ensuring the smooth conduct of the visit, and in coordinating follow-up to it. He is grateful to all of the heads and staff of the governmental institutions he met. He is also grateful to the United Nations Resident Coordinator and the United Nations Country Team for the support extended during the visit.<sup>1</sup>

3. During his visit, the Special Rapporteur had an informative exchange of views with the Prime Minister, the Secretary to the President, the Secretary to the Ministry of Defence, the Minister of Foreign Affairs, the Minister of Law and Order and Southern Development, the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs. He also met, amongst others, the Armed Forces Chief of Staff, the Commanders of the Navy, of the Army and of the Air Force, or their representatives, the Chief of National Intelligence, the Chairman of the National Police Commission, the Inspector General of Police, the Chief of the Special Task Force Division, the Chief of the Criminal Investigation Department, the Chief of the Terrorist Investigation Division and the Commissioner General of Rehabilitation. He also met the Minister of Justice.

4. The Special Rapporteur held discussions with the Attorney General, the Chief Justice, and High Court judges in Colombo, Anuradhapura and Vavuniya. He visited New Magazine Prison in Colombo and the prison in Anuradhapura, and was given an opportunity to meet and speak privately with detainees accused under the Prevention of Terrorism Act of 1978 (PTA), as well as to observe the poor conditions in which some of them were detained. He also met with their lawyers and with their families, as well as with other individuals affected by the implementation of the counter-terrorism policies and legislation in the country. Finally, he met with the Chairperson and one of the Commissioners of the National Human Rights Commission, as well as representatives of civil society.

5. The Special Rapporteur shared his preliminary findings with the Government of Sri Lanka at the end of his visit, on 14 July 2017.<sup>2</sup>

## II. General context

6. Sri Lanka has a long and complex history of civil war, and political, economic, social and cultural tensions, against the backdrop of ethnic divisions, which has generated tremendous security challenges. Indeed, for almost 26 years, the majority Sinhalese Government faced an armed uprising among large segments of the marginalised and disenfranchised Tamil population, led by Liberation Tigers of Tamils Eelam (LTTE)<sup>3</sup>, which resorted to widespread violence and acts of terrorism, including suicide bombings and political assassinations. To that violence, the Government responded with similarly widespread violence, which engulfed the country in three decades of conflict, culminating in a series of massacres, that eventually brought the conflict to an end in 2009. The

<sup>1</sup> The Special Rapporteur would like to thank his Senior Legal Adviser, Anne Charbord, for her assistance with the preparation of this report.

<sup>2</sup> See <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E>

<sup>3</sup> The LTTE has been listed as a terrorist organisation by over 32 different States.

evolution of that terrible conflict, and the details of these events have been largely described in other OHCHR reports.<sup>4</sup>

7. In 2015, following general elections, Sri Lanka transitioned to a National Unity coalition government, which brought hope of reform, inclusiveness, justice and respect for human rights to all of the people of Sri Lanka. This momentum led to the establishment of a framework for promoting reconciliation, accountability and human rights in Sri Lanka, which was adopted by the UN Human Rights Council in Resolution 30/1, co-sponsored by Sri Lanka. This resolution reflects the commitment of the Government to taking a series of specific steps aimed at confronting the past, ending the culture of impunity for crimes committed by public officials, ensuring accountability, peace and justice, achieving durable reconciliation, and preventing the recurrence of the human rights violations committed by both sides to the conflict.

8. Importantly, through this resolution, the Government undertook to review and repeal the PTA, and to replace it with anti-terrorism legislation in accordance with contemporary international norms and practices. The PTA had been used to commit some of the worst human rights violations, including widespread torture and arbitrary detention, in the run-up to and during the conflict, particularly to target minorities and suppress dissent.<sup>5</sup>

9. Well over two years after the adoption of resolution 30/1, and long into a two-year extension granted to the Government by Human Rights Council through resolution 34/1, it is timely to examine Sri Lanka's progress in implementing these commitments.

### **III. Key human rights challenges in countering terrorism**

#### **A. The counter-terrorism legal framework**

10. Sri Lanka is a party to the main United Nations human rights treaties, including the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of Persons with Disabilities; and, most recently, the International Convention for the Protection of all Persons from Enforced Disappearance. Sri Lanka has recently ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

##### **1. The Prevention of Terrorism Act (PTA)**

11. The PTA<sup>6</sup> was introduced in 1979 as temporary emergency legislation, to address the danger caused by “elements or groups of persons or associations that advocate the use of force or the commission of a crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka”. It was made permanent in 1982 and was still in force at the time of the Special Rapporteur's visit.<sup>7</sup> The Special Rapporteur remains concerned that it is still, however sporadically, used to arrest suspects, and that a number of individuals are still detained, awaiting trial, or serving long sentences under this piece of deeply flawed legislation.

---

<sup>4</sup> A/HRC/30/CRP.2.

<sup>5</sup> A/HRC/34/20.

<sup>6</sup> Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, amended by Act Nos. 10 of 1982 and 22 of 1988.

<sup>7</sup> The PTA was enacted under Article 84 of the Constitution of SL, which permits bills that are inconsistent with the Constitution to be passed by a two-thirds majority in Parliament. The Supreme Court noted “[t]he PTA became law despite any inconsistency with the constitutional provisions.” (Weerawansa v Attorney General (2000) 1 SLR 387 at 394-395).

a) *Definition of terrorism*

12. The definition of terrorist acts contained in the PTA is overly broad and vague.<sup>8</sup> It includes acts which would hardly qualify as terrorist even by the most generous definition, such as causing “mischief to the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society”; causing “by words either spoken or intended to be read or by signs or by visible representations (...) the 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”; “eras[ing], mutilat[ing], defac[ing] or otherwise interfer[ing] with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to any highway, street, road or any other public place”. The definition also casts widely the net over potential offenders by including the offence of “harbour[ing], conceal[ing], or in any other manner prevent[ing], hinder[ing], or interfere[ing] with the apprehension of a proclaimed person or any other person, knowing or having reason to believe that such person has committed an offence under this act”. Thus, it has permitted the authorities to stigmatise, brand and prosecute entire communities and members of civil society, as well as any form of peaceful criticism or dissent, as ‘terrorists’. Because the definition is also the trigger for the use of extraordinary procedural powers, it has allowed the authorities to subject any person suspected of association, even indirect, with the LTTE, to arrest, detention, interrogation and lower standards of due process and fair trial guarantees.

