

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on minority issues; the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: OL LKA 4/2023
(Please use this reference in your reply)

28 April 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on minority issues; Special Rapporteur on freedom of religion or belief and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 49/10, 51/8, 45/3, 43/4, 50/17, 43/16, 44/8, 43/8, 49/5 and 43/20.

In this connection, we would like to raise a number of issues concerning the recently proposed Anti-Terrorism Act (ATA) published on 17 March 2023, which represents the latest development of your Excellency's Government's legislative amendments in response to the challenges posed by the Prevention of Terrorism Act of 1979 (PTA) and the Rehabilitation Bill passed by the Sri Lankan Parliament on 18 January 2023. The latter legislation followed an earlier proposed draft to establish a Bureau for the Rehabilitation of 'drug addicts, war warriors, and violent extremists.' We note that the revisions to the draft Rehabilitation Bill following a decision of the Supreme Court would not adhere in certain regards to fundamental rights enshrined in the Constitution,¹ and in our view have not remedied the substantive deficiencies of the legislation, and therefore would place many of its provisions in direct contradiction with the international human rights law obligations of your Excellency's Government.

On the Proposed Anti-Terrorism Act

In a recent letter to the Sri Lankan Government (OL LKA 7/2021), which your Excellency's Government kindly responded to in December 2021, as well as in the May 2020 country visit report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/44/50/Add.1), the Special Procedures experts

¹ Centre for Policy Alternatives (Guarantee) Ltd., and Dr. Paikiasothy Saravanamuttu vs. The Attorney General (In Re the Bill titled Bureau of Rehabilitation Act)

identified that key amendments to counter-terrorism legislation in Sri Lanka require addressing these key benchmarks, including to:

1. Employ definitions of terrorism that comply with international norms.
2. Ensure precision and legal certainty, especially when this legislation may impact the rights of freedom of expression, opinion, association, and religion or belief.
3. Institute provisions and measures to prevent and prohibit arbitrary deprivation of liberty.
4. Ensure the enforcement of measures to prevent torture and enforced disappearance and adhere to their non-derogable prohibition, which has attained the status of *jus cogens*; and
5. Enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel.

This communication was designed to lay the groundwork to consolidate the observations of human rights mechanisms and support progress towards meaningful and international law-compliant legislative review and reform of the PTA, or repeal and adoption of alternate legislation that *prima facie* addresses these minimum standards for international law-compliant counter-terrorism legislation by the Sri Lankan Government.

While we welcome your Excellency's Government notification of the ongoing action to replace the PTA through the ATA, we wish to reiterate our previous comments with regard to the PTA and to directly extend those to the currently proposed ATA. We continue to underscore to your Excellency's Government that, in order to bring such legislation into compliance with international law obligations, there must be significant reform and substantive dismantling of the existing and past features of the counter-terrorism legislation, including the PTA and further regulations, which have led to alleged human rights violations, including the infringement of the right to peaceful assembly and association, arbitrary detention, torture and enforced disappearance. Without adequately addressing these key features and bringing any newly proposed legislation into full compliance with your Excellency's Government international law obligations, such legislation will neither prevent, remedy nor repair both prior and future human rights violations, nor effectively counter terrorism.

With a view to facilitating a constructive and effective review of the newly proposed ATA legislation and supporting efforts towards compliance with international law standards, we highlight the continued benchmarks that must be addressed in line with previously communicated benchmarks as applied to the proposed ATA. We underscore that this letter does not constitute a full legislative review as previously conducted by the PTA and note that further provisions may be subject to communication by Special Procedures relating to compliance with international human rights law obligations of your Excellency's Government.

1. *Employ definitions of terrorism that comply with international norms*

Benchmark 1: We recommend amending the definition of terrorism and other vague provisions and to ensure the definitions and language employed are in compliance with Sri Lanka's international human rights obligations.

We respectfully remind your Excellency's Government that, although there is no multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counterterrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counterterrorism instruments and is strictly guided by the principles of legality, necessity, and proportionality. The definition of terrorism in national legislation should be guided by the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly. Counterterrorism legislation should be in compliance with human rights obligations, protection of due process, and in line with the international prohibition against arbitrary detention. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism continues to offer a model definition of terrorism to guide Member States' practice based on the above resolutions and international law standards.

