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Stakeholders Submission for the Universal Periodic Review of Sri Lanka

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Association Loi 1901, doté du statut spécial auprès de l'ECOSOC depuis 2016 - Identification R.N.A. : W782001315 - SIRET : 449 450 527 00014
Etre libre, ce n'est pas seulement se débarrasser de ses chaînes ; c'est vivre d'une façon qui respecte et renforce la liberté des autres. [Nelson Mandela]

Prevention of Terrorism Act (PTA) & plight of political detainees

SUMMARY

Sri Lanka accepted to implement the recommendations following its UPR in 2012 and not been successful in implementing most of them. Following the election of a new president and a national government in early 2015, Sri Lanka has been tried various initiatives to make the necessary changes in order to ensure reconciliation in a divided island. This was further stressed in during the 30th Human Rights Council session in September 2015 when Resolution 30/1 was adopted by the Human Rights Council in September 2015 with the consensus of the Government of Sri Lanka for the promotion of reconciliation, accountability and human rights. However, very little has been achieved due to various Sinhala extreme political forces. Nevertheless, the Sri Lanka Human Rights Commission went through a major restoration and have been doing good work since then.

The government of Sri Lanka has failed review and repeal the Prevention of Terrorism Act (PTA) and replacement of an anti-terrorism legislation in line with contemporary international best practices.

Despite pledging to repeal the law in the UN Human Rights Council, the government continues to utilise this piece of legislation to discriminate against and marginalize the country's ethnic minority through detentions and arbitrary arrests.

The following summary of incidents of arrests under PTA

Number of rehabilitated ex-carders tried to move to the Middle Eastern countries by seeking job opportunities to avoid continuous harassment from officials of Terrorist Investigations Division (TID). Monitoring and surveillance of security forces was something these detainees were looking to escape from. Even after the change of government, the arrest of the ex- carders who have been released after the so called 'rehabilitation program' and who were trying to flee from the place of origin were arrested during their departure or arrival at the Airport. Even though they secure jobs through agencies who are functioning in the Middle East are unable to proceed with their travel. The situation has not improved for the ex-carders. They have been black listed by the immigration department and are being arrested during their return from abroad. It is important to note that many returned after the Ministry of Foreign Affairs of Sri Lanka had given assurances that all who had fled the country during the conflict can now return, since the change of new government, which stands for 'good governance'. However, since January to May 2016, more than 20 persons were arrested at the airport while either during arrival or departure.

Bail and Incarceration

The political detainees detained under the remand order of the Magistrate held a hunger strike in various prisons island-wide, calling for immediate action in terms of judicial delays regarding their litigations and amnesty. The fast unto death campaign which went on from 12th to 17th October 2015, resulted in some detainees being hospitalized due to their critical conditions. The hunger strike drew the attention of the Tamil Parliamentary Members and they informed the President and visited

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the detainees and promised a solution to their grievances within a month. Therefore, the hunger strike was called off. Since there had been pressure from both local and international activists and organizations, and following the assurances given by the Government after the 30th Human Rights Council Session in September 2015 where the OISL report and 4th resolution was passed on Sri Lanka, the government agreed to release a total of 39 PTA detainees from the New Magazine Prison in Colombo on very strict bail conditions.

After sometime 18 of them were ordered rehabilitation without any justification. The political prisoners too refused to go without any valid reasons. Therefore, their cases are still pending in court. The bailed out prisoners are attending court cases with many personal difficulties. The bail condition requires that they report to the TID, Colombo fortnightly. They travelled from Northern and Eastern provinces to Colombo every two weeks for this purpose.

Amongst those 18 prisoners who were ordered rehabilitation 05 of them have already under gone the so called government sponsored rehabilitation program and reintegrated into the community. It is deemed as meaningless if these detainees are forced to go for reintegration once again by the AG's department and TID and doubts are being raised of the government sponsored reintegration program itself. The attitude of Attorney General's Department clearly shows the lack of interest and the will to release the political detainees nor expediting their cases.

