

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: OL LKA 7/2021
(Please use this reference in your reply)

9 December 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 40/16, 45/3, 43/4, 41/12, 43/8, 40/10 and 43/20.

We welcome your Excellency's Government's update on the action in process to review and bring the 'Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by Act No. 10 of 1982' [hereinafter 'PTA'] published in the *Gazette Extraordinary* No. 2218/68 on 12 March 2021 in line with international norms and standards within a time bound process.¹ In this regard, we wish to recall our previously communicated serious concerns with the PTA and to encourage your Excellency's Government commitment to substantive review and revision of this national counter-terrorism legislation, ensuring the integration of key benchmarks to align the PTA with Sri Lanka's international legal obligations.

The human rights challenges of the PTA and the International Covenant on Civil and Political Rights Act of 2007 [hereinafter 'ICCPR Act 2007'] were the subject of previous communications sent to your Excellency's Government on 26 October 2018 (LKA 5/2018) and on 26 February 2019 (LKA 1/2019). We regret that, to date, we have not received responses regarding those communications. Moreover, despite our observations on the legislative proposals being advanced by your Excellency's Government and on some provisions of the draft Counter Terrorism Act [hereinafter 'CTA'], published in the *Gazette Extraordinary* dated 17 September 2018, it appears that the advice constructively offered on human rights compliance has not been addressed. These concerns were further deepened after the addition of the 'Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021' [hereinafter '2021 Regulation No.01'], which was also the subject of a previous communication.² Following their

¹ See Joint Press Release, EU-Sri Lanka: Fifth Meeting of the Working Group on Good Governance, Rule of Law and Human Rights, Brussels, October 1, 2021. See also, OL LKA 3.2021.

² OL LKA 3.2021.

visits to Sri Lanka, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on freedom of religion or belief made several recommendations to your Excellency's Government with regard to corrective or remedial measures that they deemed ought to be taken in relation to the PTA.³ We regret that these remedial measures have not been adopted, and that an additional set of rights-denying measures are being advanced by other proposed Regulations since that time.

Nonetheless, we welcome the recent discussions on proposed reform of the PTA. In this context, we urge your Excellency's Government to ensure that any amendments of the PTA aim to address identified international human rights law deficits and align the legislation with your international obligations, fully and comprehensively. To this end, we outline below key benchmarks that are aligned with previous communications and recommendations to enable substantive reform. In our view these recommendations are necessary prerequisites to ensure the PTA is amended to be compliant with international law obligations:

- 1) Employ definitions of terrorism that comply with international norms;
- 2) Ensure precision and legal certainty, especially when this legislation may impact the rights of freedom of expression, opinion, association and religion or belief;
- 3) Institute provisions and measures to prevent and halt arbitrary deprivation of liberty;
- 4) Ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition; and
- 5) Enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel

(1) *Employ definitions of terrorism that comply with international norms*

As previously communicated, we respectfully remind your Excellency's Government that although there is no multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counterterrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counterterrorism instruments and is strictly guided by the principles of legality, necessity, and proportionality.⁴ The definition of terrorism in national legislation should be guided by the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.⁵ Counterterrorism legislation should be in compliance with human rights obligations, protection of due process, and in line with the international prohibition against arbitrary detention. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has continued

³ See [A/HRC/39/45/Add.2](#), [A/HRC/40/52 Add.3](#), [A/HRC/33/51/Add.2](#) and [A/HRC/42/40/Add.1](#)

⁴ [CCPR/C/GC/34](#).

⁵ [S/RES/1566](#); [A/RES/51/210](#).

to offer a model definition of terrorism to guide Member State practice based on the above resolutions and international law standards.⁶

We wish to convey that the measures adopted under the PTA and subsequent Regulation appear to contradict your Excellency's Government's international obligations, in particular the Universal Declaration of Human Rights ('UDHR'), the International Covenant on Civil and Political Rights ('ICCPR'), the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), the International Convention for the Protection of All Persons from Enforced Disappearances ('ICPPED') as well as the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which reflect, codify and consolidate the customary international law that is legally binding on all States⁷ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN 'CAT'). Enforcement of the PTA and subsequent Regulation has resulted in significant and detrimental impacts on the promotion and protection of several fundamental freedoms. In particular, we are concerned that the law lacks precision in key aspects creating opportunities for misuse due to broadly worded and vague provisions.

