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WATCH

## LOCKED UP WITHOUT EVIDENCE

Abuses under Sri Lanka's Prevention of Terrorism Act



# **Locked Up Without Evidence**

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## Summary

In August 2008, Sri Lankan police were searching for Malathi's son, Kanna, whom they accused of aiding and abetting the insurgent Liberation Tigers of Tamil Eelam (LTTE). Malathi believes he escaped abroad, as she has not heard from him since. However, when the police could not find Kanna, they arrested his 37-year-old wife, Durga. Malathi says that Durga was detained for nearly a year before being produced before a magistrate. It was a further six years before any charges were filed against her. Durga was eventually acquitted of all charges in 2015.

Durga has received no apologies, compensation, or answers for her seven years in detention. She remains psychologically and physically impaired because of her long incarceration. Her three young children were raised during those years by her mother-in-law. Malathi says it has been difficult:

My youngest grandchild was 18 months old at the time of Durga's arrest. I am old but I had no choice but to raise the children, so I took menial jobs cleaning people's homes to support them, to have some money for them. Even now that Durga is out, I don't know what happened to her in there, but she's not strong enough to work on the tea estates. So I have to keep working.

\* \* \*

Hundreds of people like Durga have been arbitrarily detained in Sri Lanka under the Prevention of Terrorism Act (PTA), which was enacted in 1979 to counter separatist insurgencies, notably the LTTE. The law allows arrests for unspecified "unlawful activities" without warrant, and permits detention for up to 18 months without the authorities producing the suspect before a court pre-trial.

While other insurgent groups proved short-lived, the LTTE sustained a 26-year-long civil war in Sri Lanka that involved horrific abuses by both LTTE and government forces. The LTTE carried out targeted killings, suicide bombings, and torture, among other abuses. Military abuses included arbitrary arrests, summary executions, and forced

disappearances, as well as indiscriminate attacks in the war's final months. Government forces defeated the LTTE in May 2009.

Nearly nine years since the end of the fighting, the PTA has remained in effect, and has been used to arrest and hold people without charge or trial for months, even years. Many PTA detainees have been tortured in custody, and others have been among those forcibly disappeared. Those released have suffered psychologically as well as physically.

In October 2015, following elections in August, the Sri Lankan government under President Maithripala Sirisena agreed to a consensus resolution at the United Nations Human Rights Council under increasing diplomatic pressure. The resolution committed the government to ensure accountability for conflict-related abuses by enacting several transitional justice mechanisms. Along with other human rights related reforms, the government also pledged to repeal the PTA, but has not yet done so.

This report, based on interviews with 34 former detainees or their relatives, documents serious human rights violations under the PTA including severe torture and sexual abuse, as well as systematic denials of due process. While the cases detailed here address the experiences of only a tiny fraction of the hundreds of people who suffered under the PTA, the accounts underscore the need to ensure that any new counterterrorism legislation is rights-respecting and does not replicate past abuses.

Protests calling for the release of PTA detainees have increased in recent years. In October 2017, students at Jaffna University began a protest against the PTA that led to a brief shutdown of the campus. A hunger strike by PTA detainees has reportedly led to one prisoner being released and a second hospitalized.

The PTA has been used to arbitrarily detain an unknown number of people without access to legal recourse. One former detainee, held without trial from 2007 to 2010 at the Welikada prison in the capital, Colombo, told Human Rights Watch that there were at least 800 PTA prisoners detained with him, many of them held without any credible basis.

“A few years after the war ended, some were charged, some were sent for rehabilitation, some signed confessions and were given short sentences,” he said. “In my experience, they just use the PTA to keep you locked up with no evidence.”

The PTA has also been used for politically motivated arrests of peaceful activists. In March 2014, prominent human rights campaigners Ruki Fernando and Father Praveen Mahesan were arrested while attempting to assist a 12-year-old girl whose mother, Jeyakumari Balendran, had been arrested under the PTA. An international outcry quickly led to Fernando and Father Praveen's release on bail. The charges have yet to be dropped, and they continue to occasionally face harassment by immigration authorities when they are leaving the country for travels abroad.

Human Rights Watch and other organizations have long documented widespread torture of individuals in custody, particularly of ethnic Tamils detained under the PTA for suspected involvement with the LTTE. Ben Emmerson, then the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, said after his July 2017 visit to the country: "The use of torture has been, and remains today, endemic and routine, for those arrested and detained on national security grounds." He noted that the PTA was used "disproportionately against members of the Tamil community," and that the community "has borne the brunt of the state's well-oiled torture apparatus."

After a two-week country visit in December 2017, the UN Working Group on Arbitrary Detention called for the immediate repeal of the PTA, referring to it as "one of the key enablers of arbitrary detention for over four decades."

In a positive step, the Sri Lankan government announced it would adopt the UN Optional Protocol to the Convention against Torture during its Universal Periodic Review in November 2017.

Many of those detained under the PTA said that they were tortured to extract confessions or intelligence. Of the 17 individuals whose cases are detailed in this report, 11 reported beatings and torture. A senior judge responsible for handling PTA cases said in July 2017 that he was forced to exclude confession evidence in over 90 percent of the cases he had heard in 2017 because it had been obtained through the use or threat of force.

Sahan Kirthi, then 21, was arrested under the PTA in February 2007. He remained in detention without charge for five years. He ultimately confessed to a criminal offense, he said, because security forces threatened to rape his sister. In 2012, he was finally charged with conspiring



against the government. Security forces did not have evidence to convict him, and the courts acquitted him two years later, in 2014. Kirithi had by then spent nearly a decade in prison, and still has injuries, including loss of hearing, from the torture that he endured.

As noted above, other former PTA detainees who spoke to Human Rights Watch described severe torture including sexual abuse. Several, including those interviewed for the 2013 Human Rights Watch report *“We Will Teach You a Lesson,”* said that security forces raped them, burned their genitals or breasts with cigarettes, and caused other injuries through beatings and electric shocks. Noting an “open door policy” for routine use of torture by security forces, Juan Méndez, then the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, described the use of sexual abuse after his 2016 visit to Sri Lanka:

Torture and ill-treatment, including of a sexual nature, still occur, in particular in the early stages of arrest and interrogation, often for the purpose of eliciting confessions. The gravity of the mistreatment inflicted increases for those who are perceived to be involved in terrorism or offences against national security. The police resort to forceful extraction of information or coerced confessions rather than carrying out thorough investigations using scientific methods.

Former detainees and their family members said that despite coerced confessions, they agreed to plead guilty simply to end the indefinite detention.

Vivodhani Givoshan described the case of his brother, Soriyamoorthy Givoshan, who became trapped in the war zone and eventually surrendered to the army in Mullaitivu in 2009, during the final days of the war. Soriyamoorthy was initially detained in a military-run displacement camp in Vavuniya with others who had fled or surrendered to the government. In August 2009, members of the Sri Lankan police’s Terrorist Investigation Division (TID)—notorious for torture in custody—arrested him and took him from the camp. He was secretly detained for a year until he was finally produced before the Kandy Magistrate Court in August 2010. Vivodhani said his brother faced a range of charges and decided to plead guilty to end the indefinite detention:

We decided that it would be easier for him to plead guilty, so there was actually no trial. Although we know the prosecution had no evidence, or at least none that my brother's lawyers could see.... My brother was young when he was arrested. So many of those arrested were young, many of them arrested on flimsy evidence of buying a SIM card, renting a bike.

## Proposed Counterterrorism Legislation

After the end of the armed conflict with the LTTE in May 2009, the government relaxed some of its emergency regulations, which had given the security forces wide-ranging search, detention, and arrest powers, and in 2011 it allowed most of the measures to expire. Government directives issued in June 2016 require security forces to ensure that the fundamental rights of persons arrested or detained are respected, but the PTA remains in force, although it has not been used in 2017.

There is still no clarity on the number of people held under the PTA. In August 2017, the government released a list of 84 people in custody under the PTA and facing trial, and 12 others who had not been charged. A month earlier, the government had told Special Rapporteur Ben Emmerson that of the prisoners “currently in the judicial phase of their pre-trial detention, 70 had been in detention without trial for over five years and 12 had been in detention without trial for over 10 years.”

While the government has taken some steps to charge or release PTA detainees, lawyers working on these cases believe that the numbers are not accurate given the discrepancies in official numbers. This is not the first time the government's information on the number of PTA detainees has shown discrepancies. In a meeting with Human Rights Watch in October 2015, Prime Minister Ranil Wickremesinghe admitted that getting an accurate count of PTA detainees was difficult because the various security agencies all had different numbers.

Since the 2015 Human Rights Council resolution, the government has made little progress on security sector reform, and in 2016 continued to use the PTA to arrest and detain supposed counterterrorism suspects. One significant act of compliance with its security sector reform pledge was the government's establishment of a separate Ministry of Law and Order, removing the police and related agencies from the purview of the Ministry of Defence. However, other reforms within the security sector have yet to be enacted or implemented.

In June 2016, the government adopted directives recommended by the Human Rights Commission of Sri Lanka to protect detainees from abuses, particularly at the time of arrest and ensuing detention. These include guarantees of medical and legal assistance, registration of arrest, the right to be addressed in the language of the detainee's choice, security from torture and other ill-treatment, and special protection for women and children. The directives also reassert the commission's mandate to be promptly informed of all PTA arrests, to access any person arrested or detained under the PTA, and to access any place of detention at any time. These directives are meant to be an interim measure until the PTA is repealed and replaced with rights-respecting legislation.

Although several drafts of a new counterterrorism law have been floated, none have complied with international human rights standards. The government has not discussed these draft laws with human rights or affected victim groups. In March 2017, Ravinatha Aryasinha, Sri Lanka's permanent representative in Geneva, told the Human Rights Council that the government was drafting a law that "seeks to effectively and comprehensively respond to contemporary manifestations and threats of terrorism, consistent with principles of democracy, good governance and the rule of law."