We wish to convey that the proposed features of the ATA appear to contradict your Excellency's Government international obligations, in particular the Universal Declaration of Human Rights ('UDHR'), the International Covenant on Civil and Political Rights ('ICCPR'), acceded on 11 June 1980; the International Covenant on Economic, Social and Cultural Rights ('ICESCR'), acceded on 11 June 1980; the International Convention for the Protection of All Persons from Enforced Disappearances ('ICPPED'), ratified on 25 May 2016; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('CAT'), acceded on 3 January 1994, and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), acceded on 18 February 1982; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 5 October 1981. Moreover, such draft proposals might also run contrary to the 1992 Declaration on the Protection of all Persons from Enforced Disappearance, the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. While we acknowledge the exclusion of the language of "extremism" by past recommendations referenced in exchanges with your Excellency's Government, we believe that the ATA, in particular, its Part II - Offences and Penalties, without addressing the conflicting features of the primary definition of terrorism, would continue to perpetuate the detrimental impacts on the promotion and protection of various fundamental freedoms that have been identified with the ATA and subsequent regulations. In particular, the ATA continues to lack precision in key definitional aspects of terrorism and expands the scope of terrorist acts, further detailed below, creating opportunities for misuse due to broadly worded and vague definitions of terrorist acts.

2. *Ensure precision and legal certainty, especially when this legislation may impact the rights of freedom of expression, opinion, association and religion or belief*

Benchmark 2: We respectfully recall the previous communication to your Excellency's Government and recommend the following:

- a. Comprehensively review the proposed ATA legislation and consult with diverse stakeholders and affected communities to precisely define what speech is prohibited consistent with the requirements of article 19(3) of the ICCPR to ensure no unlawful interference with the freedom of expression and opinion, as well as of association.
- b. Comprehensively review the vague language within the ATA, including section 3(1)(a)-(e), and examine the precision and legal necessity as featured in the model definition of terrorism, and the impact of these provisions on the precision, legality and necessity of all following provisions.

We again bring to your Excellency's Government attention the 'principal of legal certainty' under international law,² which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined and/or overly broad laws are susceptible to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international obligations. In her report A/HRC/37/52, she underscores that the use of counter-terrorism law to quell legitimate activities protected by international law is inconsistent with the State's obligations. article 9 (1) ICCPR affirms the principle of legal certainty under international law and requires that any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision. article 22(2) ICCPR provides that any restrictions on the exercise of the right to freedom of association must be "prescribed by law" and "necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

We refer to the proposed sections 3(1)-3(2) of the ATA, which appear to continue to establish overly broad definitions of terrorism that threaten to impinge upon the exercise of human rights and fundamental freedoms. These specific provisions implicate the exercise of the right to assembly, right to freedom of opinion and expression and fail to offer new counter-terrorism legislation that is sufficiently distinguished from the PTA to fulfil compliance with international law obligations. The retention of the most problematic and expansive features of the PTA could be used against human rights defenders, civil society, and those legitimately exercising their human rights and fundamental freedoms. The broadness of these provisions would undermine the legal certainty and precision of the full legislation and raises questions

² ICCPR article 15(1).

regarding provisions linked to “direct or indirect encouragement” or “inducement” in section 10 of the proposed draft, as well as sections 11, 12, and 16, and beyond.

3. *Institute provisions and measures to prevent and halt arbitrary deprivation of liberty*

Benchmark 3: We respectfully recall the above analysis, including the legal standards outlined in OL LKA 7/2021, and recommend amendment of provisions concerning arrest and detention as well as administrative and judicial safeguards to prevent the continued arbitrary arrest and detention of individuals inconsistent with international law standards. Recommended benchmarks are as follows:

- a. Review and amend the ATA, in consultation with civil society and relevant stakeholders, to establish a concrete basis from which arresting authorities are empowered, and to limit the subjectivity on the grounds permissible to justify an arrest.
- b. Review and amend the ATA to ensure that there are standards and criteria, including record-keeping procedures, set out to ensure that a person has not been detained outside the bounds of the law before being handed over to the police station and to remedy the presumption that detention may occur before the commencement of an investigation.