b) *Lengthy administrative detention and lack of effective judicial review*

13. The PTA grants very broad powers of arrest and detention to the police, as ‘any person’ may be arrested and detained without a warrant.<sup>9</sup> While the detainee must be brought before a judicial authority within 72 hours, the judicial authority must -- upon a written request from the police – remand the detainee in custody even if no charges have been brought.<sup>10</sup> Further, the judicial authority cannot order the release of the detainee, unless the Attorney General – who is also the chief prosecutor - has consented.<sup>11</sup> As the PTA allows remand in custody ‘until the conclusion of the trial’, it potentially allows for the indefinite detention of a suspect. The Act also allows individuals to be detained further to a Detention Order issued by the Minister of Defence against any individual suspected of being ‘connected with or concerned in any unlawful activity’, as broadly defined by the Act itself. Such an order – for investigatory or preventive purposes – can be renewed up to a total of 18 months,<sup>12</sup> and is expressly excluded from any judicial review of its legality.<sup>13</sup> Thus, the PTA places the arrest and detention of a broad category of individuals exclusively in the hands of the executive authorities. The judiciary is either excluded altogether, or has no ability to carry out an effective review of the detention or order the release of the detainee.

14. On 29 August 2011, twenty-four hours before the state of emergency expired, an emergency regulation enacted during the state of emergency<sup>14</sup> was ‘absorbed’ in the PTA. The new regulation granted extensive powers to the Secretary of Defence to order arrest and detention and to the Sri Lankan security forces to carry out the arrests. In turn, this permitted the continued detention of individuals who had been detained under this emergency regulation for thirty days, pending the issuance of detention orders under the PTA or remand by a magistrate.<sup>15</sup> In practice, this often meant transfer from police to

<sup>8</sup> Section 2.

<sup>9</sup> Section 6(1) of the PTA. In August 2013, the Ministry of Law and Order was established to separate policing functions from its military structures. The Special Rapporteur was assured that since March 2015, no individual was held in detention by the military.

<sup>10</sup> Section 7(1) PTA.

<sup>11</sup> Section 7(1) PTA.

<sup>12</sup> Section 9(1) PTA.

<sup>13</sup> Section 10 PTA.

<sup>14</sup> Which had been enacted under the Public Security Ordinance.

<sup>15</sup> “Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011. The new regulation provided that “[a]ny person who has (a) been remanded by a Magistrate in connection with the commission of an offence in terms of the provisions of any emergency regulation which was in

military authority or a change of place of detention and, crucially, a reset of the clocks so that administrative detention periods could start anew.

15. It is therefore unsurprising that during his visit to places of detention, the Special Rapporteur met a significant number of individuals detained under the PTA whose length of detention ran into double figures in terms of years, and who had been detained in at least three different places of detention. On requesting official figures for those currently charged with offences under the Act, the Office of the Attorney General provided figures from which it is apparent that out of 81 prisoners at the time in the judicial phase of their pre-trial detention, 70 had been in detention without trial for over five years and 12 had been in detention without trial for over ten years. The Special Rapporteur was also informed that, at least until his visit,<sup>16</sup> the Attorney General almost inevitably refused to grant consent to bail applications. As a result, individuals with various real or imputed links or association to the LTTE have been detained for years without charge or trial, without any judicial review of their detention, and with almost no possibility of release.

16. Such lengthy administrative detention without any satisfactory judicial involvement is a clear violation of the prohibition of arbitrary deprivation of liberty and of the right to judicial review of the lawfulness of the detention, both of which are non-derogable.<sup>17</sup> Outside a state of emergency,<sup>18</sup> the right of the detainee to be brought promptly before a judge applies without any exception to any individual arrested or detained on suspicion of criminal activity. As detention without judicial control increases the risk of torture and other ill-treatment in detention, delays should be as short as possible from the time of the arrest and the individual should personally appear before the judge.<sup>19</sup>

c) *Torture and ill-treatment under the PTA*

Forced confessions

17. Critically, the rules concerning the admission of confessions are extremely broad under the PTA. In contradistinction to Sri Lanka's Evidence Ordinance, the PTA admits the use of confessions obtained by certain officials as admissible evidence in court and as the sole basis for convictions. Such confessions can be made by any person charged with any offence under the Act, in custody or not, at any time, and made orally or in writing, in the course of an investigation or not.<sup>20</sup> While confessions caused by an 'inducement, threat, or promise' are not admissible, the Act places the burden on the accused to prove that the confessions were obtained under such circumstances.

18. Many of the current and former PTA detainees interviewed by the Special Rapporteur claimed that they had signed documents in a language that they did not understand, or were simply asked to put their signature at the bottom of a blank piece of paper, after having been tortured, sometimes in exchange for transfer out of police or security service custody.

---

operation on the day immediately prior to the date on which these regulations came into operation; or (b) been connected with or concerned in, or who is reasonably suspected of being connected with or concerned in the commission of any unlawful activity within the meaning of the [PTA], shall with effect from the date of the coming into operation of these regulations, be deemed to have been remanded under the provisions of the [PTA]. The provisions of the said Act relating to custody of persons and the grant of bail shall thereupon be applicable in relation to such person".

<sup>16</sup> Approximate figures provided by the Attorney-General's office are that in 2016, bail was granted in over 50 percent of the cases.

<sup>17</sup> See Human Rights Committee, General Comment 29, CCPR/C/21/Rev1/Add.11 (2001), paras. 16. See also Human Rights Committee, General Comment 35, CCPR/C/CG/35, para. 66.

<sup>18</sup> SL was under a state of emergency from March 1971 to February 1977; from August 1981 to January 1982; from 30 July 1982 to 30 August 1982; from 20 October 1982 to January 20 1983; and from 18 May 1983 to 11 January 1989; from 20 June 1989 to 4 September 1994; from 4 August 1998 to 4 July 2001; from 5 November 2003 to 6 November 2003 and from 12 August 2005 to 30 August 2011. On 19 November 2015, SL notified the UN Secretary-General of "the termination of all derogations previously notified under the ICCPR, pursuant to the lapse of the Emergency Regulations in August 2011".

<sup>19</sup> General comment no. 35, paras. 32-34.

<sup>20</sup> Section 16.

19. The ability to convict a suspect on the basis of a confession, irrespective of the conditions in which the information was obtained, is a key contributing element to the pervasive use of torture and its entrenchment. In this regard, the inadmissibility of evidence obtained under torture, enshrined in article 15 of the Convention Against Torture, is one of the most crucial safeguards of this form of abuse in the criminal justice system. It removes a prime incentive for torture but, as evidence obtained under torture is dismissed and helps ensure that no innocent person is convicted.