Once again on April 19, 2016 the detainees held a hunger strike demanding to expedite the legal action and a representative of AG's department came to court in order to read out the charges which were leveled against them. This clearly shows the absurdity and arrogance of an important and responsible government department, which has failed to adhere to the very basic principle 'innocent unless proven guilty'

Abductions and arrests by the TID on the basis of Revamping LTTE

Since April 02, 2016 more than 35 persons were arrested in connection with a case where few ammunitions were found in Chavakachcheri, Jaffna. Thereafter, many of the Ex-LTTE members were arrested in connection to the incident. Most of them were taken in a blue van which had no number plates or any other identification. Families were provided with limited information about their arrests and no arrest receipts were handed over to the families. The arrests took place across North and East provinces. Visits by family members were restricted and the arrestees were demanded to give a statement before the magistrate, instructed by the TID under section 127 of Criminal Procedure Court with the assurance of their release. For instance, as at 28th June 2016, 28 persons have been arrested in connection with the discovery of a suicide jacket, explosives and other ammunition in Chavakachcheri, Jaffna. Of the 28 arrested, 24 were arrested under the PTA¹. One of those arrested under the PTA was taken into custody while lodging a complaint at the Human Rights Commission office in Jaffna. No arrest receipts were issued during the time of arrest in at least 10 cases and out of the 28 arrested 03 were produced before the Magistrate on the assurance given by the TID that they will be released if a statement is made before the Magistrate as per instructed by the TID. Suspects were not produced before a Magistrate within 72 hours (as stipulated by the Act). Moreover, detainees were not allowed legal assistance for 48 hours after their arrest; with lawyers having restricted access even thereafter.

¹ "Continuing abuse under PTA: Abductions, Arbitrary Arrests, Unlawful Detentions and Torture", Groundviews, 28th June 2016: <http://groundviews.org/2016/06/28/continuing-abuse-under-pta-abductions-arbitrary-arrests-unlawful-detentions-and-torture/>

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Although arrests under PTA were carried out till the latter part of 2016 where nearly 60 arrests have been recorded, it is important to note that the seven arrests that took place in the Northern province of Sri Lanka in 2017 were charged under the Offensive Weapons Act and Opium and Dangerous Drugs Act. But their investigations are carried by the Terrorist Investigations Department. This goes in line with the government's recent statement at the UNHRC that PTA is not in operation anymore and the need to maintain or increase military presence in the North and East is imperative in order to counter revamping of the LTTE.

There is reliable information that steps are being taken to repeal the PTA with a proposed Counter Terrorism bill which is deemed as even more severe is yet to be publicly shared. Human rights groups noted that the new piece of law, if adopted, could give the government an opportunity to crush any dissent and any opposition by labelling it as 'terrorism'.

Therefore, such moves by the State only proves that the draconian legislations such as PTA and ER is very much alive despite assurances given by the government to the international community.

Sri Lanka's draconian PTA includes a number of highly controversial provisions, including:

1. the power of entry, search, seizure and arrest without a warrant (Section 6(1));²
2. the power to hold a suspect in remand until the conclusion of his trial (Section 7);³
3. The ability to detain a suspect up to 18 months without trial (Section 9(1))⁴
4. Confession extracted under this law is admissible in court and such confessions are often obtained under torture and duress

The aforementioned provisions of the PTA are in direct contravention of some of the most significant fundamental rights provisions granted by the Sri Lankan Constitution, including Article 12(1)—the right to equality⁵; and Articles 13(1)⁶ & (2)⁷—the freedom from arbitrary arrest, detention and punishment.

The application of the PTA has negatively affected the application of ordinary law, including the reticence of the judiciary towards protecting civil liberties, permitting abuse and impunity of the

² Section 6(1), Prevention of Terrorism (Temporary Provisions) Act: *Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary" (a) arrest any person ; (b) enter and search any premises ; (c) stop and search any individual or any vehicle, vessel, train or aircraft; and (d) seize any document or thing, connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.*

³ Section 7(1), Prevention of Terrorism (Temporary Provisions) Act: *Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made En writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person*

⁴ Section 9(1), Prevention of Terrorism (Temporary Provisions) Act: *Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time: Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.*

⁵ Article 12(1), The Constitution of the Democratic Socialist Republic of Sri Lanka: *All persons are equal before the law and are entitled to the equal protection of the law*

⁶ Article 13(1), The Constitution of the Democratic Socialist Republic of Sri Lanka: *No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.*

⁷ Article 13(2), The Constitution of the Democratic Socialist Republic of Sri Lanka: *Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law.*

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police, military powers interfering with individual rights, and eroded public transparency and good governance.

The Attorney General's Department which has failed to adhere to the very basic principle 'innocent until proven guilty'. The responsible government department continues to ignore the plight of the detainees. A total of 187 political prisoners are detained under the PTA of which 73 have been released on strict bail conditions and have ongoing cases in various courts. There are also 21 detainees languishing in various prisons in the Island for a lengthy period of time. Meanwhile it is apt to mention the plight of nearly 35 detainees who are serving sentence in the Magazine Prison.

