

11th November 2016

His Excellency Maithripala Sirisena,
The President,
Democratic Socialist Republic of Sri Lanka,
Presidential Secretariat,
Colombo-01

Dear President Sirisena,

Opposition to proposed counter-terror law

1. We write to express our strong opposition at the document in the public domain titled [“Policy and legal framework of the proposed Counter Terrorism Act of Sri Lanka”](#), and **categorically reject** it as a viable alternative to replace the current Prevention of Terrorism Act (“PTA”).¹

Lack of public information and consultation

2. In September 2015, the Government committed to review and repeal the PTA and replace it with anti-terrorism legislation in accordance with contemporary international best practices.² Since then, there has been a complete absence of information from the Government about the intended review of the PTA, and no consultation with the Sri Lankan public about proposed new legislation to the best of our knowledge.
3. We note the Government’s consultations with United Nations (UN) bodies and hope this also includes the Office of the High Commissioner for Human Rights and the UN Special Rapporteur on Counter-Terrorism and Human Rights. We also hope the numerous observations and recommendations by treaty bodies in relation to the PTA will be taken into account. However, we are concerned that consultations with the UN have been shrouded in secrecy and appear to have been prioritised over consultations with the Sri Lankan public, and that information and documents have been shared with the UN that to date, have not been shared with the general public.

Uncertainty about status of document

4. The status of the document that is now in the public domain, titled “Policy and legal framework of the proposed Counter Terrorism Act of Sri Lanka”, is unclear. The Government has made no official statement whether this document is draft legislation intended to replace the PTA. However, we understand that this document is being discussed in international meetings, including in relation to Sri Lanka obtaining GSP+ status.
5. Shortly after a “leaked” version of the purported draft framework was available in the public domain, it was reported that the Cabinet of Ministers had decided ‘to forward the policy and legal framework drafted by the said committee and presented by Hon. Prime Minister Ranil Wickremesinghe, to the Sectoral Oversight Committee on National

¹ Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979.

² Speech by Hon Mangala Samaraweera, Minister of Foreign Affairs, Human Rights Council, 14 September 2015; Human Rights Council Resolution, Promoting reconciliation, accountability, and human rights in Sri Lanka, 14 October 2015, UN Doc. A/HRC/RES/30/1 (adopted 1 October 2015), para 12.

Security³ It was also reported that Opposition MP, M.A. Sumanthiran, stated that a draft counter-terror law was before the Parliamentary Oversight Committee.⁴ Further, in email correspondence with one of the signatories to this letter, the UN Security Council's Counter-Terrorism Committee also stated the draft framework was before the Parliamentary Oversight Committee. We urgently request that you **officially** put the document that is now before the Parliamentary Oversight Committee into the public domain, and also to officially make public the previous secret draft that we understand was developed by the Law Commission, which also has been leaked and is now online. This will help to ensure the public does not need to be concerned or misled by "leaked" versions which are not official versions.

The proposed policy and legal framework

6. The repeal of the PTA has been vehemently sought to remove egregious provisions, such as confessions to police officers and long periods of administrative detention without judicial supervision. The proposed framework does not appear to address these fundamental concerns attached to the PTA. Alarming it appears to amplify the existing grave concerns, such as by a range of offences spanning eight pages that lack the specificity required in penal provisions, expansion of law enforcement powers to the armed forces and coastguard, enable return of suspects in remand custody to police custody and provide for deferment of indictments upto 10 years if some broad and discretionary conditions are not fully complied by suspects.
7. 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 police, military powers interfering with individual rights, and eroded public transparency and good governance. The PTA has also been used to stifle dissent and free speech, and has created a permissible environment for enforced disappearance and systematic torture. Any new framework or formulation of counter-terror legislation must explicitly ensure that there is no further assault on civil liberties. It must also appreciate the fact that there is a constitutional and legal regime pertaining to declarations of emergency, and a clear demarcation between the purpose of counter-terror laws and emergency laws.
8. In the way it is written, the proposed law will have a chilling effect on all forms of dissent, including legitimate democratic political activity. We have long seen how the PTA and Emergency Regulations have disproportionately targeted the Tamil ethnic community. The administrative and executive culture, particularly the police and security forces, continues to be pre-disposed to such disproportionate treatment. Therefore we fear, that without explicit safeguards any proposed counter terror legislation too, would lend itself to violence and discrimination targeting numerically disadvantaged social groups, including ethnic, religious and ideological minorities. Further, it completely lacks proportionality and is not linked to any threat perception that is overseen by the legislature.