20. In practice, however, the effective implementation of this key principle remains illusory if the burden of proof that the confession was obtained by torture is placed on the suspect. Since torture almost always takes place behind closed doors, has no witnesses except its perpetrators, and deprives its victim of any independent forensic expertise to document evidence that it occurred, it is almost impossible for the suspect to prove that they have indeed been tortured. In addition, bringing complaint of torture against his/her gaolers before the judges, implies the risk of being further abused, which in itself is a disincentive from refraining to complain. Thus, for the safeguard against the admissibility of evidence obtained under torture to be effective, a shift of the burden of proof regarding torture allegations has to take place.<sup>21</sup> The Special Rapporteur notes that failure by the State to provide minimum procedural safeguards during detention and interrogation, or refusal by courts to address concerns raised relating to the use of torture and ill-treatment combined with sole reliance on the confessions signed to convict the individual lend legitimacy to allegations of torture and ill-treatment. The UN Committee against Torture has determined in this regard that the applicant is only required to demonstrate that his or her allegations of torture are well founded.<sup>22</sup> As a result, the burden of proof to ascertain whether or not statements invoked as evidence in any proceedings have been made as a result of torture shifts to the State.<sup>23</sup> A failure to verify that the confessions had not been obtained through torture and then using such confessions in judicial proceedings despite the allegations amounts to a violation of Article 15 of the CAT.<sup>24</sup>

#### Safeguards and prevention

21. The Special Rapporteur is encouraged that the National Human Rights Commission has now unfettered access to all places of detention and is notified within 48 hours of an arrest or a transfer made under the PTA.<sup>25</sup> He regrets, however, that due to the high number of complaints and various administrative and logistical factors, the Commission is not always able to respond with the required timeliness that such complaints deserve. He also regrets that several past and current detainees informed him that they had never received a visit from the ICRC during their lengthy periods of detention.

22. While the Special Rapporteur was informed that ‘most’ detainees were examined by a Judicial Medical Officer, it is clear that, given the prevalence of torture under the PTA, this mechanism has acted neither as a deterrent nor as an effective way to substantiate allegations of torture and ill-treatment.

23. Access to lawyers for individuals in detention under the PTA is patchy and far from systematic. It became clear to the Special Rapporteur during his meetings with detainees that counsel had not been made available to detainees at every stage of the investigation, and that sometimes counsel had not been made available at all. Some detainees complained that the counsel provided to them through legal aid did not speak a language that they understood, while lawyers complained about the very lengthy administrative procedures to access individuals in detention, which was used by the authorities to transfer detainees

<sup>21</sup> Special Rapporteur on torture, A/HRC/13/39/Add.5, para. 98. Special Rapporteur on Torture, Universal protocol for interviews, “States must carry the burden of proving that confessions were obtained without duress, intimidation or inducements”, A/71/298.

<sup>22</sup> G.K. v. Switzerland, communication No. 219/2002, para. 6.11. See also P.E. v. France, communication No. 193/2001, para. 6.6.

<sup>23</sup> G.K. v. Switzerland, *ibid.*, para. 6.10, with reference to P. E. v. F r a n c e, *ibid.*, para. 6.3.

<sup>24</sup> See CAT Committee, Communication no. 514/2012, CAT/C/53/D/514/2012. See Egyptian Initiative for Personal Rights and Interights c. Egypte, Communication 3342006, par. 185, 1 March 2011.

<sup>25</sup> Section 28 of the Human Rights Commission Act.

before access was granted and required lawyers to start the procedures anew, and waste precious time and resources.

‘Routine’ and ‘systemic’ use of torture and ill-treatment under the PTA

24. The evidence collected by the Special Rapporteur points to the conclusion that the use of torture has been, and remains today, endemic and systematic for those arrested and detained on national security grounds under the PTA. Following his visit to Sri Lanka in 2016, the UN Special Rapporteur on torture had concluded that “the use of torture and ill-treatment to obtain a confession from detainees under the PTA is routine practice.” He observed that, in these cases, a causal link seems to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted.<sup>26</sup> The newly appointed and highly credible National Human Rights Commission emphasised that torture in custody was widespread, systemic, institutionalised and formed a major priority in its work.

25. The Special Rapporteur was extremely concerned to learn that eighty per cent of those most recently arrested under the PTA in late 2016 complained of torture and physical ill-treatment following their arrest, in cases which were later dealt with under ordinary criminal law. The most senior judge responsible for terrorism cases in Colombo informed the Special Rapporteur that in over ninety per cent of the cases he had dealt with so far in 2017, he had been forced to exclude essential evidence because it had been obtained through the use or threat of force. Torture was so widespread that in the course of an official meeting, a Minister referred to ‘torturers’ within the police and in prisons. Following his visit, allegations that torture took place since the election of the new current government against at least 50 Tamils, emerged. The UN High Commissioner for Human Rights stated that “[w]hile the U.N. is unable to confirm this until we mount an investigation, clearly the reports are horrifying and merit a much closer inspection from our part, especially if they occurred in 2016 and 2017”<sup>27</sup>.

26. During his interviews with current and former PTA detainees, the Special Rapporteur heard distressing testimonies of very brutal and cruel methods of torture, including beatings with sticks, the use of stress positions, asphyxiation using plastic bags drenched in kerosene, pulling out of fingernails, insertion of needles beneath the fingernails, use of various forms of water torture, suspension of individuals for several hours by their thumbs, and mutilation of genitals. In a number of instances brought to the attention of the Special Rapporteur, these allegations had either been supported by independent medical evidence, or accepted by the judiciary as the basis for excluding a confession at trial.

27. Given the serious human rights violations committed under the PTA, the case for repealing and replacing it is unequivocal. The Minister for Law and Order informed the Special Rapporteur that steps were underway to avoid any new arrests under the PTA, and to use the regular criminal law wherever possible. This is to be welcomed, not least because under the general criminal law confessions made to a police officer are inadmissible, precisely because of the risk that they may have been obtained by torture. The Special Rapporteur is satisfied that there has been a steep decline in the use of the PTA over recent months, but has nonetheless been made aware of recent cases in the Northern Province, in which individuals have been reportedly arrested under that legislation. Yet more than two years since resolution 30/1, and despite the Government’s undertaking to the people of Sri Lanka and to the international community, the PTA still has not been repealed or replaced.<sup>28</sup> It remains fully on the statute book, and steps to reduce its use in new cases provide no remedy to those currently languishing in appalling conditions, for years on end without

<sup>26</sup> A/HRC/34/54/Add.2, paras. 31 and 22.