In May 2017, the cabinet approved with little public consultation a draft Counter Terrorism Act (CTA), intended to replace the PTA. In the face of severe public criticism, the government has not, as it was expected to do, moved forward with outlining its plans for the new law. The bill falls far short of the government's pledges to the Human Rights Council to end abusive detention without charge, and it remains unclear whether the government has taken on board recommendations from the UN Counter-Terrorism Committee Executive Directorate and other UN agencies.

The bill would in some ways improve upon the previous law, but it would still allow arbitrary and abusive detention. Some provisions provide potential safeguards against abuses, but as long as prolonged detention without charge is permitted, the likelihood of abuse remains high. Ultimately, the proposed law does not comply with security sector reforms sought by the Human Rights Council and required by Sri Lanka's international obligations, and suggests that the government does not intend to fully relinquish the broad and too easily abused powers available to it under the PTA.

Among his concerns with the draft law, Special Rapporteur Emmerson noted that the broad definition of torture in the law “poses a real risk that the legislation could be used in circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner.”

The Sri Lankan government should not enact any law that will perpetuate the wrongs committed for decades under the PTA or provide room for other abuses. The government should consult with Sri Lankan victim groups, human rights organizations, the Human Rights Commission of Sri Lanka, and international experts to draft a law that protects both national security and human rights. It should also seek technical assistance from the UN Counter-Terrorism Committee Executive Directorate and the Office of the United Nations High Commissioner for Human Rights.

## Key Recommendations

- Repeal the Prevention of Terrorism Act (PTA) and replace it with rights-respecting counterterrorism legislation that meets international standards for due process.
- Undertake a consultative process with victim rights groups, civil society, human rights lawyers, and relevant experts to assist in drafting the new legislation.
- Implement the recommendations of the UN special rapporteur on counter-terrorism and human rights following his July 2017 country visit, including a prohibition on the use of confessions made to the police, unfettered access for the Human Rights Commission of Sri Lanka to all places of detention, and abolishing the attorney general’s right of veto over the granting of bail.
- Implement the recommendations of the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment following his 2016 country visit, including ensuring that any new counterterrorism law provides protections against arbitrary arrests and detentions, strong judicial oversight of law enforcement and security agencies, and safeguards to ensure legal counsel from the moment of arrest.
- Accept and implement the recommendations of the Office of the United Nations High Commissioner for Human Rights investigation on Sri Lanka, including reviewing all cases of detainees held under the PTA, and investigating and prosecuting all allegations of torture committed by law enforcement and security agencies.

- Implement all recommendations made by the UN Working Group on Arbitrary Detention in its December 2017 preliminary findings report.
- Fully comply with the Human Rights Commission's guidelines on arrest and detention procedures in all cases, especially PTA cases.

## Methodology

Human Rights Watch conducted research for this report between April and May 2017. We interviewed 27 former PTA detainees and family members of seven current detainees, and spoke with lawyers and human rights defenders working on these cases.

The individuals whose cases we investigated were initially detained in locations across Sri Lanka. Although we spoke with victims from both Sinhala and Tamil speaking communities, the majority were ethnic Tamil. Due to security concerns, a few interviews were conducted over Skype. Most former detainees interviewed agreed to have their names made public, but we have withheld names where there was a legal case pending or concern for the security of the detainee. In some cases pseudonyms have been used to conceal the identity of interview subjects.

The findings of this research are consistent with what we found in previous research, including in our interviews with Sri Lankan victims of torture and sexual violence in custody in 2011 and 2012 in Sri Lanka, Australia, the United Kingdom, Germany, India, Malaysia, and Indonesia.<sup>1</sup> In research we conducted in 2015, moreover, we found torture to be common in police stations across Sri Lanka, involving regular criminal suspects as well as terrorism-related cases.<sup>2</sup> Many of the former detainees we interviewed for this report recounted torture practices similar to those previously reported, suggesting little has changed in the methods of Sri Lanka's law enforcement forces.

Many former detainees remain fearful of government surveillance and re-arrest, and are thus reluctant to draw attention to themselves. We worked with local nongovernmental organizations and defense lawyers to meet PTA detainees who were willing to provide accounts of their treatment. Sometimes we spoke only with lawyers or family members of current or former detainees, but with the consent of the detainees.

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<sup>1</sup> Human Rights Watch, *"We Will Teach You a Lesson": Sexual Violence against Tamils by Sri Lankan Security Forces*, February 2013, <https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces>.

<sup>2</sup> Human Rights Watch, *"We Live in Constant Fear": Lack of Accountability for Police Abuse in Sri Lanka*, October 2015, <https://www.hrw.org/report/2015/10/23/we-live-constant-fear/lack-accountability-police-abuse-sri-lanka>.

Human Rights Watch provided no remuneration or other inducement to the interviewees. In some cases, funds were provided to cover immediate food and travel expenses incurred for the interviews. Interviews were conducted in Sinhala or Tamil through independent interpreters.

# I. Armed Conflict and the Prevention of Terrorism Act

In May 2009, Sri Lanka emerged from three decades of civil war that left several hundred thousand people dead or forcibly disappeared, destroyed property and livelihoods, and displaced whole communities.<sup>3</sup> For much of the duration of the armed conflict, even during lulls for peace talks and ceasefires, Sri Lankan security forces and opposition armed groups were responsible for widespread human rights abuses and violations of the laws of war.

Despite repeated government claims that it would address those abuses, including public pledges from successive Sri Lankan governments to the United Nations, impunity for serious abuses has been nearly complete.<sup>4</sup>

## History of Conflict

An uprising by the Sinhalese Marxist Janatha Vimukthi Peramuna (People's Liberation Front, or JVP) between 1987 and 1989 in the south of the country involved political assassinations, blockades, and mass strikes that crippled the economy. The government responded by first deploying the police and then the military in joint operations. The security forces were implicated in thousands of deaths of JVP suspects and tens of thousands of enforced disappearances, many of which have never been resolved. As an armed insurrection, the JVP was defeated in 1990 after security forces captured and killed its leader, Rohana Wijeweera, and his deputy in November 1989.<sup>5</sup>

The armed conflict with the Tamil secessionist Liberation Tigers of Tamil Eelam (LTTE), which lasted from 1983 to 2009, included numerous violations of the laws of war and egregious human rights abuses by both sides. The LTTE committed a range of atrocities including suicide bombings and other indiscriminate killings of civilians, torture, the use of child soldiers, forced displacement of ethnic populations, targeted killings and

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<sup>3</sup> "Sri Lanka 'War Crimes': Main Allegations," *BBC News*, June 17, 2011, <http://www.bbc.com/news/world-south-asia-13158916> (accessed September 19, 2017).

<sup>4</sup> "Joint Statement by United Nations Secretary-General, Government of Sri Lanka," UN press release, SG/2151, May 26, 2009, <https://www.un.org/press/en/2009/sg2151.doc.htm> (accessed August 4, 2017).

<sup>5</sup> Charles Haviland, "Rohan Wijeweera: The Killing of Sri Lanka's Stalinist Icon," *BBC News*, November 13, 2014, <http://www.bbc.com/news/world-asia-30017905> (accessed September 20, 2017).



summary executions, and the use of human shields. Abuses by government forces included arbitrary arrests and detention, extrajudicial killings, rape and other sexual violence, enforced disappearance, torture and other ill-treatment, and indiscriminate attacks on civilians. Thousands remain disappeared. The conflict ended in May 2009 with the government forces' decisive defeat of the LTTE, and the death of its leader, Velupillai Prabhakaran, along with many other senior LTTE leaders.<sup>6</sup>

Calls for accountability for war crimes by both sides to the conflict were made during the conflict and since its conclusion. At least nine commissions of inquiry have been established, but successive governments showed little interest in providing accountability.<sup>7</sup> As a result, the commissions yielded no justice or answers for victims or their families.

The government of President Maithripala Sirisena, which replaced the Mahinda Rajapaksa administration in January 2015, has used its parliamentary mandate to bring some positive developments on human rights. Most important among them, Sri Lanka joined a consensus resolution of the UN Human Rights Council in October 2015 to promote transitional justice in the country.<sup>8</sup>

As part of its commitment under Human Rights Council resolution 30/1, the government agreed to a comprehensive nationwide consultation with victims and affected communities about what they want and need from transitional justice mechanisms. The Consultation Task Force held hearings throughout the country—largely through zonal task forces with members drawn from regional civil society leadership—and submitted a report with comprehensive recommendations on how to best implement the specific

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<sup>6</sup> Matthew Weaver and Gethin Chamberlin, "Sri Lanka Declares End to War with Tamil Tigers," *Guardian*, May 19, 2009, <https://www.theguardian.com/world/2009/may/18/tamil-tigers-killed-sri-lanka> (accessed June 25, 2017).

<sup>7</sup> Amnesty International, *Sri Lanka: Twenty Years of Make Believe*, June 11, 2009, <https://www.amnesty.org/en/documents/ASA37/005/2009/en> (accessed August 4, 2017).

<sup>8</sup> UN Human Rights Council, "Promoting Reconciliation, Accountability and Human Rights in Sri Lanka," A/HRC/RES/30/1, October 14, 2015, <http://www.refworld.org/docid/56b1bdb64.html> (accessed August 19, 2017).

recommendations of the Human Rights Council.<sup>9</sup> The government accepted the report reluctantly, and thereafter largely ignored it.<sup>10</sup>

The government's failure to act on the task force's recommendations raised concerns about its willingness to comply with all aspects of its commitments in Geneva. After an official visit to Sri Lanka in July 2017, the UN special rapporteur on counter-terrorism and human rights, Ben Emmerson, highlighted that "the continuing influence of certain vested interests in the security sector, who are resistant to change, and above all, to accountability." He said that progress in achieving the key goals set out in the commission resolution had "ground to a virtual halt."<sup>11</sup>

## Prevention of Terrorism Act

The Prevention of Terrorism Act (PTA) was enacted by the Sri Lankan government as a temporary measure in 1979 and made permanent in 1982.<sup>12</sup> Many of the most serious human rights violations by government security forces were committed when emergency regulations were in force during the armed conflict and, in particular, under the PTA.

