

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Counter-Terrorism and Human Rights: Striking A Balance

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Good morning, Co-Chair McGovern, Co-Chair Smith and Honorable members of the Commission. Thank you for inviting me to testify at this hearing. In my testimony I will illustrate the devastating impact the Prevention of Terrorism Act (PTA) has had on human rights in Sri Lanka.

Historically, the PTA has been disproportionately used against Tamils, and following the Easter terror attacks in April 2019, against Muslims as well. The PTA allows for arbitrary arrest and detention for up to 18 months without being produced before a judge. I use the term ‘arbitrary’ because arrests are not based on evidence unearthed during an investigation or even reasonable suspicion. Persons who have come into contact with a person accused of an offence under the PTA, during the normal course of their employment, such as a person who processed the accused’s money transfer at a Western Union and a salesperson at a vehicle dealership who sold the accused a motorbike have been arrested under the law. Following the Easter terror attacks, persons who had books in Arabic, or Arabic songs praising Allah were arrested.

Violation of due process

Due process is almost always violated during arrests under the PTA. According to the pattern of arrests, many persons reported being abducted from their homes, workplaces or while travelling, and said their families were not provided an arrest receipt or information on their place of detention. Their contact with family and lawyers was prohibited for days, weeks and in some cases even months after the arrest. As recently as 28th September 2021 when a person was arrested in Trincomalee in the Eastern Province, officers did not identify themselves, did not inform him of the reason for the arrest, did not inform the family of the place of detention nor issue an arrest receipt as proof of arrest.

Torture and admissibility of confessions

The PTA allows the admission of a confession made to a police officer above the rank of an Assistant Superintendent of Police as evidence during the trial. As a result, persons are tortured to obtain confessions. The burden of proving the confession was obtained under duress is upon the accused person. According to the Human Rights Commission's (HRCSL) study of prisons, in the study sample, 84% of men detained under the PTA stated they suffered torture following arrest. 90% of those who were subjected to torture said they were made to sign confessions after torture. 95% of male respondents stated that although the document which they were made to sign was written in Sinhala, a language they did not know, it was not explained to them. The HRCSL noted a pattern of arrested persons being held at unauthorized places of detention and tortured, and being moved to authorized places of detention only after the confession was extracted. Hence, many indictments are based solely on such confessions with no other evidence presented.

Many persons stated that medical treatment for the injuries they sustained during torture was withheld until they signed the confession. Where persons detained under the PTA are concerned, the role of a Judicial Medical Officer (JMO) is crucial to ensure persons who are subjected to torture are able to prove they were forced to sign confessions under conditions of physical duress. 44% of PTA respondents stated they were produced before a JMO, while only 38% of men said they were provided medical treatment after they were subjected to torture. The HRCSL also received numerous complaints of collusion between police officers and JMOs, and the inability of JMOs to communicate with persons held under the PTA due to language barriers.

Long pre-trial detention period

The HRCSL learnt that the longest period a person was in judicial custody without being indicted is fifteen years. Forty-one persons were appealing their sentences under the PTA with the longest period a person was awaiting a decision was fourteen years, as of September 2018. The Commission even met a person who received a three year sentence after being held in judicial custody for thirteen years.

Restriction orders that impact civic rights

The PTA allows the Minister of Defence to issue Restriction Orders for up to 18 months. Restriction Orders can be used to prevent people from engaging in political activities, speaking at events, or advising an organisation. Such orders allow civic rights to be curtailed arbitrarily by the Minister with no due process, transparency or accountability.

Provisions that undermine protection provided by judicial custody

Section 7 (3) of the PTA allows persons in judicial custody to be taken out of judicial custody by law enforcement officers to be interrogated at any other place. Further, Section 15A permits the Secretary to the Ministry of Defence to determine a person's place of detention even after the person is sent to judicial custody. This removes a person from the protection of judicial custody and empowers the Secretary to override a judicial order. The HRCSL has recorded testimonies of persons who were subjected to severe torture when removed from judicial custody for interrogation.