³ Cabinet Decisions - Decisions taken by The Cabinet of Ministers at its meeting held on 11-10-2016 - <http://www.news.lk/cabinet-decisions/item/14672-decisions-taken-by-the-cabinet-of-ministers-at-its-meeting-held-on-11-10-2016>

⁴ NewsIn.Asia, "Tamil National Alliance confident of modifying unacceptable new anti-terror draft law in parliament", 16 October 2016, <http://newsin.asia/tamil-national-alliance-confident-modifying-unacceptable-new-anti-terror-draft-law-parliament/>.

9. The ideology emanating from the document is one of embedding exceptional circumstance laws into the ordinary legal system. The spirit and purpose of both the PTA and the proposed law are similar: extreme powers are granted to the executive, military, and police in the name of preventing and countering terrorism, without independent checks and balances, and at the expense of rights and protections constitutionally guaranteed to citizens. Further, the expansive nature of the proposed law is not commensurate to the post-war environment that Sri Lanka is in, nor with a reasonable assessment of proposed terror threats.
10. The defects of the proposed law are not a matter of mere amendments to particular clauses. The proposed law, taken holistically, falls significantly short of what is acceptable and permissible as a counter-terror law for Sri Lanka, and therefore reiterate our stance that **this draft is beyond reform and must be withdrawn in its entirety.**

Signed by;
Individuals

1. Ainslie Joseph
2. Anberiya Hanifa
3. Ash Sheikh M.G. Rayeesul Islam
4. Ashran Ashraf
5. B.J. Mohamed Zeith
6. Balachandran Gowthaman
7. Balasingham Skanthakumar
8. Bhavani Fonseka
9. Cayathri D.
10. Chandra Jayaratne
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12. Chandrika De Silva
13. Deanne Uyangoda
14. Deborah Philip
15. Deshamanya Godfrey Yogarajah
16. Dinuka Fernando
17. Dr. Isabelle Lassee
18. Dr. Jehan Perera

19. Dr. Leonie Solomons
20. Dr. Malathi de Alwis
21. Dr. Muhammed Muzzammil Cader
22. Dr. Paikiasothy Saravanamuttu
23. Emil van der Poorten - A believer in human and civic rights
24. Ermiza Tegal
25. F. Nandana Saparamadu
26. G.V.D. Tilkasiri - General Secretary, Working People Alliance
27. Gayathri Gamage
28. Hans Billimoria
29. Hasanah Cegu Isadeen
30. Hemalatha A. - Jaffna WAN Desk
31. Herman Kumara
32. Hyshyama Hamin
33. Ian Ferdinands
34. Iromi Perera
35. Ithayarani S. - Womens Rights Activist
36. Jake Oorloff
37. Jayadeva Uyangoda
38. Jayantha Dhanapala
39. Joe William
40. K. Guruparan – University of Jaffna
41. K.S. Ratnavale – Attorney-at-law
42. Kalani Subasinghe
43. Kamani Jinadasa
44. Kumudini Samuel
45. Kusal Perera – Journalist
46. Latheef Farook

47. Lucille Abeykoon
48. Luwie Ganeshathasan
49. Mario Arulthas
50. Marisa de Silva
51. Melisha Yapa
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53. Mujeebur Rahman. P.M – Journalist
54. Navaranjini Nadarajah Sureka
55. Nicola S.
56. Nigel Nugawela
57. Nilshan Fonseka
58. Nirmanusan Balasundaram
59. P. Selvaratnam
60. P. Sivapragasam - Workers Solidarity Union
61. Padma Atapattu
62. Philip Setunga
63. Prabu Deepan
64. Prema Gamage
65. Prof. Gananath Obeyesekere
66. Prof. Jayantha Seneviratne
67. Prof. S. Ratnajeevan H. Hoole
68. R.M.B. Senanayake Retired C.C.S
69. Raisa Wickrematunge
70. Rajany Rajeswary – Feminist, Jaffna
71. Rajany Rifadh - Activist
72. Ralston Weinman
73. Ranitha Gnanarajah
74. Rev. Fr. J.C. Paul Rohan