The PTA allows arrests without warrant for unspecified "unlawful activities," and permits detention for up to 18 months without producing the suspect before a court. People detained under the PTA have been held without charge for years. The law also provides immunity for government officials responsible for abuses if deemed to have been acting in good faith or fulfilling an order under the act, giving broad cover to security forces to engage in torture and other abuses.<sup>13</sup> The law was used mainly to target those suspected of involvement with the LTTE or other militant groups, and thus was used primarily against members of the country's minority Tamil community.

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<sup>9</sup> Secretariat for Coordinating Reconciliation Mechanisms, "Final Report of the Consultation Task Force on Reconciliation Mechanisms," November 2016, <https://drive.google.com/drive/folders/oByOKvXw6zYVpQ3NhMU5oODJONoo> (accessed July 27, 2017).

<sup>10</sup> Tejshree Thapa, "Sri Lanka's Difficulty with Truth," *Daily Financial Times*, July 13, 2017, <http://www.ft.lk/article/627947/Sri-Lanka-s-difficulty-with-truth> (accessed August 8, 2017).

<sup>11</sup> "Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, at the Conclusion of His Official Visit," Colombo, July 14, 2017, <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/> (accessed August 19, 2017).

<sup>12</sup> Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, [http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention\\_of\\_terrorism.htm](http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm) (accessed June 25, 2017).

<sup>13</sup> *Ibid.*

While most of the emergency regulations have since lapsed, the PTA continues to be in effect and used to detain, question, and arrest people. In 2016, the government arrested at least 11 people under the PTA for alleged terrorist activities, rather than using appropriate provisions of the criminal code.<sup>14</sup>

In May 2016, the Human Rights Commission of Sri Lanka issued new directives to security forces on using the PTA.<sup>15</sup> The directives are intended to protect detainees against the security forces' broad powers under the PTA, particularly at the time of arrest and ensuing detention. These include guarantees of medical and legal assistance, registration of arrest, the right to language of the detainee's choice, security from torture and other ill-treatment, and special protection for women and children. The directives also reassert the commission's mandate to be promptly informed of all PTA arrests, to access any person arrested or detained under the PTA, and to access any place of detention at any time.<sup>16</sup>

## Repealing the PTA

Under pressure from victims' families and human rights groups, the government has made substantial progress on many cases of earlier PTA detainees. The authorities have released some PTA detainees on bail, "rehabilitated" others, and promised to charge and prosecute the remainder.<sup>17</sup> However, the government has yet to put forward a plan to provide redress for those unjustly detained under the PTA, or address the issue of detainees charged and prosecuted solely on the basis of coerced confessions obtained during detention.

In August 2017, the government released a list of 84 PTA detainees still in custody and facing trial, and 12 others who are yet to face charges.<sup>18</sup> Some lawyers and activists

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<sup>14</sup> Marisa de Silva, Swasthika Arulingam, and Ruki Fernando, "Continuing Abuse under the PTA: Abductions, Arbitrary Arrests, Unlawful Detentions and Torture," *Groundviews*, June 28, 2016, <http://groundviews.org/2016/06/28/continuing-abuse-under-pta-abductions-arbitrary-arrests-unlawful-detentions-and-torture> (accessed August 4, 2017).

<sup>15</sup> Human Rights Commission of Sri Lanka, "Directives on Arrest and Detention Under the Prevention of Terrorism Act," May 18, 2016, <http://hrcl.lk/english/wp-content/uploads/2016/05/Directives-on-Arrest-Detention-by-HRCSL-E-.pdf> (accessed August 2, 2017).

<sup>16</sup> *Ibid.*

<sup>17</sup> Melanie Santiago, "Justice Minister Speaks of Factors Surrounding Release of Inmates Detained under PTA," *News First*, November 26, 2015, <http://newsfirst.lk/english/2015/11/justice-minister-speaks-of-factors-surrounding-release-of-inmates-detained-under-pta/119354> (accessed October 11, 2017).

<sup>18</sup> Sulochana Ramiah Mohan, "Official List of Detainees under PTA," *Ceylon Today*, July 30, 2017, <http://www.ceylontoday.lk/print20170401CT20170630.php?id=26590> (accessed August 19, 2017).

working on PTA cases dispute these figures, claiming that the government is downplaying the number. In July, Special Rapporteur Ben Emmerson said that at least 108 individuals were still “held under the PTA both pre- and post-indictment.”<sup>19</sup>

Despite repeated promises, the government has not repealed the PTA or ensured accountability.<sup>20</sup> Nongovernmental organizations in Sri Lanka have long called for the law to be repealed. In May 2013, the Centre for Policy Alternatives said that the PTA should be repealed because it is a law that is “wholly inconsistent with contemporary human rights standards and which not merely permits, but also encourages the pervasive violation of fundamental rights otherwise protected by the Constitution of Sri Lanka. Compounded by Sri Lanka’s endemic law’s delays, it has been deployed to deprive the basic civil liberties and inflict physical harm and mental distress on thousands of Sri Lankan citizens of all communities.”<sup>21</sup>

Protests calling for the release of PTA detainees have increased in recent years. In October 2017, students at Jaffna University began a protest against the PTA that led to a brief shutdown of the campus.<sup>22</sup> A hunger strike by PTA detainees has reportedly led to one prisoner being released and a second hospitalized.<sup>23</sup>

The call for accountability has not only been domestic. Successive UN high commissioners for human rights have expressed alarm at the scale and level of impunity in Sri Lanka.<sup>24</sup>

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<sup>19</sup> “Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, at the Conclusion of His Official Visit,” <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>.

<sup>20</sup> T. Ramakrishnan, “We’ll Repeal PTA, Says Sri Lankan Government,” *The Hindu*, March 9, 2016, <http://www.thehindu.com/news/international/We%E2%80%99ll-repeal-PTA-says-Sri-Lankan-government/article14144036.ece> (accessed August 24, 2017).

<sup>21</sup> Centre for Policy Alternatives, “The Need to Repeal and Replace the Prevention of Terrorism Act,” May 9, 2013, <http://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/> (accessed August 24, 2017).

<sup>22</sup> “Jaffna Uni Closes Today in Protest at Detention of Tamil Political Prisoners,” *Tamil Guardian*, October 30, 2017, <http://tamilguardian.com/content/jaffna-uni-closes-today-protest-detention-tamil-political-prisoners> (accessed November 2, 2017).

<sup>23</sup> “Colombo High Court Acquits Tamil Political Prisoner Detained for 10 Years under PTA,” *Tamil Guardian*, October 26, 2017, <http://tamilguardian.com/content/colombo-high-court-acquits-tamil-political-prisoner-detained-10-years-under-pta> (accessed November 2, 2017).

<sup>24</sup> “Opening Remarks by Human Rights Commissioner Navi Pillay,” Colombo, August 31, 2013, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13673> (accessed November 2, 2017); “Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein,” Colombo, February 9, 2016, [http://lk.one.un.org/wp-content/uploads/2017/04/2016-02-09-HC-Sri-LankaFINAL\\_rev\\_FINAL.pdf](http://lk.one.un.org/wp-content/uploads/2017/04/2016-02-09-HC-Sri-LankaFINAL_rev_FINAL.pdf) (accessed November 2, 2017).

Following a scathing report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in September 2015, the government agreed to a resolution at the Human Rights Council in which it made many pledges toward accountability and justice.<sup>25</sup> Paragraph 12 of the resolution committed the government to review and repeal the PTA and enact a law in line with international best practices.

The UN Working Group on Enforced or Involuntary Disappearances has called for a repeal of the PTA since 1999, a call that was reiterated in July 2016 following a 2015 country visit by working group members.<sup>26</sup> A December 2016 report by the UN special rapporteur on torture, Juan Méndez, emphasized the need for a complete overhaul of the PTA and to ensure that any replacement of the law be done in compliance with international law and practices. Méndez noted: “Sri Lanka needs urgent and comprehensive measures to ensure structural reform in these institutions to eliminate torture and ensure that all authorities comply with international standards.”<sup>27</sup> Two separate reports by the UN have called for urgent replacement of the PTA.<sup>28</sup>

A summary report by Special Rapporteur Ben Emmerson after his July 2017 country visit found that 80 percent of those arrested under the PTA in late 2016 complained of torture and other ill-treatment following their arrest. He added that the most senior judge responsible for PTA cases in Colombo informed him that in over 90 percent of his cases so far in 2017, he had been forced to exclude essential confession evidence because it had been obtained through the use or threat of force.<sup>29</sup>

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<sup>25</sup> UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, A/HRC/30/61, September 28, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/219/90/pdf/G1521990.pdf> (accessed November 2, 2017); UN Human Rights Council, “Promoting Reconciliation, Accountability and Human Rights in Sri Lanka,” October 14, 2015.

<sup>26</sup> UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on Its Mission to Sri Lanka, A/HRC/33/51/Add.2, July 8, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/146/63/PDF/G1614663.pdf> (accessed July 28, 2017).

<sup>27</sup> UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment on His Trip to Sri Lanka, A/HRC/34/54/Add.2, December 22, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/440/12/PDF/G1644012.pdf> (accessed July 28, 2017).

<sup>28</sup> UN Secretary-General, Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, March 31, 2011, [http://www.un.org/News/dh/infocus/Sri\\_Lanka/POE\\_Report\\_Full.pdf](http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf) (accessed August 8, 2017); UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, September 28, 2015.

