



General Assembly

Distr.: General
16 February 2022

English only

Human Rights Council

Forty-ninth session

28 February–1 April 2022

Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by Pasumai Thaayagam Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[7 February 2022]

* Issued as received, in the language of submission only. The views expressed in the present document do not necessarily reflect the views of the United Nations or its officials.



The Urgent Need for Repeal of Sri Lanka's Prevention of Terrorism Act (PTA)

We thank the member states of the Human Rights Council for passing Resolution 46/1: Promoting reconciliation, accountability and human rights in Sri Lanka.(1) We extend our gratitude to the Office of the High Commissioner for taking on the responsibility for collecting, consolidating, analysing and preserving information on crimes committed in Sri Lanka and preparing the evidence for future judicial mechanisms.

We share the views and deep concerns highlighted within the resolution which identified emerging legal and political trends which represent “a clear early warning sign of a deteriorating situation of human rights in Sri Lanka.”(2) These trends “threaten to reverse the limited gains made in recent years and risked the recurrence of policies and practices that gave rise to the grave violations of the past.” (3)

Namely, 1. the accelerating militarisation of civilian government functions, 2. the erosion of the independence of the judiciary and institutions mandated to promote and protect human rights, 3. ongoing impunity and political obstruction of accountability for human rights violations in “emblematic cases”, 4. implementation of policies adversely affect the right to freedom of religion or belief, 5. increased marginalisation of Tamil and Muslim communities, 6. surveillance and intimidation of civil society, 7. restrictions on media freedom and shrinking democratic space to exercise civil liberties, 8. restrictions on public memorialisation of war victims, 9. arbitrary detentions, and 10. alleged torture and other cruel, inhumane and degrading treatment and sexual and gender-based violence.

Further, we are concerned about Torture, PTA, economic marginalisation and dependency, Denial of the right to development, Prevention of return to normalcy, Land grab, Buddhisisation and Sinhalisation, Structural genocide, Destruction of identity and assimilation of Tamil people with the repetition of Cycles of Violence orchestrated over the past seven decades.

Regretfully, the government of Sri Lanka continues its accelerating trajectory toward an authoritarian, militarised and racialised governance, despite the continued best efforts and guidance of the UNHRC, NGOs, other stakeholders and civil society at large.

Despite welcome calls by this Council in September 2021 for an immediate moratorium on the use of Prevention of Terrorism Act (PTA), we are concerned by the government's continued widespread use of this controversial security act which gives security forces dangerously sweeping powers of arrest and imprisonment. We likewise welcome the Core group countries continued calls to replace the PTA with human rights compliant anti-terrorism legislation.(4)

The PTA was passed as a temporary measure in 1979, under questionable circumstances. Over four decades later, it's dangerous and historically abused provisions have been linked to torture in the island and are still disproportionately used to arrest Tamils and Muslims, with most detainees from the North and East of the island. “It has been used as a tool for political victimisation and majoritarianism politics”(5) and runs contrary to the accepted principles of the Rule of Law. Alongside other Emergency regulations, it has become a useful instrument for the government to perpetrate war crimes, crimes against humanity and genocide against Tamils. It is reported that 83% of men detained under this act were tortured, 90% were forced to sign confessions under duress, 80% signed pre-written or blank statements with 95% stating they did not understand the Sinhala language in which the confessions were written.(6) The Act has provisions for the use of these confessions obtained under torture in court as well as the indefinite detention of detainees and the quick and quiet disposal of bodies of those died while in detention.

The PTA is in direct conflict with Sri Lanka's international human rights obligations and the government's recently proposed reforms(7) are “woefully inadequate”(8) as identified by the International Commission of Jurists (ICJ) who have called for its immediate repeal: “the PTA... allows for arbitrary and indefinite deprivation of liberty of any individual, group of individuals, association, organisation or body of persons within or outside Sri Lanka suspected of a wide range of ill-defined activities...”

The proposed amendments do not address the overly broad definition of terrorism within the Act, or the admissibility of confessions gained through torture. It also fails spectacularly to recognise the fundamental value of physical liberty of a person, with the proposal amending indefinite detention to 12 months detention without trial, paying scant attention to internationally recognised non-derogable rights.

The proposed amendments are superficial and insufficient to address ground realities and unlikely to prevent the harms associated with the PTA. That the Sri Lankan Government has chosen to put forward cosmetic over substantive amendments is disingenuous and reflects its lack of regard for the State's international obligations. The Centre for Policy Alternatives have highlighted these concerns in their January 2022 commentary,⁽⁹⁾ labelling it a "token effort to address international pressure rather than a genuine and effective exercise..." and we welcome their call for an immediate moratorium on the use of the PTA.