Benchmark 1: We recommend amending the definition of terrorism and other vague provisions, including rescinding language on "extremism,"⁸ which has no purchase under international law to ensure definitions and language employed are in compliance with Sri Lanka's international human rights obligations.

(2) *Ensure precision and legal certainty, especially when legislation may impact the rights of freedom of expression, opinion, and religion or belief*

We bring your attention to the 'principle of legal certainty' under international law⁹ which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international obligations.¹⁰ Her 2018 report also underscores that the use of counter-terrorism law to quell legitimate activities protected by international law is inconsistent with the State's obligations.

Article 9 (1) ICCPR affirms the principle of legal certainty under international law and requires that any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly

⁶ See A/HRC/16/51, para. 28 (Practice 7. Model definition of terrorism).

⁷ A/HRC/33/51/Add.3, para. 3

⁸ OL LKA 3.2021.

⁹ ICCPR article 15(1).

¹⁰ [A/73/361](#), para.34.

broad or arbitrary interpretation or application. Consequently, criminal laws must be sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence, and what would be the consequence of committing such an offence. We underscore that legal frameworks must be formulated with sufficient precision so that any individual can regulate his or her conduct accordingly¹¹ and to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse and may lead to arbitrary deprivation of liberty. Precision is essential in the use of exceptional counterterrorism powers, and ambiguity must be remedied to ensure adherence to international human rights obligations.

Limitations on freedoms of speech and of association

The principle of legality in article 19 (3) of the ICCPR requires that any restriction on fundamental freedoms be ‘formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.’ Under the “offences” section of the PTA, individuals can be prosecuted criminally if they surrender or are taken into custody on suspicion of causing or intending to cause ‘acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups’ by ‘words either spoken or intended to be read or by signs or by visible representations or otherwise.’ The broadly worded language would enable the deprivation of liberty on the basis of mere suspicion and without judicial process. No objective criteria have been clearly set out for any of the evaluations/decisions to be taken as to the constitutive components of this offence.¹²

The PTA does not precisely define what speech is prohibited consistent with the requirements of article 19 (3) and is thus likely to constitute an unlawful interference with the freedom of expression and opinion, including expression through artistic and symbolic means, also protected under article 15 of the ICESCR. Specifically, the provisions could function to restrict journalists, human rights defenders, civil society actors, and others from reporting or expressing views on anti-terrorist operations.¹³ While the prevention of terrorism may, in clearly defined circumstances, be a legitimate ground for restricting freedoms of expression and of association, exceptional care must be taken to ensure the legislation is 'crafted and applied in a manner that conforms to the strict requirements of paragraph 3 [of article 19 of the ICCPR].’ As previously indicated, we wish to emphasize that the right to freedom of expression extends not only to “information’ or 'ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb the State or any sector of the population.”

The broad scope of the PTA may result in misuse or misapplication, directly or indirectly leading to the silencing of dissent and criticism of the government. We express concern that this law could be used against civil society and humanitarian actors. The Human Rights Council has noted with grave concern that ‘in some instances, national security and counterterrorism legislation and other measures, such as laws regulating civil society organisations, have been misused to target human

¹¹ [E/CN.4/2006/98](#), para 46.

¹² [A/HRC/43/46](#), para. 13.

¹³ [A/HRC/37/52](#), para. 47.

rights defenders or have hindered their work and endangered their safety in a manner contrary to international law.’¹⁴ Without precision, any speech or expression may be deemed to have caused ‘feelings of ill will’ or ‘communal disharmony’ thus limiting freedom of speech and expression, as well as of association, particularly of minority defenders.

Inchoate crimes of ‘intent’ should be carefully formulated

The PTA further raises concern regarding the arrest and detention of individuals based on charges of ‘intending’ to cause ‘acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups’ through ‘words either spoken or intended to be read or by signs or by visible representations or otherwise’. The intent described is akin to an inchoate legal offence, which appears to suffer from a deficit in clarity as drafted. The phrasing hearkens to incitement as it covers statements or expressions that *could* lead to disharmony or ill will between communities or groups. Article 20 (2) of the ICCPR states that ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.’ Incitement is defined as statements about national, racial, or religious groups, which create an imminent risk of discrimination, hostility or violence against persons belonging to those groups. We accept that there are genuine cases in which exhortation to terrorism must be constrained. A lack of objective understanding about ‘intent to cause disharmony’ can capture a broad and indiscriminate range of expression and actors may place undue restriction on the freedom of expression and opinion as protected by international human rights law. We recommend that your Excellency’s Government be guided by the standards found in the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, in particular the six-part threshold test set out therein.¹⁵ Under this standard, the threshold for those inchoate crimes should be the reasonable probability that the expression in question would succeed in inciting a terrorist act, thereby establishing a causal link or actual risk of the proscribed result occurring.¹⁶