75. Rev. Fr. Jeyabalan Croos
76. Rev. Fr. Nandana Manatunga
77. Rev. Fr. Noel Fernando – Coordinator - Reconciliation & Peace Desk, Diocese of Colombo
78. Rev. Fr. Reid Shelton Fernando
79. Rev. Fr. Rohan Dominic
80. Rev. Fr. Saman Perera
81. Rev. Fr. Sarath Iddamalgoda
82. Rev. M. V. E. Ravichandran – Director - Youth Commission, Diocese of Jaffna
83. Rev. Sr. Nichola
84. Rev. Sr. Noel Christine Fernando
85. Riza Yehiya
86. Ruki Fernando
87. S.C.C. Elankovan
88. S.M. Selvaratnam
89. Sampath Samarakoon
90. Sanjana Hattotuwa
91. Selvaraja Rajasegar
92. Sepali Kottegoda
93. Shamini V. – Vallamai, Jaffna
94. Shehan de Alwis
95. Sheila Richards
96. Shenali De Silva
97. Shreen Abdul Saroor
98. Subha Wijesiriwardena
99. Sumika Perera
100. Supipi Jayawardena
101. Suren Perera

- 102. T. Balamurukan
- 103. Thiruni Kelegama
- 104. Udaya Kalupathirana
- 105. Vasanthagowry – Vallamai, Jaffna
- 106. Vasuki Jeyasankar
- 107. Yves Bowie

Organizations

- 108. Campaign Against Criminalising Communities (CAMPACC), UK
- 109. Centre for Human Rights Development (CHRD)
- 110. Centre for Policy Alternatives (CPA)
- 111. Human Rights Office (HRO), Kandy
- 112. INFORM Human Rights Documentation Centre
- 113. National Fisheries Solidarity Organization (NAFSO)
- 114. National Peace Council (NPC)
- 115. National Shooru Council
- 116. SAMADANA/M - Centre for promoting Nonviolence, Conflict Resolution & Handling and Peace Building
- 117. South Asia Centre for Legal Studies (SACLS)
- 118. Women and Media Collective (WMC)
- 119. Women's Action Network (WAN)
- 120. Women's Resource Center (WRC)

Copy to:

- 1. Hon. Ranil Wickremesinghe, Prime Minister.
- 2. Hon. Dr. Wijeyadasa Rajapakse, Minister of Justice.
- 3. Hon. Mangala Samaraweera, Minister of Foreign Affairs.
- 4. Hon. Mano Ganesan, Minister of National Co-existence Dialogue and Official Languages.

5. Hon. Rajavorothiam Sampanthan, Leader of the Opposition.
6. Hon. Sagala Ratnayake, Minister of Law & Order and Southern Development.
7. Hon. Ruwan Wijewardena, State Minister of Defence.
8. Hon. Jayantha Jayasuriya PC, Attorney-General
9. Dr. Deepika Udagama, Chair, Human Rights Commission of Sri Lanka.
10. Mano Tittawella, Secretary-General, Secretariat for Co-Ordinating Reconciliation Mechanisms.
11. Madam Chandrika Bandaranaike Kumaratunga, Chair, Office for National Unity and Reconciliation.
12. Ban Ki-moon, UN Secretary-General.
13. Zeid Ra'ad Al Hussein, UN High Commissioner for Human Rights.
14. Ben Emmerson QC, UN Special Rapporteur on Counter-Terrorism and Human Rights.
15. Philip Divett, Programme Officer, Terrorism Prevention Branch, UN Office of Drugs and Crime (UNODC).