No. 460/2021

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and has the honour to refer to the latter’s Note Verbale No. OL LKA 7/2021 dated 09 December 2021 forwarding a joint communication from a group of special procedures mandate holders.

The Permanent Mission wishes to transmit herewith the comments of the Government of Sri Lanka (GoSL) on the above joint communication.

The Permanent Mission requests that the attached GoSL comments, sent within the period of 48 hours, be published along with the joint communication of the special procedures, as indicated in the text of the joint communication, when the Special Procedures Branch proceeds with such publication on the communications reporting website, as well as in any other report that would contain the joint communication.

An acknowledgement of receipt of this note and the attached comments would also be appreciated.


Geneva, 11 December 2021

Special Procedures Branch
Office of the United Nations High Commissioner for Human Rights
Geneva
Government of Sri Lanka’s response to the Joint Communication received from seven UN Special Procedures Mandate Holders concerning the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by Act No. 10 of 1982 published in the Gazette Extraordinary No. 2218/68 on 12 March 2021


2. At the outset, it may be noted that the PTA as amended is a law in force. The reference in your communication that it has been published in the Gazette Extraordinary No. 2218/68 on 12 March 2021 is factually incorrect. It may be noted that the said Gazette referred to in your communication pertains to Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021. The said Gazette has been impugned in the Supreme Court in several Fundamental Rights applications. The Supreme Court issued an interim order staying the operation of the said Gazette. The said Fundamental Rights applications are pending consideration for leave to proceed before the Supreme Court and will be taken up for further consideration by the Supreme Court on 13.12.2021.

3. It is noted that the Government of Sri Lanka has been provided only 48 hours to comment on the communication before it is made public. It would be appreciated if the special procedures afford adequate time to the States to engage and respond to lengthy commentaries of this nature particularly where the matter pertains to legislation that has already been enacted in accordance with the Constitutional provisions of the State concerned. This unfortunate practice is a matter of concern to Sri Lanka.

4. In this context, without prejudice to the above, the following may be noted:

   a. The GoSL has commenced the process of revisiting provisions of the PTA in order to identify the provisions of the PTA that are of concern, domestically and internationally, and ensuring that Sri Lanka’s national security concerns are balanced with Sri Lanka’s human rights undertakings as well as with international best practices.

   b. The Cabinet of Ministers granted approval on 21st June 2021 to appoint a Cabinet Sub-committee and an Officials’ Committee to revisit the PTA, based on a joint Cabinet Memorandum submitted by the Ministers of Foreign Affairs, Justice, and Defence. The Officials’ Committee comprising representatives from the Ministries

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of Foreign Affairs, Justice, Public Security, Defence, and the Attorney General’s Department and the Legal Draftsman was appointed on 24th June 2021.

c. The Officials’ Committee conducted extensive consultations among different Ministries and agencies and further expertise was called from additional institutions relating to the matters of discussion. Thereafter, the Officials’ Committee proposed a two-pronged approach towards amending counter terrorism legislation in Sri Lanka; (a) to amend the PTA as a short-term measure and (b) to introduce a new counter terrorism legislation as a long term measure, aiming at enhancing Sri Lanka’s capabilities of addressing the contemporary security threats, in line with international best practices.

**Short-term measures**

d. Under short terms measures, the Committee taking into account international best practices adopted by other jurisdictions recommended amendments to key provisions such as:

- Detention Orders (sec. 9)
- Restriction Orders (sec 11)
- Expressly recognizing judicial review of Orders (detention and restriction) (sec 10 and 26)
- Expeditious disposal of cases of those charged under the PTA to avoid long term detention (sec 15)
- Repealing certain sections (sec 14), and

- Introduction of provisions on,
  - Access to an Attorney-at-Law
  - Prevent maltreatment and torture during the detention period
  - Right to communicate with the family

e. The Cabinet Sub Committee was appointed by H.E. the President on 07.10.2021 chaired by the Foreign Minister to review the recommendations of the Officials’ Committee.

f. The report of the Officials’ Committee was submitted to the President and the members of the Cabinet Sub-Committee and Secretary to the President on 15.11.2021.

g. Having reviewed the proposals of the Officials’ Committee, the Cabinet Sub Committee conducted further consultations with selected Parliamentarians and other government agencies and experts. The Cabinet Sub Committee also conducted discussions on the proposed amendments to the PTA with the Law Commission of Sri Lanka, Bar Association of Sri Lanka and civil society groups. Proposals were received for consideration verbally and through written submissions.
**Long-term measures**

h. As comprehensive measures, the Officials’ Committee has identified areas where comprehensive amendments should be introduced, including amendment of definitions for acts of terror in line with contemporary and evolving developments in order to safeguard national security, and to bring the PTA in line with other laws of the country as well as to ensure that Sri Lanka’s counter terrorism legislation incorporates international standards and best practices.

