



INTA Committee, EU Parliament: Call to reject the EU Commission's proposal to restore GSP+ to Sri Lanka

4th April 2017

Dear Colleagues,

We, the undersigned, remain deeply concerned about the possibility of a restoration of the GSP+ scheme to Sri Lanka and urge you to make a recommendation against the Commission's proposal ahead of a vote in Parliament later this month.

'Serious failures' in implementation of the Conventions:

As previously outlined in a [joint civil society letter](#) to MEPs on 3 February 2017, the Commission's proposal is based on a [flawed factual analysis](#) of Sri Lanka's implementation of the Conventions which leads it, erroneously, to the conclusion that there are "no serious failures" in implementation that would preclude restoration of GSP+. With respect to the Convention Against Torture alone for example, the EU Commission's report glosses over a number of serious issues, repeats several false or incorrect government claims, and appears to elevate several unfulfilled assurances to the status of fact (for a detailed critique, please see section (i) of the aforementioned [letter](#)).

In forming your decision concerning the Commission's proposal, we urge you to refer to the recent concluding observations of the UN [Committee Against Torture](#) (7 December 2016) and the [Special Rapporteur on Torture](#) (22 December 2016), as well as submissions from the International Truth and Justice Project on ongoing torture¹, which provide a more accurate and impartial picture of ongoing serious failures by the government of Sri Lanka in implementing the Convention Against Torture.

Failure to meet 2010 EU Commission criteria:

We further note that Sri Lanka has failed to implement a significant portion of the [15 conditions](#) that were set out by the EU Commission in 2010 as criteria to be met in order for the government of Sri Lanka to retain GSP+. We wish to draw your attention to three specific conditions in particular which remain unimplemented and which should act as clear red-lines to its restoration:

i) Repeal of the PTA

EU Condition:

"Repeal of those sections of the Prevention of Terrorism Act which are incompatible with the ICCPR or amendment so as to make them clearly compatible with the ICCPR"

Progress:

In October 2016 Prime Minister Ranil Wickremesinghe stated that a Bill to replace the PTA would be published soon. A draft framework Bill was leaked shortly afterwards was roundly rejected by Sri Lankan civil society and the legal community. Prominent legal analyst and Kishali Pinto Jayawardene [described it](#) as a "cure worse than the disease", citing the disturbing expansion in the grounds for

¹ ITJP Submission to the Committee Against Torture 17 October 2016, on 33 cases at <http://www.itjpsl.com/assets/ITJP-Submission-to-the-Committee-Against-Torture.pdf>, noting that the ITJP as of today has 48 cases of victims of abduction and torture under the new Sirisena Government, 18 of whom have been granted asylum in the UK or Switzerland.

offence and its unamended provisions for limitations on suspects' access to counsel. In November 2016, no less than 120 Sri Lankan civil society organisations wrote a [letter](#) to President Sirisena expressing their "strong opposition" to the draft, which they stated would "have a chilling effect on all forms of dissent".

The Bill was quietly withdrawn in December 2016 and has since been subject to a closed doors re-drafting process. As of today, no new draft framework has been made publicly available despite reports that it has been sent to the Legal Draftsmen's Department to be converted into a Bill. On 2 April, Kishali Pinto Jayawardene, commenting on a leaked copy, [remarked](#) that the latest framework continues to contain an "extraordinarily vague definitions of what constitutes terrorism", including "words either spoken or intended to be read" which "cause or intend to cause harm [including to the] unity, territorial integrity of Sri Lanka, or the people coexistence of the people." She further stated that despite revisions to the admissibility of confession "ambiguity remains in relation to the provision of immediate legal counsel to suspects".

ii) *Amending the Code of Criminal Procedure to safeguard rights of detainees to legal counsel*

EU Condition:

"Adoption of the planned amendments to the Code of Criminal Procedure, which provide for the right of a suspect to see a lawyer immediately following his arrest"

Progress:

A Bill titled 'Amendment to the Code of Criminal Procedure (Special Provisions) Act No. 2 of 2013 – (rights of detainees – access to legal counsel)' was approved by the Cabinet of Ministers on [21 February 2017](#) and gazetted on 6 March 2017. Regrettably however, the Bill contains a number of provisions which fail to address the absence of safeguards for detainees in detention.

