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“In a Legal Black Hole”

Sri Lanka’s Failure to Reform the Prevention of Terrorism Act

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“In a Legal Black Hole”

Sri Lanka’s Failure to Reform the Prevention of Terrorism Act

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Summary

Sri Lanka's Prevention of Terrorism Act (PTA) has been used for over 40 years to enable prolonged arbitrary detention, to extract false confessions through torture, and to target minority communities and civil society groups. After years of domestic and international criticism of the law, the Sri Lankan government of President Gotabaya Rajapaksa on January 27, 2022, published a bill to amend the act. However, the proposed amendments leave the most often abused provisions of the law intact, and if enacted, will do little to bring the PTA into compliance with Sri Lanka's international human rights obligations.

The proposed amendments would not have prevented the abuses suffered by Ahnaf Jazeem, a 26-year-old Muslim poet, who was arrested under the PTA on May 26, 2020, because broadly drawn speech related offences remain unchanged. He was accused without basis of promoting "religious extremism" in a 2017 book of Tamil verse. In a newspaper interview after he was released on bail following nearly two years in detention, Jazeem said that the police Terrorism Investigation Division "kept me handcuffed and isolated for 14 days. They forced me during this time to deliver a confession." He said they threatened to keep him in prison "for 15 or 20 years" and to arrest the woman he was arranged to marry. "That is how they threatened a confession out of me."

If the amendments are adopted, the PTA would still not meet any of the five "necessary prerequisites" described by seven United Nations special rapporteurs in December 2021 to comply with international human rights standards.

The PTA was enacted in 1979 as a temporary measure when it was presented in parliament, debated, and enacted all in one day. It allows the authorities to carry out arrests without warrant for unspecified "unlawful activities," and permits detention for up to 18 months without producing the suspect before a court. Many suspects have been held on remand for years awaiting trial. Statistics indicate that most are tortured in custody, and convictions frequently rely on confessions obtained under torture. "During this 18-month period you are at the mercy of whichever security agency is detaining you," a defense lawyer in numerous PTA cases told Human Rights Watch.

Since Gotabaya Rajapaksa won the presidential election in November 2019, his administration has used the PTA to target perceived political opponents and members of the minority Tamil and Muslim communities. Meanwhile, the authorities have threatened the victims of past human rights violations, human rights activists and lawyers, journalists, and members of civil society groups under the guise of countering terrorism. As a human rights activist working with the Tamil community based in the north of Sri Lanka said: “They are using PTA to create fear among activists. When we talk to the families of the disappeared, they say they can be arrested at any time. Police are arresting people for posting pictures on Facebook. They can arrest you for anything.”

The Rajapaksa government has rejected pledges by the previous administration of Maithripala Sirisena to repeal the law. Instead, it has used the PTA to target religious and ethnic minorities, fuelling concerns the government aims to further institutionalize Sinhala Buddhist nationalism in keeping with President Rajapaksa’s ethnically divisive campaign rhetoric. He has also promised to strengthen the country’s abusive intelligence agencies and protect military commanders he calls “war heroes” from war crimes prosecutions.

In January 2021 the Rajapaksa government pledged to review abusive provisions of the PTA, which is a key condition of Sri Lanka’s tariff-free trading access to the European Union. The Prevention of Terrorism (Temporary Provisions) Act of 1979 Amendment Bill (the “Amendment Bill”), published in January 2022, includes revisions that could reduce some abuses under the law, such as shortening, from 18 to 12 months, the period a suspect can be held without judicial oversight. But this still violates the prohibition against arbitrary detention.

The Amendment Bill does not provide a definition of terrorism, as called for by United Nations experts to help prevent the PTA’s widespread misuse. The bill does not alter the sweeping powers the law gives to authorities to charge people with speech-related offenses: authorities can still arrest anyone deemed to be causing or intending to cause “racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups.” This is the provision used to detain the poet Ahnaf Jazeem and a prominent lawyer called Hejaaz Hizbullah.

Crucially, the Amendment Bill does not change the status of confessions given to the police as evidence in PTA cases. While such evidence is inadmissible under other Sri

Lankan laws, it is admissible under the PTA. This has led the police to routinely use torture and other ill-treatment to extract confessions from PTA prisoners. Furthermore, the bill does not remove the authority from officials to move and keep a suspect in “any place for the purpose of interrogation,” which has repeatedly been used to facilitate torture and increases the risk of enforced disappearance.

Other proposed amendments merely replicate existing provisions of Sri Lankan law that have done little to date to prevent abuses, such as mandating magistrates to make monthly visits to places of detention to check whether prisoners are being tortured. The Human Rights Commission of Sri Lanka told Human Rights Watch it had informed the Supreme Court chief justice that magistrates had made no visits to Criminal Investigation Department and Terrorism Investigation Division detention centres. The Amendment Bill would also add a requirement to notify the Human Rights Commission of PTA arrests – a requirement that already exists but that the police often ignore.

Meanwhile, President Rajapaksa in 2021 introduced regulations that would make the PTA even more abusive of rights, by enabling up to two years detention without trial for “rehabilitation.” Additionally, proposed changes to the Code of Criminal Procedure weaken requirements for in-person court attendance by defendants, a key safeguard against mistreatment in custody including torture and denying adequate access to legal counsel, mirroring provisions of the PTA that enable rights violations.

This report provides a critical assessment of the PTA and information on its recent use by the Rajapaksa administration. It demonstrates that despite promises to international partners that the law would be reformed, proposed amendments would leave the abusive framework of the PTA largely intact. The administration appears committed to using the PTA to further policy goals that undermine the rights of Tamils, Muslims and other minorities and civil society groups and the media on the pretext of countering terrorism.

The Rajapaksa administration’s actions have proved louder than its misleading reform proposals. Friends of Sri Lanka—including the European Union, United States, and United Kingdom, as well as the United Nations—should hold the Sri Lankan government to its commitments and withdraw their support from the country’s counterterrorism apparatus until there are concrete, time-bound steps to end abuses and to repeal the PTA. The EU should insist that Sri Lanka meet its human rights commitments, in exchange for which it

receives tariff-free access to European markets, by requiring immediate and genuine action to revoke the PTA and ensure any new counterterrorism legislation meets international human rights standards.

Before enacting any counterterrorism law, the government should conduct meaningful and inclusive consultations with civil society groups and adopt the December 2021 benchmarks from seven UN human rights experts that they consider to be “necessary prerequisites” for meeting Sri Lanka’s international human rights obligations. The “statutory safeguards” that the government, in its response, said exist and are used for protecting the rights of PTA detainees, have in practice been repeatedly bypassed by security agencies.

Sri Lanka’s Abusive Counterterrorism Law

Between 1983 and 2009, when Sri Lanka was wracked by a brutal civil war between the government and the separatist Liberation Tigers of Tamil Eelam (LTTE), the authorities primarily used the Prevention of Terrorism Act against those accused of involvement with the LTTE or other militant groups, thus mostly ethnic Tamils.

Twelve years since the end of the war, the government is still targeting Tamils but also using the PTA against Muslims, particularly since 2019, when Islamist militants carried out the deadly, coordinated Easter Sunday bombings on churches and hotels, killing over 260 people.

The PTA denies fundamental due process rights and removes safeguards that would help protect detainees from abuse, creating what is effectively a legal black hole.

Scores of people have remained in prison for years, even decades, awaiting trial on terrorism charges, or following convictions based on confessions extracted using torture. A lawyer described a case in which Barmasiri Chandraiya Ragupathi Sharma, a Tamil Hindu priest, arrested in February 2000 for suspected involvement in an LTTE attack, was held pre-trial under the PTA until 2015, when he was convicted and sentenced to 300 years in prison, based on a confession he says was obtained through repeated torture and recorded in a language he could not understand. A 2002 medico-legal report confirms that the injuries,

burns, and scars sustained on his body are consistent with the torture he reported. His appeal has been pending since 2015.

A 2020 report by the constitutionally mandated Human Rights Commission of Sri Lanka (HRCSL) found that, as of September 2018, at least 29 PTA prisoners had spent 5 to 10 years on remand (pretrial detention), and 11 had spent 10 to 15 years on remand. The commission said the longest period a person had been in remand before trial was then 15 years. The longest period a trial had been ongoing was 16 years. The study also found that about 84 percent of PTA prisoners are tortured after their arrest, and over 90 percent of those were forced to sign a document in a language, Sinhala, they could not understand. Very often, PTA prisoners are denied proper access to legal representation

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In September 2021, the Committee for Protecting Rights of Prisoners, a Sri Lankan human rights organization, wrote to the UN high commissioner for human rights, Michelle Bachelet, listing 11 PTA suspects they said had been in detention for 12 to 14 years, and were facing trials that have so far lasted between seven and nine years without reaching a verdict.

Targeting Minorities

Gotabaya Rajapaksa was the defense secretary in the government led by his brother, President Mahinda Rajapaksa, between 2005 and 2015, during and after the final phase of the civil war. He had direct responsibility for the conduct of government security forces that committed war crimes including indiscriminate attacks, summary executions, and rape. The scale of the abuses against ethnic Tamils was particularly great during the final months of the war in 2009, and its immediate aftermath. The government did not acknowledge these crimes or seek to hold those responsible to account, but instead embarked upon a triumphalist campaign that treated the defeat of the LTTE as a victory for majority Sinhala Buddhist political dominance.

After the electoral defeat of Mahinda Rajapaksa, President Sirisena's government from 2015-2019 undertook a number of police investigations into human rights violations committed in Colombo and elsewhere, that revealed evidence of official responsibility for killings and enforced disappearances. In 2015, the Sirisena administration agreed to a landmark consensus resolution at the UN Human Rights Council to promote truth, justice,

and reparations, and take steps to protect rights including by repealing the PTA. The government also committed to numerous human rights reforms and to repeal the PTA as part of its negotiations to restore a preferential trading arrangement called the General Scheme of Preferences Plus (GSP+) with the European Union in 2017.