i. The Committee during its deliberations took into cognizance, the recommendations made by the Presidential Commission of Inquiry (PCOI) headed by Justice Nawaz, a sitting judge of the Supreme Court. Based on recommendations made by the Commission, certain developments have already taken place.

j. One of the key developments is the appointment of a 3-member Advisory Board under Section 13, chaired by retired Chief Justice Asoka de Silva, on 24 August 2021. Any person who has been issued a Detention Order or a Restriction Order under the PTA, or any person representing the detainee can make representations to this Advisory Board. The Board provides an opportunity for those detained or restricted under the PTA to request a review of the Order. The Board has already commenced work, having received and reviewed applications from persons detained under the PTA and has made recommendations on the release of detainees.

k. Presidential pardons were granted to 16 LTTE cadres serving sentences under the PTA in June 2021, and the legal and administrative process has been set in motion to release detainees who have been in judicial custody for extended periods under charges relating to the PTA.

l. Furthermore, instructions have been issued to all Police Officers with regard to conducting of investigations in terms of the PTA, including treatment of suspects in detention. (The relevant instructions issued by the Inspector General of Police dated 30.11.2021 and 23.10.2021 are annexed for reference.)
1979 ලෝකයේ 48 කිලෝමීටරක් වන අන්තර්ජාශ ආයතනය (උපකාරී විද්‍යාලය) නිරූප වේ. මෙහෙය කුරුණාංග ප්‍රදේශ පිළිතුරු යොමුක්කු නම් පුස්ස්කල මණයක් සම්පූර්ණ ක්‍රමයක් පිළිතුරු නැතිය. 

2021.10.23 භාෂාවේ RTM 626, CRTM 382 යොමුක්කු පුළුල් අනුවර්තනය සමඟ එකක් කිහිපයක් විය.

1979 ලෝකයේ 48 කිලෝමීටරක් වන අන්තර්ජාශ ආයතනය (උපකාරී විද්‍යාලය) නිරූප වේ. මෙහෙය කුරුණාංග ප්‍රදේශ පිළිතුරු යොමුක්කු නම් පුස්ස්කල මණයක් සම්පූර්ණ ක්‍රමයක් පිළිතුරු නැතිය. 

මායිමේ, මෙහෙය මෙම මණයක් සමන්විත හා මෙම මණයකින් සමන්විත ඉතිහාසික විදෘතා විය, මෙම මණය සමන්විත හා මෙම මණය මෙම මණයකින් සමන්විත ඉතිහාසික විදෘතා විය.

මෙම මණයකින් මෙම මණයකින් සමන්විත හා මෙම මණය සමන්විත විදෘතා විය.

ියෝක්කු පුළුල් අනුවර්තනය සමඟ එකක් කිහිපයක් විය.
2021.10.23

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iv. කිසුදුම කථාත්කරාවක් නිතර කතා වීමක් කල්පනාවක් (කො : WhatsApp) විස්තාර කිරීමක් නිසා කතාවේ දකුණු විශේෂ මීටර් මැට කතාවක් තායි කල්පනාවක් පැහැදිලි කරන සදහා විශේෂ කිරීමක්.

සිදුවුන්නේ විශේෂ වීමක් නිතර කතා කතාවක් ලෙස කිසුදුම කථාත්කරාවක් නිතර කතා දකුණු වීමක් කල්පනාවක් පැහැදිලි කරන සදහා විශේෂ කිරීමක් පැහැදිලි කරන සදහා.

1. ඇතිහාසික පුද්ගලීය වර්ග නිතර කතා දකුණු වීමක් කල්පනාවක් (විශේෂ විශේෂ) නිරක්ෂීච යෘදීමක් නිරාකරා කරන විට ඇතිහාසික කාලයට මත පිමුල පිස්සුම් පිවිශේෂීමක් පිළිබඳ පිහිටි විශේෂ විශේෂයකට ඇති පිමුල පිළිබඳ පිහිටි විශේෂ විශේෂයක් පිහිටි.


මම මේ අංකය වූ බිම ගොඩනැගෙන්නේ, මෙහෙඳ දැන් උපත කිණිම නමුත් නොවේ කාලය ආරම්භයේදි පියවර පෙන්නා සියට සිටින් හැකිය කාලය අතර එකක් පැහැදිලිව උපයුත් එකක් රූපවාහිනී සිටින් රුජු කරන සමයක්.