Legal proceedings

Many persons held under the PTA face financial difficulties retaining lawyers. Additionally, due to the stigma attached to appearing for a PTA accused, as well as the long duration taken to file an indictment and the commencement of the trial, many persons detained under the PTA stated they had difficulty finding legal representation or could not afford to retain lawyers. Due to this, many persons are reliant on legal aid.

Persons held under the PTA overwhelmingly said they did not understand court proceedings, which were conducted primarily in Sinhala, and although they requested interpreters their requests were not heeded.

Impact of imprisonment

86% of males convicted under the PTA and 76% of males in pre-trial judicial custody under the PTA stated that they were suffering from feelings of depression, anxiety and sadness to the point that it interferes with their ability to perform their daily functions.

In addition, 21% of persons convicted under the PTA and 19% of persons in pre-trial judicial custody under the PTA stated they have attempted self-harm, while 21% of males convicted under the PTA and 10% of males in pre-trial judicial custody stated they have attempted suicide while in prison.

Family contact for persons imprisoned under the PTA continues to be difficult since most are held in prisons that are long distances from their families, who cannot afford to travel to visit them often. Further, many persons detained under the PTA expressed fear and that they would not be allowed to socially re-integrate and rebuild their lives even after release.

New regulations issued under the PTA

In March 2021, new Regulations titled “Deradicalisation from Holding Violent Extremist Religious Ideology’ were issued under the PTA. These regulations are similar to Regulations issued in 2011 that allowed for the rehabilitation of alleged former LTTE members, and resulted in gross human rights violations. In this instance they appear to target the Muslim community.

The Regulations create a new predictive offence with a broad and vague definition that enables arrest and detention contrary to the procedure set out by law and permit investigations to commence after the arrest, which deprives a person of being informed of the reason for the arrest. They violate a person’s right to a fair trial because they deem a person guilty and require the person to be subject to rehabilitation for up to two years without a trial, solely on the basis of the recommendation of the Attorney-General. Moreover, the regulations can prevent a person from accessing legal representation, perpetuate ethno-religious stereotypes and encourage racial profiling.

PTA as a weapon to stifle dissent and freedom of expression

The PTA is also used as a weapon to intimidate, threaten and stifle dissent, media freedom and civil society activities, especially in the Tamil majority North as well as the East of the country, including in the guise of countering terrorism financing.

Victims, dissenters, human rights defenders, and particularly those who call for accountability or international intervention with regard to allegations of human rights committed during the armed conflict are labelled traitors and terrorists. In February 2021, those protesting in Jaffna in the Northern Province demanding the release of persons detained under the PTA were threatened with arrest by intelligence officers, while an activist in the Eastern province received phone calls from security officials instructing him to cancel a similar campaign. Two Tamil journalists, one from the north and one from the east were instructed to appear at the Terrorism Investigation Department on 26th October 2021 and 8th November 2021 respectively for inquiries. Even families of the disappeared campaigning to find out the truth about their disappeared loved ones have been summoned for such inquiries.

At present we have a government that has little respect for the rule of law, due process or the human rights of its citizens. A regime that has discriminatory anti-minority policies and practices. When the regime is at a loss as to how to deal with the messy and complex business of governance it turns to militarized, repressive means to deal with a conflict or crisis. In this context, the PTA and other counter-terror methods become powerful tools of oppression in the hands of the government.

Interventions by the international community

In this context there are two critical interventions that can be made. Firstly, we urge the international community and the United States to adopt a principled approach in their engagement with Sri Lanka based on the principle of “do no harm”. This would require, in particular, ensuring that their financial support, such as grants, do not enable the repressive policies of the government, even inadvertently. This applies to the United Nations, and to agencies such as UNODC in particular.

The second critical intervention is to support civil society and human rights defenders, with particular attention to those in the North and East, who are subject to surveillance, intimidation and threats. This would entail not only supporting their work through grants but also speaking out when they are being persecuted or action is being taken to undermine civic space, such as through repressive legislation.

It is imperative that donors and the United Nations, especially UNODC, listen not only to the government but also to civil society and human rights defenders when crafting programmes, such as on countering violent extremism, a nebulous concept that has no legal definition and is abused by governments, to ensure they do not undermine human rights or enable government targeting of minority communities.

Thank you.