In line with the resolution, the government drafted a new Counter-Terrorism Act (CTA) to replace the PTA, but it was never adopted. The Easter Sunday bombings in 2019 brought renewed use of the PTA, as hundreds of Muslims were arrested, often without any evidence. Some were released in the ensuing weeks and months, but about 300 remain in custody without trial.

The Rajapaksa family's new political party, the Sri Lanka Podujana Peramuna (SLPP), campaigned in the wake of the Easter Sunday bombings on a platform of enhancing public security, as well as reversing any steps towards accountability which it portrayed as penalizing "war heroes." The SLPP's 2019 presidential election campaign had the backing of ultra-nationalist Sinhala Buddhist groups including clergy who incited hostility against Muslim minorities.

After winning the presidency in 2019, Gotabaya Rajapaksa promptly derailed important investigations into rights violations, disavowed the 2015 Human Rights Council resolution, and pardoned one of the very few soldiers ever convicted of serious abuses. One of the first acts of his administration, in January 2020, was to abandon attempts to draft alternative counterterrorism legislation that had been made by the previous government, and proclaim support for the PTA. "The PTA is back in the statute book, empowering the police and armed forces to face any threat posed to national security from any quarter," the cabinet spokesperson, Minister Bandula Gunawardana, announced.

In a speech on November 18, 2020, President Rajapaksa invoked nationalist fears "that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and ideologies that support separatism, extremism and terrorism." Such rhetoric has been repeatedly used by the president and members of his government to stigmatize and justify discrimination against minorities.

On February 25, 2021, the Sri Lankan government published a list proscribing several “terrorist organizations” and naming several hundred individuals as alleged “terrorists,” including many rights activists in the Tamil diaspora. The list also included several diaspora groups engaged in advocacy at the Human Rights Council in support of international accountability for violations committed in Sri Lanka. The list “created a lot of fear,” said a northern-based activist, who pointed out that many mothers of victims of enforced disappearance have received funds from the designated diaspora groups to support their campaign. Also, among those listed were some who are already under PTA detention, such as Dr. Sinnaiya Sivaruban, a Tamil judicial medical officer in Kilinochchi who had served as a medical witness in human rights cases and whom the police Terrorism Investigation Division arrested on August 18, 2019.

On March 9, 2021, President Rajapaksa introduced the Prevention of Terrorism (de-radicalization from holding violent extremist religious ideology) Regulations No. 1 of 2021, which is attached to the PTA and seeks to expand its powers. The regulation broadly allows the authorities to detain and “rehabilitate” anyone who “by words either spoken or intended to be read or by signs or by visible representations” causes the commission of violence or “religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups.” Instead of being tried, the suspect faces detention in a “reintegration center” for up to one year, on the recommendation of the attorney general. The defense minister, currently President Rajapaksa, is empowered to extend the detention for a second year. At the time of writing the implementation of the order is suspended while the Supreme Court considers fundamental rights petitions against it.

Ongoing Violations Under the Prevention of Terrorism Act

As Sri Lanka’s human rights situation has deteriorated under Gotabaya Rajapaksa, the shrinking of civil society space and weakening of independent institutions has made it harder for lawyers and activists to track abuses under the PTA. In 2020 the Rajapaksa-dominated parliament passed an amendment to the constitution that eliminates key checks on presidential power, including by putting the president in control of appointments of senior judges and members of previously independent institutions such as the Human Rights Commission of Sri Lanka.

Human rights defenders told Human Rights Watch that they hear frequent reports of arrests under the PTA but are no longer able to verify them for reasons including the Human Rights Commission's loss of independence. "Now there is no verification," one activist said. At the beginning of July, another activist in the north said that they had received information about numerous cases but, unlike before, they were unable to confirm them. "Things have changed," the activist said. "We can't talk to the police about it. They usually don't give any information on why they are arresting someone or where they are going to be taken to."

In previously undisclosed information provided to Human Rights Watch on January 7, 2022, the Human Rights Commission of Sri Lanka said it recorded 109 arrests under the PTA in 2021.

Hejaaz Hizbullah, a prominent Muslim lawyer, was arrested under the PTA in April 2020 and his lawyers told Human Rights Watch he has repeatedly been denied access to them for extended periods. He was initially accused of aiding one of the Easter Sunday suicide bombers who belonged to a wealthy trading family. Hizbullah's lawyers said that his relationship was that of a legal counsel in the family's business affairs. While the initial allegations were dropped, the police filed new cases accusing Hizbullah of causing "communal disharmony." Some students alleged that they were forced to testify that Hizbullah incited violence at a school event hosted by a group called Save the Pearls. Police subsequently arrested at least five other men connected to Hizbullah, including staff at the organization and teachers at a school called Arabic College. The lawyers said that some of these men allege that they were tortured, and others that they were threatened and pressured to give false testimony against Hizbullah. They were denied access to lawyers for long periods. All remain in custody under the PTA.

Among other high-profile cases, Murugupillai Kokulathan, a freelance Tamil journalist, was arrested in the eastern city of Batticaloa on November 28, 2020, after posting on social media about commemoration events related to the civil war. He remains in custody. Keerthi Ratnayake, a freelance journalist, was summoned to a police station and arrested under the PTA, on August 14, 2021. He remains in custody without charge. Ten Tamils were arrested from a memorialization event at beach in Batticaloa on May 18, 2021, and accused under the PTA of commemorating the LTTE. They were released on bail on

December 8, although after seven months in custody no indictment had been brought against them.

Had the government's proposed amendments to the PTA in January 2022 been in effect earlier, they would neither have prevented these detentions, nor given the detainees any legal recourse during the first year of their detention. The Amendment Bill states that a detention order issued by the defense minister under the PTA "shall be final and shall not be called in question in any proceedings or in any court of law," except by a fundamental rights petition in the Supreme Court. This is the same as under the law as it currently exists, except that the maximum duration of detention orders would be reduced to 12 from 18 months. Under the Amendment Bill, if a prisoner is remanded in pre-trial detention beyond the period of the detention order they would have an opportunity to apply to a court for bail.

International Efforts on Rights Protection

UN human rights experts and the UN high commissioner for human rights, Michelle Bachelet, have repeatedly expressed alarm over deteriorating rights in Sri Lanka, and repeatedly highlighted the role of the PTA in sustaining abuses.

On December 9, 2021, seven UN special procedures wrote to the Sri Lankan government noting the repeated findings by their mandates that the PTA contravenes Sri Lanka's obligations under international human rights law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They wrote that instead of taking remedial measures, the government is advancing "an additional set of rights denying measures" through new regulations attached to the PTA.

The UN experts set out five benchmarks for PTA reform that are "necessary prerequisites" to making the law compliant with international law:

- Employing definitions of terrorism consistent with international norms.
- Ensuring legal certainty, especially where it may impact rights to freedom of expression, opinion, association, and religion or belief.

- Including provisions to prevent and halt arbitrary deprivation of liberty.
- Including provisions to prevent torture and enforced disappearance.
- Guaranteeing due process and fair trials, including judicial oversight and access to legal counsel.

The amendments subsequently proposed by the government would not bring the PTA into compliance with international law on any of these benchmarks.

The UN experts expressed particular concern over the threat the PTA poses to ethnic and religious minorities, and its use to curtail political dissent, and called for an immediate moratorium until the necessary amendments are made. In response the government noted that amendments were then being drafted, and also said that PTA prisoners now had the opportunity to make representations to an advisory board appointed by the president, and provided a copy of guidance issued to police in October on evaluating whether to arrest people under the PTA, using the example of the possession of banned images on a mobile phone.

Faced with the prospect of the UN Human Rights Council adopting a resolution, and calls from the European Union to meet human rights commitments linked to GSP+, the government had announced on January 25, 2021, that it would review and amend the PTA to bring it into compliance with its human rights obligations.

This task was given to the Presidential Commission of Inquiry for Appraisal of the Findings of Previous Commissions and Committees, which the government had mandated to review previous reports as a supposed alternative to the international evidence gathering process then under discussion at the Human Rights Council. The council nevertheless adopted resolution 46/1 on March 26, establishing a UN Sri Lanka Accountability Project to collect evidence of past abuses, over the objections of the Sri Lankan government.

The European Parliament adopted a resolution in June that called for the withdrawal of Sri Lanka's trading privileges under the GSP+ scheme if it continued to fail to meet its human rights commitments, particularly in relation to the PTA. Following the resolution, the Rajapaksa administration repeated assurances that it was willing to amend the PTA, without providing any details or specific commitments.

On June 21, 2021, President Rajapaksa received an interim report on PTA reform from the presidential commission of inquiry. However, the commission's recommendations did not address the gravity or extent of abuses under the law, and none were adopted in full by the president. On June 22, the justice minister, Ali Sabry, announced in parliament that the government intended to reform the PTA, and to free prisoners in cases where "there is no court case." Two days later, Rajapaksa pardoned 94 prisoners, including 16 people convicted under the PTA. However, the PTA prisoners were either nearing the end of their sentences or had already been incarcerated for a period exceeding their sentence.

During that parliamentary debate an opposition member of parliament stated that PTA abuses were continuing. Namal Rajapaksa, the minister for youth and sports and son of the prime minister, said that the political opposition, by raising recent detentions, was attempting to disrupt the government's policy to release long-term prisoners. "There are people who have been imprisoned for our lifetimes," he said. "Why are you talking about people who were only arrested yesterday?"

Ahead of the September session of the Human Rights Council, the Sri Lankan government circulated a briefing document to foreign diplomats, claiming progress on human rights and misleadingly stating that the government was "intensifying and expanding" a consultation process on PTA reform, which activists and the Bar Association of Sri Lanka denied at that time. In October, the government offered similar assurances of PTA reform to an EU delegation assessing Sri Lanka's compliance with its GSP+ obligations.