As currently drafted, the ATA retains the most problematic and exceptional features that may also allow, as alleged under the PTA, for the unlawful deprivation of liberty across pre-trial detention, bail, undue delays in trials, the admissibility of self-incriminating confessions obtained through torture or other forms of ill-treatment, in absence of legal safeguards against such practices and the continued use of the death penalty. It may also continue to infringe on the right to challenge the legality of detention, the right to legal detention, and the continued use of the death penalty. The ATA provides for wide arresting authority under Part III, section 19, to “any police officer, member of the armed forces or a coast guard officer,” and to “arrest without a warrant” on the basis of a range of factors that include mere suspicion, including on the basis of arresting an individual “who has been concerned in committing an offence,” under the Act or when an arresting authority “receives information or a complaint which such officer or member believes to be reliable.” Given the overly broad definition of terrorism and the subjectivity of provisions that go beyond reasonable grounds, these provisions would continue to present a high risk of misuse and violation of human rights and fundamental freedoms. We draw your Excellency’s Government attention to the relevant legal obligations attached to these alleged features and benchmarks as found in OL LKA 7/2021.

We further refer your Excellency’s Government to the standards set out above in articles 17(2)(c)-(f) of the ICCPED, articles 6, 9 and 10 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, article 6 of the Declaration and article 23 of the ICCPED. These changes are necessary to address matters of fairness, due process, coercion, and arbitrariness raised by these provisions.

4. *Ensure the enforcement of measures to prevent torture and enforced disappearance and adhere to their absolute and non-derogable prohibition.*

Benchmark 4: We respectfully recall the standards and recommend immediate amendments to address the full scope of the requirements of the UN CAT and the Standard Minimum Rules for the Treatment of Prisoners across all detention practices, rules, provisions, and powers. Meaningful amendments can only be made by ensuring that these protocols are addressed and current conditions that increase the likelihood of torture are urgently remedied.

We draw your Excellency's Government attention to the relevant obligations attached to this benchmark in [OL LKA 7.2021](#). The provisions within the ATA may provide the circumstances leading to arbitrary detention, enforced disappearance, and torture, cruel, inhuman, or degrading treatment, as it has been alleged under the PTA, contrary to articles 17 to 20 of ICCPED and articles 9 to 12 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance, as an international norm of jus cogens regardless of the State treaty obligations. We draw the attention of your Excellency's Government to section 31(6), which may indicate that the ATA permits "approved places of detention" or sites of detention outside the remit of judicial authority. This provision does not specify whether the site, in addition to the number of approved places, would be made public, which tends to further limit the positive impact of provisions, such as section 34(a) which permits an officer of the Human Rights Commission to enter a site of detention without notice, or section 35, which permits a Magistrate to do the same without notice.

5. *Enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel.*

Benchmark 5: Recalling the above analysis on the international human rights law deficits, specifically the lack of fair trial guarantees, continued and extended deprivation of liberty without due process, and the full scope of overarching lack of judicial oversight of detention practices, we recommend close review and amendment in consultation with civil society and other stakeholders of the ATA, in line with past communications detailing your Excellency's Government obligations under international law and to bring all procedures in line with due process obligations under the ICCPR and UDHR.

We recognize that some judicial oversight of the arresting authorities has been improved in the ATA, including some limited timeframes linked to judicial review and the application of the provisions of the Code of Criminal Procedure Act as it relates to trials under this act. However, as drafted, the ATA's provisions on definitions, and detention and restriction orders, could still thwart due process and fair trial guarantees. Such practices may allow systematic detention without trial, a practice that is inconsistent with your Excellency's Government's international legal obligations.

The previously identified issues around 'judicial involvement' under the PTA, which consisted of a decision made by the Attorney General, confirmed but not fully reviewed by a judge, continues to be paralleled in the ATA through the limitations placed on the authority of a Magistrate Judge to order release under its section 28(2)(b)(iii) by the officer in charge of the relevant police station. This, as in

previous communications does not amount to a proper judicial process, which is required in any restriction imposed on the right to liberty. In the report of the Working Group on Arbitrary Detention on its visit to Sri Lanka, the Working Group found that individuals sent for rehabilitation were detained arbitrarily. Their deprivation of liberty lacked a legal basis and was the result of numerous grave violations of the right to a fair trial, including a lack of effective legal assistance, the inability to access the evidence against them, and undue delay in being tried. section 31 of the ATA further expands the authority for detention orders, beyond the Minister of Defence as under the PTA, to the Deputy Inspector General of Police. We continue to emphasize that standard criminal legal provisions and procedures that comply with standards of due process remain the most appropriate and legally compliant form of addressing terrorism cases and resort to exceptional measures such as schemes of detention orders should be removed from future legislation.

