Генеральная Ассамблея

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Совет по правам человека
Сороковая сессия
25 февраля – 22 марта 2019 года
Пункт 3 повестки дня
Поощрение и защита всех прав человека, гражданских, политических, экономических, социальных и культурных прав, включая право на развитие

Посещение Шри-Ланки

Доклад Специального докладчика по вопросу о поощрении и защите прав человека и основных свобод в условиях борьбы с терроризмом*

Резюме

В своем прежнем качестве Специального докладчика по вопросу о поощрении и защите прав человека в условиях борьбы с терроризмом Бен Эммерсон посетил Шри-Ланку в период с 10 по 14 июля 2017 года для оценки прогресса, достигнутого Шри-Ланкой в области законодательства, политики и практики по борьбе с терроризмом с момента окончания ее внутреннего вооруженного конфликта. Прогресс в этих областях имеет первостепенное значение для обеспечения подотчетности, прекращения безнаказанности и достижения примирения, а значит является залогом прочного мира в Шри-Ланке. В своем докладе Специальный докладчик делится несколькими ключевыми замечаниями и озабоченностями в области прав человека, связанными с продолжающимся применением Закона о предупреждении терроризма 1979 года, несмотря на давно взятое правительством на себя обязательство пересмотреть и отменить его. Закон, в частности, предусматривает слишком широкое и расплывчатое определение терроризма, длительное административное задержание и неэффективный пересмотр судебных решений, а также чрезвычайно широкие правила, касающиеся использования признательных показаний. Кроме того, он выражает обеспокоенность по поводу регулярного и систематического применения пыток и неправомерного обращения согласно Закону и по поводу условий содержания под стражей. В частности, он считает, что условия в посещенном им блоке строгого режима тюрьмы в Анурадхапуре являются бесчеловечными.

Кроме того, Специальный докладчик считает, что разработка нового законодательства о борьбе с терроризмом, а также рассмотрение прошлых дел в соответствии с Законом движутся чрезвычайно медленно, и это в свою очередь привело к задержке с принятием более широкого пакета мер в области правосудия

* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на языке представления.

переходного периода, который Шри-Ланка обязалась реализовать в 2015 году. Далее Специальный докладчик отметил широко распространенную скрытую форму стигматизации тамильской общины. Тамилы серьезно недопредставлены во всех учреждениях, особенно в секторе безопасности и судебной системе, несмотря на важность обеспечения того, чтобы все институты надлежащим образом отражали этнический, языковой и религиозный состав государства.

Специальный докладчик выносит ряд конкретных рекомендаций и подчеркивает, что Шри-Ланка должна безотлагательно выполнить обязательства, взятые на себя в соответствии с резолюцией 30/1 Совета по правам человека, в целях искоренения наследия широкомасштабных и серьезных нарушений прав человека, происходивших в контексте внутреннего вооруженного конфликта в стране. Повсеместная атмосфера безнаказанности и отсутствие ответственности за серьезные нарушения прав человека, которые имели место как во время конфликта, так и после него, требуют немедленного исправления положения. Сектор безопасности нуждается в срочном реформировании. Для приведения законодательства о борьбе с терроризмом в соответствие с нормами международного права прав человека требуется его полная перестройка. Невозможность оперативно и эффективно решить эти вопросы создаст благодатную почву для тех, кто стремится прибегнуть к политическому насилию, поскольку боевики используют реальные и предполагаемые обиды для получения поддержки среди уязвимых и отчужденных слоев населения. Цена, которую будущим поколениям Шри-Ланки придется заплатить за продолжение этого правового подавления, может оказаться едва ли не более высокой, чем та, которая уже заплачена нынешним поколением.

Annex

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

I. Introduction

1. In his former capacity as Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson conducted a visit to Sri Lanka from 10 to 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 ensuring accountability, an end to the rule of impunity, and reconciliation, and thus to paving the way for lasting peace in Sri Lanka.