Even as the government sought to reassure governments about its intention to reform the PTA, the prisons minister, Lohan Ratwatte, visited Anuradhapura prison where he made PTA prisoners kneel and held a handgun to their heads, ordering them to "confess." The administration subsequently fired him as prisons minister, but he retained another ministerial portfolio.

On November 15, Defense Secretary Gen. (retd) Kamal Gunaratne, who led forces that were implicated in war crimes at the end of the civil war, submitted a report on PTA reform to the president. At around the same time, the government invited a small group of civil society figures to discuss PTA reform, but failed to include key stakeholders.

In a letter to Human Rights Watch in January 2022, the Sri Lankan Foreign Ministry stated that under a process to release detainees “held in judicial custody for extended periods under charges relating to the PTA... 13 more persons were discharged as of 13 January 2022.” No further details of the releases were available. In the same letter, the government said it had conducted “extensive discussions with multiple stakeholders” on PTA reform, a claim disputed by lawyers and human rights activists.

The Amendment Bill was ultimately published by the government on January 27, two weeks ahead of a joint commission meeting between Sri Lanka and the EU, at which Sri Lanka’s compliance with its human rights obligations under the GSP+ trading scheme would be discussed.

The EU should hold Sri Lanka to its commitment to end all abuses under the PTA. The many years of unfulfilled government promises to reform the PTA have merely provided cover for continuing violations. The PTA should be repealed. Those currently detained under the PTA should promptly be brought to trial on internationally recognizable charges, if there is an evidentiary basis to do so--or they should be released, and charges dropped. Convictions under the PTA should be reviewed and quashed if they rely on confessions made under torture or other ill-treatment, or otherwise disregarded fundamental due process standards. Where torture has been committed, the authorities should prosecute those responsible, including as a matter of command responsibility. Victims of torture and prolonged arbitrary detention should receive treatment and compensation.

Methodology

This report is based on Human Rights Watch research on the Prevention of Terrorism Act carried out since 2018, interviews conducted between January and December 2021, and a review of newly available court documents.

Due to travel restrictions during the Covid-19 pandemic, all interviews in 2021 were conducted by telephone or via email. Given the security challenges, the inability to conduct in-person interviews greatly limited our ability to include the voices of victims of abuses and their families.

In 2021 Human Rights Watch interviewed 19 lawyers and human rights activists involved in PTA cases in Colombo, the capital, and in Sri Lanka's predominantly Tamil and Muslim north and east.

We informed all interviewees of the purpose of the interview, its voluntary nature, and provided no remuneration or other inducement. In most cases we have concealed the identity of interviewees due to security concerns within Sri Lanka. The letters we have chosen for initials in the pseudonyms we use bear no relation to the person's actual name. Interviews were conducted in English.

Human Rights Watch also reviewed recent court filings and other documentation provided by lawyers and activists. In many instances we have not published details of individual cases at the request of lawyers who fear retaliation against their clients.

On December 9, 2021, Human Rights Watch wrote to Sri Lanka's attorney general, the Human Rights Commission of Sri Lanka, and the United Nations Office on Drugs and Crime asking for their responses to queries about the PTA and its use so that they could be included in this report. Replies were received from the United Nations Office on Drugs and Crime on December 21, 2021, and from the Human Rights Commission of Sri Lanka on January 7, 2022. This correspondence is published in an appendix to the report.

I. Repealing the PTA: Decades of Delay

Sri Lanka's Prevention of Terrorism Act (PTA), first enacted as a temporary measure in 1979, allows arrests without warrant for unspecified "unlawful activities," and permits detention for up to 18 months on government issued detention orders without a court appearance, or opportunity for bail.¹ "During this 18 month period you are at the mercy of whichever security agency is detaining you," a lawyer acting in PTA cases said.² Prisoners are then remanded to pre-trial detention, where they can languish in jail for years awaiting trial.

During the civil war between the Sri Lankan government and the Tamil separatist group the Liberation Tigers for Tamil Eelam (LTTE) from 1983-2009, the law was used primarily against members of the country's ethnic minority Tamil community. Following 2019 bombings on Easter Sunday that killed over 260 people, the use of the PTA has been expanded to target members of the Muslim minority.

Prisoners held without trial under the PTA do not have access to legal recourse, and are at heightened risk of torture and cruel, inhuman, or degrading treatment. A Sri Lankan lawyer described the case of a Tamil man whom the military arrested under the PTA in 2001. While detained, he was tortured and forced to sign confessions in Sinhala and blank sheets of paper. His family only learned of the place where he was detained about six to seven months after his arrest, and he says he was kept hidden during visits by an international humanitarian agency. In 2015, after spending 13 years in remand detention, he was

¹ Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, [http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Prevention_of_Terrorism_\(Temp_Provisions\).pdf](http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Prevention_of_Terrorism_(Temp_Provisions).pdf) (accessed November 6, 2021); *Locked Up Without Evidence, Abuses under Sri Lanka's Prevention of Terrorism Act*, Human Rights Watch, January 29, 2008, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act> (accessed November 11, 2021); "Sri Lanka: Muslims Face Threats, Attacks," Human Rights Watch, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks> (accessed November 11, 2021); "Sri Lanka: Free Rights Activist," Human Rights Watch and others, July 28, 2021, <https://www.hrw.org/news/2021/07/28/sri-lanka-free-rights-activist> (accessed November 11, 2021); "Sri Lanka: Pardons a Meager Response to Abusive Law," Human Rights Watch, July 29, 2021, <https://www.hrw.org/news/2021/06/29/sri-lanka-pardons-meager-response-abusive-law> (accessed November 11, 2021); "Sri Lanka: Joint Statement Calls for Immediate Release of Poet Detained for a Year Without Charge," Human Rights Watch and others, May 16, 2021, <https://www.hrw.org/news/2021/05/17/sri-lanka-joint-statement-calls-immediate-release-poet-detained-year-without-charge> (accessed November 11, 2021); "Sri Lanka: 'Religious Disharmony' Order Threatens Minorities," Human Rights Watch, March 16, 2021, <https://www.hrw.org/news/2021/03/16/sri-lanka-religious-disharmony-order-threatens-minorities> (accessed November 11, 2021).

² Human Rights Watch telephone interview, lawyer RR, details withheld, November 8, 2021.

sentenced to 30 years in prison for conspiracy and aiding and abetting a 1999 suicide bombing, following a trial conducted in Sinhala, a language he could not understand. He received no reduction in sentence for the time he had already spent in detention. His lawyers have appealed the verdict and the appeal was first called two-and-a-half years later, in 2017, and is ongoing.

After promising to reform the law to address concerns of international partners, particularly as the European Union is evaluating Sri Lanka's compliance with GSP+ requirements, the Sri Lankan government on January 27, 2022, published a proposed Act to amend the Prevention of Terrorism (Temporary Provisions) Act of 1979 (the "Amendment Bill").³

The Amendment Bill effectively acknowledges that the existing PTA violates international human rights standards, but even if provisions of the new bill were fully implemented the most often abused provisions of the law would remain intact.

Some of the changes, such as reducing the time that the defense minister can order a person's detention without judicial oversight from 18 to 12 months, and measures that may expedite trials in cases in which charges are ultimately brought, could reduce the level of abuses. But other proposed clauses in the bill, such as a requirement to inform the Human Rights Commission of Sri Lanka of detentions, and monthly inspections of prisoners' welfare, only replicate procedures that already exist under domestic law, and which have not previously proved an effective safeguard against torture.

Most importantly, the Amendment Bill does not address the worst features of the law that have led to arbitrary detention and torture. Confessions given to the police remain admissible as evidence without any safeguards, suspects can be detained and interrogated anywhere and by anyone the authorities choose, and there remains no judicial oversight or criteria for the use of detention orders. There is still no definition of "terrorism" under the law, and suspects can be arrested and held for up to year without evidence.

³ "PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) (AMENDMENT) BILL to amend the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979," *The Gazette of the Democratic Socialist Republic of Sri Lanka*, January 27, 2022.

Human Rights Watch reiterates the call made by many human rights experts for many years to repeal the PTA, and in the interim to impose an immediate moratorium on the use of PTA until an acceptable law can be drafted.

Criticism of the PTA

Nongovernmental organizations in Sri Lanka and abroad, along with UN human rights experts, have long called for the PTA to be repealed or revised to meet international due process standards. In May 2013, the Colombo-based Centre for Policy Alternatives (CPA) described the PTA as 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.”⁴ In January 2022, the CPA said that the government’s “proposed amendments follow a minimalist approach, introducing only basic reforms which are insufficient to address ground realities.”⁵

In January 2021, a team of 11 prominent women activists issued a report on the impact of the Easter bombings in Batticaloa, eastern Sri Lanka, describing an ongoing “pattern of arbitrary arrests and detention... [including] many persons [who] were arrested prior to investigation, detained on detention orders for months, and thereafter discharged” for lack of evidence.⁶ Others who had personal contact with the bombers remain in detention without apparent evidence against them, while their families face destitution and harassment by the security services. They include, for example, two men who bought motorcycles from the suicide bombers when they were disposing of their possessions prior to the attacks. The report calls for the government to “[r]epeal the PTA, and in the interim implement an immediate moratorium on the use of the law,” adding that “[a]ny law that purports to deal with terrorism must adhere to international human rights standards after community consultation and expert input.”

⁴ “The Need to Repeal and Replace the Prevention of Terrorism Act (PTA),” Centre for Policy Alternatives, May 9, 2013, <https://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/> (accessed November 8, 2021).

⁵ “Commentary on Prevention of Terrorism (Temporary Provisions) (Amendment) Bill 2022,” Centre for Police Alternatives, January 31, 2022, <https://www.cpalanka.org/commentary-on-prevention-of-terrorism-temporary-provisions-amendment-bill-2022/> (accessed January 31, 2022).

⁶ Report of the Fact Finding Mission to Batticaloa to Study the Impact of the Easter Sunday Bombings, January 4, 2021, <https://www.minormatters.org/storage/app/uploads/public/61d/281/690/61d28169031b5163048128.pdf> (accessed January 5, 2022).