<sup>27</sup> Paisley Dodds, “Dozens of men say Sri Lankan forces raped and tortured them”, AP, 7 November 2017.

<sup>28</sup> In March 2017, the HRC adopted a ‘technical roll over’ resolution that gave more time to implement resolution 30/1, which was criticized by many because it placed no additional conditions on the government of SL. See International Crisis Group, ‘Sri Lanka’s Transition to Nowhere’, Asia Report No. 286, 16 May 2017.

trial. The Special Rapporteur's opinion is that a moratorium on the use of this Act must be immediately established, pending its rapid repeal.

#### Conditions of detention

28. The Special Rapporteur found the prison conditions in the high-security wing of the Anuradhapura prison that he visited to be inhumane. The infrastructure was deficient and crumbling, there were no proper sleeping arrangements as inmates were forced to sleep on concrete floors, there was a clear lack of ventilation in extreme heat, and the toilet and shower facilities were unhygienic. Further, he met with an inmate who was held in isolation who showed a tin can that he was obliged to use in the absence of access to toilet facilities.

#### 2. Draft Counter-Terrorism Act: the 'Policy and legal framework of the proposed Counter-Terrorism Act of Sri Lanka'

29. Prior to his visit to Sri Lanka, the Special Rapporteur was provided with a copy of the 'Policy and legal framework of the proposed Counter-Terrorism Act of Sri Lanka' (hereafter referred to as the "draft Framework"), which was approved by the Cabinet on 25 April 2017. Although not a Bill in itself, the document provides a detailed framework for a proposed legislation to replace the PTA. At the time of the visit, the draft Framework was being elaborated by the Legal Draftsman's Office to be turned into a bill. In terms of procedure, the Attorney-General's certification that the bill is consistent with the Constitution and the international human rights and other obligations of Sri Lanka contracted under the treaties it has ratified will be required before it can be presented to Parliament.

30. The Special Rapporteur notes that the draft Framework contains several significant improvements. Notably, it allows the National Human Rights Commission's unfettered access to individuals in detention and it abolishes the Attorney General's right of veto over the grant of bail. It creates an improved framework for administrative and pre-trial detention, with greater scope for independent judicial review. However, there are a number of central flaws in the current framework draft which, if enacted, would guarantee the continued violation of the human rights of terrorism suspects.

#### a) *Evidence*

31. One of the substantial weaknesses of the draft Framework is a provision that maintains the admissibility of confessions made to a police officer in custody. In a country with such a grave and widespread legacy of torture and ill-treatment in custody, the only way for counter-terrorism legislation to conform to international human rights standards in this regard would be to strictly prohibit the use of torture and confessions obtained through it. That is the position under the general law in Sri Lanka, for good reason, and it should certainly be the position under counter-terrorism legislation, where the risk of torture is greater. Additional safeguards should also be included, such as the presence of counsel during all interviews, and their systematic videotaping, as a practical, effective technical safeguard against torture.

#### b) *Definition of terrorism*

32. The breadth of the definition of terrorism poses a real risk that the legislation, including the enhanced procedural powers which limit the rights of those falling foul of the legislation could be used in circumstances very far removed from acts of real terrorism. The Special Rapporteur is particularly concerned that the draft Framework does not confine acts of terrorism to acts that threaten the life or physical integrity of individuals and are aimed at spreading fear or terror. This wide scope of application seems to echo the wide scope of the definition in the PTA. Consequently, relatively minor offences could be construed as terrorist offences. The draft Framework also contains a list of "aggravated criminal offences associated with terrorism", which cover acts that have no or no direct relation to terrorism whatsoever, including human trafficking, as well as those acts that are prohibited under the Poison Opium and Dangerous Drug Ordinance and the Immigrant and Emigrants Acts. The Special Rapporteur is also concerned that the use of the expression "causing harm to the unity of Sri Lanka" (which is to be differentiated from territorial

integrity and sovereignty, also included in the draft) could be interpreted to include any non-violent act of protest or dissent against the State.

33. The draft Framework also contains provisions that could seriously impact on freedom of expression, including instigating “by words either spoken or intended to be read or understood or by signs or by visible representations or otherwise” “communal disharmony” or “feelings of ill-will” between different communities so as to affect the “unity” of Sri Lanka. This language is also too reminiscent of that of the PTA. It constitutes an overly broad provision that could be used to cover peaceful statements critical of the government.<sup>29</sup> References to the broadly defined use of “confidential information” could be used against whistle-blowers or non-registered media.

34. The Special Rapporteur notes the existence of a ‘fundamental rights’ provision, which allegedly aims to exclude from the definition of terrorist acts “any action taken in good faith in the lawful exercise of a fundamental right”. However, any action that is carried out to fulfil the purpose element of the crime of terrorism cannot be considered as a “lawful exercise of a fundamental right”. This in fact over-rides the fundamental rights exclusion altogether, and renders its protection meaningless.

c) *Detention*

35. In light of the entrenched pattern of detention under the PTA, the Special Rapporteur has noted with concern that serious problems exist with a number of the provisions of the draft Framework relating to the powers of arrest and detention. Detention Orders, made by the police, would allow it to hold individuals in detention for up to six months without charge. The possibility of judicial or administrative review after two weeks of detention would be based on a request by the detainee, while the administrative review would be carried out by an executive body that clearly lacks independence. The only mandatory judicial review would be upon a request for extension of the Order after eight weeks of detention, carried out on the basis of a confidential document, whose only outcome could be an extension of the Order or a placement in remand custody. Further, at the end of the period of detention under the Order, release would not be automatic<sup>30</sup> making remand detention more likely to be the rule. In turn, remand custody could last for a maximum of 12 months. Bail could no longer be vetoed by the Attorney General, but would be granted only if the police officer in charge requests it or at least does not object to it. This problem would be compounded by the fact that the High Court is expressly prohibited from granting bail unless there are ‘exceptional grounds’ for doing so.

36. The Special Rapporteur recalls that the prohibition of arbitrary detention is absolute.<sup>31</sup> Judicial review of administrative detention should occur within 48 hours, except in absolutely exceptional and fully justified circumstances. The proper exercise of judicial power must be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with, and the judicial authority must have the power to release the individual. Further, individuals need to be ‘promptly’ informed of any charges against them, and the decision to keep a person in any form of detention should be subject to periodic re-evaluation by effective judicial review of the justification for continuing the detention, otherwise it may become arbitrary.

d) *Use of force*

37. The Framework grants a key role to the military, without specifying that in the context of counter-terrorism, it should be bound by the same rules as those applicable to law-enforcement. Further, the grounds on which force may be used are overly broad, and could cover situations where there is no imminent threat to life or serious injury, given the broad scope of the definition of terrorism offences under the draft Framework. The use of force

<sup>29</sup> This provision is very similar to Section 2(1)(h) of the PTA which was used to arrest and prosecute journalists and activists.