Limitations on freedom of religion or belief

The prohibition on causing or intending to cause ‘violence or racial, religious or communal disharmony’ by ‘words either spoken or intended to be read or signs or visible representations or otherwise’, may undermine the right to freedom of thought, conscience, and religion. The use of the word ‘otherwise’ is particularly concerning, as it invites for various subjective interpretations of what could be considered a permissible conduct or expression and could lead to arbitrary and discriminatory application of the law and particularly target minorities. Such a vague disposition can be misinterpreted and misused to restrict the free expression and manifestation of one’s religion or beliefs. Article 18 of the ICCPR protects everyone’s right to freedom of thought, conscience, and religion or belief. The Human Rights Committee in its General Comment 22 paragraph 4 advises that the freedom to manifest religion or

¹⁴ [A/HRC/RES/25/18](#), [A/HRC/RES/27/31](#), [A/HRC/RES/32/31](#) and [A/HRC/RES/34/5](#).

¹⁵ [A/HRC/22/17/Add.4, annex, appendix, para. 29](#).

¹⁶ [A/HRC/43/46](#), para. 27.

belief may be exercised ‘either individually or in community with others and in public or private.’ The comment further elaborates that the freedom to manifest religion or belief in worship, observance, practice, and teaching encompasses a broad range of acts. While the manifestation of religion or belief may be restricted as per article 18 (3) of the ICCPR, to protect public safety, order, health, morals and the fundamental rights and freedoms of others, any such limitation must fulfil a number of obligatory criteria including being non-discriminatory in intent or effect and constituting the least restrictive measure. Even in the face of overwhelming public necessity that falls on one or more of the five grounds for permissible limitations noted in article 18 (3), if there is a less restrictive measure, a greater interference with the right to manifest one’s beliefs will not be permissible. Additionally, we wish to underscore that the right to freedom of thought, conscience, religion, or belief cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant. These principles are far-reaching and profound, encompassing freedom of thought and expression, personal conviction and the commitment to religion or belief.¹⁷ The provision concerning religious disharmony is frequently invoked against religious minorities rather than against the religious majority (see LKA 04/2020) violating this protection of expression and the principle of non-discrimination. There can also potentially be a breach of the obligation of persons belonging to ethnic, religious or linguistic minorities not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language, as enshrined in Article 27 of the ICCPR

We note that during his visit to Sri Lanka in 2019, the Special Rapporteur on freedom of religion or belief had expressed concerns with regard to the overly broad and ambiguous provisions of the PTA, its reported use to target minorities and to suppress dissenting views, and he called for its abrogation.¹⁸ The PTA risks continuing to broadly proscribe expressions, opinions and religious beliefs that should be firmly protected under international human rights law. For this reason, we collectively affirm the need for substantive review.

Benchmark 2: We respectfully recall the previous communication to your Excellency’s Government and recommend the following:

- a. Amend the PTA and relevant legislation to precisely define what speech is prohibited consistent with the requirements of article 19 (3) to ensure no unlawful interference with the freedom of expression and opinion, as well as of association.
- b. Amend the vague language of causing or intending to cause ‘violence or racial, religious or communal disharmony’ by ‘words either spoken or intended to be read or signs or visible representations or otherwise’, which as noted above may violate the right to freedom of thought, conscience, and religion.

(3) *Institute provisions and measures to prevent and halt arbitrary deprivation of liberty;*

¹⁷ UN Human Rights Committee (HRC), *CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)*, 30 July 1993, CCPR/C/21/Rev.1/Add.4, para.1.

