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

Written statement* submitted by the Tamil Uzhagam, 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.

[15 May 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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PTA Vs. CTA: Another Draconian Law replace New one ?*

Although Sri Lanka has sought to, since the war ended in May 2009, consign terrorism to the history books, the word does come back to haunt us often.

As a country that was victim to domestic terrorism, Sri Lanka has every right to take measures to protect itself from any potential threats – for instance, via relevant legislation.

The nature of this legislation, however, is what has warranted debate over the last few years; it is no secret that the existing Prevention of Terrorism Act (PTA) has been extensively criticised as a piece of ‘draconian legislation’ that facilitates human rights abuses and impunity for those responsible.

What Is The PTA?

The PTA gives police broad powers to search, arrest, and detain terror suspects.

The Prevention of Terrorism Act of 1978 is a law which provides the Police with broad powers to search, arrest, and detain terror suspects. It was first enacted as a temporary law in 1979 under J. R. Jayewardene’s presidency, and later made permanent in 1982.

A suspect arrested under the provisions of the PTA can be detained for a period of three months at a time. The time period can be extended, subject to approval by the Minister of Defence (Section 9). This order of detention cannot be questioned by any court of law, by writ or otherwise.

A person arrested under the PTA must be produced before a Magistrate within 72 hours of his arrest, unless a detention order is obtained by the Minister.

That person, if produced before the court, will be produced without a Preliminary Enquiry before a single judge without a jury. During the period of trial, he can be kept in remand and will not be allowed bail under any circumstances (Section 16).

Many local social groups, as well as politicians, have claimed that there is no need to continue with the PTA since the civil war has ended. Others claim that due to alleged abuse of the law, the PTA should be repealed or another new law should take its place. All Human Rights Activists has claimed that although an exact number of detainees has not been disclosed, there could be around 120 to 162 individuals detained under the PTA even today.

Problems With The PTA

The PTA needs to be changed because it is outdated. It was meant to fight a domestic insurgency in 1979 but the world has changed and the threats we face are much different. Unlike 1979, the world is a more connected place and terrorists can coordinate their activities far away from where the actual act takes place.

It is common knowledge that the PTA is a draconian piece of legislation which has been condemned by many in the international community,” he said, adding that “it has many faults and essentially suppresses personal rights through its arbitrary application. The biggest flaw is that any person arrested under the PTA could be detained for three months at a time extendable up to 18 months, subject to approval by the Minister. This detention order cannot be called into question by any court of law, which means that the Minister’s order, no matter how harsh or deceitful, will be upheld until he thinks it appropriate to release such person.

which means that confessions recorded by Police, whether by threat or coercion or by torture, would all be admissible in a Court of Law and will essentially result in an arrest. This is what happened in the infamous Singarasa case which received much criticism.

Enter CTA

Maithripala Sirisena takes oaths as President, January 2015. Abolishment of the PTA was one of the key promises of the UNFVG Government during the 2015 Presidential Election.

Once the Government of the United National Front for Good Governance, led by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe, came into power, revoking the PTA was among the main topics under discussion.

In June 2016, the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, acknowledged that a committee chaired by the Minister of Law and Order, Sagala Ratnayake, was appointed in April to draft a new legislative piece to replace the current PTA.

The Foreign Affairs Ministry later confirmed that the committee had obtained assistance in this regard from the United Nations Counter-Terrorism Committee Executive Directorate as well.

The committee is expected to draft two other legislative pieces; an Intelligence Act and an Act Against Organised Crime.

Once this news broke, a confidential document containing what appeared to be the first draft of this law, was leaked to the internet. The document was named "Policy and legal framework of the proposed Counter Terrorism Act (CTA) of Sri Lanka."

Even though this is not the finalised draft of the CTA, many a critic came out with banners of protest against the proposed law. The CTA, even before it was officially released to the public, was called "utterly chilling, worse than the PTA in many ways."

The CTA was criticised by the Tamil National Alliance, who have continuously called for the abolishment of the PTA. They claimed that the law will raise fear in many and said it has the potential to be worse than the PTA.

"Terrorism is now defined in the draft as threatening, attacking, changing or adversely affecting the unity, territorial integrity, security or sovereignty of Sri Lanka, or that of any other sovereign nation," the Sunday Times noted.

New Concerns

Although many flaws point to the need to repeal the PTA and bring in alternative legislation to combat terrorism, the CTA may not be the right answer.

The leaked document containing information on counter-terrorism legislation does not do much better. It is not a draft bill, but rather the initial step towards preparing a draft bill. In any case, it does not give out positive vibes and contains several other arbitrary provisions which had not previously been addressed by the PTA.

CTA's intentions are clear – to be better than the PTA. However, the CTA is no better than the current legislation.

For example, the PTA allowed for detention up to three months each time, for up to six times, and the Counter Terrorism draft makes it possible to issue a detention order for a period of one month up to six times.

Furthermore, there is a wider ambit of crimes covered under the Counter Terrorism draft which are classified as offences of terrorism, terrorism-related offences, associated offences, and other offences. Even crimes contained in the Penal Code such as criminal intimidation, murder, abduction, property damage and even robbery is contained under terrorism-related offences. On the current wording of the draft, it can be construed that a person ordinarily engaging in an act of robbery can be arrested under charges of terrorism.

The CTA draft also finds 'Violent Extremism' and 'ideological domination' as punishable offences. Shaheid claims that these offences are either inappropriately worded or can only be defined very vaguely.

While a large portion of the bill can still be construed as very vaguely worded, it tends to comprehensively cover the area of crime. However, enacting it on its current provisions will be arbitrary and will certainly restrict many of the rights of the people. The chances of manipulation and political victimization are still high under the leaked draft, but victimisation itself is a lot less. The prisoners are guaranteed access to their lawyers and family members under this draft, which makes it much better than the PTA.

The leaked draft for the CTA does, however, attempt to eliminate the possibility of political arrests; Shaheid notes that the authority to give out a detention order is vested in a Deputy Inspector General, and not the Minister, as it is under the PTA. The CTA draft also improves on the arbitrariness and control of the Minister by empowering the Magistrate to make a call on the detainees' further detention after 90 days.

No Better Than The Old Law?

There is a big question mark as to why this was done in such secrecy with absolutely no public consultations. As a victim of the PTA, still being investigated, harassed and intimidated, what need is to be discarded. And focus on strengthening existing legal and institutional framework to combat crime and terrorism, while ensuring protection of persons from abuses by the authorities.

The CTA draft sufficiently addresses potential terror threats. It's certain that the criticism against the CTA – that it can lead to human rights abuse – is a result of the PTA being misused by the previous administrations against Tamil Nation.

* Swiss Council of Eelam Tamils (SCET), Association Le Collectif La Paix au Sri Lanka, NGOs without consultative status, also share the views expressed in this statement.