The UN Working Group on Enforced or Involuntary Disappearances has called for a repeal of the PTA since 1999,⁷ including in July 2016 following a visit to Sri Lanka.⁸ After a country visit in December 2017, the UN Working Group on Arbitrary Detention called for its immediate repeal, describing it as “one of the key enablers of arbitrary detention for over four decades.”⁹

Juan Méndez, then the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, described the use of torture including sexual abuse after his 2016 visit to Sri Lanka and called for a complete overhaul of the PTA.¹⁰ He also urged authorities to ensure that any replacement of the law comply with international law and practices. A summary report by Ben Emmerson, then the special rapporteur on human rights while countering terrorism, after his July 2017 country visit found that 80 percent of those arrested under the PTA complained of torture or other ill-treatment following their arrest.¹¹

Abusive Provisions

The preamble to the PTA states that its purpose is to prevent “unlawful activities ... within Sri Lanka or outside Sri Lanka.”¹² The effect of the PTA is to deprive people accused by the

⁷ Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2000/64, December 21, 1999, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/164/72/PDF/G9916472.pdf?OpenElement> (accessed November 8, 2018).

⁸ 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?OpenElement> (accessed November 18, 2021).

⁹ “Sri Lanka must urgently implement reforms to end arbitrary detention, UN rights experts say,” OHCHR, December 15, 2017, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22543&LangID=E> (accessed November 8, 2021).

¹⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka, A/HRC/34/54/Add.2, December 22, 2016, <https://sangam.org/wp-content/uploads/2017/01/SR-Torture-report-Dec-22-2016.pdf> (accessed November 6, 2021).

¹¹ “Human rights and counter-terrorism: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Sri Lanka,” OHCHR, July 14, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E> (accessed November 6, 2021). Emmerson found that methods of torture used against PTA prisoners included 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. See also, “Sri Lanka routinely tortures security suspects amid stalled reform process, UN expert finds,” OHCHR, July 18, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21884&LangID=E> (accessed November 6, 2021).

¹² Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, [http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Prevention_of_Terrorism_\(Temp_Provisions\).pdf](http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Prevention_of_Terrorism_(Temp_Provisions).pdf) (accessed November 18, 2021).

government of vaguely defined “terrorist” acts of due process rights, enabling detention without trial that can last for years or even decades, and removing protections that would reduce the risk of torture.

A lawyer who has defended suspects in numerous PTA cases said that the authorities bring cases and only then begin their investigation: “If they cannot find any evidence then they record a confession. I have not seen any confession that was recorded in compliance with procedures. My experience is that in only a few cases the confessions have been rejected by the judges.”¹³ The effect, the lawyer said, is that “prisoners know they are in a legal black hole. They can’t see the light at the end of the tunnel. They know that they have no future.”

This characterization is borne out by the many cases in which suspects are held, sometimes for years, without the government indicating having any evidence against them. A court filing of August 30, 2019,¹⁴ informing a magistrate about the detention of 65 people in connection with the Easter Sunday bombings, repeatedly states that a “suspect” was identified due to a personal connection with the suicide bombers, and is being held while their financial and telephone records and their travel history are investigated, and that statements have been recorded from their relatives.

On July 2, 2019, the Human Rights Commission of Sri Lanka wrote to the inspector general of police that it had received “a number of complaints alleging illegal arrests.” The commission observed that the police were making arrests prior to conducting an investigation, and directed the police to gather evidence before detaining a suspect (see correspondence published in the appendix).

The most frequently abused provisions include:

- Section 2 of the act defines terrorism offenses so broadly as to include, for example, causing or intending to cause “racial or communal disharmony or feelings of ill-will,” or interfering with “any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place.” It is also an

¹³ Human Rights Watch telephone interview, a lawyer MM, details withheld, October 5, 2021.

¹⁴ “The information to be furnished to the magistrate,” Case No. B/427/19, Batticaloa, August 30, 2021.

offense, punishable by up to seven years in prison, to be aware of an action that appears to be in breach of the act and fail to report it.

- Section 6(1) empowers the police—without a warrant, and notwithstanding anything in any other law to the contrary—to arrest any person; enter and search any premises; stop and search any individual or vehicle, and to seize any document or thing.
- Section 7(1) provides that a magistrate will remand any person in custody until the completion of their trial, if requested by the police. There is no provision for bail, unless approved by the attorney general.
- Section 7(3) empowers the police to take “any person” arrested under the act “to any place for the purposes of interrogation.” This provision has frequently been used to facilitate torture.
- Section 9(1) provides that if the defense minister suspects “any person is connected with or concerned in any unlawful activity,” he can order them detained for up to 18 months.
- Section 10 states that “[a]n order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.”
- Section 15(a) gives discretion to the secretary of defense to order that a PTA suspect “be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests [of national security or public order].” The provision does not set out any criteria for making this determination, and the decision is not subject to judicial oversight.
- Section 16 reverses the burden of proof, stating that “any statement” made by the accused in any circumstances, and recorded in any manner, is admissible as evidence and “[t]he burden of proving ... [it] is irrelevant ... shall be on the person asserting it to be irrelevant.” This, along with other provisions of the act, has contributed to convictions based on confessions obtained under torture.
- Section 17 states that provisions of the Evidence Ordinance, which make confessions given to a police officer inadmissible, do not apply in PTA cases.¹⁵
- Section 26 grants immunity to officials for “for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or

¹⁵ Evidence Ordinance, sections 25, 26 and 30, Ministry of Justice Lawnet, <https://www.lawnet.gov.lk/evidence-ordinance/> (accessed November 7, 2021)

- direction given under this Act,” giving broad cover to security forces to engage in torture, arbitrary arrest, and other abuses.
- According to section 28, “The provisions of this Act shall have effect notwithstanding anything contained in any other written law and accordingly in the event of any conflict or inconsistency between the provisions of this Act and such other written law, the provisions of this Act shall prevail.”

Attempts at Reform

Maithripala Sirisena defeated incumbent Mahinda Rajapaksa in the August 2015 presidential election. In October, the Sirisena administration agreed to a consensus resolution at the UN Human Rights Council.¹⁶ The resolution committed the government to ensure accountability for conflict-related abuses by enacting several transitional justice mechanisms. Along with other human rights commitments under the resolution, the government pledged to “review and repeal” the PTA “and to replace it with anti-terrorism legislation in accordance with contemporary international best practices.” However, despite drafting alternative counterterrorism legislation, which despite some improvements contained provisions incompatible with human rights standards, the PTA remained in place and abuses continued.

Several drafts of a new counterterrorism law were floated during Sirisena’s presidency, but none complied with international human rights standards, and none were adopted. In May 2017, the cabinet approved a draft Counter Terrorism Act (CTA), intended to replace the PTA. Although the bill provided some potential safeguards against abuses, it fell far short of the government’s pledges to the Human Rights Council and the European Union to end abusive detention without charge.¹⁷ Among his concerns with the draft law, Emmerson, the then special rapporteur on human rights while countering terrorism, noted that its broad definition of terrorism “poses a real risk that the legislation could be used in

¹⁶ “Promoting reconciliation, accountability and human rights in Sri Lanka”, A/HRC/RES/30/1, October 1, 2015, <https://undocs.org/en/A/HRC/RES/30/1> (accessed November 18, 2021).

¹⁷ *Locked Up Without Evidence: Abuses Under Sri Lanka’s Prevention of Terrorism Act*, Human Rights Watch, January 2018, https://www.hrw.org/sites/default/files/report_pdf/srilankao118_web_o.pdf (accessed November 7, 2021). According to a leaked draft of the CTA, police and military officers would still be empowered make arrests without a warrant. Suspects could be detained without charge for 12 months, and bail would only to be granted only for exceptional reasons.

circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner.”¹⁸

In June 2016, the Human Rights Commission of Sri Lanka made recommendations to ensure that any replacement legislation adhered to international human rights standards.¹⁹ That month, the president adopted directives issued by the Sri Lankan Human Rights Commission that were intended to protect PTA detainees until the law was repealed. The directives reasserted 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. For over three years this led to some increased transparency in the application of the act.

However, the adoption of the 20th amendment to the constitution in 2020 empowered the president to appoint the commissioners to the Human Rights Commission, which the Rajapaksa government used to undermine the commission’s independence. Human rights activists and lawyers told Human Rights Watch that they were no longer able to engage with the commission on PTA arrests, and the commission no longer effectively tracked PTA detentions.²⁰ Four human rights activists, three of whom are based in the north or east of Sri Lanka, said that while they were previously able to verify PTA arrests with the Human Rights Commission, they are no longer able to do so. A lawyer involved with PTA cases said of the current commission, “they are not very open, not very transparent.”²¹

¹⁸ “Human rights and counter-terrorism: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Sri Lanka,” OHCHR, July 14, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E> (accessed November 6, 2021).

¹⁹ “Arrest under PTA: HRCSL responds to President,” *CeylonAnanda*, June 27, 2016, <http://ceylon-ananda.com/arrest-under-pta-hrcsl-responds-to-president/> (accessed November 7, 2021). The HRCSL’s recommendations were based on recommendations by the UN Special Rapporteur on Protecting and Promoting Human Rights while Countering Terrorism. The HRCSL recommendations included:

- The basis for a clear and specific definition of what constitutes terrorism;
- That the burden of proof to show an individual poses a threat and should be detained always lies upon the state, “and that burden increases with the length of the detention”;
- “[R]eview by a court of such detention in a prompt and regular manner is imperative to prevent any violation of the detainee’s rights,”
- “[E]nabling the admissibility of confessions coupled with prolonged periods of administrative detention creates space for torture and ill-treatment . . . Only confessions voluntarily made to a judicial officer should be admissible in evidence.”

²⁰ Human Rights Watch telephone interview, lawyer RR, details withheld, November 8, 2021.