Sri Lanka Human Rights Commission too has laid down general directives in this regard. A Press Communiqué released by the Sri Lanka Human Rights Commission highlighted the ill effects of long term detention and the human rights violations to the Attorney General.⁸

Agitation for reform of the draconian PTA has been long-standing and forms an important aspect of the Government's international human rights commitments. The demand of the political prisoners is that they be released unconditionally. Many are calling for the unconditional release of all political prisoners. They cite a precedent set in 1971 and 1989 when Sinhalese rebels from the South were released without court cases and with minimum conditions and within very short time.

Although adoption of Resolution 30/1 in October 2015 was a major achievement and an important milestone, there are growing doubts about the government's political will and ability to see the complex process through even in spite of 02 year extension of Resolution 30/1

Therefore, we ask the UNHRC to call upon the government of Sri Lanka to take immediate steps

Recommendations

Anti-Terrorism Legislation

- a. Repeal the Prevention of Terrorism Act and abolish the system of administrative detention;
- b. Ensure that security measures adopted in the context of armed violence comply with international human rights law;
- c. Release all individuals arrested under emergency or anti-terrorism laws, unless they are charged with recognizable criminal offences and remanded by an independent, regularly constituted court. Any trials must be held promptly and in regularly constituted courts with all internationally recognized safeguards provided.
- d. Take immediate measures to establish a special unit to handle cases related to PTA and ensure expediting the legal process which has been dragging on for a lengthy period of time.
- e. Revamping of the Attorney General's Department which was part of the directives of the Sri Lanka Human Rights Commissions' directives should also take place without delay.

Enforced Disappearances

- f. Initiate and implement effective witness and victim protection.
- g. Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances, in accordance with international norms and in a transparent manner.

⁸ Press Communiqué, Human Rights Commission of Sri-Lanka, 27 November 2015, HRC Release of prisoners <http://hrcls.lk/english/wp-content/uploads/2015/11/HRCSL-Press-release-on-27-November-2015.pdf>

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- h. Facilitate to the Working Group on Enforced and Involuntary Disappearances to victims family without intimidations.
- i. Families of the disappeared are clear in their demands for truth, justice, redress, and guarantees of non-recurrence. It is critical to address the enormous problem of enforced or involuntary disappearances in Sri Lanka by tracing the missing, determining what happened, and prosecuting those responsible. This will be an important first step in dealing with the past.
- j. Moreover, the State should endeavor to build trust with Tamil Nation affected by war, who are weary about participating in yet another flawed domestic mechanism purporting to address enforced or involuntary disappearances.
- k. The pain and loss suffered by the people is immense and indescribable and therefore, it is important that they should be a part of the transitional justice process especially in formulating the framework of the four reconciliation mechanisms. It is imperative that the Government of Sri Lanka and UN understands the suffering and yearnings of the affected Tamil Nation. If not, search for truth and justice would be just another failure.

National Human Rights Action Plan

- l. Promptly implement the concrete human rights commitments contained in the National Human Rights Action Plan, particularly those that will protect against ongoing gross violations of human rights and ensure an end to impunity.

National Institutions

- m. Strengthen and ensure the independence of human rights institutions such as the National Human Rights Commission,

Witness Protection

- n. Initiate and implement effective witness and victim protection, in line with commitments made during the previous review but not yet implemented.

Torture and ill-treatment

- o. Implement the recommendations of the Special Rapporteur on torture, including to strengthening legal safeguards for eliminating all forms of ill treatment or torture in prisons and detention centres.

Death Penalty

- p. Abolish the death penalty and commute all death sentences to terms of imprisonment.

Extrajudicial Executions

- q. Investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards.

Impunity

- r. Take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law.
- s. Stop to protect war criminals and promote them as high level diplomats

War crime, Crime against Humanity and Genocide

- t. We request you to take measures to judicially address the Genocide against the Tamil people as called upon by the unanimous resolution adopted by the Northern Provincial Council of Sri Lanka in February 2015.
- u. Recognise the obvious pattern of sexual abuse against Eelam Tamil women as being carried out with genocide intent.

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- v. Initiate an independent international investigation into the genocide of Eelam Tamils on the island to bring perpetrators of the crime of genocide to justice.
- w. Application of international criminal law, including war crimes, crimes against humanity, and genocide;

Ratification and implementation of international human rights treaties

- x. Ratify and implement the International Convention for the Protection of All Persons from Enforced Disappearance;
- y. Implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- z. Ratify the Rome Statute of the International Criminal Court;
- aa. Establish procedures in law to consider modalities for implementing the views of the UN Human Rights Committee.
- bb. Referendum for the Eelam Tamils in Sri Lanka, so that Tamil Nation can decide their political destiny.

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