<sup>30</sup> The judicial authority must place the detainee in remand custody if the investigation is ongoing or if the Attorney General “has been or is to be requested to consider the institution of criminal proceedings.”

<sup>31</sup> HRC general comment No. 35, CCPR/C/CG/35, para. 66.

should be strictly limited, in accordance with the UN Basic Principles on the Use of Force by Law Enforcement Officials.

## **B. Impunity for human rights violations under the PTA**

38. The PTA provides immunity from prosecution “for any act or thing done in good faith, or purported to be done, in pursuance or supposed pursuance of any order made or direction given under this act”.<sup>32</sup> Such a broad immunity clause, clearly contrary to basic principles of international law, provides a good starting point for understanding the culture of impunity and the subsequent lack of accountability for human rights violations committed under this Act, in particular for violations of the absolute prohibition of the right to life, of torture and ill-treatment and arbitrary detention

39. Despite the shocking prevalence of the practice of torture in Sri Lanka, the Special Rapporteur notes the lack of effective investigations into such allegations. Indeed, he was informed that only 71 police officers had been sanctioned for torturing persons since available records began. During his visit, his official interlocutors repeatedly downplayed the importance of the phenomenon of torture, and when confronted with the large numbers of complaints and of vastly documented cases, often simply explained that the police denied the allegations. All of this reflects a clear and disturbing unwillingness to recognize the problem, to take it seriously, to investigate allegations of torture and to proportionately punish perpetrators.

40. The Special Rapporteur welcomes the Government’s recent adoption of a ‘zero tolerance policy’ towards torture<sup>33</sup> and by the appointment on 14 July 2016 of a Committee to Eradicate Torture by the Police. He also salute the National Human Rights Commission’s 18 May 2016 Directive on Arrest and Detention under the PTA, which sets standards to be respected by the police during arrest and detention to protect the human rights of those arrested and detained, particularly against torture and ill-treatment.<sup>34</sup> He further welcomes the important President’s decision on 17 June 2017, to instruct the Commanders of the Armed Forces and the Police to abide by this Directive.

41. The Special Rapporteur is however very concerned at the lack of clear and effective procedure to complain about torture in custody. He notes that there is no formal procedure available to the detainees in the prison system, and that there is no single clear channel for dealing with allegation of ill-treatment committed by the police. First, of the approximately 2,800 complaints received by the National Police Commission in 2016 and 2017, only 0,2 per cent dealt with torture. The reasons for this extremely low percentage can in part be explained by the absence of any satisfactory outcome for the complainant. Indeed, the investigations, which are carried out by the police, obviously lack independence and can only result in disciplinary (as opposed to criminal) action against police officers. This is wholly insufficient in light of the gravity of the crime of torture. Second, High Courts have jurisdiction for complaints made under the Convention Against Torture Act.<sup>35</sup> Complaints can either be made directly to the Attorney General, or can be channelled through a ministerial-level mechanism that monitors cases of torture.<sup>36</sup> Investigations are led by a Special Investigations Unit, under the supervision of the Inspector General of the Police. Unfortunately, this procedure gives the Attorney General discretionary power over

<sup>32</sup> Section 26.

<sup>33</sup> In 2016, all police officers attended workshops on the issue of torture, were made aware of this policy, and were informed that the commission of any act of torture or ill-treatment would lead to military and court action.

<sup>34</sup> The Directive states that the PTA should be “construed narrowly and used in very specific circumstances, and should not be used to arrest persons for ordinary crimes”. Safeguards include: right to meet with counsel during interrogation, right to be brought before the JMO within 48 hours of the arrest, right to inform family members, requirement that all places of detention be clearly gazetted and authorized.

<sup>35</sup> Act 22 of 1994.

<sup>36</sup> Cases they are made aware of through public sources, reports from the Inspectorate General of Police Command Centre and fundamental rights applications.

indictment, which has resulted in only three indictments made since 2010. Third, fundamental rights applications can be made before the National Human Rights Commission,<sup>37</sup> or directly to the Supreme Court.<sup>38</sup> When made to the National Human Rights Commission, which received 3404 complaints of torture against the police in the period 2010-16, complaints are solved either through mediation or conciliation, through a recommendation that the matter be appropriately prosecuted through the Attorney General, or referred to the Supreme Court. While fundamental rights applications are probably the most effective way of complaining of torture in detention, the Special Rapporteur is concerned that such procedures are not only lengthy and costly, but that the very short time frame within which they must be lodged – one month – can prove an insurmountable obstacle for a detainee.

42. Combating impunity is the most important objective of the UN Convention against Torture.<sup>39</sup> Victims of torture have a right to a remedy and adequate reparation for the harm they have suffered. It is clear that where there is no possibility to complain, either because the mechanisms are ineffective or inexistent, or where official investigations are ineffective and slow to establish the facts, the right to an effective remedy and reparation remains illusory in practice, and impunity prevails. The Special Rapporteur thus calls on the government to conduct prompt, thorough and effective investigations securing all relevant evidence wherever there is reasonable ground to believe that an act of torture has been committed, and ensure that any individual who alleges he has been subjected to torture has the right to complain to, and to have his case promptly and impartially examined by, a competent and independent authority.

### C. Dealing with past PTA cases and the right to a fair trial

43. The Special Rapporteur is concerned that during his visit, he was unable to obtain consistent figures regarding the number of individuals held in detention under the PTA. He estimates that – at the time of his visit – there were between 81 and 111 individuals still in detention, at various stages of the judicial process.<sup>40</sup> Given the very lengthy administrative detention that prevails under the Act that would in most cases amount to arbitrary detention, solving these past PTA cases, and finding a fair outcome for those in detention through release or conviction with procedures that afford all guarantees of due process, should be an absolute priority of the government.

44. The Attorney General informed the Special Rapporteur that his office had spent two years reviewing the cases of all those in detention under the Act. Executive decisions had been made to consent to bail, to divert individuals into rehabilitation programmes or to reduce criminal charges, particularly where the individual had been in detention longer than the maximum sentence of the offence. This initiative is to be welcomed, but it is insufficient in light of the fact that some detainees have been in custody in appalling conditions for 12 years, on the basis of a confession that was likely obtained through the use of force, who have not been brought to justice.