²¹ Human Rights Watch telephone interview, lawyer NN, details withheld, November 4, 2021.

Human Rights Watch wrote to the commission seeking information on its monitoring procedures as well as data on current PTA detentions. In response the commission wrote that it “receives information related to PTA detainees from the relevant Authorities from time to time.” (The correspondence is published in the appendix to this report.) The response described the commission’s “broad mandate” under the 1996 Human Rights Commission Act to monitor PTA detainees, and cited four meetings with the police, two each in 2020 and 2021, “regarding the status and welfare of detainees detained under the PTA.” The commission also cited six visits to PTA detainees, three in 2019, two in 2020, and one in 2021.

The commission said it had received eight complaints of torture against PTA detainees in the last three years, including six received by its Jaffna regional office and two in Colombo. The commission said that in one of these cases (from 2020) it had “taken steps to get statements from the PTA detainees in the Remand Prison of Magazine for further investigation.”

According to data, disclosed for the first time by the Human Rights Commission, as of January 7, 2022, 392 people were being held on remand under the PTA and another 92 people were held on PTA detention orders. In 2021, 109 people were arrested under the PTA. However, it is not clear how to reach consistent totals from the numbers presented in the tables compiled by the commission (see appendix).

The commission also provided a number of supporting documents, which are published in the appendix to this report. They include a January 2022 letter from the commission to the inspector general of police, stating that the police do not consistently inform the commission of PTA arrests as required by law, and a letter from the commission to the chief justice of the Supreme Court, also from January 2022, stating that magistrates are not fulfilling their mandate to visit places of detention.

In December 2021 the Global Alliance of National Human Rights Institutions (GANHRI) announced that the Human Rights Commission of Sri Lanka would have its “A” status

removed in one year because it no longer meets standards of “independence and effectiveness.”²²

International Calls to Reform the PTA

Continuing abuses by President Mahinda Rajapaksa’s government following the end of the civil war in 2009 and the failure to address impunity for wartime atrocities led the United Nations and a number of governments to press for reform of the PTA.

United Nations

The UN first documented abuses committed during the final months of the conflict in a 2011 report by a Panel of Experts appointed by UN Secretary-General Ban Ki-moon.²³ The UN Human Rights Council in March 2014 called for an independent investigation by the UN Office of the High Commissioner for Human Rights (OHCHR); its 2015 report, known as the OISL Report, found horrific wartime abuses committed by both sides to the conflict.²⁴ The Human Rights Council, in the same year, passed a landmark consensus resolution that set out detailed steps for Sri Lanka to pursue accountability and reconciliation, as well as “to review and repeal the Prevention of Terrorism Act,” to prevent future abuses.²⁵ Much of the resolution, including PTA reform, remained unimplemented in 2020 when the Gotabaya Rajapaksa administration repudiated these commitments.²⁶

In her January 2021 report to the Human Rights Council, the UN high commissioner for human rights, Michelle Bachelet, recommended that UN member states consider imposing

²² “GANHRI Sub-Committee on Accreditation Report – October 2021”, December 2021, https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA-Report-October-2021_E.pdf (accessed December 14, 2021).

²³ *Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka*, March 31, 2011, <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/POC%20Rep%20on%20Account%20in%20Sri%20Lanka.pdf> (accessed November 11, 2021).

²⁴ *Report of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx> (accessed November 9, 2021).

²⁵ Promoting reconciliation, accountability and human rights in Sri Lanka, Resolution adopted by the Human Rights Council A/HRC/RES/30/, October 1, 2015, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/236/38/PDF/G1523638.pdf?OpenElement> (accessed November 8, 2021).

²⁶ “Statement made by Hon. Dinesh Gunawardena, Minister of Foreign Relations at the 43rd Session of the Human Rights Council,” Sri Lankan Foreign Ministry, February 27, 2020, <https://mfa.gov.lk/statement-made-by-minister-of-foreign-relations-at-the-43rd-session-of-the-hrc-eng/> (accessed November 7, 2021).

targeted sanctions “against State officials and other actors credibly alleged to have committed or be responsible for grave human rights violations or abuses” in Sri Lanka.²⁷

In March 2021 the Human Rights Council adopted resolution 46/1, mandating the OHCHR “to collect, consolidate, analyse and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law.”²⁸

At the 48th session of the Human Rights Council in September 2021, the Core Group on Sri Lanka urged the government of Sri Lanka “to bring its counter-terrorism legislation in line with its international human rights obligations.” Referring to the 2021 regulations enabling up to two years detention for “rehabilitation”, it added, “We call on the government of Sri Lanka to reconsider their intention to introduce a rehabilitation process under the Prevention of Terrorism Act that lacks judicial oversight.”²⁹

On December 9, 2021, seven UN special rapporteurs wrote to the Sri Lankan government noting the repeated findings by their mandates that the PTA contravenes international human rights law, including provisions of the Universal Declaration of Human Rights and core international human rights treaties.³⁰ They wrote that instead of taking “remedial measures,” the government is advancing “an additional set of rights denying measures” through new regulations attached to the law.

The special rapporteurs set out five “necessary prerequisites” to make the law compliant with Sri Lanka’s international legal obligations:

- 1) Employ definitions of terrorism consistent with international norms.

²⁷ “Promotion of reconciliation, accountability and human rights in Sri Lanka,” Report of the Office of the High Commissioner for Human Rights, A/HRC/46/20, January 27, 2021, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E> (accessed January 13, 2022).

²⁸ “Promoting reconciliation, accountability and human rights in Sri Lanka,” Resolution adopted by the Human Rights Council A/HRC/RES/46/1, March 23, 2021, <https://undocs.org/A/HRC/RES/46/1> (accessed December 9, 2021).

²⁹ UN Human Rights Council 48: Core Group statement on Sri Lanka, September 14, 2021, <https://www.gov.uk/government/speeches/un-human-rights-council-48-core-group-statement-on-sri-lanka> (accessed November 11, 2021). The Core Group consists of Canada, Germany, North Macedonia, Malawi, Montenegro and the UK.

³⁰ “Communication by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and six others LKA7/2021, December 9, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26863> (accessed December 14, 2021)

- 2) Ensure legal certainty, especially where it may impact rights to freedom of expression, opinion, association, and religion or belief.
- 3) Include provisions to prevent and halt arbitrary deprivation of liberty.
- 4) Include provisions to prevent torture and enforced disappearance.
- 5) Provide due process and fair trial guarantees, including judicial oversight and access to legal counsel.

The rapporteurs expressed particular concern at the threat the PTA poses to ethnic and religious minorities, and its use to curtail political dissent, and called for an immediate moratorium until the necessary amendments are made.

United Kingdom

As a member of the core group on Sri Lanka at the Human Rights Council, the UK has taken a leading role in the adoption of successive resolutions urging respect for human rights and accountability in Sri Lanka.

Under its Conflict, Stability and Security Fund, the UK also provides law enforcement and military assistance to Sri Lanka.³¹ A component of this program, involving police training delivered by Police Scotland, was cancelled by Police Scotland in 2021 following criticism that abusive Sri Lankan police units had benefitted.³² The program also involves “targeted non-kinetic training and high-level dialogue” in the defense sector.³³

A freedom of information application by Human Rights Watch, seeking further details of UK security assistance to Sri Lanka and asking whether the UK provides counterterrorism support, was rejected on national security and other grounds.³⁴ On January 19, 2022, the

³¹ “Sri Lanka Delivering Increased Stability and Reducing the Risk of a Return to Conflict programme summary 2020 to 2021,” https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003167/Sri_Lanka_Delivering_Increased_Stability_and_Reducing_the_Risk_of_a_Return_to_Conflict_programme_summary_2020_to_2021.odt (accessed November 18, 2021).

³² “Joint Letter on Police Scotland Training for Sri Lankan Police,” Human Rights Watch and others, August 16, 2021, <https://www.hrw.org/news/2021/08/16/joint-letter-police-scotland-training-sri-lankan-police> (accessed November 18, 2021).

³³ CSSF Programme Summary: SRI LANKA: DELIVERING INCREASED STABILITY AND REDUCING THE RISK OF A RETURN TO CONFLICT, 2019-2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/842484/Sri_Lanka_Programme.odt (accessed November 18, 2021).

³⁴ Letter from the Foreign, Commonwealth and Development Office of September 23, 2021, REQUEST REF: FOI2021/17905.

Sri Lankan Foreign Ministry issued a statement expressing “deep appreciation to the UK for the support extended in the sphere of counter-terrorism.”³⁵

European Union

In 2010 the European Union withdrew Sri Lanka’s access to its trading preference scheme, known as GSP+, which grants tariff-free access to the EU market in exchange for ratifying and implementing 27 international agreements, including human rights conventions.³⁶ The step was taken amid large-scale international humanitarian law and human rights violations by the then administration of President Mahinda Rajapaksa.

In 2017, following overall improvements in the human rights situation and reform measures undertaken by the Sirisena administration, the EU restored Sri Lanka’s access to GSP+.³⁷ In its January 2017 report on Sri Lanka’s application to re-join the scheme, the EU noted, “In particular, the Government has committed to replace the PTA with a new Bill on counter-terrorism, to be presented to the Parliament in January 2017 . . . which is to be compatible with international human rights conventions and counter-terrorism standards.”³⁸

Five years later, the PTA remains in force and hundreds of people remain detained under it. In its most recent GSP+ assessment, prior to the assessment that is currently in preparation, the commission wrote, “The Prevention of Terrorism Act (PTA), which is reported to facilitate detentions without charge, has not been repealed yet, despite Sri Lanka’s commitment to do so under GSP+ and UN Human Rights Council Resolution 30/1.”³⁹ The European Parliament adopted a resolution in June 2021 that called for the

³⁵ “Sri Lanka and the UK Acknowledge Multifaceted Partnership at Meeting Between Foreign Minister and British Minister for South Asia Lord Ahmad,” Sri Lankan foreign ministry, January 19, 2022, <https://srilankaembassyrome.org/2022/01/sri-lanka-and-the-uk-acknowledge-multifaceted-partnership-at-meeting-between-foreign-minister-and-british-minister-for-south-asia-lord-ahmad/> (accessed January 29, 2022).