<sup>29</sup> See “Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, at the Conclusion of His Official Visit,” <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>. It states: “During his interviews with current and former PTA detainees, the Special Rapporteur himself heard distressing stories of extremely brutal methods of torture, including

The UN Working Group on Arbitrary Detention conducted a two-week visit to Sri Lanka in December 2017. They visited more than 30 detention facilities around the country and interviewed over 100 detainees held under various charges, in addition to speaking with government officials, judges, lawyers, and civil society organizations. They reported no impediments to access. The group’s preliminary report following the visit found that many detainees were deprived of the most fundamental guarantees of due process, such as immediate access to legal counsel, and made several strong recommendations to the Sri Lankan government for detention system reform.<sup>30</sup>

The group also found that authorities relied on the use of confessions, often extracted under torture or duress. In particular, they called for the immediate repeal of the PTA, referring to it as “one of the key enablers of arbitrary detention for over four decades.”<sup>31</sup> While the group’s full report will only be presented in September 2018, the initial findings and recommendations echo the findings in this report.

The government announced that it would adopt the UN Optional Protocol to the Convention against Torture during its Universal Periodic Review in November 2017, but the practical effects of that undertaking have yet to be seen.

## Proposed Counterterrorism Legislation

While the Sri Lankan government has not publicly acted on its pledge to repeal and replace the PTA, there have been some leaked drafts of proposed counterterrorism laws. The lack of government transparency about the process and unwillingness to engage in serious consultations with domestic human rights groups has left much to conjecture.

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beatings with sticks, the use of stress positions, asphyxiation using plastic bags drenched in kerosene, the pulling out of fingernails, the insertion of needles beneath the fingernails, the use of various forms of water torture, the suspension of individuals for several hours by their thumbs, and the mutilation of genitals. In a number of instances brought to the attention of the Special Rapporteur, these allegations had either been supported by independent medical evidence, or accepted by the judiciary as the basis for excluding a confession at trial.”

<sup>30</sup> UN Human Rights Council, Working Group on Arbitrary Detention: Preliminary Findings on its Visit to Sri Lanka, December 15, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22541&LangID=E> (accessed January 4, 2018).

<sup>31</sup> “Sri Lanka Must Urgently Implement Reforms to End Arbitrary Detention, UN Rights Experts Say,” UN press release, December 15, 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22543&LangID=E> (accessed January 4, 2018).

Responding to the report of the UN special rapporteur on torture following his country visit, Sri Lanka's permanent representative to Geneva, Ravinatha Aryasinha, told the Human Rights Council in March 2017 that the legislative framework for a new law had been approved and "seeks to effectively and comprehensively respond to contemporary manifestations and threats of terrorism, consistent with principles of democracy, good governance and the rule of law."<sup>32</sup> He acknowledged contributions from UN agencies dealing with counterterrorism, including the OHCHR.

Several provisions of the leaked draft counterterrorism law are genuine improvements, such as those that would provide greater detainee access to counsel, allow entry of magistrates and Human Rights Commission officers to detention facilities, and require regular reporting to help prevent enforced disappearances.<sup>33</sup>

However, key provisions in the new draft seem likely to facilitate human rights abuses. Of particular concern are the bill's overbroad and unclear definitions of terrorist acts, which include a wide array of illegal conduct. The suspect needs to have acted with a terrorist purpose, but this term vaguely and broadly includes "intimidat[ing] a population" and threatening "the unity, territorial integrity, sovereignty of Sri Lanka, or the national security or defence of Sri Lanka"—which could be found to include peaceful political activity or protest. While the draft law enumerates procedural safeguards, it is weak on demonstrating how they can be effectively implemented.

As with the PTA, under the proposed law police and military officers may make arrests without a warrant. Suspects may be detained without charge for 12 months, a reduction from the 18 months permitted under the PTA. Bail is only to be granted for exceptional reasons.

The bill also prohibits a range of interactions with "Proscribed Terrorist Organizations" that could violate the right to freedom of association. If enacted, the law would prohibit ordinary dealings with many ethnic Tamil organizations, including those based abroad,

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<sup>32</sup> Ravinatha P. Aryasinha, Permanent Representative of Sri Lanka, "Statement at the Clustered Interactive Dialogue with the Special Rapporteur on Torture and the Special Rapporteur on Human Rights Defenders," Geneva, March 2, 2017, <http://www.lankaweb.com/news/items/2017/03/02/report-of-the-special-rapporteur-on-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-on-his-mission-to-sri-lanka-from-29-april-to-7-may-2016> (accessed August 21, 2017).

<sup>33</sup> "Sri Lanka: Anti-Terror Bill Revives Fears of Abuse," Human Rights Watch news release, May 18, 2017, <https://www.hrw.org/news/2017/05/18/sri-lanka-anti-terror-bill-revives-concerns-abuse>.

that were declared illegal during the armed conflict and remain so, even if during or since the war they never engaged in terrorist activity.<sup>34</sup>

Special Rapporteur Ben Emmerson found “central flaws” in the draft framework that, if enacted, “would guarantee the continued violation of the human rights of terrorism suspects.”<sup>35</sup>

## International Standards

Acts of terrorism pose a threat to every country in the world. Sri Lanka, after decades of civil war, has a responsibility to take preventive measures to protect its populace from future attacks. However, the government also needs to ensure that its counterterrorism laws do not imperil human rights and that they include necessary safeguards to prevent repetition of past abuses.

Recent cases indicate that abuses under the PTA or related criminal law provisions, if not as frequent, continue as they did in the past. Human Rights Watch research found that torture in custody, in some cases resulting in death, is widespread through much of the country.<sup>36</sup>

Sri Lanka is a party to core international human rights conventions that prohibit torture and other ill-treatment and ensure due process rights of criminal suspects. These include the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>37</sup>

Sri Lankan authorities are empowered to prevent and deter serious abuses. These protections include the right to legal representation of choice, to have access to family

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<sup>34</sup> Ibid.

<sup>35</sup> “Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, at the Conclusion of His Official Visit,” <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>.

<sup>36</sup> Human Rights Watch, “*We Live in Constant Fear*.”

<sup>37</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Sri Lanka on June 11, 1980; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Sri Lanka on January 3, 1994.



members, to be promptly produced before a court of law, and to be informed of any criminal charges.

Recent strengthening of the Human Rights Commission of Sri Lanka has led to many improvements in ensuring access to PTA detainees. President Sirisena has issued directives to end torture, including during arrests under the PTA.<sup>38</sup> However, serious shortcomings in the enforcement of the law have meant that few detainees harmed by police have received justice or meaningful redress. Unless the law, policies, and practices are changed, most PTA detainees, including those still awaiting trial, are unlikely to see meaningful redress for sustained unlawful detentions, let alone for torture and other abuses.

Beyond Sri Lanka's obligations under the human rights treaties, UN General Assembly resolution 60/147 of December 2005 recognizes the rights of victims of serious human rights violations, such as those under the PTA, to "adequate, effective and prompt reparation for harm suffered."<sup>39</sup>

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<sup>38</sup> "No Torture or Humiliation of Terror Suspects," *Sunday Times*, June 19, 2016, <http://www.sundaytimes.lk/160619/news/no-torture-or-humiliation-of-terror-suspects-197897.html> (accessed August 24, 2017).

<sup>39</sup> ICCPR, arts. 2(3) and 9(1); see also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted December 16, 2005, G.A. res. 60/147, U.N. Doc. A/RES/60/147 (2005).

## II. Abuses under the PTA

The government has detained people under the PTA with a range of backgrounds and histories. Although the law is specifically intended to prevent terrorism, many people with no connection to terrorism or to groups such as the Liberation Tigers of Tamil Eelam have been arrested under its provisions.

Among those who have been arbitrarily arrested under the PTA are prominent human rights campaigners Ruki Fernando and Father Praveen Mahesan. Although Fernando and Father Praveen were released on bail following an international outcry after their 2014 arrest, they continue at times to face harassment from security forces and immigration authorities when traveling abroad.

But most of those held without charge under the PTA are unknown to the outside world, generate no international outcry, and may languish in prison for years. Human Rights Watch is aware of several cases of people detained for a decade or more, who were subsequently acquitted or released without charge, and who received no compensation, reparations, or apologies from the government.

Listed below are cases of abuses under the PTA in which we were able to interview the detainee or their relatives. These cases are only a tiny fraction of the cases brought under the PTA in the past three decades, but they highlight the draconian nature of the law and the injustices under it that any new counterterrorism legislation should eliminate. The cases include arbitrary detention, torture and custodial abuse, forced confessions, denial of legal and medical assistance, and other forms of abuse. Frequently detainees suffer from multiple forms of such abuse. As Ben Emmerson, UN special rapporteur on counterterrorism and human rights, noted in July 2017: “Through a combination of extended executive detention, and grossly protracted criminal proceedings, suspects arrested under the PTA have commonly been held in detention, in conditions that amount to inhuman and

degrading treatment, for many years without ever having been found guilty of anything, and without any effective judicial review of their detention.”<sup>40</sup>

Most of the cases we documented reflect practices that have been previously documented by domestic rights groups and lawyers. Countless cases of torture, sexual violence, and other ill-treatment have occurred in various official and unofficial places of detention, including but not limited to the Criminal Investigation Department (CID) and Terrorist Investigation Division (TID) offices in Colombo.<sup>41</sup> Detainees have had limited recourse to lawyers or medical assistance, with many complaining that even when produced before a judicial medical officer, they received no assistance or proper examination for injuries.