We draw your Excellency's Government's attention to further provisions that impact the compliance of the proposed ATA with international human rights law standards, including its section 71, which although permitting the deferral of prosecution, may create conditions that compel individuals into coercive admissions of guilt; section 82 (Presidential prescription orders), section 83 (Presidential restriction order), section 85 (Presidential establishment "prohibited places" and section 100 (Presidential orders for rehabilitation including in cases of suspended criminal proceedings).

Conclusion

We wish to reiterate the importance of meaningful reform of counter-terrorism legislation by your Excellency's Government. The continued risk to the rights and liberties of persons who may be detained arbitrarily, especially religious and ethnic minorities, human rights defenders exercising their right to peaceful assembly and association, may curtail political dissent with no effective due process guarantees under the proposed ATA and still need to be addressed. Lack of sufficient judicial oversight and effective due process standards could facilitate institutional contexts where misuse of the law can occur. We urge your Excellency's Government to commence a significant reform and substantive dismantling of the existing and past features of counter-terrorism legislation, including the PTA and further Regulations, which have led to alleged human rights violations. Further, we recommend an immediate moratorium on the continued use of the PTA, until such time as the necessary amendments to the proposed ATA can be made in consultation with civil society, and all relevant stakeholders. As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your Excellency's Government observations on the following matters and the planned or in-process plans to address these continued issues and how it intends to bring the proposed ATA into compliance with international law obligations.

On the Proposed Rehabilitation Bill

We note that the Rehabilitation Bill which was also previously entitled "Bureau of Rehabilitation" was initially presented by the Minister of Justice, Prison Affairs and Constitutional Reform on 23 September 2022, and published on the Gazette on

9 September 2022. We note that at that time an express linkage was initially made in the legislation with the prevention of terrorism, specifically linking the role of Commissioner-General of Rehabilitation as provided for under the PTA 1979 with the establishment of the Bureau. The legislation’s stated objective was to “provide for the establishment of a Bureau to be called and known as the Bureau of Rehabilitation”.³ The then Preamble framed its intention as “having regard to the need and the importance of regulating the rehabilitation of the misguided combatants, individuals engaged in extreme or destructive acts of sabotage and those who have become drug dependant persons” and went on to address compulsory rehabilitation for these three distinct categories of persons and their stated socially problematic acts in one singular piece of draft legislation. We note the intermingling of counter-terrorism and counter-extremism in the legislation’s conception, as outlined below, and observe that these kinetic and security-focused features have permeated the current legislative framework as a whole with observable concerns for human rights.

We stress the importance of positive rehabilitation in the framework of international human rights law, recalling provision 10 of the Basic Principles on the Treatment of Prisoners.⁴ However, we draw a distinction between voluntary and consent-based processes of rehabilitation for legitimate health purposes that would be compatible with the right to the highest attainable standard of health and warns against arbitrary detention absent independent judicial authorization in respect of a specific criminal offence.⁵ Compulsory rehabilitation as included in the current legislation implicates violations of article 9 of the Universal Declaration on Human Rights, article 9 of the International Covenant on Civil and Political Rights, article 37 and 40 of the Convention on the Rights of the Child, ratified on 12 July 1991 and article 14 of the Convention of the Rights of Persons with Disabilities, ratified on 8 February 2016.⁶

As regards the previously proposed legislation, the practices of detention which function under the title of ‘rehabilitation’ and are justified in the discourse of ‘de-extremification’ or need to be reviewed. In such contexts, where there are no formal charges laid against a detained person, where they may be held incommunicado, where they have no access to legal remedy, and limited to no contact with the outside world, there is a significant risk of enforced disappearance and arbitrary detention. Such circumstances increase the risk of persons being subject to torture and other ill-treatment. Moreover, such forms of regulation would hold out the prospect of long-term, indefinite arbitrary detention.

Noting that the first proposed legislation used as a definition of extremism the phrase “individuals engaged in extreme or destructive acts of sabotage”, such a broad definition tied together by unqualified references to extremism premised on a series of under-defined acts which may or not be criminal in nature needs to be reviewed. We note that employing the term “extreme” as a qualifier for defining certain acts lacks

³ Part I, section 2.

⁴ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners>

⁵ Noting joint statement by the International Labour Organisation; United Nations Development Programme; United Nations Population Fund; Office of the High Commissioner for Human Rights; Joint United Nations Programme on HIV/AIDS; United Nations High Commissioner for Refugees; United Nations Children’s Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; World Health Organization; United Nations Educational, Scientific and Cultural Organisation; International Organization for Migration, ‘Joint Statement: Compulsory drug detention and rehabilitation centres in Asia and the Pacific in the context of COVID-19’, 1 June 2020.

⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners>

legal certainty and may impinge upon the abovementioned fundamental human rights. Absent any fulsome definition the phrase ‘sabotage’ also lacks legal certainty with implications for the enjoyment of fundamental human rights. We recall that the term “extremism” absent the qualifier of “violent extremism conducive to terrorism” has no purchase in binding international law and when operative as a criminal legal category, is *per se* incompatible with the exercise of certain fundamental human rights.

The use of the term “misguided combatants”/“ex-combatants” in this now-discarded legislative proposal⁷ Has to be reviewed. The legislation did not make clear if the reference to combatant status pertains to internal or international armed conflict, and lacked any reference to applicable international humanitarian law, as the overarching framework for determining the status of combatants, in the context of armed conflict. We note that the term “misguided” is inherently malleable, does not have a clear evidential basis to support its application, and is likely to be used against persons protected by complementary international law norms. We remind your Excellency’s Government that under applicable international humanitarian law, combatants receive specific protections, and at the end of hostilities all prisoners are to be released (and repatriated) without delay, except those held for trial or serving sentences imposed by judicial process (article 142, Geneva IV; Additional Protocol I, Article 85(4)(b)). The phrase “misguided combatants” would have impinged upon both the international humanitarian law and human rights obligations of your Excellency’s Government.

We further note that the revision to the legislation provides its applicability to “drug-dependent persons” and “other persons as provided by law” (section 3). There is ambiguity of whom precisely is engaged by this latter category and the potential for misuse of rehabilitation for a wider range of vague and under-defined persons. It remains unclear if the category will be limited to persons against whom a judicial determination has been made by the courts.

The new Bureau of Rehabilitation establishes a new administrative structure operated by the Ministry of Defence to oversee and operate the “rehabilitation” centers which would be under the direction of a Council comprised of *inter alia* a representative of the National Dangerous Drugs Control Board, a representative of the Ministry of Health and a representative of the Defence Ministry; the Chief Executive Officer of the Bureau can only be appointed on the approval of the representative of the Ministry of Defence deepening the role of the defence establishment in the decision-making and operation of ‘rehabilitation’ institutions in Sri Lanka. We state unequivocally that the administration of such centres by military personnel who are not competently trained social or medical staff is in violation of the fundamental rights of those arbitrarily detained in such circumstances. We highlight that in 2017 the Working Group on Arbitrary Detention, articulated its concerns at the involvement of the Sri Lankan military in drug treatment and medical care including their lack of training on the medical management of drug dependence from a medical standpoint, as well as pointing out irregularities in the judicial process.⁸ The proposal that persons suffering from drug withdrawal symptoms appear to be placed in such a situation of extremity, and decries

⁷ Part 1, section 3, previous bill.

⁸ Working Group on Arbitrary Detention, Preliminary Findings from its visit to Sri Lanka (4-15 December 2017), found here: <https://www.ohchr.org/en/statements/2017/12/working-group-arbitrary-detention-preliminary-findings-its-visit-sri-lanka-4-15?LangID=E&NewsID=22541>

the militarisation that stems from a counter-terrorism or ‘extremism’ standpoint of any rehabilitation process would be contrary to international standards.

We highlight that the legislation (section 27(2)) empowers officials operating such centres or in contact with detained persons to use undefined “minimum force” to “compel obedience” from detainees. The authorization of the use of force against arbitrarily detained persons further compounding the harms experienced in detention would be problematic. Section 25 provides that an official who “without reasonable cause” strikes, wounds, ill-treats, or wilfully neglects anyone under rehabilitation can be punished by up to 18 months in prison, suggesting that there might be a “reasonable cause” to harm detainees, a position which is inconsistent with the prohibition on torture, and other cruel, inhuman or degrading treatment or punishment. We note that the use of force against persons detained without judicial oversight is simply inconsistent with your Excellency’s Government obligations under international human rights law. The requirement of compulsory rehabilitation of persons is fundamentally incompatible with your Excellency’s Government obligations under international human rights law.

A non-liability, essentially a pre-emptive amnesty clause, is contained in section 21 of the Rehabilitation Bill which states that no civil or criminal liability will be attached to “any officer of the Bureau or to any officer authorised by such officer, for anything which in good faith is done in the exercise, performance or discharge of any power, duty or function imposed or conferred on the Bureau under this Act”. Such sweeping pre-emption for liability is particularly concerning where it reaches to absolving punishment or liability for acts that may constitute torture, and other cruel, inhuman or degrading treatment or punishment against those detained.