³⁶ Vikas Bajaj, “Sri Lanka Loses E.U. Trade Benefit,” *The New York Times*, July 6, 2010, <https://www.nytimes.com/2010/07/07/business/global/07trade.html> (accessed November 7, 2021).

³⁷ “EU grants Sri Lanka improved access to its market as incentive for reform,” European Commission, May 17, 2017, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=1663> (accessed November 7, 2021).

³⁸ Report on assessment of the application for GSP+ by Sri Lanka, European Commission, January 11, 2017, https://trade.ec.europa.eu/doclib/docs/2017/january/tradoc_155236.pdf (accessed November 7, 2017).

³⁹ “The EU Special Incentive Arrangement for Sustainable Development and Good Governance (‘GSP+’) assessment of Sri Lanka covering the period 2018 - 2019 Accompanying the document Joint Report to the European Parliament and the Council Report on the Generalised Scheme of Preferences covering the period 2018-2019,” European Commission, February 10, 2020,

withdrawal of Sri Lanka's trading privileges under the GSP+ scheme if it continued to fail to meet its human rights commitments, particularly in relation to the PTA.⁴⁰

Meanwhile, the European Union has also provided counterterrorism support to Sri Lankan law enforcement and security agencies by funding programs implemented by the UN Office on Drugs and Crime (UNODC).⁴¹ The European Parliament resolution also called upon the European Commission to “urgently evaluate its funding” for a UN Office on Drugs and Crime (UNODC) and INTERPOL project entitled “Support to Sri Lanka on Counter-Terrorism” so long as “counterterrorism in Sri Lanka is in certain cases being used as a pretext on which to persecute members of ethnic and religious groups and civil society.”⁴² UNODC's counterterrorism programs in Sri Lanka do not appear to be in compliance with UN human rights due diligence policy, which forbids assistance to security forces in which there is a “real risk” of grave violations of international human rights law.⁴³

Human Rights Watch wrote to UNODC seeking information on its counterterrorism projects in Sri Lanka, and its interpretation of the UN's human rights due diligence policy. In response the UNODC said, “Through various projects, UNODC and the rest of the United Nations family advocate for compliance with international norms, mindful of concerns with the Prevention of Terrorism Act (PTA)... These continued efforts, however, should not be confused with support for non-compliant measures.... UNODC is currently phasing out the

<https://op.europa.eu/en/publication-detail/-/publication/ec88a77e-5327-11ea-aece-01aa75ed71a1/language-en> (accessed November 7, 2021).

⁴⁰ “The situation in Sri Lanka, in particular the arrests under the Prevention of Terrorism Act,” European Parliament resolution, June 10, 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0290_EN.html (accessed November 6, 2021).

⁴¹ EU-GMCP Partnership Report, https://www.unodc.org/documents/Maritime_crime/EU-GMCP_PARTNERSHIP_REPORT.pdf (accessed November 18, 2021). See also “Terrorism prevention projects, Asia,” UNODC, <https://www.unodc.org/unodc/en/terrorism/projects/asia.html> (accessed November 18, 2021).

⁴² “The situation in Sri Lanka, in particular the arrests under the Prevention of Terrorism Act,” European Parliament resolution, June 10, 2021, https://www.europarl.europa.eu/doceo/document/TA-9-2021-0290_EN.html (accessed November 6, 2021).

⁴³ The policy reads (in part): “United Nations support [to non-United Nations security forces] cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures. For the same reasons, if the United Nations receives reliable information that provides substantial grounds to believe that a recipient of United Nations support is committing grave violations of international humanitarian, human rights or refugee law, the United Nations entity providing such support must intercede with the relevant authorities with a view to bringing those violations to an end. If, despite such intercession, the situation persists, the United Nations must suspend support to the offending elements.” Human rights due diligence policy on United Nations support to non-United Nations security forces, A/67/775-S/2013/110, March 5, 2013, <https://undocs.org/A/67/775> (accessed November 19, 2021).

project ‘Support to Sri Lanka on Counter-Terrorism’, with the project scheduled to be completed by 31 January, 2022.” (The correspondence is published in the appendix to this report.)

United States

On February 14, 2020, the United States banned the Sri Lankan chief of defense staff, Gen. Shavendra Silva, from travel to the US “due to credible information of his involvement, through command responsibility, in gross violations of human rights, namely extrajudicial killings.”⁴⁴ On December 10, 2021, the United States imposed similar travel bans on two more Sri Lankans, Chandana Hettiarachchi, a navy intelligence officer, implicated in enforced disappearances at Trincomalee naval base, “for his involvement in gross violations of human rights, namely, the flagrant denial of the right to liberty of at least eight ‘Trincomalee 11’ victims, from 2008 to 2009,” and Sunil Ratnayake, a former staff sergeant in the Sri Lanka Army, “for his involvement in gross violations of human rights, namely the extrajudicial killings of at least eight Tamil villagers in December 2000.”⁴⁵ On December 5, another Sri Lankan officer, Maj. Gen. (retd) Udaya Perera, was turned away from a flight to the United States by airline staff, apparently because his visa had been cancelled.⁴⁶

Amendments to Sri Lanka’s Prevention of Terrorism Act

After Gotabaya Rajapaksa took office in November 2019, one of the first acts of the new administration, in January 2020, was to drop the draft CTA and proclaim support for the PTA. “The PTA is back in the statute book, empowering the Police and Armed Forces to face

⁴⁴ Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, February 14, 2021, <https://2017-2021.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section-7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/index.html> (accessed December 14, 2021).

⁴⁵ “The United States Promotes Accountability for Human Rights Violations and Abuses,” Statement by Antony J. Blinken, December 10, 2021, <https://www.state.gov/the-united-states-promotes-accountability-for-human-rights-violations-and-abuses/> (accessed December 14, 2021).

⁴⁶ Shamindra Ferdinando, “Now, another Maj. Gen. barred from entering US,” *The Island*, December 27, 2021, <https://island.lk/now-another-maj-gen-barred-from-entering-us/> (accessed January 10, 2022).

any threat posed to national security from any quarter,” the cabinet spokesperson Minister Bandula Gunawardana announced.⁴⁷

However, faced with growing international pressure over the country’s deteriorating human rights situation, the government announced on January 25, 2021, in a joint statement with the European Union, that it would review and amend the PTA to bring it into compliance with human rights standards.⁴⁸ This task was added to the mandate of the Presidential Commission of Inquiry for Appraisal of the Findings of Previous Commissions and Committees,⁴⁹ which had recently been created to review previous reports as a supposed alternative to the international evidence-gathering process then under discussion at the Human Rights Council.

Nevertheless, one month later the Sri Lankan government published a list proscribing “terrorist” organisations and listing several hundred individuals as alleged “terrorists,” including many who are rights activists in the Tamil diaspora.⁵⁰ The list included several nonviolent diaspora groups which at that time were engaged in advocacy at the Human Rights Council to promote accountability for past violations.

On March 12, 2021, President Rajapaksa issued the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021, under the PTA, which expands its powers.⁵¹ The regulation allows the authorities to detain and “rehabilitate” anyone who “by words either spoken or intended to be read or by signs or by visible representations” causes the commission of violence or “religious, racial

⁴⁷ Sandun A Jayasekera, “Cabinet approval to withdraw Counter Terrorism Bill,” January 4, 2020, https://www.dailymirror.lk/print/front_page/Cabinet-approval-to-withdraw-Counter-Terrorism-Bill/238-180710 (accessed November 7, 2021).

⁴⁸ Joint statement of the 23rd meeting of the EU-Sri Lanka Joint Commission, January 25, 2021, <https://mfa.gov.lk/23rd-meeting-of-the-eu-sri-lanka-joint-commission/> (accessed November 6, 2021).

⁴⁹ “President appoints Col to investigate entire gamut of HR probes and findings,” Presidential Secretariat, January 21, 2021, <https://www.presidentsoffice.gov.lk/index.php/2021/01/22/president-appoints-coi-to-investigate-entire-gamut-of-hr-probes-and-findings/> (accessed November 21, 2021).

⁵⁰ Gazette of the Democratic Socialist Republic of Sri Lanka No. 2216/37, February 25, 2021, http://fiusrilanka.gov.lk/docs/UNSCR/List/2216_37/2216_37_E.pdf (accessed November 6, 2021).

⁵¹ Gazette of the Democratic Socialist Republic of Sri Lanka No. 2218/68, March 12, 2021, http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf (accessed November 6, 2021); “Sri Lanka: ‘Religious Disharmony’ Order Threatens Minorities,” Human Rights Watch, March 16, 2021, <https://www.hrw.org/news/2021/03/16/sri-lanka-religious-disharmony-order-threatens-minorities> (accessed November 7, 2021); “Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act,” Centre for Policy Alternatives, March 18, 2021, <https://www.cpalanka.org/concerns-relating-to-the-recent-regulations-issued-under-the-prevention-of-terrorism-act/> (accessed November 7, 2021).

or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups.” Instead of being tried, the suspect faces detention in a “reintegration center” for up to one year on the recommendation of the attorney general. No standards for making such a recommendation are set out. Following the introduction of The regulations in March 2010, Commissioner General of Rehabilitation Maj. Gen. Darshana Hettiarachchi said the government intended to use the powers to “rehabilitate” people detained during the Easter Sunday bombings inquiry who had been found not to be linked to the attacks.⁵² The defense minister, currently President Rajapaksa, is empowered to extend the detention for a second year. At the time of writing, implementation of the order is suspended while the Supreme Court considers fundamental rights petitions against it.⁵³

On June 4 President Rajapaksa issued a gazette notice creating a new detention site for PTA prisoners at a police facility in Colombo. The step was taken days after the Human Rights Commission wrote to the government to ask about a prisoner being held at the site, which up to that point was an unauthorized place of detention.⁵⁴

On June 21 President Rajapaksa received an interim report on PTA reform from the presidential commission of inquiry. The commission opposed repealing the act. Instead, it focused on just three provisions (9, 11 and 13) and made three recommendations: expedite the hearing of cases by filing indictments against those held for over three months; confine detainees to their own home under special security instead of detaining them in prisons; and establish an advisory board consisting of at least three people representing Sri Lanka’s three major ethnic groups.⁵⁵

⁵² Zulfick Farzan, “Rehab for detainees not related to April 21st Attacks,” *Newsfirst*, March 23, 2021, <https://www.newsfirst.lk/2021/03/23/rehab-for-detainees-not-related-to-april-21st-attacks/> (accessed December 13, 2021)

⁵³ “Supreme Court suspends presidential order for de-radicalization of extremists,” *ColomboPage*, August 5, 2021, http://www.colombopage.com/archive_21A/Aug05_1628179328CH.php (accessed November 6, 2021).