2. The Special Rapporteur expresses his appreciation to the Government for its invitation and commends the transparency and the largely courteous, constructive and cooperative 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 the follow-up to it. He is grateful to all of the heads and staff of governmental institutions that he met. He is also grateful to the United Nations Resident Coordinator and members of the United Nations country team for the support extended during the visit.[1]

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, and the Minister of Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs. He also met with, among 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 the 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 with the Minister of Justice.

4. The Special Rapporteur held discussions with the Attorney General and 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 1979, and to observe the poor conditions in which some of them were detained. He also met with their lawyers and families, and other individuals affected by the implementation of the counter-terrorism policies and legislation in the country. Moreover, he met with the Chairperson and a commissioner of the National Human Rights Commission, and with representatives of civil society.

5. The Special Rapporteur shared his preliminary findings with the Government at the end of his visit on 14 July 2017.[2]

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

[1] The Special Rapporteur would like to thank his senior legal adviser, Anne Charbord, for her assistance with the preparation of the present report.

[2] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E.

Government faced an armed uprising from large segments of the marginalized and disenfranchised Tamil population, led by the Liberation Tigers of Tamil Eelam,[3] an organization that resorted to widespread violence and acts of terrorism, including suicide bombings and political assassinations. 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 evolution of that terrible conflict, and the details of these events have been largely described in other reports of the Office of the United Nations High Commissioner for Human Rights (see, for example, A/HRC/30/61).

7. In 2015, following general elections, Sri Lanka transitioned to a coalition National Unity 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 adoption of Human Rights Council resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka, co-sponsored by the Government of Sri Lanka. The 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 the resolution, the Council welcomed the commitment of the Government of Sri Lanka to review and repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international norms and practices. The Prevention of Terrorism Act 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 (A/HRC/34/20, para. 45).

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

III. Key human rights challenges in countering terrorism

A. 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; the International Convention for the Protection of All Persons from Enforced Disappearance; and the Optional Protocol to the Convention against Torture.

1. Prevention of Terrorism Act

11. The Prevention of Terrorism Act[4] was introduced in 1979 as temporary emergency legislation, to address the danger caused by, according to its preamble, “elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka”. It was made

[3] The Liberation Tigers of Tamil Eelam has been listed as a terrorist organization by over 32 different States.

[4] Prevention of Terrorism Act No. 48 of 1979, amended by Acts No. 10 of 1982 and No. 22 of 1988.

permanent in 1982 and was still in force at the time of the Special Rapporteur's visit.[5] He 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.

(a) Definition of terrorism

12. The definition of terrorist acts contained in the Prevention of Terrorism Act (sect. 2) is overly broad and vague. It includes acts that 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, cooperative union or cooperative society"; causing, "by words either spoken or intended to be read or by signs or by visible representations… 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"; and erasing, mutilating, defacing or otherwise interfering 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 the net widely over potential offenders by including the offence of harbouring, concealing or in any other manner preventing, hindering or interfering with the apprehension of a proclaimed person or any other person, knowing or having reason to believe that such a person has committed an offence under the Act. Therefore, under the Act, the authorities have been able to stigmatize, brand and prosecute entire communities and members of civil society as "terrorists", and associate any form of peaceful criticism or dissent with terrorism. 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 association, with the Liberation Tigers of Tamil Eelam, 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 police are granted very broad powers of arrest and detention under the Prevention of Terrorism Act, as any person may be arrested and detained without a warrant (sect. 6 (1)).[6] 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. Further, the judicial authority cannot order the release of the detainee, unless the Attorney General — who is also the chief prosecutor — has consented (sect. 7 (1)). As remand in custody is allowed under the Act until the conclusion of the trial, the indefinite detention of a suspect is possible. The Act also allows for individuals to be detained further under a detention order issued by the Minister of Defence if they are 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 (sect. 9 (1)), and is expressly excluded from any judicial review of its legality (sect. 10). Thus, the arrest and detention of a broad category of individuals is placed 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, 24 hours before the state of emergency expired, an emergency regulation that had been enacted during the state of emergency (which had been enacted under the Public Security Ordinance) was "absorbed" into the Prevention of Terrorism Act. Under the new regulation, the Minister of Defence was granted extensive powers to order arrest and detention and the Sri Lankan security forces were granted powers to carry out the

[5] The Prevention of Terrorism Act was enacted under article 84 of the Constitution of Sri Lanka, which stipulates that bills that are inconsistent with the Constitution may be passed by a two-thirds majority in Parliament. The Supreme Court noted that, accordingly, the Act became law despite any inconsistency with the constitutional provisions (see *Weerawansa v. the Attorney General and others* (2000)).