45. During the visit, the Special Rapporteur heard the desperation and trauma of detainees who undertook hunger strikes in an attempt to persuade the government to finally bring their cases to courts. One of the detainees explained that the judicial phase of the procedure had been underway since 2010. A number of State interlocutors tried to suggest that the slow process of justice in the existing PTA cases was primarily due to slow progress by the defence. The Special Rapporteur is satisfied that a more convincing and adequate explanation is to be found in the one given both by the Chief Justice and a senior official in the Office of the Attorney General, who acknowledged that the present court and prosecution resources were under such strain that the situation has become, in his words,

<sup>37</sup> See Part II, Human Rights Commission Act of SL.

<sup>38</sup> See article 17 and 126 of the Constitution of SL.

<sup>39</sup> Special Rapporteur on torture, A/HRC/13/39/Add.5, para. 134.

<sup>40</sup> According to figures provided by the Police and the Attorney General's office, as at 12 July 2017. Other governmental departments' figures ranged from 23 to 95.

“unmanageable”. A number of lawyers also informed him that no efforts were made by the government to increase the number of courts in the criminal field.

46. The Special Rapporteur notes that two Special High Courts have been set up to deal exclusively with PTA cases, in Colombo and Anuradhapura, in January 2016. Despite obvious efforts from the two judges responsible for these High Courts to prioritise and extradite terrorism cases, and to deal with them as fairly as possible under such a flawed piece of legislation, notably by excluding confessions not made before a magistrate where these are the only evidence, these Courts appear to be under-resourced and under-staffed, given the number of individuals still at various stages of the judicial process. The Special Rapporteur is alarmed that in Colombo, the High Court judge informed that in the short time he had been in this role, he had only been able to accept one out of eleven confessions as evidence during the trial (the sole that had been made before a magistrate) while in Anuradhapura, out of fourteen cases, twelve were based solely on unreliable confessions. This raises extremely serious doubts as to the fairness of the trials that have already been concluded, and the possibility of severe miscarriage of justice that ensues. The Special Rapporteur further regrets that rules that further encroach upon the right to a fair trial, including the rights of defence<sup>41</sup> and those relating to appeals<sup>42</sup> continue to be applied, and that application of credit for time spent in detention – which appears to be at the discretion of the judge in sentencing convicts under the PTA – is not mandatory, given the length of time these individuals have already spent in detention.

47. In meetings with victims of the PTA, their families and their lawyers, the Special Rapporteur’s attention was drawn to the fact while those most affected by the operation of the Act are Tamils, detentions and trials under the Act rarely occur in Tamil-majority areas. In addition to the issue of the language, the Special Rapporteur was told of the fear of some Tamil-lawyers to attend trials, the fact that many Tamils view the trials as taking place in hostile environments, and the general distress of families who are far away for very long periods of time and feel excluded from the process. Several lawyers stressed the lack of impartiality and independence of the judges dealing with these cases, and requested the transfer of these cases to majority Tamil areas, such as Jaffna or Vavuniya.

48. The Special Rapporteur is clear that the way in which the PTA has, and continues, to operate amounts to a flagrant denial of justice, and that all of those still detained under the PTA should be provided with an effective judicial review of the legality of their detention, and either released or submitted to a fair trial with all guarantees of due process. Further, those already convicted under the PTA should have their case fully reviewed, so that they do not suffer in prison serving long sentences, following a flawed trial where the sole evidence was obtained under torture. As fundamental rights applications do not lie against judicial decisions, the Special Rapporteur calls on the Government to set up a mechanism for reviewing the safety of all past convictions under the PTA, particularly those in which a confession to the police was central evidence.

## D. Transitional Justice

49. The progress of the new counter-terrorism legislation, together with dealing with past PTA cases, to date has been painfully slow, and this has, in turn, delayed the wider package of transitional justice measures that Sri Lanka committed to deliver in 2015. During his visit, the Special Rapporteur was given a personal assurance by the Prime Minister that once the current process of counter-terrorism reform had been completed, the Government would pass legislation paving the way for a Truth and Reconciliation Commission to be established, and set up an Office of the Special Prosecutor to bring criminal charges against those involved in the most serious atrocities committed on both sides of the conflict. These are, of course, steps which the Government promised to the international community that it would have delivered in full by now.

50. It is fair to say that there are some very slight indications of positive movement in this direction. During the Special Rapporteur’s visit, the Chief of the Army made a public

<sup>41</sup> Section 18 PTA

<sup>42</sup> Section 19 PTA.

commitment to ensuring that members of the armed forces who had committed crimes would be brought to justice; a senior Naval Commander was arrested for his alleged involvement in the disappearance of 11 people during the closing stages of the conflict, and the Special Rapporteur was assured by the Attorney General that if and when criminal allegations against the military finally reach his office, they will be prosecuted with the full force of the law. The Attorney General recognised that if Sri Lanka was to achieve lasting peace, then its law enforcement institutions must gain the confidence of all sectors of society, including the Tamil and Muslim minorities. Unfortunately, since the Special Rapporteur's visit, the President sought to shield a former army general from a criminal complaint which accused him of command responsibility for war crimes.<sup>43</sup>

51. This falls far short of Sri Lanka's international commitment to achieve a lasting and just solution to its underlying problems, for the benefit of all of its communities, to establish a meaningful system of transitional justice including the rights to truth, justice, reparation, and guarantees of non-recurrence, that is governed by the principles of equality and accountability, and to put in place essential and urgently needed reform of the security sector. It is indeed difficult to resist the conclusion that the inertia in implementing the reform package that is resolution 30/1- including repealing the PTA, adopting new human rights compliant counter-terrorism legislation, solving past terrorism cases and ending the impunity that surrounds these cases - reflects the continuing influence of certain vested interests in the security sector, who are resistant to change, and above all, to accountability. The recent enactment of domestic legislation incorporating the [International Convention for the Protection of all Persons from Enforced Disappearances](#), though belated, is to be welcomed. Its impact remains to be evaluated. Given the continuing prominent role that the security sector continues to have, including in the drafting of the new counter-terrorism legislation, it is critical that all those within the military, intelligence and police establishment allegedly responsible for grave human rights violations, including torture under the PTA, are identified and punished, and that the security sector is placed under full civilian control and oversight.