මෙම මඟින්, එක් අංකයේ අතර පරිපාලන නිපදනයක් වෙත නැගෙනහිර අදායම් පිළිතුවෙන් (මාළත්තිය පිළිතුම) පවුල්කරන මතු කරුණ අදායම් පිළිතු පිළිතුරු බලපත්‍ර එක් විස්තරය එක් මොස්ටර් කියන සමයක්.

මෙම පිරාය ප්‍රදේශයේ දිල්ලිමක තැන් උපත කරන්නේ 6 වන අදායම් පිළිතුරුවෙන් පිළිතුරු සාමාජික මාර්ගය.
From the Office of Inspector General of Police

RTM - 626  CRTM - 382

From: IGP  To All.  Senior Deputy Inspectors General of Police
Deputy Inspectors General of Police
Commandants/ Directors
OICC of Territorial Divisions
Senior Gazetted Officers in charge of Districts
Headquarters Inspectors / OICC

Conducting of Investigations in terms of the Prevention of Terrorism (Temporary Provisions) Act

When a suspect is detained under the Prevention of Terrorism (Temporary Provisions) Act, it is absolutely imperative to take account of his mental element that led him to commit the offence.

Thus, if a person is arrested in terms of the provisions of the Prevention of Terrorism (Temporary Provisions) Act, it needs to be confirmed whether the offence/s alleged to have been committed by him, is/are come under the said Act or the regulations made thereon. When such a confirmation cannot be made, provisions of the Penal Code or any other Act should be applied instead of invoking the jurisdiction of the Prevention of Terrorism (Temporary Provisions) Act

For instance, if a person is arrested under the Prevention of Terrorism Act, alleging that he possesses by way of keeping in his mobile phone an image/picture of a member or a person of a banned organization or an image with a logo of a banned organization or a label/ poster promoting a banned organization, meticulous attention should be paid on the matters mentioned below.

i). Whether the person possesses it for the intention of promoting the said banned terrorist organization or for any other reason.

ii). Or else, the person possesses the said image/picture by way of keeping it in the mobile phone for no such intention but merely it was sent to his/her mobile phone by someone else.
iii). Whether the said image/picture has been sent to the mobile phone without the knowledge of that person by someone else.

iv). Whether the person possesses the said image/picture by way of keeping it in the mobile phone, merely because of being a member of a social media group (e.g. WhatsApp) in which the said image/picture has been shared.

Accordingly, the following instructions should be followed, when an investigation against a person is conducted under the above Act.

1. Before arresting the suspect, investigations should be conducted especially with regard to the severity of the offence alleged to have been committed by the suspect, his mental element and whether he can be arrested under the Prevention of Terrorism (Temporary Provisions) Act.

2. In that investigation, after having obtained the necessary facts and instructions from Director/ Counter Terrorism and Investigation Division, the investigating officer and his supervising officer should decide whether the arrest is made under aforesaid Act or the Penal Code or any other Law.

3. If it is decided to arrest the suspect as per the provisions made under the Prevention of Terrorism (Temporary Provisions) Act, action can be taken in accordance with Section 06 of the Act.

4. At the end of the detention period of seventy-two hours, if the investigating officer or his supervising officer decides the suspect to be detained further, having obtained instructions from the Director/ Counter Terrorism and Investigation Division, a detention order against the suspect can be obtained and/or he can be produced before the Court.

5. Upon completion of the investigation, if it is deemed unnecessary to detain the suspect for 72 hours or if the suspect is in the detention under section 9 of the said Act and in any other case, it is deemed unnecessary to detain him further, the investigation can be conducted while releasing the suspect subject to a travel restriction order obtained from the Minister in charge of the subject, in terms of the section 11 of the said Act.

As well, where the suspect is required to be detained with the view of further investigation but such detention is deemed not to be obtained by way of an order of the Minister in charge of the subject, it is advisable to remand the suspect, as soon as possible, by producing him before the Magistrate’s Court and conduct investigation accordingly.
Further, priority should be given to conclude the investigations in expeditious manner, against the suspects who are under the detention either by the orders of the Minister in charge of the subject or by Hon. Magistrates which are made in terms of the Prevention of Terrorism (Temporary Provisions) Act.

Adherence to above ensures the provisions of this Act to be applied only against the suspect who should necessarily be investigated and detained thereunder and it avoids the misapplication of the provisions of the Prevention of Terrorism (Temporary Provisions) Act.

However, these instructions shall not be construed as not to use the Prevention of Terrorism (Temporary Provisions) Act in curbing the terrorist activities.

Take necessary actions to make every officer under your command aware in this regard.

C.D. Wickramaratne
Inspector General of Police

23.10.2021

C. D. Wickramaratne
Inspector General of Police
Police Headquarters
Colombo 01.

Copy - File