[6] In August 2013, the Ministry of Law and Order was established to separate policing functions from military structures. The Special Rapporteur was assured that since March 2015, no individual had been held in detention by the military.

arrests. In turn, this permitted the continued detention of individuals who had already been detained under this emergency regulation for 30 days, pending the issuance of detention orders under the Act or remand by a magistrate.[7] In practice, this often meant transfer from police to 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 Act 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. From the official figures provided by the Office of the Attorney General on the persons currently charged with offences under the Act, it was apparent that out of 81 prisoners in the judicial phase of their pretrial detention, 70 had been in detention without trial for over 5 years and 12 had been in detention without trial for over 10 years. The Special Rapporteur was also informed that, at least until his visit,[8] the Attorney General had almost inevitably refused to grant consent to bail applications. As a result, individuals with various real or imputed links or association with the Liberation Tigers of Tamil Eelam 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 detention, both of which are non-derogable.[9] Outside a state of emergency,[10] 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.[11]

(c) Torture and ill-treatment under the Prevention of Terrorism Act

(i) Forced confessions

17. Critically, the rules concerning the admission of confessions are extremely broad under the Act. In contradistinction to the Evidence Ordinance of Sri Lanka, under the Prevention of Terrorism Act, the use of confessions obtained by certain officials is 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 (sect. 16). While confessions caused by an "inducement, threat, or promise"[12] are not admissible, the burden is placed on the accused to prove that the confessions were obtained under such circumstances.

18. Many of the current and former detainees under the Act who were 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.

[7] Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011.

[8] Approximate figures provided by the Office of the Attorney General show that in 2016, bail was granted in over 50 per cent of cases.

[9] Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 16. See also general comment No. 35 (2014) on liberty and security of person, para. 66.

[10] Sri Lanka was under a state of emergency from: March 1971–February 1977; August 1981–January 1982; 30 July–30 August 1982; 20 October 1982–20 January 1983; 18 May 1983–11 January 1989; 20 June 1989–4 September 1994; 4 August 1998–4 July 2001; 5–6 November 2003; and 12 August 2005–30 August 2011. On 19 November 2015, Sri Lanka notified the Secretary-General of the United Nations of "the termination of all derogations previously notified under the International Covenant on Civil and Political Rights, pursuant to the lapse of the Emergency Regulations in August 2011".

[11] Human Rights Committee, general comment No. 35, paras. 32–34.

[12] Section 24 of the Evidence Ordinance.

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 against this form of abuse in the criminal justice system. It removes a prime incentive for torture and, as evidence obtained under torture is dismissed, it helps ensure that no innocent person is convicted.

20. In practice, however, the effective implementation of this key principle remains illusionary 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 a complaint of torture against his or her gaolers before the judges implies the risk of being further abused, which in itself is a disincentive 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.[13] 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 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.[14] 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.[15] A failure to verify that the confessions were not obtained through torture and then using such confessions in judicial proceedings despite the allegations amounts to a violation of article 15 of the Convention against Torture.[16]

(ii) Safeguards and prevention

21. The Special Rapporteur is encouraged that, under section 28 of the Human Rights Commission Act, the National Human Rights Commission now has unfettered access to all places of detention and is notified within 48 hours of an arrest or a transfer made under the Prevention of Terrorism Act. 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 International Committee of the Red Cross during their lengthy periods of detention.

22. While the Special Rapporteur was informed that "most" detainees had been examined by a judicial medical officer, it is clear that, given the prevalence of torture under the Act, 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 Act 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 before access

[13] A/HRC/13/39/Add.5, para. 98. See also A/71/298, para. 98.