## Vijayakumar Ketheeswaran

Vijayakumar Ketheeswaran, a student in auto mechanics in Colombo at the time, was visiting his family in the northern town of Kilinochchi, the unofficial LTTE capital during the war, when he was detained under the PTA in June 2014. TID police came to his family’s home and said they needed to question him about a surrendered LTTE fighter who had been through the “rehabilitation” program and had since gone abroad. Ketheeswaran said that although he was no longer in touch with the person, the TID officials insisted that he had recently received a call. He alleged that after he was taken into custody, the authorities tortured him:

They took me to a house close to the army camp. I am unsure what the house was for or who owned it. When I got there, I saw that there was another man there, another detainee. I recognized him as someone from my village. The TID officers then showed me photos of the LTTE rehabilitated person and told me that they suspected he was reorganizing the LTTE. They accused me of being in touch with him. When I denied any contact, they beat me on the soles of my feet with pipes. I was beaten for about three hours that night. I

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<sup>40</sup> “Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-Terrorism, at the Conclusion of His Official Visit,” <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>.

<sup>41</sup> See Human Rights Watch, *“We Will Teach You a Lesson.”* The report documents numerous violations of the rights of individuals in the custody of the Criminal Investigation Department and Terrorist Investigation Division.

recall there were roughly about 10 TID officers present. I was given no food or water or medical treatment that night.<sup>42</sup>

The next morning, he was taken to the TID office in nearby Vavuniya. He said that one day later, he was questioned and beaten by a unit in civilian clothes who said that they belonged to the Colombo office:

This unit beat me on my back with sticks and poles. They stripped me naked and beat the soles of my feet with pipes. At one point, they rubbed chili paste on my genitals. I fainted at that point. When I woke up, I was in the hospital, with TID officials with me. There were also two police officers in uniform in the room. I was handcuffed to the bed. The next day, I was taken from the hospital to the CID headquarters fourth floor in Colombo. I was treated fine while I was there. I got food, water, and there was no torture.<sup>43</sup>

After one month, in July 2014, Ketheeswaran was transferred to Boosa near Galle, a maximum security prison in southern Sri Lanka where many PTA detainees have been held. He said he was produced before a magistrate only in March 2015, after 10 months in custody:

I remember that before going to the magistrate, the TID wanted me to sign a confession, and they burned me with cigarettes. But they had to produce me before a JMO [judicial medical officer] before taking me to the magistrate. The JMO asked me about the burn marks. I told him that the authorities had done that. The JMO told me not to mention it to them, and that he would put it in my report without their knowing.<sup>44</sup>

Ketheeswaran was released on bail in November 2015, but he still has to report to the magistrate every month. The attorney general has yet to decide whether to file charges, and so Ketheeswaran said he lives “in this limbo of not knowing whether I am free or not.”

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<sup>42</sup> Human Rights Watch interview with Vijayakumar Ketheeswaran, Colombo, April 24, 2017.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

In April 2016, the authorities arrested him again under the PTA, this time because the TID was looking for his brother in connection with a motorcycle incident. He was released only on September 17, 2016. Ketheeswaran said:

When they couldn't find [my brother], they arrested me instead. I was taken to Boosa and tortured all over again. They asked me to admit that my brother had been in the LTTE. I was hanged and beaten so badly that I admitted to it even though I don't know if it's true or not. When I was finally produced before a judge in September, the judge ordered me to be released, saying there was no connection. I was 13 years old when the war ended. I didn't even know what the LTTE was. But I'm still being harassed. They are harassing Tamils.<sup>45</sup>

## Jeyakumari Balendran

Jeyakumari Balendran said that she was detained under the PTA on March 12, 2014, because authorities were suspicious of Appan, a friend of her late husband, who had been living in Kilinochchi with her and her 12-year-old daughter. Balendran, who lost her husband and three sons during the conflict, is a prominent campaigner against enforced disappearances. The Sri Lankan authorities said they had identified an LTTE conspiracy that included Appan and two other men, Gobi and Thevihan, who were all later killed in an April 2014 army operation.<sup>46</sup> Balendran said:

Appan used to drive a truck, and it broke down that day. He told me he was going to go and get it repaired. Around midday, I saw a man jump the gate into the house. He ran inside, grabbed my daughter, and covered her mouth to stop her from screaming. I shouted at him to let my daughter go. Just then, I heard a loud group of voices calling my name—but not quite my name, they were calling “Jayegowri.” I came out, opened the door, and told them my name was Jeyakumari. At about the same time, I heard a loud

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<sup>45</sup> Ibid.

<sup>46</sup> The Sri Lankan government alleged that Appan, Thevihan, and Gobi had been trying to arm and revive the LTTE. See Charles Haviland, “Suspected Tamil Rebels Shot Dead in Sri Lanka,” *BBC News*, April 11, 2014, <http://www.bbc.com/news/world-asia-26984716> (accessed August 24, 2017).

explosion. And then there were a large number of police and army who came in, plus a lot of local villagers. It was confusing and sudden.

The police and army searched my house. They took all documents, and all of Appan's belongings. He didn't have much, just some petrol for his truck really. Then the police and army took me and my daughter to their van. They tried to take only me but I refused to be separated from my daughter. They took us to the CID station near Kandaswamy temple in Kilinochchi.

At the station, I was accused of giving food to the LTTE. They threatened to pull out my fingernails and brought pliers to show me how they would do it. I wasn't tortured except for some blows on my hand. But the mental torture was terrible. My daughter was there the entire time.<sup>47</sup>

Balendran said that several male officers questioned her, although they later brought in two female CID officers. She and her daughter were later taken to Vavuniya hospital and examined. Her daughter was then taken to Kilinochchi hospital, and lawyers helped get her into child protection services. Balendran said she was repeatedly questioned about Appan and a man she didn't know:

I was kept in Vavuniya police station for three days and then sent to Boosa prison. I was kept in the women's ward. They said I was harboring the LTTE, and I was questioned regularly about my knowledge of Appan and Gopi. I didn't know Gopi at all.<sup>48</sup>

Balendran was first produced before a magistrate in December 2014. She was repeatedly questioned about the same issues. While she received bail on March 10, 2015, her case has yet to be resolved.

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<sup>47</sup> Human Rights Watch interview with Jeyakumari Balendran and Vibooshika Balendran, Colombo, April 24, 2017.

<sup>48</sup> Ibid.

## Ruki Fernando and Father Praveen Mahesan

Two prominent human rights activists, Ruki Fernando and Father Praveen Mahesan, were detained under the PTA in Kilinochchi on March 16, 2014, while inquiring into the circumstances surrounding the arrest of Jeyakumari Balendran and the welfare of her 12-year-old daughter. During the day, the authorities had followed and questioned them, and the two were eventually arrested and taken to the Kilinochchi police station about 10 p.m. that night. They were questioned intensively until early morning the following day.

Fernando, who is known internationally for his human rights work, managed to send out a text message before his cell phone and other electronics were taken from him. This message proved critical in alerting domestic and international human rights groups, who quickly mobilized to denounce the arrests and call for Fernando and Father Praveen's unconditional release.<sup>49</sup>

Both men were held for nearly 48 hours before they were released. A travel restriction issued on March 20 was later rescinded, but Fernando continues to occasionally face harassment and questioning when leaving the country. His electronic equipment, which contained sensitive information and contact details, has never been returned to him.<sup>50</sup>

## Vivodhani Givoshan

Vivodhani Givoshan was arrested on October 1, 2010, by the Kandy TID under the PTA. He was detained for ten months and was eventually produced before a magistrate in August 2011. He said he was never told of the allegations against him:

I don't know what the charges were against me. I was given conditional bail, so I had to appear every Sunday before police, which was then reduced to once a month. The case against me was dropped in 2014. I was not tortured in custody but I was threatened quite a lot. The ICRC [International

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<sup>49</sup> "Sri Lanka: Free Prominent Human Rights Defenders," Human Rights Watch news release, March 17, 2014, <https://www.hrw.org/news/2014/03/17/sri-lanka-free-prominent-rights-defenders>; Letter from Human Rights Watch to President Sirisena, February 26, 2015, <https://www.hrw.org/news/2015/02/26/letter-president-sirisena-re-human-rights-situation-sri-lanka>.

<sup>50</sup> Ruki Fernando, "Arrest: Timeline of Events," <https://rukiiii.wordpress.com/march-2014/timeline-of-events/> (accessed August 4, 2017).

Committee of the Red Cross] visited the station, so I feel that might have given me some protection.<sup>51</sup>

## Soriyamoorthy Givoshan

Vivodhani said his brother, Soriyamoorthy Givoshan, surrendered to the army in Mullaitivu in 2009, near the end of the war. Soriyamoorthy had been trapped in the combat zone along with other civilians in the area. He was detained with others who surrendered at Rambaikulam in Vavuniya camp. In August 2009, the TID came and arrested him, taking him from the camp. He was secretly detained for a year until he was finally produced before the Kandy Magistrate Court in August 2010 and formally arrested under the PTA. Vivodhani said that when he finally managed to speak with his brother, Soriyamoorthy said he had been transferred numerous times during his detention and that he had been tortured. Vivodhani said:

He was taken to the Kandy police station and kept there for three months. He was questioned there continually about any involvement with or knowledge about the LTTE. He was taken to other police stations—we don't know exactly where—for another six months, where he was also questioned. I know he has been tortured a lot, he has told me this since, but I don't know exactly what happened to him. He told me he was forced to sign a confession, a blank piece of paper on which nothing had been written. The authorities told him that he would be released if he signed it.<sup>52</sup>

After he was produced before a magistrate, Soriyamoorthy was remanded to Pallekele prison. He faces a range of charges in Matale, Dambulla, Alawathugoda, and Kandy, all for involvement with the LTTE. Vivodhani said that his brother just decided to plead guilty to end the indefinite detention:

In six out of his eight cases, the ones which actually went to court, we decided that it would be easier for him to plead guilty, so there was actually

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<sup>51</sup> Human Rights Watch interview with Vivodhani Givoshan, Kandy, April 22, 2017.