"The fatally flawed PTA cannot be cured by these disingenuous reform attempts, but must be entirely repealed." ICJ

(10) "In the run up to the Human Rights Council session in March 2022, when Sri Lanka comes under scrutiny once more, the government of Sri Lanka has already launched a charm offensive intended to deflect criticism of its record on human rights and the rule of law. These last-minute conciliatory gestures must not, however, be allowed to obscure the reality of ongoing impunity and government disregard for human rights and the rule of law.

For instance, the government's recently announced proposals to amend the Prevention of Terrorism Act (PTA), a law which conflicts with Sri Lanka's international human rights obligations, have proved woefully inadequate. After months of promises of meaningful reform, the proposed changes will have little practical effect, and fail to address the major problems identified by Sri Lankan civil society and UN experts. In the meantime, the government continues to arrest people under the PTA and has sought to extend the law with the appalling 'de-radicalisation' regulations which would allow detention for up to two years without judicial oversight or other safeguards. Human rights defenders and Tamil and Muslim communities who have been most affected by the PTA continue to call for its repeal, and for a complete and immediate moratorium on its use in the meantime.

However, the international community must use all available bilateral and multilateral mechanisms to support efforts to address the deep-rooted institutional problems at the core of the government's failure to respect human rights and the rule of law. Sri Lanka's current trajectory has been enabled by the long-running culture of impunity, with successive governments failing to tackle human rights violations and corruption committed by state actors. Instead, generations of political elites have protected each other. Opportunities to address these issues have been squandered, with governments playing for time with little intention of fulfilling their promises. With substantive consideration of Sri Lanka on the agenda of the Human Rights Council twice during 2022, it is essential that member states not be taken in by false promises. States concerned with a stable and prosperous Sri Lanka must remain engaged with and supportive of the UN process, but should also take their own independent actions, such as halting engagement with abusive security forces and applying targeted sanctions against individuals and organisations credibly accused of international crimes." (Srilanka Campaign)

When Sri Lanka regained GSP+ in 2017, it pledged to repeal or reform the PTA, among many other rights commitments that remain unfulfilled. This oppressive Act has long and widely been recognised as sitting at the heart of human rights abuses by the State. While the government scrambles yet again to do the bare minimum ahead of another UNHRC session in a cynical attempt to curry favour with the international community, respect for human rights in Sri Lanka has been declining alarmingly under President Rajapaksa. This Council has a historic opportunity to help reverse this trend to address this culture of violence and impunity and press the government to meet its human rights obligations and finally repeal this draconian instrument.

British Tamils Forum (BTF), NGO(s) without consultative status, also share the views expressed in this statement.

1 <https://undocs.org/A/HRC/RES/46/1>

2 Elisabeth Tichy-Fisslberger, speaking on behalf of the European Union

3 Julian Braithwaite, UK Representative to the UN in Geneva

4 Response to Labour MP Sam Tarry's question for FCDO, "How many times has his Department officially discussed with its counterpart in Sri Lanka the repeal of Sri Lanka's Prevention of Terrorism Act and reports of potential ongoing torture in that country?" <https://questions-statements.parliament.uk/written-questions/detail/2021-09-07/44477>

5 Tamil National Alliance (TNA) MP Shanakiyan Rajaputhiran Rasamanickam, 22nd July 2021

6 Prison Study by the Human Rights Commission of Sri Lanka, Dec. 2020 <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>

7 Presidential Commission of Inquiry (PCoI), 'Appraisal of the Findings of Previous Commissions and Committees on Human Rights and the Way Forward' interim report

8 ICJ, 'Sri Lanka: The Prevention of Terrorism Act cannot be reformed; it must be repealed,' Feb' 2022 <https://www.icj.org/sri-lanka-the-prevention-of-terrorism-act-cannot-be-reformed-it-must-be-repealed/>

9 Centre for Policy Alternatives, 'Prevention of Terrorism (Temporary Provisions) (Amendment) Bill 2022',

January 2022 <https://www.cpalanka.org/wp-content/uploads/2022/01/Final-PTA-Amendment-2022-1.docx-1.pdf>

10 <https://www.srilankacampaign.org/wp-content/uploads/2022/02/FINAL-Jailing-activists-and-pardoning-murderers-monitoring-ten-issues-of-concern-in-Sri-Lanka-in-2021.pdf>