[14] *G.K. v. Switzerland* (CAT/C/30/D/219/2002), para. 6.11. See also *P.E. v. France* (CAT/C/29/D/193/2001), para. 6.6.

[15] *G.K. v. Switzerland*, para. 6.10, with reference to *P.E. v. France*, para. 6.3.

[16] *Niyonzima v. Burundi* (CAT/C/53/D/514/2012), para. 8.7. See also African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, communication No. 334/2006.

was granted and required lawyers to start the procedures anew, wasting precious time and resources.

(iii) "Routine" and "systemic" use of torture and ill-treatment under the Prevention of Terrorism Act

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 Prevention of Terrorism Act. Following his visit to Sri Lanka in 2016, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had concluded that the use of torture and ill-treatment to obtain a confession from detainees under the Prevention of Terrorism Act was routine practice. He observed that, in those cases, a causal link seemed to exist between the level of real or perceived threat to national security and the severity of the physical suffering inflicted (A/HRC/34/54/Add.2, paras. 22 and 31). A representative of the newly appointed and highly credible National Human Rights Commission emphasized that torture in custody was widespread, systemic and institutionalized, and its eradication formed a major priority in its work.

25. The Special Rapporteur was extremely concerned to learn that 80 per cent of individuals arrested under the Act in late 2016 had complained of torture and physical ill-treatment following their arrest, in cases that had been later dealt with under ordinary criminal law. The most senior judge responsible for terrorism cases in Colombo informed him that in over 90 per cent of the cases he had dealt with during the first half of 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 the Special Rapporteur's visit, allegations emerged that torture of at least 50 Tamils had taken place since the election of the current Government. The United Nations High Commissioner for Human Rights stated that while the United Nations was unable to confirm the allegations until it mounted an investigation, clearly the reports were horrifying and merited a much closer inspection from its part, especially if the acts had occurred in 2016 and 2017.[17]

26. During his interviews with current and former detainees under the Act, the Special Rapporteur heard distressing testimonies of very brutal and cruel methods of torture, including beatings with sticks, 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 his attention, 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 Prevention of Terrorism Act, the case for repealing and replacing it is unequivocal. The Minister for Law and Order informed the Special Rapporteur that steps were under way to avoid any new arrests under the Act, and to use the general 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 had been a steep decline in the use of the Act during the first half of 2017, but he was nonetheless made aware of new cases in the Northern Province, in which individuals had reportedly been arrested under that legislation. More than two years since the adoption of resolution 30/1, and despite the undertaking of the Government to the people of Sri Lanka and to the international community, the Act still has not been repealed or replaced.[18] It remains fully on the statute book, and steps to reduce its

[17] Paisley Dodds, "Dozens of men say Sri Lankan forces raped and tortured them", Associated Press, 8 November 2017.

[18] In March 2017, the Human Rights Council adopted resolution 34/1, a "technical rollover" resolution to give more time to implement resolution 30/1. It was criticized by many because no additional conditions were placed on the Government of Sri Lanka (see International Crisis Group, "Sri Lanka's transition to nowhere", Asia Report No. 286, 16 May 2017).

use in new cases provide no remedy to those currently languishing in appalling conditions, for years on end without trial. The Special Rapporteur's opinion is that a moratorium on the use of this Act must be immediately established, pending its rapid repeal.

(iv) Conditions of detention

28. The Special Rapporteur found the conditions in the high-security wing of the prison in Anuradhapura 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. Furthermore, he met with an inmate held in isolation who showed him a tin can that he was obliged to use in the absence of access to toilet facilities.

2. Policy and legal framework of the proposed counter-terrorism act of Sri Lanka

29. Prior to his visit to Sri Lanka, the Special Rapporteur had been provided with a copy of the policy and legal framework of the proposed counter-terrorism act of Sri Lanka, which had been approved by the Cabinet on 25 April 2017. Although not a bill in itself, the document provides a detailed framework for the proposed legislation to replace the Prevention of Terrorism Act. At the time of the visit, the draft framework was being prepared 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, the National Human Rights Commission is allowed unfettered access to individuals in detention and the Attorney General's right of veto over the grant of bail has been abolished. It contains an improved framework for administrative and pretrial detention, with greater scope for independent judicial review. However, there are a number of central flaws in the current draft framework that, if it was 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 while 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 video recording, 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 that limit the rights of those falling foul of it, could be used in circumstances very far removed from acts of real terrorism. The Special Rapporteur is particularly concerned that in the draft framework, acts of terrorism are not confined 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 Prevention of Terrorism Act. 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 little or no direct relation to terrorism whatsoever, including human trafficking, and offences that are prohibited under the Poisons, Opium and Dangerous Drugs Ordinance and the Immigrants and Emigrants Act. The Special Rapporteur is also concerned that the use of the expression "causing harm to the unity of Sri Lanka" (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 hinder freedom of expression, including the offence of 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 the language of the Prevention of Terrorism Act. It constitutes an overly broad provision that could be used to cover peaceful statements that are critical of the Government.[19] 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 a terrorist act "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 overrides the fundamental rights exclusion altogether, and renders its protection meaningless.

(c) Detention

35. In the light of the entrenched pattern of detention under the Prevention of Terrorism Act, the Special Rapporteur notes 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 for individuals to be held 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 would clearly lack 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. Furthermore, at the end of the period of detention under the order, release would not be automatic,[20] 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 requested it or at least did 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.[21] 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 carried out by an authority that is independent, objective and impartial in relation to the issues at hand, and the judicial authority must have the power to release the individual. Furthermore, individuals must 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 military is granted a key role under the framework, although it is not specified that in the context of counter-terrorism, the military should be bound by the same rules as those applicable to law enforcement. Furthermore, 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

[19] This provision is very similar to section 2 (1) (h) of the Prevention of Terrorism Act, which was used to arrest and prosecute journalists and activists.

[20] 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".

[21] Human Rights Committee, general comment No. 35, para. 66.

framework. The use of force should be strictly limited, in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

B. Impunity for human rights violations under the Prevention of Terrorism Act

38. The Prevention of Terrorism Act provides for 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" (sect. 26). 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 right to life, and of the absolute prohibition 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, they 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 punish perpetrators proportionately.

40. The Special Rapporteur welcomes the adoption by the Government of a "zero-tolerance policy" towards torture[22] and the appointment on 14 July 2016 of a committee to eradicate torture by the police. He also welcomes the Directive on Arrest and Detention under the Prevention of Terrorism Act, adopted on 18 May 2016 by the National Human Rights Commission, in which standards are set that must 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.[23] He further welcomes the important decision made by the President on 17 June 2017, to instruct the commanders of the armed forces and the police to abide by this Directive.

41. However, the Special Rapporteur is very concerned at the lack of a clear and effective procedure to complain about torture in custody. He notes that there is no formal procedure available to detainees in the prison system, and that there is no single clear channel for dealing with allegations 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 were related to 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 the light of the gravity of the crime of torture. Second, only High Courts have jurisdiction for complaints made under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994. Complaints can either be made directly to the Attorney General, or can be channelled through a ministerial-level mechanism adopted to monitor cases of torture.[24] Investigations are led by a Special Investigations Unit, under the supervision of the Inspector General of the Police.

[22] In 2016, all police officers attended workshops on the issue of torture. They were made aware of this policy, and they were informed that the commission of any act of torture or ill-treatment would lead to military and court action.

[23] In the Directive, it is stated that the Prevention of Terrorism Act should be "construed narrowly and used in very specific circumstances, and should not be used to arrest persons for ordinary crimes". Safeguards include: the right to meet with counsel during interrogation, the right to be brought before a judicial medical officer within 48 hours of arrest, the right to inform family members, and the requirement that all places of detention be clearly gazetted and authorized.

[24] Ministers are made aware of cases through public sources, reports from the Inspectorate General of the Police command centre, and fundamental rights applications.

Unfortunately, this procedure gives the Attorney General discretionary power over indictment, which has resulted in only three indictments made since 2010. Third, fundamental rights applications can be made before the National Human Rights Commission[25] or directly to the Supreme Court.[26] When made to the National Human Rights Commission, which received 3,404 complaints of torture against the police in the period 2010–2016, 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 about 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 Convention against Torture (A/HRC/13/39/Add.5, para. 134). 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 because 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 to have been subjected to torture has the right to complain and to have his or her case promptly and impartially examined by a competent and independent authority.

C. Dealing with past cases under the Prevention of Terrorism Act 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 Act. 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.[27] Given the very lengthy administrative detention that prevails under the Act that would in most cases amount to arbitrary detention, solving these past 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 for longer than the maximum sentence of the offence. This initiative is to be welcomed, but it is insufficient in the 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, and the perpetrators have not been brought to justice.

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

[25] See part II of the Human Rights Commission Act.

[26] See articles 17 and 126 of the Constitution of Sri Lanka.

[27] According to figures provided by the police and the Office of the Attorney General, as at 12 July 2017. Figures from other governmental departments ranged from 23 to 95 individuals.

Rapporteur that no efforts had been made by the Government to increase the number of criminal courts.

46. The Special Rapporteur notes that two Special High Courts, in Colombo and Anuradhapura, were set up in January 2016 to deal exclusively with cases under the Act. Despite obvious efforts from the two judges responsible for these High Courts to prioritize 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 in cases where those confessions had been the only evidence, the Courts appear to be underresourced and understaffed, 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 him that in the short time he had been in this role, he had only been able to accept 1 out of 11 confessions as evidence during a trial (the sole confession that had been made before a magistrate), while in Anuradhapura, out of 14 cases, 12 had been based solely on unreliable confessions. This raises extremely serious concerns over the fairness of the trials that have already been concluded and the possibility of severe miscarriage of justice. The Special Rapporteur regrets that provisions of the Prevention of Terrorism Act that further encroach upon the right to a fair trial, including the rights of defence (sect. 18) and those relating to appeals (sect. 19), 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 Act — is not mandatory, given the length of time these individuals have already spent in detention.

47. In meetings with victims under the Act, their families and their lawyers, the Special Rapporteur's attention was drawn to the fact that while those most affected by the operation of the Act were Tamils, detentions and trials under the Act rarely occurred in Tamil majority areas. In addition to proceedings being conducted in an unfamiliar language, he was told of the fear felt by some Tamil lawyers of attending trials, of the view of many Tamils that trials took place in hostile environments, and of the general distress of families who were far away for very long periods of time and felt excluded from the process. Several lawyers had stressed the lack of impartiality and independence of the judges dealing with those cases, and had requested the transfer of those cases to majority Tamil areas, such as Jaffna or Vavuniya.

48. The Special Rapporteur is clear that the way in which the Act has been and continues to be implemented amounts to a flagrant denial of justice, and that all of those still detained under the Act 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. Furthermore, those already convicted under the Act 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 establish a mechanism for reviewing the safety of all past convictions under the Act, particularly those in which a confession to the police was central evidence.

D. Transitional justice

49. The progress of the new counter-terrorism legislation, and the management of past cases under the Act, 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 personal assurance by the Prime Minister that once the 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 that the Government had promised to the international community to deliver in full by the time of the Special Rapporteur's visit.