<sup>52</sup> Ibid.



no trial. Although we know the prosecution had no evidence, or at least none that my brother's lawyers could see.<sup>53</sup>

In three of the cases where he pled guilty, Soriyamoorthy was given a year of “rehabilitation” and a year of rigorous imprisonment, running concurrently. He received a seven-year sentence for another case and is still waiting for trial on the remaining cases. Vivodhani said his brother has suffered in prison:

My brother is better now, because he sees that there might be some hope, some sense of definite time when he will be released. Prison conditions are difficult—it's hot, there are water shortages—but we can take him food and he gets medical care. My brother was young when he was arrested. So many of those arrested were young, many of them arrested on flimsy evidence of buying a SIM card, renting a bike.<sup>54</sup>

## Suranjiv Krishantha Fernando

K. Rajeshwari said that in August 2008, when her son Suranjiv Krishantha Fernando was 19 years old and had just taken his A-level exams, the authorities arrested him under the PTA in Matale. She said that the family is unclear about the evidence against him:

Kandy TID came to our home that evening. Krishantha had come home from helping out my brother at his shop and he was watching TV. As soon as he stepped out to see what the officials wanted, he was immediately handcuffed. They said they had suspicions that he was involved with the LTTE. I asked them for their IDs. They showed me their identification and told me they were with Kandy TID. They took him away.<sup>55</sup>

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Human Rights Watch interview with K. Rajeshwari, Kandy, April 22, 2017.

Krishantha was kept at the Kandy police TID for six months, and was then transferred to Hanguranketha station for another six months. After one year, he was finally produced before a magistrate and sent for detention at Kandy prison. Rajeshwari said:

We were allowed to take him food and see him. I don't know if he has been mistreated in prison but he has lost so many years of his youth. I know that he gave a confession; I don't know if it was under torture or voluntary.<sup>56</sup>

The authorities eventually filed three cases against Krishantha. He decided to plead guilty to end the indefinite detention. In two cases, he was sentenced to two years of imprisonment and "rehabilitation." The trial is proceeding in the third case. He has so far spent eight years in prison.

## **Murali Rajalechchami**

Rajalechchami said that her son, Murali Rajalechchami, was 18 years old at the time he was arrested under the PTA. Two police officers from the station in Teldeniya, near Kandy, came to their house on June 25, 2008, and said they needed a statement from Murali. Murali was not at home so she agreed to bring him to the police station. She said that when they arrived, the police tricked Murali to construct a false case against him:

While we were there waiting outside the station, a man in civilian clothes came up to us and said to Murali, "You haven't eaten, let me take you for some food." The two of them then moved to a nearby shop and I saw the man buy Murali some yogurt. I'm not certain exactly what happened next, but Murali told me later that the man in civilian clothes told him to run away. We saw Murali run away, and immediately about 25 police officers chased after him. About half an hour later, they brought Murali back. I was there, and saw that he was bloody and beaten up. His hands were tied behind his back. They threw him into the police station and started thrashing him badly with their feet and the rifle butts of their guns. I fainted when I saw

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<sup>56</sup> Ibid.

that. I can't remember if they questioned him or anything else, I just blacked out.<sup>57</sup>

Rajalechchami said that Murali was kept at the police station for three days:

When I tried to visit him, the police would not let me in and would say, "Oh, the Tigers are coming, the Tigers are coming." Murali told me later that he had been tortured and beaten while in the station.<sup>58</sup>

Murali was taken to the Menikhinna police station to record his statement. Three months later he was brought before a magistrate. He was then transferred to Bogambara prison where he was held for five years without charge. He was finally charged in the Jaffna High Court in 2013 with spying for the LTTE.

Murali was acquitted in 2013 after the judge ruled that there was no evidence against him. His mother said the long detention has traumatized her son: "He had done well in school, both O and A levels. But now he can't do anything because of this trauma."<sup>59</sup>

## **Guruparan Gurudharan**

Guruparan Gurudharan said that on the morning of June 30, 2008, he was arrested under the PTA by a group consisting of uniformed members of the Special Task Force (STF), an arm of the police specializing in counterterrorism, and some members of the People's Liberation Organisation of Tamil Eelam (PLOTE), a Tamil armed group that was opposed to the LTTE.<sup>60</sup> He said he recognized the PLOTE members. Gurudharan said that he was initially detained at a PLOTE camp in Vavuniya, near Kovil Kulam. While it was the STF that had arrested him, it was PLOTE members who questioned and tortured him:

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<sup>57</sup> Human Rights Watch interview with Rajalechchami, Kandy, April 22, 2017.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> There were many reports during the war of rival Tamil groups participating with authorities in the torture of suspected LTTE members.

When we got to the PLOTE camp, they removed my shirt and blindfolded me. They put me in a room that smelled like a toilet to me. I was completely naked, and they chained my legs to an iron bar. They then beat me with wires and poles. They put kerosene into plastic bags and made me breathe through it. They hung me and beat me many times. They kept asking me questions about the LTTE. I told them I had no LTTE involvement, that I had tried to escape forced recruitment by the LTTE by using the sea route through Mannar to escape their control. But they wouldn't believe me and kept questioning me.<sup>61</sup>

After a couple of nights, the STF took him to Joseph Camp, long notorious as a Sri Lankan navy torture site.<sup>62</sup> He said:

I remember that night, an STF member put a book on my head, made me kneel down, and thrashed me with his baton on my head. I don't remember anything after that because I fainted. Afterward, they tied my thumbs together and hung me from my hands. I fainted regularly from this torture—they simply poured water on me to revive me and started all over again. I got no medical attention. I wasn't even given any water to drink. Occasionally they would fill the cap of a water bottle with water and give it to me. They kept promising me water if I confessed. I was so desperate I checked the toilet to see if I could drink out of the commode, but they had made sure there was no water even in there. I had no food for three days.<sup>63</sup>

On July 3, 2008, Gurudharan was brought to the CID headquarters in Colombo. He got his first meal on his way to Colombo. He remained there until October when he was finally produced before a magistrate and then transferred to the prison in Boosa:

At first the CID wanted to turn me. They kept saying, "The war is going to end and we can help you." They tortured me, hitting me with wires, making

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<sup>61</sup> Human Rights Watch interview with Guruparan Gurudharan, Colombo, April 24, 2017.

<sup>62</sup> Allegations of torture at Joseph Camp have been rife for many years. See, for example, International Truth and Justice Project, "Joseph Camp," March 16, 2017, <http://www.itjpsl.com/reports/joseph-camp#english> (accessed August 8, 2017).

<sup>63</sup> Human Rights Watch interview with Guruparan Gurudharan, April 24, 2017.

me kneel on sharp things. They had banana branches, which they used to hit me with because those don't leave deep scars. I was in complete despair. My mother was in the war zone, and I didn't know anything about how she was doing. It was such a dark place. I felt hopeless. No one knew where I was or whether I was alive.<sup>64</sup>

He said that medical staff and judicial authorities failed to ensure his protection:

I was finally produced before a magistrate in October 2008. Five days before that, I was taken to a JMO [judicial medical officer], who spoke only Sinhala. The CID had warned me against speaking to the JMO. I don't know what the JMO wrote in her report, she didn't do any proper physical exam, just wrote down some notes and that was it. In Boosa, the ICRC would visit, but in between their visits, the CID from Colombo would come and torture me. Magistrates would come to Boosa to extend our detention orders. I was never asked once by any magistrate if I was being treated okay.<sup>65</sup>

Gurudharan remained at Boosa for seven months. On May 25, 2009, he was produced before a magistrate in Vavuniya and shifted to the Anuradhapura prison. He was moved several times after that. The authorities eventually filed six cases against him. He was acquitted and released in February 2017, but said he remains under surveillance:

I have no faith in the courts, or the transitional justice mechanisms. They promised us a hybrid tribunal but they're backtracking already. This will continue for generations. The only hope for people like me is to leave the country. My health has deteriorated as a result of all this. I can't stay in the sunlight. I have no strength in my right arm. I also didn't know there were so many rules about getting signed confessions. I didn't know anything about the law when I was arrested so I just kept signing papers. I don't know what I signed.<sup>66</sup>

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

## Angela Croos

Angela Croos, who taught English at a school in Kandy, lost her mobile phone in 2007, and a year later the police said her phone had been found in the hands of the LTTE. Angela's mother, Selvarama Croos, told Human Rights Watch that in May 2008 her brother had been arrested for alleged connections to the LTTE. So when the police came to them in August 2008 about Angela's phone, the family went to the Kandy police station because they knew that the police already viewed the family with suspicion. The police then detained Angela under the PTA. Selvarama said:

My daughter was put in a cell. I spent the night at the police station outside the cell. We managed to get a lawyer the next day, and thankfully she was produced before the magistrate quickly. She was remanded to Kandy prison for 14 days, and every 14 days would get produced and remanded again. This continued for one year and eight months. I hired a lawyer—first locally, which cost me 15,000 rupees [US\$135] each court appearance, and then a lawyer from Colombo which cost me 30,000 rupees [\$270] each time. Meanwhile, my daughter's health was deteriorating. We filed for bail in the high court, but they only agreed to release her into medical care. I had to pay 600,000 rupees [\$5,400] for this.<sup>67</sup>

Eventually, the family sought assistance from their church, and the local priest intervened to help file a fundamental rights case. Angela was released in April 2010, nearly two years after her arrest, and was fully acquitted.

Angela married immediately after her release from detention and gave birth to a stillborn child in September 2010. Her health having worsened, she was hospitalized on October 5 and died on October 24.

## Sachinda Ananda Sudaharan

Sumanthy Arasalingkam said that after her sister died, she started caring for her nephew, Sachinda Ananda Sudaharan. But she soon realized that he had started working in

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<sup>67</sup> Human Rights Watch interview with Selvarama Croos, Kandy, April 22, 2017.