52. Sri Lanka must ensure accountability for any gross or serious violations of international human rights law and international humanitarian law, including those that take place in the context of countering terrorism. It should ensure that action is taken so that violations and abuses are prevented and not repeated, to promptly, thoroughly, independently and impartially investigate allegations of such violations and abuses, to punish perpetrators and to ensure access to remedy and redress for victims. The slow pace of implementation of the four desperately needed mechanisms as per human rights resolution 30/1 (truth and reconciliation commission, accountability mechanism, Office of Missing Persons<sup>44</sup> and reparations office) sends the very clear message to victims that impunity and lack of accountability will continue to prevail, and will make 'the exercise of universal jurisdiction even more necessary' as recently noted by the United Nations High Commissioner for Human Rights.<sup>45</sup>

## E. Non-discrimination and stigmatisation

53. The Special Rapporteur was made aware of the important investment that is carried out by the Government to resettle Tamils and further the economic development of the Northern Province, including the construction of 6,000 new houses, and a planned 50,000 in the next few years. He was repeatedly assured that there was no discrimination against the Tamils; that criminal law had been used against the LTTE, only; he was officially told

<sup>43</sup> President Maithripala Sirisena was reported as saying "I state very clearly that I will not allow anyone in the world to touch Jagath Jayasuriya or any other military chief or any war hero in this country." Sri Lanka leader to shield general from war crimes case, Al Jazeera, 3 September 2017.

<sup>44</sup> There has been some limited progress in the creation of the Office on Missing Persons, with the enactment of a law, which still needs to be operationalized.

<sup>45</sup> UN High Commissioner for Human Rights highlights human rights concerns around the world in an address to the 36th session of the UN Human Rights Council in Geneva, 11 September 2017, <[https://www.unog.ch/unog/website/news\\_media.nsf/%28httpNewsByYear\\_en%29/D0BF0EABE559E1ADC12581980045720E?OpenDocument](https://www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/D0BF0EABE559E1ADC12581980045720E?OpenDocument)>.

that ill-treatment was a greater challenge in the South than in the North and East of Sri Lanka; and that there was disproportionate attention paid to a perceived negative treatment by the authorities of the Tamil population by Tamils themselves, the international community and civil society.

54. At the same time, the Special Rapporteur observed a pervasive and insidious form of stigmatization of the Tamil community. Tamils are severely under-represented in all institutions, particularly in the security sector and the judiciary, despite the importance of ensuring that all institutions adequately reflect the ethnic, linguistic and religious make-up of the State. The authorities explained that notwithstanding various government programmes to reach out to the Tamils, it was the Tamils that do not want to integrate governmental institutions, notably because of the language barrier, or the lack of trust in the government. He is particularly concerned about the very large, imposing, presence of the military in the North, which he witnessed himself in Vavuniya. While he understands that the military undertakes important re-construction work in that part of the country, he is also conscious of the highly symbolic value of its presence. The pervasive lack of accountability for the war crimes that were perpetrated during the war, the climate of impunity that prevails within the security sector, the overwhelming economic weight of the military, its involvement in civilian activities, as well as the overwhelmingly Sinhalese nationality within the military all contribute to perpetuating the resentment and disenfranchisement felt by the Tamil community as a whole.

55. The absence of reaction from the Government to incitement to hate speech and racism, and attacks on minorities, including Muslim places of worship, in what is perceived by Tamils and Muslims as ‘Buddhist extremism’, increases the deeply-engrained sense of injustice felt by these minority communities, and increases Tamils’ national sentiments.<sup>46</sup> In this context, the Special Rapporteur recalls that it is not diversity within a society, but marginalisation, discrimination, and alienation of groups that increases a country’s vulnerability to terrorism and violent extremism. During his visit, the Special Rapporteur heard the anxieties of current and former detainees of being arrested again under the PTA, of their impossibility to find employment, and of the real or perceived surveillance of their families. He was told of the interrogation by the Terrorism Investigation Division of Father Elil Rajendram, who led efforts to create a memorial for families who had lost loved ones during the armed conflict in the north, which is evidence that the PTA is used as a continuous threat against the Tamils. Former detainees, as well as individuals who have undergone rehabilitation, allegedly still face regular security checks and questioning. In Vavuniya, the Special Rapporteur was made aware of the threats made to a woman upon leaving a meeting with him. He was told about the surveillance of Tamil civil society, including women’s groups and of fear of reporting alleged human rights violations and sexual violence to the authorities.

56. In addition to the trauma and desperation felt by the detainees themselves, the remaining cases of detention under the PTA, as well as allegations that torture against Tamils occurred in the past two years, are an increasing source of frustration among the Tamil community at large. Yet, in the course of his official meetings, the Special Rapporteur heard that the rationale for the exception to the general rule on confessions in the Act was that terrorists were not ‘normal’ criminals, and that periods of pre-trial detention that lasted more than ten years were justified because ‘these people are guilty of committing horrible crimes’. Both statements reflect a commonly held view that suspects under the PTA face an almost insurmountable credibility deficit, contrary to the principle of presumption of innocence. When viewed side by side with the figures that show that Tamils have been, and still are, overwhelmingly and disproportionately affected by the operation of the Act,<sup>47</sup> a picture emerges of widespread institutional stigmatisation of a single community.

<sup>46</sup> International Crisis Group, ‘Sri Lanka’s Transition to Nowhere’, Asia Report No. 286, 16 May 2017.

<sup>47</sup> Figures provided by the Police Department showed that PTA detention still overwhelmingly affects the Tamil population, with a ratio of over 3:1.

## F. Rehabilitation

57. Starting in 2006, Sri Lanka's rehabilitation programme was set up to deal with ex-combatants, and at the end of the conflict in 2009, it was used in relation to the large numbers of individuals who had various alleged links to the LTTE and who, in the words of the government, "surrendered to the government of Sri Lanka for safety and protection". A range of individuals with varying real or suspected links to the LTTE were thus taken into custody and, following further investigation and an assessment of their risk-level, placed either in detention under the PTA, or in Protective Accommodation and Rehabilitation Centres for a maximum of two years. At the time of the Special Rapporteur's visit, 12,190 individuals had undergone Sri Lanka's Rehabilitation Programme,<sup>48</sup> with 10,000 between 2009 and 2013.

58. It is clear that unless there is a judicial decision to send an individual to such a programme, enrolment must be truly voluntary, otherwise it will amount to arbitrary detention. Where the sole alternative to rehabilitation is the flagrant denial of justice that is the PTA, it can hardly be said that the individual is given a real choice. While the programme was presented as an amnesty in lieu of prosecution, in certain cases, it was neither, as some individuals went from administrative detention under the PTA to rehabilitation and back, through 'revolving doors' that could keep individuals in detention without any judicial involvement for years on end. Since 2013, the restrictions on liberty do not always amount to detention, but the 'judicial involvement,' essentially consists of a decision made by the Attorney General which is rubber-stamped by a judge. This does not amount to a proper judicial process that is required in any restriction on the right to liberty. The Special Rapporteur is of the view that the continuing use of this programme, is discriminatory, and perpetuates resentment and stigmatization. It creates additional grievances within this community.