¹⁸ [A/HRC/43/48/Add.2, para. 74](#)

As currently drafted, the PTA might allow for unlawful deprivation of liberty across pretrial detention, bail, undue delays in trials, confessions obtained by torture and ill treatment, the continued use of the death penalty. It might also infringe on the right to challenge the legality of detention, the right to legal detention, and the continued use of the death penalty. The PTA provides for arresting authority to ‘any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf.’ The 2021 Regulation expanded this power.¹⁹ Expanding the arresting power under the PTA might facilitate arresting entities to proceed with arrests without identification.²⁰

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Article 9 (1) of the ICCPR affirms that ‘Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law’. With regard to the meaning of the words ‘arbitrary arrest’ in article 9 (1), the Human Rights Committee has held that ‘arbitrariness’ is not to be equated with ‘against the law’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law. ... [T]his means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in the circumstances.²¹ Principle 2 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment clearly states that ‘Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.’ The Experts have further expressed concern that the recent proposed Regulation issued this year also contribute to a lack of clarity as to which ‘persons or body of persons’ may be authorized by the President to wield arresting power, nor does the Regulation prohibit retroactive authorization of ‘persons or body of persons’ who might make an arrest under the provisions and the length of such detention following arrest.²² Thus, it appears that an individual may be detained by anyone and such arrest could be sanctioned retroactively. The concerns about fairness, due process, coercion, and arbitrariness raised by this provision are of profound concern to the Experts.

Such broad detention powers raise serious unease. First, it is troubling that there are no standards or criteria set out to ensure that the person has not been detained for more than the permitted time period (72 hours under PTA, Part II, 7(1)), before being handed over to the police station). Without any arrest receipt provided to the arrestee, or his or her family or any communication with another regulating body, there is no record maintained of which individuals are being taken into custody.²³

¹⁹ OL LKA 1.2021.

²⁰ OL LKA 2021. *See also*, ‘Arrest and Detention’, in Prison Study by the Human Rights Commission of Sri Lanka, 2020, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>; Report of The Human Rights Commission to The Committee Against Torture, Review of The 5th Periodic Report of Sri Lanka, October 2016. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf>.

²¹ A/49/40 (Vol.II) at p.181, para 9.8.

²² OL LKA 1.2021.

²³ ‘Arrest and Detention’, in Prison Study by the Human Rights Commission of Sri Lanka, 2020, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>; Report of The Human Rights Commission to The Committee Against Torture, Review of The 5th Periodic Report of Sri Lanka, October 2016. <https://www.hrcsl.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf>

Moreover, arrested individuals are also deprived of the right to be informed of the reason for arrest. Article 17 (2) (c) of the ICCPED requires States to ‘Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.’ Additionally, article 17 (2) (d) guarantees the right of persons deprived of liberty to communicate with, and be visited by, family and others. Article 17 (2) (e) guarantees access by the competent and legally authorized authorities and institution to places of deprivation of liberty and article 17 (2) (f) guarantees that persons deprived of their liberty or others with a legitimate interest can take proceedings before a court which may decide without delay on the lawfulness of the deprivation of liberty. Article 18 also guarantees that a minimum level of information must be provided to any person with a legitimate interest, including relatives of individuals deprived of their liberty, including the date, time, and place where the person was deprived of liberty and their whereabouts. Furthermore, the United Nations Declaration on the Protection of All Persons from Enforced Disappearances sets out the necessary guarantees to be offered by States. In particular, articles 10 and 12 relate to the rights to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; to the maintenance in every place of detention of official up-to-date registers of all detained persons and to establish clear rules under national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention. We further refer to articles 9 and 10 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which, *inter alia*, also require that persons deprived of their liberty be held in recognized places of detention and that accurate information on their place of detention is made promptly available to their family members and others with a legitimate interest. Both the 1992 Declaration (in article 6) and the ICCPED (in article 23) also require the training of law enforcement personnel involved in custody or treatment of any person deprived of liberty, including on the prohibition of enforced disappearances. The PTA also fails to define a ‘detainee.’

Benchmark 3: We respectfully recall the above analysis and recommend amendment of detention provisions as well as administrative and judicial safeguards to prevent the continued arbitrary arrest and detention of individuals inconsistent with international law standards. Recommended benchmarks are as follows:

- a. Amendment to make it clear which ‘persons or body of persons’ may be authorized by the President to wield arresting power, and to prohibit retroactive authorization of ‘persons or body of persons’ who might make an arrest under the PTA and subsequent Regulations.
- b. Amendment to ensure that there are standards and criteria, including record keeping procedures, set out to ensure that a person has not been detained outside the bounds of the law before being handed over to the police station and to remedy the presumption that detention occurs before the commencement of an investigation.

We further refer your Excellency's Government to the standards set out above in Articles 17 (2) (c)-(f) of the ICCPED, articles 9 and 10 of the 1992 Declaration, and both the Declaration (article 6) and the ICCPED (article 23). These changes are necessary to address concerns about fairness, due process, coercion, and arbitrariness raised by these provisions and are of utmost concern to the experts.