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 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 reached his Office, those found guilty would be prosecuted with the full force of the law. The Attorney General recognized that if Sri Lanka was to achieve lasting peace, its law enforcement institutions must gain the confidence of all sectors of society, including the Tamil and Muslim minorities. Unfortunately, following the Special Rapporteur's visit, the President sought to shield a former army general from a criminal complaint in which he had been accused of command responsibility for war crimes.[28]

51. This falls far short of the international commitment made by Sri Lanka 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 reforms reflected in resolution 30/1 — including repealing the Prevention of Terrorism Act, adopting new human rights-compliant counter-terrorism legislation, solving past terrorism cases and ending the impunity that surrounds those 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 Disappearance, although belated, is to be welcomed. Its impact remains to be evaluated. Given the 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 who are allegedly responsible for grave human rights violations, including torture under the Prevention of Terrorism Act, 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, and it should 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 three desperately needed mechanisms in accordance with resolution 30/1 (a commission for truth, justice, reconciliation and non-recurrence, an office of missing persons[29] and an office for reparations) 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.[30]

E. Non-discrimination and stigmatization

53. The Special Rapporteur was informed of the important investment carried out by the Government to resettle Tamils and to 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 and that criminal law had been used against the Liberation Tigers of Tamil Eelam only. He was officially told 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 the perceived negative

[28] 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". (Al Jazeera, "Sri Lanka leader to shield general from war crimes case", 3 September 2017.)

[29] 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 implemented.

[30] See www.unog.ch/unog/website/news_media.nsf/%28httpNewsByYear_en%29/D0BF0EABE559E1ADC12581980045720E?OpenDocument.

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 underrepresented in all institutions, particularly in the security sector and the judiciary, despite the importance allegedly attributed to ensuring that all institutions adequately reflect the ethnic, linguistic and religious make-up of the State. The authorities explained that despite the various governmental programmes to reach out to Tamils, it was the Tamils that did not want to integrate into governmental institutions, notably because of the language barrier or their lack of trust in the Government. The Special Rapporteur is particularly concerned about the very large and imposing military presence in the north, which he witnessed himself in Vavuniya. While he understands that the military undertakes important reconstruction 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 and its involvement in civilian activities, and the overwhelmingly Sinhalese majority within the military, all contribute to perpetuating the resentment and disenfranchisement felt by the Tamil community as a whole.

55. The lack of reaction from the Government to incidences of 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 strengthens Tamil national sentiments.[31] In this context, the Special Rapporteur recalls that it is not diversity within a society, but marginalization, discrimination and alienation of groups that increases a country's vulnerability to terrorism and violent extremism. During his visit, he heard that current and former detainees were afraid of being arrested again under the Prevention of Terrorism Act, that it was impossible for them to find employment, and that their families were, or were perceived to be, under surveillance. He was told that Father Elil Rajendram, who had led efforts to create a memorial for families who had lost loved ones during the armed conflict in the north, had been interrogated by the Terrorism Investigation Division, which was evidence that the Act was used as a continuous threat against the Tamils. Former detainees, and individuals who had undergone rehabilitation, allegedly still faced 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 about the 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 Prevention of Terrorism Act and the allegations that torture of Tamils has occurred in the two years prior to the Special Rapporteur's visit, 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 pretrial detention that had lasted more than 10 years were justified because those people were guilty of "committing horrible crimes". Both statements reflect a commonly held view that suspects under the Act face an almost insurmountable credibility deficit, contrary to the principle of presumption of innocence. When viewed together with the figures that show that Tamils have been, and still are, overwhelmingly and disproportionately affected by the operation of the Act,[32] a picture emerges of the widespread institutional stigmatization of a single community.

[31] See International Crisis Group, "Sri Lanka's transition to nowhere", Asia Report No. 286, 16 May 2017.

[32] Figures provided by the police department show that detention under the Act still overwhelmingly affects the Tamil population, with a ratio of over 3:1 Tamils to non-Tamils.

F. Rehabilitation

57. A rehabilitation programme was set up in Sri Lanka in 2006 to deal with ex-combatants, and from the end of the conflict in 2009, it was used to deal with the large numbers of individuals who had various alleged links to the Liberation Tigers of Tamil Eelam and who, in the words of the Government, had "surrendered to the Government of Sri Lanka for safety and protection". A range of individuals with varying real or suspected links to the Liberation Tigers of Tamil Eelam were thus taken into custody and, following further investigation and an assessment of their risk level, placed either in detention under the Prevention of Terrorism Act, 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 been through the rehabilitation programme,[33] 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 Prevention of Terrorism Act, 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 Act to rehabilitation and back, through "revolving doors" that could keep them in detention without any judicial involvement for years on end. Since 2013, the restrictions on liberty have not always amounted 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, which 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 the Tamil 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. In resolution 30/1, co-sponsored by Sri Lanka itself, the Council emphasized the importance of 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 those key goals seemed to have ground to a virtual halt. None of the measures adopted by the time of the Special Rapporteur's visit to fulfil the transitional justice commitments made by Sri Lanka 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 the Special Rapporteur's visit, the Prevention of Terrorism Act 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 Prevention of Terrorism Act, 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**

