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**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.

[22 August 2021]

* Issued as received, in the language(s) of submission only.



The Urgent Need for Repeal of Sri Lanka's Prevention of Terrorism Act (PTA) and actions required to stop the cycle of violence & impunity

We thank the member states of the Human Rights Council for passing Res. 46/1 in March and for the Office of the United Nations High Commissioner for Human Rights for taking up the task of collect, consolidate, analyse and preserve information of international crimes committed in Sri Lanka and for preparing that evidence for prosecution of perpetrators.

We respectfully request member states' assistance in assuring that the OHCHR has all the resources required for the important tasks mandated in the Resolution.

We are disappointed that the OHCHR is unable to present its report¹ on the importance of transitional justice for the attainment of Sustainable Development Goal 16² – peaceful, just and inclusive societies – as the lack of transitional justice in Sri Lanka for atrocity crimes committed during and after the war which ended in 2009 is a major factor in the lack of progress toward this Goal and is experienced profoundly by victims and by the affected communities as a whole on the island.

We thank the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence for his assessment of the implementation of the recommendations made following the country visit of the previous Special Rapporteur to Sri Lanka in 2017. We regret that so little concrete assessment of the current situation in Sri Lanka is actually made in his report, although the discussion of legal obligations and examples of good practices given are very useful for future efforts towards justice in Sri Lanka. Of particular interest re Sri Lanka's Prevention of Terrorism (PTA) discussed here is Paragraph 83 and the use of the idea of the "continuous nature of violations"³ to supersede statute of limitation laws, etc.

Sri Lanka's PTA⁴ was first passed in 1979 to restrict activities of Tamil youth disaffected by the 1977 anti-Tamil pogrom and increasing anti-Tamil discrimination. This law, along with various Emergency regulations, has been used as one of the most important tools to perpetrate war crimes, crimes against humanity and genocide against Tamils and to effect impunity for those atrocity crimes over the last 42 years, since it allows the quick and quiet disposal of bodies, indefinite detention and the use of confessions under torture in court. The fact that the law has not been repealed or substantially reformed despite the end of the war and despite repeated promises to the international community, including the UNHRC, is evidence of the importance the Sri Lankan state gives to suppression of Tamils, the community which has been the primary target of the law.

Muslims have also been increasingly held under the PTA since the end of the war, with Amnesty recognizing that the law's use needs to be understood in the context of the 'increased marginalization, discrimination and targeting' of the Muslim community.⁵ Sri Lanka is in the process of alienating another ethnic community through its heavy-handed use of counter-insurgency/counterterrorism methods.

The PTA has occasionally been used against political opponents, but without the long-term detention without trial, torture and large-scale disappearances used for decades against the Tamils. The PTA has also been used as a tool to quell dissent against the government.

¹ A/HRC/48/36 - E - A/HRC/48/36.

² Sustainable Development Goal 16 - United Nations and the Rule of Law.

³ For example, when a serious human rights violation is not defined as a criminal offence in national law at the time of the events, interpretations of international human rights law can be applied to counter impunity. For example, the notion of the continuous nature of violations, as applied in cases of enforced disappearance, provides an exception to the rule prohibiting the retroactive application of law and to the application of statutory limitations, thus allowing for the prosecution of perpetrators of these crimes even after some time has passed." A/HRC/48/60 - E - A/HRC/48/60 -Desktop (undocs.org).

⁴ Prevention of Terrorism Act (sangam.org).

⁵ Sri Lanka: Increased marginalization, discrimination and targeting of Sri Lanka's Muslim community | Amnesty International & Sri Lanka: Further information: Lawyer detained without trial for over a year: Hejaaz Hizbullah | Amnesty International.

