

8th Session of the Forum on Minority Issues

“Minorities in the Criminal Justice System”

I wish to thank the Special Rapporteur for choosing a timely theme for the 8th session of the Forum on Minority Issues. In the aftermath of the dastardly attack on innocent civilians in Paris and the operations being conducted to hunt down the suspects of this gruesome violence our lives have become unsafe and insecure. In this context needless to say rights of minorities have become threatened. There is no doubt in my mind over the past several years and especially since the post 9/11 era racism, xenophobia and violent attacks against minorities have increased and similarly violence of extremist forces in the name of religion and community rights have had devastating effects to our societies.

I come from Sri Lanka where we have experienced a 30 years long civil war which lead to the disappearance, extra-judicial killings, prolong detentions, arbitrary arrests and assassinations of those belonging to the Tamil origin mostly. Thousands have fled the country due to fear of unlawful arrest and violence committed by the police and armed forces. Tamil women have complaint of custodial rape and are afraid to take action against the perpetrator due to threats and intimidation.

I was a student activist in late seventies who refused to enter any higher institution of learning due to my involvement in the workers movement. As the then government introduced free market policies which impacted on workers rights demonstrations became a daily occurrence. Our leaders were arrested often on charges for unlawful

assembly. As dissention against the government grew in the south the rebellion in the North also escalated demanding the right of self-determination of the Tamil people. It is in such a backdrop that the Sri Lanka saw the introduction of the Prevention of Terrorism Act in 1979 which was made permanent in 1981. Some of my student activists were arrested and while seeking legal advice I was advised by a senior lawyer that it is high time to become a lawyer. This is how I became a lawyer and got involved in human right activism.

The PTA is a draconian piece of legislation that allows prolonged detention and the suspension of certain rights of the ordinary criminal procedure including the right of individuals to be presumed innocent. The police continues to use this provision when apprehending especially those from minority communities.

Under the act, people can be arrested without charge or trial and detained for up to 18 months while police investigate the possibility of their involvement in illegal activity. The act also allows for indefinite detention on the order of a magistrate pending trial.

The PTA also allows the authorities broad discretion to hold detainees where they choose and to move detainees from place to place while under investigation.

Emergency regulations and the PTA grants broad powers to the police to enter and search premises without a warrant, to seize property and arrest individuals connected with unlawful activity. The PTA grants extraordinary power to the Minister of Defence to order the detention of an individual suspect for investigation or as a preventative measure.

The Minister can determine the place and conditions of detention, and is not required to make that information publicly available.

There is a consistent lack of clarity over procedures for arrest and detention in Sri Lanka, and information about the whereabouts and wellbeing of prisoners is hard to come by. The Terrorist Investigation Division (TID) of the Sri Lankan police announced in June 2011 the opening of three information centres where families could seek information about TID detainees. But the centres would not provide data on persons detained by the military or other units of the police. There remains no central register of detainees.

Law enforcement officers routinely ignore regulations and procedures meant to protect the rights of individuals who have been arrested.

Suspects have been threatened with further violence and their lawyers and families (and other witnesses) with arrest or physical harm by police officers attempting to suppress information, including information about torture; some victims and witnesses have been killed. Potential threats from police can inhibit suspects and lawyers from notifying a magistrate about torture.

Under Sri Lanka's Evidence Ordinance, confessions made to a police or other public officer and confessions made while in the custody of the police are not admissible – as dispositive evidence. But such confessions are admissible under the Prevention of Terrorism Act (PTA). But the PTA reverses the burden of proof, putting the onus on victims to prove that their confessions were made under duress.

The 2010 conviction of journalist J.S. Tissainayagam under the PTA for criticizing the Sri Lankan military's treatment of Tamil civilians was

based on a confession he told the court he made under duress. The court rejected his allegation and Tissainayagam was sentenced to 20 years in prison.

In Japan, IMADR has worked together with the Buraku Liberation league to combat discrimination against Buraku community, including the criminal justice system. We have been working on the emblematic case of Mr Kazuo Ishikawa, who belongs to the Buraku community. In 1963 he was arrested on false charges and sentenced to death. Although he has been released on parole, he is still fighting to prove his innocence for 53 years.

Armed men abducted Tamil businessman Ramasamy Prabhakaran in Colombo in February 2012, two days before the fundamental rights case that he filed against police was to be heard. Authorities had released Prabhakaran from prison in 2011 after two years in detention without charges, and he was challenging his arbitrary detention and abuse while in custody.

The ICRC annual report for 2012, released on June 21, noted that ICRC Sri Lanka was handling 16,090 cases of missing persons as of December 2012, including 823 women and 1,574 minors. This caseload included cases reported to the ICRC since 1990. In 2012 the ICRC received 335 new cases, including 76 involving women and 85 involving minors, and traced 36 persons.

The Muslim community too faced discrimination and violence being a minority religious group.

Furthermore under section 6 of the Public Security Ordinance the armed forces can be called out of barracks to maintain law and order in each of the 25 districts by the President on the basis that the police were incapable of maintaining law and order. All police powers relating to arrest detention search etc were given to all three armed forces. This happened throughout the former regime and discontinued in March.

Both the PTA and Article 157A of the Constitution jointly are preventing the emergence of democratic space in the North and East in the post-war context. The repeal of these legal instruments is required for the Tamil people to be able to self-address most of the post-war issues that have been identified. The PTA represents an aberration of the rule of law and opens the gateway to systematic abuse of human rights, giving rise especially to gross ethnic discrimination in its implementation.

The kind of structural violence we have experienced during the past three decades have resulted in total collapse of institutions related to administration justice as well as other independent institutions including the electoral process in Sri Lanka. The new government today is faced with the mammoth task of spearheading a transitional justice process and rebuilding the country and the confidence of the people in these institution including that of the Police.