[33] Under Regulation No. 22 of the 2005 Emergency (Miscellaneous Provisions and Powers) Regulations, as amended by Emergency Regulation 1462/8 of 2006, "surendees" could be detained in rehabilitation centres for 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 in, others were allegedly coerced into doing so to avoid "severe consequences", while others were arrested, often with the assistance of informants. The one-year programme includes six months of mental and physical health rehabilitation and six months of vocational training.

operation of the Act. The Tamil community remains stigmatized and disenfranchised, while the trust of other minority communities is being steadily eroded.

61. **Sri Lanka must urgently implement the commitments made in line with 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. Failure to 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 among vulnerable and alienated sections of the population. The price that future generations in Sri Lanka 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 Prevention of Terrorism Act for new arrests until it is off the statute book, 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 a prompt and effective judicial review of the legality of the detention of all those still detained under the Act;**

(d) **Submit all individuals charged under the Act to a fair trial with all guarantees of due process;**

(e) **Ensure that statements and confessions made by detainees under the Act have no probative value in proceedings against them;**

(f) **Establish a mechanism for reviewing all convictions under the Act in which evidence of a confession to the police was central to the prosecution case;**

(g) **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;**

(h) **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;**

(i) **Ensure that all interviews with detainees are fully in line with the proposal made by the Special Rapporteur on torture for a universal protocol for non-coercive, ethically sound, evidence-based and empirically founded interviewing practices (see A/71/298) and ensure that all interviews are video recorded;**

(j) **Consider transferring those still in pretrial detention or those serving sentences under the Prevention of Terrorism Act to places of detention closer to their families, and the two Special High Courts dealing with cases under the Act to majority Tamil areas;**

(k) **Ensure that the right to habeas corpus is fully reflected in the future legislation, in line with the 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;**

(l) **Guarantee full and unimpeded access to a counsel who speaks a language understood by the person detained from the beginning of the deprivation of liberty and throughout all stages of criminal proceedings;**

(m) **Urgently ratify and implement the Optional Protocol to the Convention against Torture, and enable the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to carry out regular unannounced inspections of all places of detention;**

(n) **Ensure that 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;**

(o) **Publicly issue unequivocal instructions to all security forces to immediately end all forms of surveillance and harassment against human rights defenders and victims under the Prevention of Terrorism Act and their families;**

(p) **Guarantee that all cases of hate speech and attacks on minorities are fully investigated and prosecuted and the perpetrators punished, without discrimination;**

(q) **Ensure minimum standards of detention in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**

(r) **Urgently reform all 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;**

(s) **Ensure that the security sector, particularly the police, intelligence services and the military, adequately reflects the ethnic and linguistic make-up of the country;**

(t) **Demilitarize the Northern Province, as a symbolic gesture of reconciliation and trust-building;**

(u) **Implement the specific and detailed recommendations of the Special Rapporteur on torture (A/HRC/34/54/Add.2), the Special Rapporteur on minority issues (A/HRC/34/53/Add.3), the Special Rapporteur on the independence of judges and lawyers (A/HRC/35/31/Add.1) and the Working Group on Enforced or Involuntary Disappearances (A/HRC/33/51/Add.2) following their missions to Sri Lanka, and those of the Committee against Torture (CAT/C/LKA/CO/5);**

(v) **Implement in full all the commitments made by Sri Lanka that are reflected in resolution 30/1, including by urgently putting into operation the office of missing persons.**