“The PTA has a four-decade history of being used as a tool for political victimisation and majoritarianism politics. That is why the call to repeal the PTA exists and that is why it must be repealed, especially considering the severe harm it has caused and continues to cause to individuals who are detained under it,” said Tamil MP Shanakiyan Rasamanickam on July 22.⁶

As soon as the PTA was introduced,⁷ on 13 July 1979 youth started to be arrested, tortured and disappeared in Jaffna, which shocked the community.⁸ The Tamil Centre for Human Rights has documented 22 cases of disappearance in 1979.⁹

In 1981 Prof. Virginia Leary visited Sri Lanka on behalf of the International Commission of Jurists (ICJ), “The South African Terrorism Act has been called ‘a piece of legislation which must shock the conscience of a lawyer.’ Many provisions of the Sri Lankan Prevention of Terrorism Act are equally contrary to accepted principles of the Rule of Law.”¹⁰

Paul Sieghart, on a mission to Sri Lanka for the ICJ in early 1984, reported that when he met the Secretary to the Ministry of Defence he was told 83 people were being held under the PTA.¹¹ These numbers were to rise dramatically in following years, including after the end of the war and the government ended the practice of reporting the exact number of those being held. In the same report, Sieghart stated, “Support for a separate Tamil State is a consequence of the perception by the Tamil community of discrimination against them, reinforced by extravagant counter-measures against terrorism.”¹²

As Amnesty noted in its 1993 report on “Disappearance” and murder as techniques of counter-insurgency, “by late 1984 a new tactic of the security forces was evident: in an increasing number of cases where a person had been arrested by the security forces in front of witnesses, those forces denied holding the prisoner and their relatives were never able to establish their whereabouts. Whole groups of young men, who had been arrested together, simply “disappeared”...

Testimonies from released prisoners described the torture and killing of many prisoners in army or STF detention camps, and the secret disposal of bodies, often by burning. “Disappearance” appeared to be used for two purposes: it facilitated torture without accountability, and it concealed the killing of prisoners.

In the northeast the number who have “disappeared” or been extrajudicially executed to date runs into the thousands. From 1984 to mid-1987, Amnesty International recorded over 680 “disappearances” in the northeast.”¹³

In the same report, Amnesty stated that, “The government’s willingness to condone the actions of the security forces and government officials, even when they have committed gross abuses, was underlined in December 1988 when the Indemnity (Amendment) Act was passed days before a presidential election was to take place. This act gives immunity from prosecution to all members of the security forces, members of the government and government servants involved in enforcing law and order between 1 August 1977 and 16 December 1988 [in a period of conflict almost exclusively between Tamil armed groups and government forces] provided that their actions were carried out “in good faith” and in the public interest.”¹⁴ These exact provisions are also part of the PTA.¹⁵

The government does not release a list of those held under the PTA, but the Centre for Human Rights & Development was following at least 146 PTA detainees in 2020,¹⁶ some held for

⁶ TNA slams recommendation to not repeal PTA - The Morning - Sri Lanka News.

⁷ Refworld | Sri Lanka: Act No. 48 of 1979, Prevention of Terrorism (Temporary Provisions).

⁸ <https://sangam.org/pirapaharan-vol-1-chap-20-jaffna-turned-torture-chamber/>.

⁹ TCHR: Tamils Killed Disappeared Arrested Raped Injured Displaced 1956 - 2007 (sangam.org).

¹⁰ Sri-Lanka-ethnic-conflict-and-violence-fact-finding-mission-report-1983-eng.pdf (icj.org).

¹¹ Sri-Lanka-mounting-tragedy-of-errors-fact-finding-mission-report-1984-eng.pdf (icj.org).

¹² Ibid.

¹³ Amnesty-1993-asa370131993en.pdf (sangam.org).

¹⁴ Ibid.

¹⁵ Item #26.

¹⁶ PTA_Terrorising-Sri-Lanka-for-42-years-English.pdf (sangam.org), p.2.

decades. The June 24 pardon by the president of 16 former LTTE cadres¹⁷ held for long periods under the PTA demonstrates that this problem can be solved when there is the political will.

We call on the OHCHR, in its work to preserve, analyze and prepare the evidence for future judicial mechanisms, to consider the full range of atrocity crimes committed under the PTA in the last 42 years (with Tamils the predominant target for most of those years) to – among other benefits – demonstrate the ‘continuous nature of the violations’ with respect to enforced disappearances, torture, etc.

We call on the government to release all prisoners held under the PTA and for the complete revocation of the law for the peaceful coexistence of all people on the island.

The Australian Tamil Congress, British Tamils Forum, The US Tamil Action Group, NGO(s) without consultative status, also share the views expressed in this statement.

¹⁷ In order to retain GSP+ Sri Lanka tells EU that PTA being reviewed and reconciliation is progressing!
• Sri Lanka Brief.