Kilinochchi as a driver for the LTTE. Later, he was asked by the LTTE if he wanted to work for their intelligence services. When he refused, the LTTE jailed him. He managed to escape from their custody and cross into government-held territory. Arasalingkam said that Sudaharan decided to try and go abroad to escape from the conflict:

At that time, the LTTE only allowed men over 32 years to cross over [into government territory], so he used a friend's pass to cross over. The logic was that if you're older, that means you're married and you'll have incentive to come back. They didn't like younger persons to cross over. Ananda decided to go abroad, and went to some agent in Colombo to register. He was living with some other men who had registered with the agent to go abroad as well, as migrant workers.<sup>68</sup>

Arasalingkam said that while her nephew was waiting for his work permit, militants set off a bomb on a bus in the suburbs of Colombo in April 2008.<sup>69</sup> Security forces immediately started rounding up Tamil men there under the PTA. Sudaharan was among them. Arasalingkam said:

Ananda was arrested during this roundup. All 12 men in his house were arrested. All were Tamil youth from the north. They were first taken to Mount Lavinia station, and then taken to the CID headquarters on the fourth floor. My nephew told me he was severely tortured there. His nails were removed, and he was severely beaten. They tied his hands behind his back and hung him upside down. He didn't understand Sinhala, so had no idea what they were asking him. He ended up signing a confession he didn't understand. He said they eventually produced an interpreter but he was so afraid that he just went along with everything they asked him to do.<sup>70</sup>

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<sup>68</sup> Human Rights Watch interview with Sumanthy Arasalingkam, Colombo, April 24, 2017.

<sup>69</sup> "Sri Lanka Bus Blast Kills 24," *Guardian*, April 25, 2008, <https://www.theguardian.com/world/2008/apr/25/srilanka.terrorism> (accessed August 8, 2017).

<sup>70</sup> Human Rights Watch interview with Sumanthy Arasalingkam, April 24, 2017.

Charges were filed against Sudaharan after three years of detention. One of the 12 men arrested with him died from alleged torture. Sudaharan remains on trial, although his aunt said there is no evidence against him:

I have seen the evidence they produced to support the charges. It was nothing. A flowerpot, an ID, a toy remote control. I'm not a lawyer but even I knew it meant little. Even the CID have told us privately that that they have no clear evidence against him. My nephew needs heart surgery. Hopefully they can make sure he gets that soon.<sup>71</sup>

## Kanna and Durga

According to Durga, her husband, Kanna, was possibly involved with the LTTE. Kanna was arrested by the Matale police in 2008 on suspicion of being involved with the LTTE. He was released after a week in custody, and vanished soon after. Durga and her mother-in-law, Malathi, think he may have escaped abroad, as they have had no news of him since. Shortly after Kanna was released and went missing, TID officials came searching for him at his home in Kandy. Malathi and Durga told the officials they did not know his whereabouts. Malathi said the officials arbitrarily decided to detain Durga instead:

When they couldn't find Kanna, the TID arrested his wife, Durga, simply because Kanna wasn't there. Durga and Kanna had three small children ages 18 months, 3 years, and 7 years at the time. The TID took Durga to the local police station in Kandy. They questioned her about Kanna's involvement in LTTE cases. Apparently, they had eight separate allegations against him, but no evidence against Durga. Durga was kept at the police station for six months. She was finally produced before a magistrate after six months, and was sent to prison custody. She remained in prison for six years before a case was even filed in court against her.<sup>72</sup>

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<sup>71</sup> Ibid.

<sup>72</sup> Human Rights Watch interview with Malathi, Kandy, April 22, 2017.



Charges were finally brought against Durga only in 2014, and she was eventually acquitted in 2015.

Durga could keep her youngest child with her in prison while nursing, but all three children were raised by Malathi. Malathi said she found it very difficult, and had to take cleaning jobs to raise the children. Even after her release, Durga is traumatized by her years of detention. Malathi said:

Durga is out of prison now, but is broken. She is not strong enough to take a job on the tea estates, so she does menial chores in the bungalows. We have not received any apologies or compensation for our suffering.<sup>73</sup>

Said Durga:

I was in remand for seven years for a mistake I did not do. My children also suffered. If I try to get justice now, the difficulties which my children faced will not be answered.... But it will be a great help if they assure that such a situation does not come to others.<sup>74</sup>

## Ramesh and Nanda Kumar

Ramesh Kumar was arrested in 2008 under the PTA on suspicion of being involved with the LTTE. Local police arrested him and held him at the Kandy police station under a detention order. A magistrate then transferred him into custody, where he was held for five years without charge. His mother, M. Parameswary, said:

After five years, we decided it was better for him to plead guilty because we could see him staying in prison for many more years. I paid a fine of 15,000 rupees [US\$115], but he was still kept in remand for one more year. He doesn't talk to me in detail about what he went through but I know that he

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<sup>73</sup> Ibid.

<sup>74</sup> Human Rights Watch interview with Durga, Kandy, November 11, 2017.

was tortured in custody. He was burned with cigarettes and tortured in other ways.<sup>75</sup>

Parameswary said she also filed a fundamental rights case in the Supreme Court, seeking relief. In 2014, the court ordered Kumar's release without any charges. She said: "We have received no compensation and no justice for his clearly wrongful arrest and detention. He lost much of his youth unjustly in prison."<sup>76</sup>

Ramesh Kumar's brother, Nanda, was also arrested in 2008. He was kept in police custody under a detention order for three months before being sent to remand custody in prison for five years. Nanda Kumar was released without charge after five years of detention.

Parameswary said:

There were no charges against him, they just said he was being held under the PTA. I know he was severely tortured at the police station. He was beaten and burned with cigarettes. He is so mentally unstable now that he cannot leave the house and cannot work. He has terrible mental health issues.<sup>77</sup>

## Solomon Caspus Paul

Solomon Caspus Paul was arrested in connection with an August 2006 bombing in Digana, near Kandy.<sup>78</sup> Several people from his village were arrested soon after the bombing, but Paul was arrested under the PTA only in June 2007. He said the police tortured him and forced him to sign blank papers that were eventually used as a confession:

They came to my home around three in the morning. As soon as I opened the door, they asked for my ID. Once I produced it, they handcuffed me, one hand over my shoulder, the other hand round behind my back stretching up to meet the arm over my shoulder. They also shoved a ball into my mouth, I

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<sup>75</sup> Human Rights Watch interview with M. Parameswary, Kandy, April 22, 2017.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> "Bomb Kills Senior Police Officer in Central Sri Lanka," *Zee News*, August 7, 2006, [http://zeenews.india.com/news/south-asia/bomb-kills-senior-police-officer-in-central-sri-lanka\\_314037.html](http://zeenews.india.com/news/south-asia/bomb-kills-senior-police-officer-in-central-sri-lanka_314037.html) (accessed September 19, 2017).

suppose to stop me from speaking or shouting. Because I had been sleeping, I was only wearing a sarong, and it fell off. They took me completely naked, without any clothes, to the police station in Nawalapitiya. I was kept in that position, with my arms handcuffed in that way, all night, until the TID came in the morning.

He said the next morning the TID put him in handcuffs the normal way:

I was taken to a room somewhere in the station. They put me on the ground, they punched me, trampled on me, used poles to beat me. They were asking questions about if I knew so and so, all I suppose in relation to the blast. That same day, I was taken from the Nawalapitiya station to the Teldeniya police station by the TID. I was kept there for six months. For the first few days there, they would come get me in the morning, force me into a crouching position. They put cricket poles into my anus, put petrol onto a sponge and shoved it on my mouth and nose so I was forced to breathe it in.<sup>79</sup>

Paul said that the torture stopped after a few days, probably because a human rights activist intervened. But he still had to sign some blank papers. “I don’t know what I confessed to,” he said. “The papers they made me sign were blank.”<sup>80</sup>

He was produced before a magistrate after six months in detention, and was transferred to custody in Kandy prison. After 18 months, he was charged with aiding and abetting a terrorist organization. During the trial he was transferred to the Anuradhapura prison. He was eventually acquitted of all charges in February 2012. He said he still suffers because of his unlawful detention and torture:

I have a lot of psychological problems as a result of all of this. My baby was born when I was arrested. I couldn’t see her for years until after my acquittal. I have severe physical problems from the torture; I never received

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<sup>79</sup> Human Rights Watch interview with Solomon Caspus Paul, Kandy, April 22, 2017.

<sup>80</sup> Ibid.

medical treatment or was produced before a JMO. Even after my release, the STF and police regularly threatened me against speaking or seeking help.<sup>81</sup>

## Wellage Sudesh Nandimal Silva

Wellage Sudesh Nandimal Silva, secretary of the railway service's trade labor union and an ethnic Sinhalese, said that he was arrested on April 30, 2007, near Colombo. He said he was engaged in left-wing politics and working on protecting Tamil rights, but did not support the LTTE.

In February 2007, the police began cracking down on a group that they suspected to be "Sinhala Tigers," supporters of the LTTE among the country's majority Sinhalese population. Silva said that he became a suspect after he reached out to the police in search of his colleague, Sisira, who had gone missing. The railway authorities claimed they had found ammunition in Silva's possession, and suspended him. He said he went into hiding until April, when he came home for his son's first birthday. He said:

On April 30, I went with my family to the bank. That is when they arrested me. I saw three men coming toward me, in civilian clothes, and another two walking up to the bank. They asked for my ID, asking, "Are you Nandimal?" Then they blindfolded and handcuffed me, and threw me into a van. They put me on the floor of the van and stepped on me. When they removed the blindfold shortly after, I saw there were seven of them in the van. I was beaten and threatened. They slapped me, knee-kicked me on my stomach, hit me with their rifle butts on my neck. They kept asking questions: "Who are the others? Where are they?" They threatened to kill me unless I told them.<sup>82</sup>

Silva was put in a dark cell at the Gampaha police station. He said he was repeatedly questioned and tortured:

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<sup>81</sup> Ibid.

<sup>82</sup> Human Rights Watch interview with Wellage Sudesh Nandimal Silva, Colombo, April 21, 2017.