## IV. Conclusions and Recommendations

### A. Conclusions

59. **In 2015, Sri Lanka seemed to have turned a corner. New elections brought to power a coalition government and with it the promise of change. Human Rights Council resolution 30/1, co-sponsored by Sri Lanka itself, set out key goals for reconciliation, transitional justice, accountability and reform of the security sector, including the counter-terrorism framework. Yet, after a two-year extension granted to the Government in resolution 34/1, progress in achieving the key goals seems to have ground to a virtual halt. None of the measures so far adopted to fulfil Sri Lanka's transitional justice commitments are adequate to ensure real progress.**

60. **The counter-terrorism apparatus is still tainted by the serious pattern of human rights violations that were systematically perpetrated under its authority. At the time of writing, the PTA remained on the statute book. The new draft Framework largely reflects the interests of the security sector and is far from being adequately grounded in international human rights law. Individuals are still held in detention under the PTA, impunity is still the rule for those responsible for the routine and systemic use of torture, and countless individuals are the victims of gross miscarriages of justice resulting from the operation of the PTA. The Tamil community remains stigmatised and disenfranchised, while the trust of other minority communities is being steadily eroded.**

<sup>48</sup> Under the 2005 Emergency Regulations (Regulation 22 of the EMPP Regulation 2005, as amended by Emergency Regulation 1462/8, 2006), 'surrendees' could be detained in rehabilitation centres up to two years, without charge or trial, for the purpose of 'rehabilitation'. At the end of the conflict, many of these individuals voluntarily handed themselves, others were allegedly coerced into doing so to avoid 'severe consequences', while others were arrested, often with the assistance of informants. See A/HRC/30/CRP.2, paras. 360 et s. The one-year programme includes six months of rehabilitation of mental and physical health, and six months of vocational training.

61. Sri Lanka must urgently implement the commitments made in resolution 30/1 to address the legacy of widespread and serious human rights violations that occurred in the context of the internal armed conflict in the country. The pervasive climate of impunity and the lack of accountability for serious human rights violations that occurred both during the conflict and in the aftermath requires immediate redress. The security sector is in need of urgent reform. The counter-terrorism legislation requires a complete overhaul to bring it into line with international human rights law. A failure address these issues promptly and effectively will provide fertile ground for those intent on resorting to political violence, as real and perceived grievances are exploited by militants to garner support amongst vulnerable and alienated sections of the population. The price that Sri Lanka's future generations will have to pay for the continuation of this legal repression may prove as costly or even costlier than that which has so far confronted the present generation.

## **B. Recommendations**

62. The Special Rapporteur recommends that the Government of Sri Lanka:

- a) Immediately establish a moratorium on the use of the PTA for new arrests until the Act is off the statute books and take urgent steps to repeal it.
- b) Ensure that the new counter-terrorism legislation is fully in line with international human rights law
- c) Immediately provide for prompt and effective judicial review of the legality of the detention of all those still held in detention under the PTA.
- e) Submit all individuals charged under the PTA to a fair trial with all guarantees of due process.
- f) Ensure that statements and confessions made by PTA detainees have no probative value in proceedings against them.
- g) Establish a mechanism for reviewing all PTA convictions in which evidence of a confession to the police was central to the prosecution case.
- i) Establish an independent effective and accessible mechanism to complain about torture and ill-treatment in all places of detention. Ensure that investigations into allegations of torture are launched ex-officio and that complainants are not subject to reprisals.
- j) Ensure the availability of prompt, independent, adequate and consensual medical examinations at the time of arrest, upon entering a custodial or interview facility and upon each transfer.
- k) Ensure that all interviews with detainees are fully in line with the Special Rapporteur on torture's proposal for a Universal Protocol for non-coercive, ethically sound, evidence-based and empirically founded interviewing practices (A/71/298) and ensure that all interviews are videotaped.
- l) Consider transferring those still in pre-trial detention or those serving sentences under the PTA to places of detention closer to their families, and the two Special High Courts dealing with PTA cases to majority Tamil areas.
- m) Ensure that the right to habeas corpus is fully reflected in the future legislation, in line with the recently adopted 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.<sup>49</sup>
- n) Guarantee full and unimpeded access to counsel that speaks a language understood by the person detained from the beginning of the deprivation of liberty and throughout all stages of criminal proceedings.

<sup>49</sup> United Nations Working Group on Arbitrary Detention, 6 July 2015 (ref. A/HRC/30/37)

- o) Urgently ratify and implement the Optional Protocol to the Convention Against Torture, and enable the Subcommittee on the Prevention of Torture to carry out regular unannounced inspections of all places of detention;**
- p) Ensure the National Human Rights Commission receives adequate resources to effectively fulfil its mandate, including regular, effective and independent monitoring of all places of detention, the investigation of allegations of torture and ill-treatment, and the review of legislation.**
- q) Publicly issue unequivocal instructions to all security forces to immediately end all forms of surveillance and harassment against human rights defenders and PTA victims and their families.**
- r) Guarantee that all cases of hate speech and attacks on minorities are fully investigated, prosecuted and perpetrators punished, without discrimination.**
- s) Ensure minimum standards of detention in accordance with the Standard Minimum Rules for the Treatment of prisoners (Mandela Rules).**
- t) Urgently reform all the institutions of the security sector to place them under full civilian control and oversight. Develop a vetting process to ensure that all security personnel and public officials involved in human rights violations are removed from service.**
- u) Ensure that the security sector, in particular in the police, intelligence services and the military, adequately reflects the ethnic and linguistic makeup of the country.**
- v) Demilitarise the Northern Province, as a symbolic gesture of reconciliation and trust-building.**
- w) Implement the specific and detailed recommendations of the Special Rapporteur on torture (A/HRC/34/54/Add.2), of the Special Rapporteur on minority issues (A/HRC/34/53/Add.3), of the Special Rapporteur on the independence of judges and lawyers (A/HRC/35/31/Add.1) and of the Working Group on Enforced or Involuntary Disappearances (A/HRC/33/51/Add.2) following their mission to Sri Lanka, and of the Committee against Torture. (CAT/C/LKA/5).**
- x) Implement Human Rights Council resolution 30/1 in full, including by urgently operationalizing the Office of Missing Persons.**

---