(4) *Ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition*

Similarly, article 11 of the UN Convention against Torture (UN CAT) requires 'Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.' Because persons can be held by individuals without such training, review protocols or oversight, this increases the risk that detainees will be subjected to torture, inhuman, or degrading treatment. Second, there are no standards or criteria established for the conditions or locations for where an individual may be detained. As a result, we take the view that this provision does not comply with the standards of accommodation established by the Standard Minimum Rules for the Treatment of Prisoners.²⁴

Articles 1 and 23 of the ICCPED require the absolute prohibition of enforced disappearance and the corresponding State's obligations to train law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, to prevent, investigate and resolve cases of enforced disappearances. Furthermore, the 1992 Declaration on the protection of all persons from enforced disappearances, provides that 'States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance' (article 2.2) and 'each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction' (article 3). Article 7 of the 1992 Declaration also establishes that 'no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.'

Benchmark 4: We respectfully recall the above standards and recommend immediate amendments to address the full scope of the requirements of the UN CAT and the Standard Minimum Rules for the Treatment of Prisoners across all detention practices, rules, provisions, and powers. Meaningful amendments can only be made by ensuring that these protocols are addressed and current conditions that increase the likelihood of torture are urgently remedied.

²⁴ Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>

(5) *Enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel*

As drafted, the PTA's provisions on detention and restriction orders, might not allow for a fair trial considering that detainees or surrendees are not given the opportunity to hear the case against them or the result of any investigation concerning their alleged activities. This might lead to severe restrictions on the liberty of persons and penalization of individuals without any access to due process guarantees, without charge, or trial. Such practices may allow systematic detention without trial, a practice that is inconsistent with your Excellency's Government's international legal obligations.

The 'judicial involvement' under the PTA consisting of a decision made by the Attorney General, confirmed but not fully reviewed by a judge,²⁵ does not amount to a proper judicial process, which is required in any restriction imposed on the right to liberty.²⁶ In the 'report of the Working Group on Arbitrary Detention on its visit to Sri Lanka, the Working Group found that individuals sent for rehabilitation were detained arbitrarily. Their deprivation of liberty lacked a legal basis and was the result of numerous grave violations of the right to a fair trial, including a lack of effective legal assistance, the inability to access the evidence against them and undue delay in being tried.²⁷

Benchmark 5: Recalling the above analysis on the international human rights law deficits, specifically the lack of fair trial guarantees, continued and extended deprivation of liberty without due process, and the full scope of overarching lack of judicial oversight of detention practices, we recommend amendment of the PTA in line with the above and past communications. Amendments should aim to bring all processes in line with due process obligations under the ICCPR and UDHR.

Conclusion

We wish to reiterate the importance of meaningful reform of the PTA. The continued risk to the rights and liberties of persons who may be detained arbitrarily, especially religious and ethnic minorities, and may curtail political dissent with no effective due process guarantees remains at the core of their concern. Lack of judicial oversight and effective due process standards could facilitate institutional contexts where misuse can occur. We urge your Excellency's Government to immediately commence with a thorough examination of the PTA with a view to amend all relevant provisions and ensure that human rights are respected and protected under the auspices of countering terrorism. Further, we recommend an immediate moratorium on its use until such time as the necessary amendments can be made.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters and the planned or in process amendments to the Regulation and how it brings the legislation into compliance with

²⁵ [A/HRC/40/52/Add.3](#)

²⁶ [A/HRC/40/52/Add.3](#)

²⁷ [A/HRC/39/45/Add.2](#)

international law obligations.

Please provide any additional information and/or comment(s) you may have on the above-mentioned concerns.

1. Please provide detailed information of how the counterterrorism efforts of Your Excellency's Government and planned or in process amendments will comply with international obligations, including the benchmarks highlighted in this communication, specifically ensuring that any amendments:
 - a) *Employ definitions of terrorism that comply with international norms;*
 - b) *Ensure precision and legal certainty, especially when legislation may impact the rights of freedom of expression, opinion, association and religion or belief;*
 - c) *Institute provisions and measures to prevent and halt arbitrary deprivation of liberty;*
 - d) *Ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition; and*
 - e) *Enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel*

2. Please provide information in detail of how the counterterrorism efforts of Your Excellency's Government comply with the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017) ; as well as Human Rights Council solution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law requirements of same.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Luciano Hazan
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment