**Call for Input: Use of Administrative Measures in Counter Terrorism – Report to the Human Rights Council on Terrorism and Human Rights**

**Submitted by:**

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1. **Please provide information on the application of administrative measures in the context of countering terrorism. This includes, but is not limited to, the use of administrative - or security - detention, travel or entry-into-own country bans, movement restrictions, deportation orders, countering the financing of terrorism, terrorism listing of entities and individuals, surveillance, and deprivation of nationality.**

Detention orders

In Sri Lanka, the counterterror law - the Prevention of Terrorism Act 1979, the implementation of which has resulted in egregious violations of human rights, allowed persons to be held in administrative detention in police custody, for up to eighteen months, without being produced in court. In 2022, the [amendment](http://documents.gov.lk/files/act/2022/3/12-2022_E.pdf) to the Prevention of Terrorism Act (PTA) reduced this period to twelve months.

This provision removes a person from the ambit of judicial protection and has allowed police to adopt an ‘arrest first, investigate later’ approach as they are allowed up to one year before they are required to justify the arrest to judicial authorities. Numerous human rights violations have been reported by persons held on administrative detention under the PTA – including torture, being held incommunicado and being forced to sign confessions (discussed in detail below).

Listing of entities/individuals

Persons and organizations can be designated, at the national level, as associated with terrorism or terrorist financing, which can lead to the funding belonging to these entities being frozen.

Administrative measures to counter financing of terrorism

A circular issued by the Central Bank of Sri Lanka (CBSL), which requires commercial licensed banks to undertake ‘enhanced due diligence’ of non-governmental organisations (NGOs) that are not registered with the NGO Secretariat is being misinterpreted by banks to refuse to credit foreign funds to NGOs if they are not registered at the NGO Secretariat. This is discussed in detail below.

The NGO Secretariat was previously within the purview of the Ministry of Defence and currently under the Ministry of Public Security. In a context where NGOs are demonized by the government for their activities and considered ‘threats’ to national security, administrative instructions are being used to impede their operations and create informal/extra-legal barriers.

1. **Please provide information on the regulatory framework used for implementing administrative measures in countering terrorism and elaborate on the interrelationship between these measures and the use of the criminal justice system to prevent and counter terrorism.**

Prevention of Terrorism Act (PTA)

Section 9 of the [PTA](http://www.mediareform.lk/wp-content/uploads/2020/03/160-Prevention-of-Terrorism-Temporary-Provisions-Act-No.48-of-1979.pdf) allows the Minister of Defense to issue a detention order (DO) where there is ‘reason to believe or suspect that any person is connected with or concerned in any unlawful activity’. A DO can be issued for a maximum of three months initially and thereafter extended every three months, with the aggregate period of detention not exceeding twelve months. Hence, this allows a person to be detained without being produced before a judge for up to twelve months. The PTA does not include periodic judicial review to ascertain the continued need for the deprivation of liberty, in contravention of international standards. This is most concerning, especially since the DO is not issued/extended by an independent or unbiased authority but the Minister of Defense. The PTA therefore encroaches upon judicial power and transfers that power to the executive. There is no oversight of the actions of the Minister of Defence, except through a petition filed in the Supreme Court [challenging](http://www.commonlii.org/lk/legis/const/2000/17.html) the violation of a fundamental right.

The [report](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) of the study of prisons conducted by the Human Rights Commission of Sri Lanka contains the most detailed account of violations experienced by persons held under the PTA. According to data gathered during the study, it appeared that the Minister of Defense issued detention orders and renewed them without conducting a substantive assessment of whether there were grounds to issue a detention order. Moreover, persons detained under the PTA reported not being given copies of the DO when their detention was extended. Hence, often they had no documentary evidence their detention was legally extended.

United Nations Act

UN Security Council Resolution (UNSCR) 1373 is implemented in Sri Lanka via the United Nations Regulations No. [1](http://competentauthority.gov.lk/resources/resolutions/sl/1373.pdf) of 2012 issued by Minister of External Affairs (at the time) under the United Nations Act, No. 45 of 1968. Under these regulations, the Secretary to the Ministry of Defense is the Competent Authority for the implementation of UNSCR 1373 and other successive resolutions and is required to compile a list, designating:

(a) natural persons, whom the Competent Authority has reasonable grounds to believe commit or attempt to commit, participate in or facilitate the commission of, terrorist acts within the meaning of these regulations;

(b) legal persons, groups or entities, which the Competent Authority has reasonable grounds to believe commit or attempt to commit or participate in or facilitate the commission of, terrorist acts within the meaning of these regulations ;

(c) legal persons, groups or entities which are owned or controlled directly or indirectly by one or more natural or legal persons, group or entities referred to in (a) and (b) above; and

(d) natural and legal persons, groups or entities acting on behalf of, or on the direction of, one or more natural or legal persons, groups or entities referred to in (a) and (b) above.

The outcome of persons and entities being designated is primarily the freezing of their bank accounts and associated assets. Although the regulations do not require the Competent Authority to consult any other entity, the website of the Competent Authority claims that the listing process shall involve consultations with the “[Financial Intelligence Unit](https://www.cbsl.gov.lk/en/financial-intelligence-unit) (of the Central Bank), and other relevant authorities as the Attorney General, the Customs Service, the Police and the Ministry of Foreign Affairs in order to identify targets”.

Persons aggrieved by the designation may apply to the High Court for the decision to be set aside. It should be noted that the cost of legal action in Sri Lanka is prohibitive and hence not accessible by all. Since the pattern of designation under the PTA, much like arrests under the PTA, demonstrates that it is mostly persons from marginalized and economically underprivileged backgrounds that have been designated, it is highly unlikely most of those designated would be able to avail themselves of the provided remedy. Furthermore, retaining legal representation for allegations of terror financing can be difficult because lawyers may prefer to not be associated with controversial cases.

Circulars issued by the Financial Intelligence Unit of the Central Bank of Sri Lanka

The Financial Intelligence Unit (FIU) is an entity within the Central Bank system, created to [implement](https://fiusrilanka.gov.lk/fiu_objectives.html) countering terrorism financing and anti-money laundering policies. Circular 02/14 of the FIU outlines the [process](https://fiusrilanka.gov.lk/docs/Circulars/2014/Circular-02-2014.pdf) by which banks and financial institutions are required to respond to the listing of persons and entities and report to the FIU.

A circular dated 23 May 2019 was issued by the FIU to CEOs/General Manager of all licensed banks. The circular 01/2019 titled, “Conducting Enhance Due Diligence with respect of the Non- Governmental Organizations, Not-for-Profit Organizations or Charities under Financial Institutions (Customer Due Diligence) Rules, No. 1 of 2016”, refers to Rule 51 of the Financial Institutions (Customer Due Diligence) Rules, No. 01 of 2016. Rule 51 states that, “every financial institution shall conduct enhanced CDD measures when entering into a relationship with a Non-Governmental Organizations (NGO) or a Not-for-Profit Organization (NPO) and Charities to ensure that their accounts are used for legitimate purposes and the transactions are commensurate with the declared objects and purposes”.

The circular goes on to state that all licensed banks are to monitor and report any Non-Governmental Organization:

a) not registered with the national secretariat for Non-Governmental Organization;

b) registered with any other institution including the District Secretariat or the

Divisional Secretariat or any other institution;

c) receives direct foreign funds/remittances into their accounts

and to submit such reports under Section 7 of the Financial Transactions Reporting Act No. 06 of 2006. Hence, the monitoring and reporting of NGOs is required to be done under Section 7 of the Financial Transactions Reporting Act. Section 7 of the said Act states that where the bank “has reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of any unlawful activity or any other criminal offence” the bank has to inform the Financial Intelligence Unit of the Central Bank.

According to Section 7 (2) (c), the report the bank submits to the Financial Intelligence Unit has to “contain a statement of the grounds on which Institution holds the suspicion”, i.e. the suspicion has to be based on reasonable grounds and cannot be frivolous, spurious or arbitrary. Therefore, Circular no 01/2019 does not require the bank to refuse to remit foreign funds if the organization is not registered with the NGO Secretariat. It only requires banks to conduct additional due diligence.

To date, there is also no other law or regulation that requires banks to refuse to remit foreign funds if the organization is not registered with the NGO Secretariat. However, in practice it has been noted that banks are refusing to remit foreign funds received by civil society organisations citing the said circular. However, while banks refuse to remit foreign funds, they are not reporting these civil society organisations to the FIU of the Central Bank using Section 7 of the Financial Transactions Act, because they clearly do not have reasonable grounds to suspect the funds will be used for criminal activities. The decision of the banks is hence not based on law but seems to be taken arbitrarily by reading the said circular in an overbroad manner to place restrictions that do not exist in law.

1. **With respect to the administrative measures used and referred to above, please provide information on the challenges and benefits of the use of these administrative measures as well as good practices and lessons learned. In doing so, please elaborate how administrative measures used effectively address the threat posed by terrorism.**

Administrative detention

Patterns in the use of administrative detention, as documented by the HRCSL prison study [report](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) and set out in Supreme Court judgments[[1]](#footnote-1), demonstrate the arbitrary nature of administrative detention under the PTA. Furthermore, persons arrested under the PTA were held in multiple places of detention, for months at a time, on a detention order, without being produced before a Magistrate during which period they were tortured to extract confessions. The detention was extended by the arresting authorities without being subject to independent scrutiny, as the Minister would comply with the recommendation of the police to extend detention without undertaking an independent assessment.

Several persons reported being [held](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf) incommunicado while in administrative detention, with their family members or legal representatives not being informed of their whereabouts nor provided with copies of the DO.

It has overwhelmingly been confirmed that persons were tortured during administrative detention with the aim of extracting confessions, which many signed. Since persons were not produced in court for up to eighteen months during this period, there was no judicial review or oversight of the detention, which prevented the torture from being reported and/or documented, as persons would not be sent for examination by a Judicial Medical Officer (JMO), or even allowed access to medical treatment for injuries. This in turn, would lead to difficulties in proving torture was perpetrated, as persons would be seen by a JMO several months after the torture. As [reported](https://www.hrcsl.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf) by HRCSL, methods of torture included “beating, being asked to strip, being strung upside down on a hook/fan and beaten on the soles of the feet, being pushed to the ground and kicked and stepped on, burning parts of the body”, among others. Statistics gathered during the study found that 84% of male detainees had been tortured in administrative custody under the PTA, and of these, 90% were forced to sign confessions.

The case of poet Ahnaf Jazeem, who was arrested in May 2020 under the PTA under false charges associated with the Easter Bombings that occurred in Sri Lanka in 2019, demonstrated how administrative detention enables torture – Ahnaf reported harsh physical conditions and psychological torture while in administrative detention. Moreover, he was not allowed to see his lawyer until several months of detention had lapsed. Prolonged administrative detention and the resultant lack of judicial oversight of detention thereby create a culture of impunity that allows officials to escape accountability.

Administrative detention under the PTA has also been used by the police in cases where persons have no connection to terrorism offences. Instead, it has been used to arrest persons for drug [trafficking](https://www.adaderana.lk/news.php?nid=96376), drug [possession](https://www.dailymirror.lk/print/news-features/No-law-to-charge-a-person-under-PTA-just-because-he-is-a-Tamil-HC-Judge/131-252951) as well as those engaging in [protests against the government.](https://www.ft.lk/top-story/SL-faces-global-censure-over-detentions-under-PTA/26-739010)

Listing of persons/entities

There are no specified objective criteria which must be fulfilled prior to designation, except the broad remit set out in the law, nor is there any transparency in the process of designation. Hence, the lack of procedural safeguards allows the Ministry of Defence to designate persons and entities without an independent and impartial process, thereby arbitrarily impeding the financial mobility and asset mobilization of individuals and organizations with devastating consequences on their socio-economic rights and livelihood. This is particularly concerning in Sri Lanka, where national security and terrorist financing concerns are often used as a guise to [monitor](https://www.hrw.org/news/2024/03/12/sri-lanka-repression-civic-space-threatens-financial-reform) and crackdown on the activities of human rights organizations and local non-governmental organisations that document rights violations by the government particularly in the post-war areas, and [freeze](https://www.dailymirror.lk/breaking-news/NGOs-spend-billions-unchecked-new-law-soon-to-monitor-them/108-276725) their funding.

1. **Please provide details regarding the safeguards put in place, including oversight mechanisms, to guarantee that administrative measures do not encroach upon human rights. These rights include, but not limited to, privacy, freedom of religion, freedom of movement, due process and fair trial, non-discrimination, gender equality, liberty and security of person, and access to effective remedies.**

A new provision introduced when the PTA was amended in 2022 requires a magistrate to visit places where persons are held in administrative detention at least once a month. While in theory, this provision appears to provide a safeguard against torture, in practice this provision may have little success. Firstly, the [workload](https://ceylontoday.lk/2023/03/07/a-million-pending-court-cases-in-sl/) of the magistrate will likely not enable them to conduct regular visits. Secondly, the provision states that if the magistrate thinks the person may have been subject to torture, the magistrate “may” refer the person to a Judicial Medical Officer (JMO) and may change the place of detention– the use of the word “may” rather than “shall” indicates the magistrate is entitled to produce a person at their discretion.

A monthly visit by the magistrate would also be inadequate to protect persons held in administrative detention, because the time period between visits by the magistrate is too long and physical violence can be perpetrated without leaving visible marks of assault, as observed by [HRCSL](https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf). The burden is therefore on the person in custody to complain, as there may not be visible signs of torture that may enable the Magistrate to ascertain that a person has been tortured. Furthermore, a person will have to speak to a magistrate at the place of detention – as opposed to being produced in court – and there are no safeguards to ensure privacy and confidentiality when speaking to the magistrate. Hence, detained persons will likely not complain due to fear of reprisals, which in this case is valid given the law does not require the magistrate the change the place of detention immediately after the complaint of torture is made. Torture is not limited to physical violence – inhuman conditions of detention, verbal abuse and threats, denial of food and water all constitute forms of physical and emotional torture that have been perpetrated against persons held in administrative custody under the PTA to extract confessions, from which the 2022 amendment does not provide protection.

1. **Please indicate whether human rights impact assessments are undertaken prior to the design and implementation of administrative measures in counter terrorism, and whether monitoring and evaluation are periodically undertaken to assess the effectiveness of administrative measures to meet their stated objectives. Please also provide information on how civil society organizations are involved in such monitoring and evaluation processes.**

Information on any human rights impact assessments undertaken by the government, if any, is not publicly available. Historically, counterterror laws have been formulated with virtually no consultation with key stakeholders, particularly civil society, on the human rights impact of these laws. In fact, even the HRCSL, a constitutional body mandated to ascertain whether proposed laws are in line with international human rights standards and advise the government to bring them in line with international standards, was not provided with a copy of the proposed counterterrorism bill, while this author was a Commissioner of the HRCSL in 2018. Therefore, the human rights impact of counterterror measures is not assessed prior to the enactment of laws or formulation of policies.

In 2021, the government at the time announced its intention to amend the PTA, under pressure from the European Union to retain the GSP+ trade benefits, which requires adherence to core human rights conventions. In 2021, former President Gotabaya Rajapakse appointed a committee and an advisory board to review the PTA and recommend changes. Reports produced by these mechanisms were not made public. In fact, the PTA Amendment Bill that was tabled in Parliament was met with criticism by civil society activists and human rights advocates that had been campaigning against the PTA for decades, because the most egregious provisions of the Act had not been removed. Furthermore, civil society activists and human rights groups that directly worked with victims of the PTA were not consulted prior to the drafting of the amendment.

Civil society groups and activists, particularly those working in the North and the East with Tamil and Muslim communities that have been the targets of the PTA, are routinely visited by security agencies that inquire about their activities, funding sources and personal details of personnel. Many have been summoned to the Criminal Investigation Department (CID)/Terrorist Investigation Division (TID) offices in Vavuniya in the Northern Province and Colombo. The legal basis of these visits and requests are not specified but appear to be based on broad and vague investigations into anti-terror activities.

Such treatment is usually not suffered by mainstream/larger NGOs, so the experiences of community groups from the North and East are not significantly reported nor generate sufficient outcry even within mainstream civil society.

1. **Please provide information about specific measures that have been taken to ensure accountability and access to remedies for violation of human rights resulting from the use of administrative measures in countering terrorism.**

Fundamental rights petitions in the Supreme Court

Article 11 of the Constitution of Sri Lankan the protection against torture, cruel, in inhuman and degrading treatment and punishment which is as an absolute and non-derogable right. Fundamental rights petitions on the infringement or imminent infringement of any fundamental right by executive or administrative action can be filed in the Supreme Court of Sri Lanka, which possesses the exclusive jurisdiction for protection of fundamental rights, as affirmed by the Constitution of Sri Lanka.

However, the cost of filing a fundamental rights petition can be prohibitive and take several years, even up to ten years. Reparative accountability in cases of torture is often limited to the award of compensation by the Supreme Court in fundamental rights petitions. The lack of respect for the rule of law extends to the judgments of the Supreme Court with its orders to pay compensation often ignored. For instance, in December 2023, four police officers including the acting Inspector General of Police at the time, were ordered to pay [compensation](https://island.lk/deshabadu-tennakoon-three-others-faulted-by-supreme-court-over-torture/) by the Supreme Court for torture committed against a victim in police custody. Despite the damning Supreme Court finding against him, the Acting IGP was [appointed](https://www.adaderana.lk/news/97549/deshabandu-tennakoon-appointed-igp) Inspector General of Police in February 2024.

Action under the Convention Against Torture Act

The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994, which criminalizes torture, was enacted to give effect to the Convention Against Torture. Section 4 of the Act states any person who attempts to commit, aids and abets to commit or conspires to commit torture, shall on conviction after trial by the High Court be punishable with imprisonment between seven to ten years and a fine between Rs. 10,000 and Rs. 50,000.

Despite this law being in place, very few cases under the Act have been pursued, let alone concluded. In 2016, the government [reported](https://www.ohchr.org/en/2016/11/committee-against-torture-considers-report-sri-lanka) to the Committee Against Torture that 17 indictments had been filed out of only thirty cases pursued by the Special Investigations Unit. In contrast, the Human Rights Commission of Sri Lanka had received approximately 3,000 complaints for torture between October 2010 and August 2016, a difference which was highlighted by the Committee when remarking on the low level of prosecution for torture. Complaints regarding torture by the police must be lodged at a police station, and a Special Investigations Unit which functions under the direct supervision of the Inspector General of Prisons would be responsible to conduct the investigation into a member of its own department. This can cause bias and conflict of interest because the Special Investigation Unit is situated within the police department hierarchy.

Complainants may also be discouraged from complaining due to fear of reprisals[[2]](#footnote-2). Furthermore, there exists a conflict of interest that arises due to the dual functions of the Attorney General’s Department (AGD). While the AGD is responsible for criminal prosecutions, which are undertaken based on investigations conducted by the police officers, the Department is also responsible for prosecuting police officers under the Convention Against Torture Act. It is also simultaneously responsible for defending the State in fundamental rights petitions, including for violations of Article 11 (protection against torture) and even appears for state officials in various legal proceedings.

In instances the Supreme Court found a violation of the protection against torture, the Court has recommended the Attorney General’s Department to take action against the respondent under the Convention Against Torture Act. However, such investigations are rarely initiated. In contrast, as [noted](https://www.policinglaw.info/assets/downloads/Committee_against_Torture%C2%A0Concluding_Observations_on_Sri_Lanka_(2017).pdf) by the Committee Against Torture in its Concluding Observations:

‘although the (Human Rights) Commission forwards all allegations of torture to the Attorney General’s Office for prosecution, the Office does not open ex officio investigations into those complaints, but rather refers them to the police for further investigation. Similarly, the Committee notes the State party’s confirmation that prosecutors generally do not launch investigations into torture ex officio, but rather only act in cases where a complaint of torture is first submitted to the police and investigated by them.’

Human Rights Commission of Sri Lanka

The HRCSL is mandated to inquire into complaints of violations of fundamental rights under Section 10 of the Human Rights Commission Act and award compensation to the aggrieved party upon finding a violation. However, the Commission does not possess any enforcement powers in situations where the Police Department and the Attorney-General take no action against officers found to have committed violations and/or do not pay compensation to the victim.

Although Section 21 of the Act affirms that “every offence of contempt committed against, or in disrespect of, the authority of the Commission shall be punishable by the Supreme Court as though it were an offence of concept committed against, or in disrespect of, the authority of that Court”, the problem of non-compliance of respondent parties with recommendations issued by the Commission remains a significant problem. To date, the Commission has not taken action against any state entity for contempt.

1. Weerawansa v. The Attorney-General [2000] 1 Sri.L.R. 387 [↑](#footnote-ref-1)
2. See cases: [SC/FR No. 578/2011](https://www.supremecourt.lk/images/documents/sc_fr_578_2011.pdf), [SC/FR 369/2013](https://www.supremecourt.lk/images/documents/fr_369_13.pdf), and [SC/FR. No. 56/2012](https://www.supremecourt.lk/images/documents/sc_fr_56_2012.pdf)  as examples, where all three victims were assaulted by police and threatened with further harm if reported on the assault. [↑](#footnote-ref-2)