In a statement on [10 March](#), the Centre for Policy Alternatives outlined its concerns with regards to several clauses in the Bill that would enable police officers to deny legal counsel to detainees, stating that these would "render meaningless the other rights enumerated in the Bill [such that the Bill] would curtail existing constitutional and administrative protections for detainees, and like its previous avatar, facilitate the violation of rights including the commission of custodial torture."

In a letter to the Prime Minister on [14 March](#), the National Human Rights Commission issued similar concerns and urged the offending clauses to be removed from the Bill.

iii) *Ending detention of persons held under the Emergency Regulations*

EU Condition:

"Decisive steps to bring to an end the detention of any persons held under the Emergency Regulations either by releasing them or by bringing them to trial"

Progress:

Despite the [lifting](#) of Emergency Regulations in 2011, the retention of draconian powers enabling detention without charge under the Prevention of Terrorism Act - and the transfer and continued detention of individuals under that law - mean that this condition remains unfulfilled. The National Human Rights Commission [report](#) that as of May 2016, 111 individuals remained remand custody under the PTA, 29 of whom have not been indicted. An August 2016 [report](#) by the human rights organisation INFORM found that "5 Tamils arrested under the PTA have been in remand and have their cases pending conclusion for 18 and 19 years respectively. Another person who was charged in

1998, has had his case ongoing in the High Court for the past 17 years without conclusion. Another person has been detained for 15 years without having any charges filed against him.”

In his recent report the [UN Special Rapporteur on Torture](#) found that “the use of torture and ill-treatment to obtain a confession from detainees under the Prevention of Terrorism Act is a routine practice”. The PTA continues to be used to arrest and detain people and in November 2016 the National Human Rights Commission reported that “thirteen persons arrested under the PTA since April 2016 have complained of ill-treatment and torture, either at the time of arrest and/or during initial interrogation following arrest”.

Enhanced human rights monitoring?

EU Commission representatives have recently sought to bolster the case for restoration of GSP+ by [emphasizing](#) the role of enhanced human rights monitoring for Sri Lanka. However, a cursory examination of the detail of these proposals indicates that there is little, if any, substance to them. The so-called ‘three-track monitoring’ which has been outlined appears to amount merely of a repackaging of existing human rights monitoring by the Commission, the UN and by EU states bilaterally.

Even if such monitoring was a new and additional exercise to existing mechanisms, we are extremely doubtful that it would yield the desired outcomes. Sri Lanka has been subject to various monitoring mandates in recent times, including by the Office of the High Commissioner for Human Rights, various UN Special Procedures and ad hoc bodies such as International Independent Group of Eminent Persons (IIGEP). In light of the government of Sri Lanka’s limited responsiveness to the findings of these agencies, the basis for the EU Commission’s assumption that enhanced human rights monitoring holds the key to unlocking progress on human rights reform does not appear to be well founded.

Summary:

The government of Sri Lanka is yet to fulfil a number of basic conditions essential for the restoration of GSP+ as laid out by the EU Commission itself. A range of further serious failures in implementation of the Conventions - including those highlighted by the reports of the UN Committees and Special Mandate Holders - remain unaddressed. Despite hopes that the looming parliamentary deadline for the approval of GSP+ would create incentives for the government of Sri Lanka to take concrete action in the months since the EU Commission’s proposal, these have simply not materialised. A decision to approve GSP+ would therefore be premature on the facts and would constitute a strategically unwise squandering of EU leverage over further much needed human rights reforms in Sri Lanka. It would, moreover, set a poor precedent in diluting the principle of this very useful mechanism. As such, we urge members of the EU parliament to reject the Commission’s proposal for the restoration of GSP+ to Sri Lanka at this moment, and urge those examining the issue on behalf of their parliamentary groups to recommend the same to their members.

Yours sincerely,

Richard Gowing (Campaign Director, Sri Lanka Campaign for Peace and Justice)

Mario Arulthas (Advocacy Director, PEARL)

Frances Harrison (The International Truth and Justice Project; Support A Survivor of Torture)