I was taken away again, I think to a police barracks. They put me on a flat surface and beat me on the soles of my feet, questioning me again on the same issues. The next day I was taken there again, where they put petrol in a polyethylene bag and tied it around my neck and face. The petrol burned, I couldn't breathe. My feet were swollen from the previous day's beatings. The next day was more torture. They put high-pressure water into my mouth. The water goes all over your nose, your mouth, your face. They did this three or four times. Then I was beaten again and questioned by different units. I don't know who they were.

Because his family had seen him arrested, they persisted in searching police stations:

Thankfully, my family and colleagues had been searching for me and were allowed to visit me after five days. That led to a doctor examination after two weeks. The doctor examined me at the police station, and he shouted at the OIC [officer in charge] about my maltreatment. That led to the police producing me before a magistrate, who then remanded me to Boosa. This was around the end of May. I had no lawyer during the appearance before the magistrate.<sup>83</sup>

Silva was transferred to Welikada prison in June 2007 and held without charge for 18 months under the PTA. He was eventually charged with working with a terrorist organization. But there was never a trial; while dates were set for hearings, he said, they were always postponed. After nearly seven years, in 2014, he was finally released, after the prosecutors amended the charges to fall under the Firearms Act, instead of the PTA. He was ordered to pay a fine of 30,000 rupees (US\$230).

## Sahan Kirthi

Sahan Kirthi, an ethnic Sinhalese, was 21 years old when he was arrested under the PTA on February 12, 2007. He said that soon after three of his colleagues at the Marxist trade union newspaper where he worked were arrested, TID police officers arrived at his home and said

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<sup>83</sup> Ibid.

they needed a statement from him. When he appeared at the TID office to give his statement, he was arrested. He was produced before a magistrate, who ordered him detained for six months. He said that as soon as his lawyer departed, the TID officials beat him. He said he endured weeks of torture and has lost hearing in his left ear because of the beatings:

There were four or five officers beating me and questioning me. I felt like I was floating above the earth, it was so unreal. They were questioning me about other people's activities and locations. They tried three times to force me to confess to being a "Sinhala Tiger."

He said that he was eventually transferred to Boosa prison, but was then brought back to TID headquarters in Colombo where he was tortured again:

There was a pattern to the torture. They would take a plastic shopping bag, pour some petrol into it, and then cover my head with the plastic bag. It forced me to breathe the petrol simply to try and get some air. I was beaten on the soles of my feet. The pain was unbearable. I could feel my heart beat and I would get terrible headaches. There was also water torture, where they would put a handkerchief over my face, and put my face under a running tap with high pressure. If you breathe, the water goes into your nose and you feel like you are drowning. At the same time, you can't really breathe because the water pressure is so high.<sup>84</sup>

Kirthi said that the TID officers wanted to force a confession, even threatening to rape his sister: "My sister was graduating from college, and they had questioned her or at least told me they had questioned her. They threatened to rape her unless I confessed."<sup>85</sup>

After his six-month court-ordered detention was over, police officials had to produce him before a magistrate. To cover up their abuses, the police told him to clean up and not complain about the torture. However, Kirthi said that the judicial and medical systems also failed to protect his rights:

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<sup>84</sup> Human Rights Watch interview with Sahan Kirthi, Colombo, April 19, 2017.

<sup>85</sup> Ibid.

They told me after the beatings to wash and get ready. I refused and said I would go before the magistrate with my blood and wounds and that I would tell the magistrate about their treatment. The TID officers threatened me and ordered me against saying anything to the magistrate. When I was produced before the magistrate, I started telling my story. She called us into her chambers instead and scolded me for saying that the TID had tortured me. I showed her my wounds and scars and she said, “You must have hit yourself.”

Thankfully, because I had been shouting loudly while in the courtroom, some lawyers turned up to assist me and pleaded for a JMO [judicial medical officer] exam. I was produced before a JMO after agreeing to sign a confession. I signed some papers. They would not let me read what was written down, so I have no idea what I supposedly confessed to.

The JMO didn’t listen to me—there is a network between the JMO, magistrate, and TID, I am certain of that. They protect each other.<sup>86</sup>

Kirthi was transferred to Welikada prison in June 2007, but was only formally charged in 2012, for conspiracy against the state. He was eventually acquitted in October 2014 after seven years in prison.

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<sup>86</sup> Ibid.

### **III. Recommendations**

#### **To the Government of Sri Lanka**

- Repeal the Prevention of Terrorism Act (PTA) and replace it with rights-respecting counterterrorism legislation that meets international standards for due process.
- Undertake a consultative process with victim rights groups, civil society, human rights lawyers, and relevant experts to assist in drafting the new legislation.
- Implement the recommendations of the UN special rapporteur on counter-terrorism and human rights following his July 2017 country visit, including a prohibition on the use of confessions made to the police, unfettered access for the Human Rights Commission of Sri Lanka to all places of detention, and abolishing the attorney general's right of veto over the granting of bail.
- Implement the recommendations made by the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment following his 2016 country visit, including ensuring any new counterterrorism law provides protections against arbitrary arrests and detentions, strong judicial oversight of law enforcement and security agencies, and safeguards to ensure legal counsel from the moment of arrest.
- Incorporate the comments from the UN special rapporteur on counter-terrorism and human rights and the Counter-Terrorism Committee Executive Directorate into new legislation.
- Accept and implement the recommendations of the Office of the United Nations High Commissioner for Human Rights investigation on Sri Lanka, including reviewing all cases of detainees held under the PTA, and investigating and prosecuting all allegations of torture committed by law enforcement and security agencies.
- Implement all recommendations made by the UN Working Group on Arbitrary Detention in its December 2017 preliminary findings report.
- Continue to allow the Human Rights Commission unimpeded access to all official and unofficial places of detention, and ensure that the commission is notified within 24 hours of all PTA arrests.
- Fully comply with the Human Rights Commission's guidelines on arrest and detention procedures in all cases, especially PTA cases.



- Prosecute all cases of torture alleged under the PTA through a prosecutorial office operating with financial and investigative independence.
- Ensure that all PTA detainees who were acquitted or released without charge are compensated under the government's transitional justice reparations and non-recurrence mechanisms.
- Implement comprehensive security sector reform to ensure a zero-tolerance policy toward abuse and torture throughout the security services, in line with pledges undertaken under Human Rights Council resolution 30/1.
- Seek ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

#### *To the Attorney General's Department*

- Investigate and set aside all confessions obtained under torture or other coercive measures or without the presence of a legal counsel.
- Ensure that all PTA detainees still in detention have free and unimpeded access to legal counsel.
- Set up an independent oversight council to investigate all allegations of abuses under the PTA, including past and recent cases.
- Ensure that all transitional justice mechanisms as pledged under Human Rights Council resolution 30/1 include detainees under the PTA.
- Ensure the non-recurrence of torture, and make sure all laws are in compliance with the recommendations made by the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

#### *To the Ministry of Justice*

- Incorporate the recommendations made by the UN special rapporteur on the independence of judges and lawyers following her 2016 country visit to ensure that all detainees are appropriately charged and receive fair trials, or are released.
- Implement speedier processes for justice, reparations, and compensation within the criminal justice system, such as timely access to judicial medical officers and legal counsel, and regular production before magistrates.

### *To the Ministry of Law and Order*

- Ensure prompt implementation of pledges made under Human Rights Council resolution 30/1 for security sector reform, including but not limited to accountability for abuses under the PTA.
- Issue an authoritative list of all individuals who were or are currently detained under the PTA and the status of their cases. Ensure that family members and lawyers have access to the information.

### **To the United Nations and UN Member Countries**

- Call for time-bound compliance with Human Rights Council resolution 30/1, particularly security sector reforms, including but not limited to a repeal of the PTA.
- Ensure that the UN and related institutions assist in the drafting of any new counterterrorism legislation, as pledged by the government in Human Rights Council resolution 30/1.
- Offer technical and other assistance to the relevant government agencies in security sector reform, particularly related to PTA reform.
- Press the Sri Lankan government to implement the recommendations from the UN special rapporteur on counter-terrorism and human rights, and to consult closely with all UN agencies that have raised concerns about the PTA before passing any new legislation replacing it.
- Implement strict vetting standards to ensure that no members of abusive security forces are sent on UN peacekeeping assignments.
- Urge ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

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# LOCKED UP WITHOUT EVIDENCE

## Abuses under Sri Lanka's Prevention of Terrorism Act

For decades, Sri Lankan authorities have used the Prevention of Terrorism Act (PTA) to arbitrarily detain hundreds of individuals for months and often years without charge or trial, facilitating torture and other mistreatment. The government has failed to repeal the law despite its pledges to the United Nations Human Rights Council in October 2015. The PTA was used widely during the country's 26-year-long civil war with the Liberation Tigers of Tamil Eelam (LTTE), yet it remains in effect more than eight years after the conflict ended in May 2009.

*Locked Up Without Evidence* documents serious human rights violations committed under the PTA, including torture, forced confessions, and systematic denials of due process. Drawing on interviews with former detainees, family members, and lawyers, Human Rights Watch found that the PTA is a significant contributing factor toward the persistence of torture in Sri Lanka. The 17 accounts documented in the report represent only a small fraction of PTA cases overall, but they underscore the law's draconian nature and abusive implementation.

As the government drafts a new counterterrorism law, it is vital that it not replicate the existing PTA provisions that violate basic rights. Human Rights Watch calls on the Sri Lankan government to repeal the PTA and replace it with rights-respecting legislation, drafted through a consultative process, that fully complies with international standards. The government should also implement comprehensive security sector reform, including accountability for abuses carried out under the PTA.



*Sri Lankan police stand guard at a protest calling for the release of Tamil activists being held under the Prevention of Terrorism Act in Colombo, Sri Lanka, October 14, 2015.*

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