The Bill establishes database (section 30 (1)) including “all the particulars of the rehabilitees”. Given the lack of comprehensive data protection legislation in Sri Lanka, we underscore the potential risk to the protection of privacy of persons detained (article 12, UDHR;⁹ article 17 of the ICCPR). The right to privacy is enshrined in international and regional human rights instruments¹⁰ demonstrating a “universal recognition of [its] fundamental importance, and enduring relevance, [...] and of the need to ensure that it is safeguarded, in law and in practice.”¹¹ We stress that the collection, retention, processing, sharing, and other uses of information relating to a person, particularly when done without the person’s valid consent, amount to an interference with that person’s right to privacy and thus must meet a set of conditions in order for such measures to be human rights-compliant. In particular, such interference must be implemented pursuant to a domestic legal basis that is sufficient

⁹ We acknowledge the positive legal development in the passage of The Right to Information Act of 2017.

¹⁰ See also, Convention on the Rights of the Child (article 16); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 14).

¹¹ See ‘The right to privacy in the digital age. Report of the Office of the United Nations High Commissioner for Human Rights’, A/HRC/27/37, para. 13. See also ‘Report of the Special Rapporteur on the promotion and protection of the right to the freedom of opinion and expression, Frank la Rue’, A/HRC/23/40, para. 20.

foreseeable;¹² accessible;¹³ and provide for adequate safeguards against abuse. Restrictions taken must be aimed at protecting a legitimate aim;¹⁴ and with due regard for the principles of necessity, proportionality, and non-discrimination.¹⁵ The collection and use of this data would contribute further to the social exclusion and stigma experienced by persons subject to detention by the Rehabilitation Bureau. We further emphasize that the General Assembly and the Human Rights Council have stressed that the right to privacy serves as one of the foundations of democratic societies and, as such, plays an important role in the realization of the rights to freedom of expression and to hold opinions without interference as well as to the freedoms of peaceful assembly and association.¹⁶ Due to the interconnectedness of a range of human rights, the adverse impacts of legally unsound data collection may further engage a broad spectrum of rights. These include, inter alia, the right to equal protection of the law without discrimination, the rights to life, to liberty and security of person, fair trial and due process, the right to freedom of movement, and the right to enjoy the highest attainable standard of health.

We acknowledge that the Supreme Court of Sri Lanka determined that the Rehabilitation Bureau Bill was, as a whole, inconsistent with article 12(1) of the Sri Lankan Constitution, and as such could only be enacted by a special parliamentary majority.¹⁷ Disappointingly, the small number of parliamentarians present for the adoption of the legislation underscores about the lack of sufficient engagement by the legislative body with the international human rights implications of this legislation and still your Excellency's Government has proceeded to enact this legislation with this assessment in hand. In light of the abovementioned defects identified, we urge the review and revision of this legislation as a matter of urgency to align it with your Excellency's Government international human rights obligations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide detailed information on how the counterterrorism efforts of your Excellency's Government in the legislative field will comply

¹² This means that the law must be "foreseeable as to its effects, that is, formulated with sufficient precision to enable the individual to regulate his conduct" and that the individual affected by it "must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." See European Court of Human Rights, *Sunday Times v. The United Kingdom* (no. 1), Application no. 6538/74, 26 April 1979, § 49. The law must also provide sufficient guidance to those charged with its execution to enable them to ascertain when privacy can be restricted and indicate the scope of any discretion conferred on the competent authorities as well as the manner of its exercise.

¹³ Accessibility implies that individuals that are to be affected by the respective legislation must have the possibility to become aware of its content.

¹⁴ At the same time, relevant restrictions impacting on the right to privacy cannot be justified merely by a general reference to a protected interest, such as national security.

¹⁵ See, for example, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/37/52; Human Rights Committee, General Comment no. 34, CCPR/C/GC/34, para. 26.

¹⁶ A/RES/71/199; A/RES/73/179; A/HRC/RES/34/7

¹⁷ As required by article 84 (2) of the Constitution.

with international obligations, including the benchmarks highlighted in this communication.

3. Please provide information in detail of how the counterterrorism efforts in the legislative field comply with your Excellency's Government obligations under United Nations Security Council resolutions 1373 (2001) as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law requirements of same.
4. Please provide information on how the definition of terrorism contained in the ATA conforms to the principle of legal certainty under international law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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Mathew Gillett

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