⁵⁴ Human Rights Watch telephone interview, human rights defender LL, details withheld, November 4, 2021.

⁵⁵ “President handed over interim report of Commission appointed to probe alleged human rights violations,” Embassy of Sri Lanka – United States of America, July 21, 2021, <https://slembassyusa.org/new/media-center/news/2355-president-gets-interim-report-of-commission-appointed-to-probe-alleged-human-rights-violations.html> (accessed November 7, 2021); “President gets interim report of commission appointed to probe alleged Human Rights violations,” *Daily FT*, July 22, 2021, <https://www.ft.lk/front-page/President-gets-interim-report-of-commission-appointed-to-probe-alleged-Human-Rights-violations/44-720766> (accessed November 7, 2021).

On the same day, a cabinet sub-committee was appointed to further consider PTA reform.⁵⁶ However, none of the commission's interim recommendations were adopted in full by the president. Although an advisory board was established, it is appointed by the president (who is also minister of defense) and does not offer independent oversight.⁵⁷

On June 22 Justice Minister Ali Sabry announced in parliament that the government intended to reform the PTA, and to free prisoners in cases where "there is no court case."⁵⁸ During the debate an opposition MP claimed that during the previous year over 100 young people had been arrested under the PTA in connection with Facebook posts.⁵⁹ In response the minister for youth and sports, Namal Rajapaksa, who is the nephew of the president and the son of the prime minister, alleged that the opposition was attempting to disrupt the government's new policy to release long term prisoners. "There are people who have been imprisoned for our lifetimes. Why are you talking about people who were only arrested yesterday?" he said.⁶⁰

On June 24, 2021, President Rajapaksa pardoned 16 people convicted under the PTA – most were either nearing the end of their sentences or had already been incarcerated for a period exceeding their sentence.⁶¹ On the same day he appointed a second committee, this one composed of officials and chaired by the defense secretary, Gen. (ret'd) Kamal Gunaratne, who commanded forces implicated in alleged war crimes and crimes against humanity during the civil war,⁶² to work on changes to the PTA. In July, Gunaratne said intelligence reports did not indicate any terrorist activity in Sri Lanka.⁶³ He was responding to the threat level shown on the US government travel advisory for the country, which

⁵⁶ "Government of Sri Lanka response to the Joint Communication received from seven UN Special Procedures Mandate Holders concerning Prevention of Terrorism (Deradicalisation from holding violent extremist religious ideology) Regulations No. 01 of 2021," August 11, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=36496> (accessed November 6, 2021).

⁵⁷ "President appoints advisory board for guidance on PTA," *Daily FT*, August 26, 2021, <https://www.ft.lk/news/President-appoints-advisory-board-for-guidance-on-PTA/56-722220> (accessed November 6, 2021).

⁵⁸ Pamodi Waravita, "PTA to be reformed: Sabry," *The Morning*, June 13, 2021, <https://www.themorning.lk/pta-to-be-reformed-sabry/> (accessed November 6, 2021).

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ "Sri Lanka: Pardons a Meager Response to Abusive Law," Human Rights Watch, June 29, 2021, <https://www.hrw.org/news/2021/06/29/sri-lanka-pardons-meager-response-abusive-law> (accessed November 7, 2021).

⁶² *Report of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx> (accessed November 9, 2021).

⁶³ "Sri Lanka asserts no threat of terrorism reported," *Colombo Gazette*, July 8, 2021, <https://colombogazette.com/2021/07/08/sri-lanka-asserts-no-threat-of-terrorism-reported/> (accessed November 6, 2021).

Gunaratne said reflected only the Covid-19 pandemic and not any terrorist threat. Nevertheless, the security forces have continued to arrest people under the PTA.

Ahead of the September 2021 session of the Human Rights Council, the Sri Lankan government circulated a briefing document to foreign diplomats claiming progress on human rights.⁶⁴ It partially described the interim recommendations of the presidential commission for PTA reform,⁶⁵ stated that the cabinet sub-committee appointed to “revisit” the PTA would report by September 24, and claimed without basis to be “intensifying and expanding the consultation process by including all stake holders such as civil society... the Bar Association of Sri Lanka and academic institutions.”

However, even as the government sought to reassure diplomats about its intention to reform the PTA, Prisons Minister Lohan Ratwatte visited Anuradhapura prison, where he made PTA prisoners kneel and held a gun to their heads, ordering them to “confess.”⁶⁶ He was subsequently sacked as prisons minister, but retained another ministerial portfolio.

In October, similar assurances of PTA reform were also offered to an EU delegation assessing Sri Lanka’s compliance with its GSP+ obligations.⁶⁷

The committee of officials chaired by Defense Secretary Gunaratne submitted a report on PTA reform to the president on November 15.⁶⁸ On around the same date the government invited a group of civil society figures known as the Sri Lanka Collective for Consensus

⁶⁴ “Progress made by the Government of Sri Lanka (GoSL) on human rights and reconciliation,” August 27, 2021, document circulated to “All diplomatic missions’ resident in Colombo” by the Ministry of Foreign Affairs. Copy on file with Human Rights Watch. See, “Sri Lanka: UN Rights Council Scrutiny Crucial,” Human Rights Watch, September 10, 2021, <https://www.hrw.org/news/2021/09/10/sri-lanka-un-rights-council-scrutiny-crucial> (accessed November 6, 2021).

⁶⁵ The briefing omits to mention that the Presidential Commission called for representatives of all three major communities to be appointed to the advisory board – a recommendation President Rajapaksa had ignored when making the appointments.

⁶⁶ Meenakshi Ganguly, “Sri Lankan Minister Threatens Prisoners at Gunpoint,” Human Rights Watch, September 15, 2021, <https://www.hrw.org/news/2021/09/15/sri-lankan-minister-threatens-prisoners-gunpoint> (accessed November 6, 2021); Meera Srinivasan, “Tamil prisoners file Fundamental Rights petition at Sri Lanka’s Supreme Court,” September 30, 2021, <https://www.thehindu.com/news/international/tamil-prisoners-file-fundamental-rights-petition-at-sri-lankas-supreme-court/article36753917.ece> (accessed November 6, 2021).

⁶⁷ “EU-Sri Lanka: Fifth Meeting of the Working Group on Good Governance, Rule of Law and Human Rights,” joint press release October 1, 2021, https://eeas.europa.eu/delegations/philippines/105010/eu-sri-lanka-fifth-meeting-working-group-good-governance-rule-law-and-human-rights_en (accessed November 19, 2021).

⁶⁸ “Report by committee appointed to review PTA handed over,” *Colombo Gazette*, November 15, 2021, <https://colombogazette.com/2021/11/15/report-by-committee-appointed-to-review-pta-handed-over/> (accessed November 18, 2021).

(SLCC) to discuss PTA reform. Up to that point no known consultations had taken place, including with the Bar Association of Sri Lanka.

At a November 27 meeting between the SLCC and members of the cabinet subcommittee on PTA reform, ministers said they did not yet have a draft of proposed changes to the law but described at least eight amendments the government intends to make.⁶⁹ In response to the SLCC's account of the meeting, a group of 47 prominent civil society figures and 13 civil society organisations issued a statement noting that “nearly all so-called changes proposed already exist in law and do not address any of the shortcomings in the PTA that enable grave human rights violations.”⁷⁰ They said, “We call for repeal of the PTA and in the interim an immediate moratorium on the use of the law.”

In a letter to Human Rights Watch in January 2022, the Sri Lankan foreign ministry stated that under a process to release detainees “held in judicial custody for extended periods under charges relating to the PTA... 13 more persons were discharged as of 13 January 2022.”⁷¹ No further details of the releases were available.

⁶⁹ According to a press release by the SLCC, the eight proposed amendments are: “1) Detention orders: The period of validity of a detention order would be reduced from 18 months to 12 months. 2) Restricted use of PTA: The IGP has issued clear instructions to police officers not to have recourse to the PTA as a regular mode of arrest or as a short cut. The norm should be to investigate with the use of the normal law. They should only use PTA in exceptional circumstances when adequate evidence is found in investigation and if national security issues arise in the process of investigations 3) Supervision by magistrates: It will be mandatory for magistrates to visit the place of detention and to personally ensure the welfare of detained persons. The Human Rights Commission should/ will be informed of such detention. Magistrates will be empowered to direct the IGP to investigate if any evidence of torture is found. In such a situation the Attorney General will institute criminal proceedings. 4) Judicial oversight: The person detained will have access to judicial appeal through Article 126 of the constitution (Fundamental Rights jurisdiction of Supreme Court) and Article 140 (Writ jurisdiction of Appeal Court). This will be spelled out in the law so that there is no ambiguity. This will be the first time in the four decade long history of PTA that detention orders can be legally challenged. 5) Access to lawyer: The person detained will have the right to access a lawyer and to visits by family members. This will be a statutory right so that there is no discretion in the matter. 6) Repeal of Section 14 of PTA: This prohibits publication of any statement made by the detainee or with regard to the investigation. 7) Speedy trial: Trials of PTA cases will take place on a daily basis until completed to avoid delays. The Chief Justice has already directed that PTA cases should be expedited. 8) Advisory Board: This has been set up under Section 13 of the PTA. Chaired by retired Chief Justice Asoka de Silva it has already recommended the release of 26, 8 and 6 prisoners on three occasions. The Advisory Board is expected to make recommendations and advise the President on the investigation, release, granting of bail and future action related to the persons imprisoned over terrorist activities and detained under detention orders.” Statement by the Sri Lankan Collective for Consensus, November 29, 2021, <https://peace-srilanka.org/media-centre/news/item/1093-statement-by-the-sri-lankan-collective-for-consensus-29-11-2021> (accessed December 10, 2021). Human Rights Watch telephone interview with SLCC member TT, details withheld, November 30, 2021.

⁷⁰ “Civil society calls for immediate moratorium on use of PTA,” *The Island*, December 6, 2021, <https://island.lk/civil-society-calls-for-immediate-moratorium-on-use-of-pta/> (accessed December 10, 2021),

⁷¹ “Response to the Human Rights Watch ‘World Report 2022’: Sri Lanka Section,” Sri Lankan Foreign Ministry, January 22, 2022, <https://mfa.gov.lk/hrw-world-report-2022-sl/> (accessed January 24, 2022).

On January 27, 2022, the government published a bill to amend the PTA.⁷² If the Amendment Bill is adopted, it would do little to help Sri Lanka meet the five “necessary prerequisites” set out by seven UN special rapporteurs in December 2021 to bring Sri Lanka’s counterterrorism legislation into compliance with Sri Lanka’s international human rights obligations.⁷³

The five necessary prerequisites are:

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

The PTA contains no definition of terrorism, and the Amendment Bill does not address this.

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

The Amendment Bill does not affect the sweeping criminalization of speech under section 2 of the PTA, including a vague provision that allows authorities to arrest anyone whose speech they deem to have caused or be intended to cause “racial or communal disharmony or feelings of ill - will or hostility between different communities or racial or religious groups.”

In their December 2021 communication the UN special rapporteurs drew particular attention to this provision, which can be used to violate numerous provisions of the International Covenant on Civil and Political Rights (ICCPR) and other human rights conventions. The Amendment Bill leaves the provision fully intact and would not prevent abuses such as in the case of the lawyer Hijaaz Hizbullah, or the poet Ahnaf Jazeem, who were detained under the PTA for allegedly causing “communal disharmony.”

⁷² “PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) (AMENDMENT) BILL to amend the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979,” *The Gazette of the Democratic Socialist Republic of Sri Lanka*, January 27, 2022.

⁷³ “Communication by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and six others LKA7/2021, December 9, 2021, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26863> (accessed December 14, 2021)

3. “Ensure preventive measures are in place to prevent and halt arbitrary detention and deprivation of liberty.”

Under the Amendment Bill, clause 2, the period for which a person can be held under a detention order issued by the defense minister is reduced from 18 to 12 months. This merely shortens the possible period of arbitrary detention, but does not end it. There remains no judicial oversight of the imposition of detention orders, no criteria for their use, and no requirement to produce any form of evidence against the detainee.

Under the Amendment Bill, clause 4, detention orders “shall not be called into question in any proceedings or in any court of law.” An apparent exception is made for proceedings under articles 126 and 140 of the Sri Lankan constitution – however these relate to fundamental rights petitions in the Supreme Court, which are already brought on behalf of PTA detainees under the current law. There remains no opportunity under the Amendment Bill for people held on detention orders to seek bail. The proposed law would do nothing to prevent the arbitrary detention of any suspect during the first year after their arrest.

4. “Ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition.”

Crucially, the Amendment Bill does not change the status of confessions given to the police as evidence in PTA cases. Whereas such evidence is inadmissible under other Sri Lankan laws, it is admissible under the PTA. This has led the police to routinely use torture to extract confessions from PTA detainees, as documented in numerous reports by special rapporteurs, the Sri Lankan Human Rights Commission, and human rights groups.⁷⁴

⁷⁴ See, “Prison Study by the Human Rights Commission of Sri Lanka,” HRCSL, 2020, <https://www.hrcsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> (accessed January 28, 2022); “Human rights and counter-terrorism: UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism concludes visit to Sri Lanka,” OHCHR, July 14, 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21883&LangID=E> (accessed November 6, 2021); Human Rights Watch, *Locked Up Without Evidence: Abuses under Sri Lanka’s Prevention of Terrorism Act*, January 29, 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act#:~:text=The%20Sri%20Lankan%20government%20has,facilitating%20torture%2C%20and%20other%20abuse.> (accessed January 27, 2022).

Furthermore, the Amendment Bill does not alter the power of authorities under section 7(3) of the PTA to move a suspect “to any place for the purpose of interrogation and from place to place for the purposes of investigation.” Nor does it alter the power of the defense secretary under PTA section 15(a) to order that a detainee “be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests [of national security or public order].” These provisions have repeatedly been used to enable torture and other ill-treatment, and increase the risk of enforced disappearance.

Clause 3 of the Amendment Bill would require authorities to notify the Human Rights Commission of Sri Lanka of detentions under the PTA within an (unspecified) “reasonable period,” although a similar duty already exists under the Human Rights Commission Act.⁷⁵ The Human Rights Commission, in a letter to Human Rights Watch dated January 7, 2022, acknowledged that the police do not consistently uphold this provision.⁷⁶

Clause 3 of the Amendment Bill also contains provisions relating to monthly inspections of places of detention by magistrates. In its letter to Human Rights Watch, the Human Rights Commission recognized that these powers already exist, but acknowledged that they are not applied in practice. And the Amendment Bill creates no obligation on magistrates to initiate an investigation of suspected torture, stating only that they “may” do so. The bill also does not ensure that prisoners are able to meet magistrates or judicial medical officers (JMOs) in private, nor provide for their transfer to another place of detention in case they have allegedly been tortured, nor make clear the procedural basis for magistrates to pursue any action, since those held under detention orders do not have cases filed at the magistrates’ court. This contravenes article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention against Torture”), which states that, “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”⁷⁷

⁷⁵ Human Rights Commission of Sri Lanka Act No. 21 of 1996, <https://www.hrcsl.lk/wp-content/uploads/2020/01/HRC-Act.pdf> (accessed January 28, 2022).

⁷⁶ The correspondence is published in the appendix to this report.

⁷⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (accessed January 31, 2022)

Clause 10 of the Amendment Bill reiterates provisions for official impunity in the existing act, stating “no suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any Order made or direction given under this Act.” This is contrary to article 14 of the Convention against Torture, which states that “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.”⁷⁸

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

Clause 5 of the Amendment Bill provides that “[a]n Attorney-at-Law representing a person remanded or detained under this Act, shall have the right of access to such person and to make representations on behalf of such person, subject to such conditions as may be prescribed by regulations made under this Act or as provided for in other written law.” Since the defense minister has broad powers to introduce new regulations under the act, the proposed law therefore imposes unspecified restrictions on prisoners’ access to a lawyer. In principle the right of access to a lawyer already exists in Sri Lankan law, although it is frequently violated for PTA detainees, and the confidentiality of meetings with lawyers has also been routinely violated under the PTA.⁷⁹

The proposed Amendment Bill contains a provision in clause 8 that may expedite the conduct of trials, stating that hearings should normally be conducted on a “day to day basis.” In the past, trials have often lasted years, with only intermittent hearings. Under clause 10 of the Amendment Bill, if a trial has not begun 12 months after the date of their arrest, a detainee may apply to the High Court or Court of Appeal for bail. Under the existing PTA, bail can normally be granted only if the attorney general makes no objection

⁷⁸ Ibid., article 14.

⁷⁹ See “Sri Lanka: Free Rights Activist,” Human Rights Watch and others, July 28, 2021, <https://www.hrw.org/news/2021/07/28/sri-lanka-free-rights-activist>; Pamodi Waravita, “TID officers said I’m a terrorist because I didn’t own Buddhist books: Ahnaf Jazeem,” *The Morning*, January 18, 2022, <https://www.themorning.lk/tid-officers-said-im-a-terrorist-because-i-didnt-own-buddhist-books-ahnaf-jazeem/> (accessed January 30, 2022)

II. Ongoing PTA Abuses

Since the Gotabaya Rajapaksa administration took office in November 2019, the authorities have continued to make arrests and hold people in detention under the PTA without producing evidence of terrorism against them. This is because the PTA permits detention without evidence.

In one of the few cases that went to trial, on November 2, 2021, the Colombo High Court acquitted former provincial governor Azath Salley of terrorism after he had been held in custody since March 16, 2021. The charges alleged that Salley had caused “communal disharmony” with comments he had made about Sharia (Islamic law), but the judge found that Salley had not made such a statement.⁸⁰ He had been arrested following a complaint by three ruling party members of parliament.

According to data provided by the Human Rights Commission of Sri Lanka, 212 people were arrested under the PTA in 2020, and 109 in 2021.⁸¹ The data show that one person was bailed under the PTA in 2020 and 23 were bailed in 2021, while the attorney general instructed that 10 PTA prisoners should be released in 2020, and 45 in 2021. However, it is not clear when the prisoners who were bailed or released had been arrested. Human Rights Watch wrote to the attorney general requesting data on PTA detentions but received no reply.

Most of the people known to have been detained under the PTA belong to either the Tamil or Muslim minority communities.⁸² Members of the government have also frequently used rhetoric to inflame majoritarian sentiments and stigmatise these minorities by associating them with terrorism. In a speech on November 18, 2020, President Rajapaksa invoked “legitimate fears that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and

⁸⁰ “Azath Salley’s acquittal: Three SLPP MPs summoned to court,” *NewsWire*, December 2, 2021, <https://www.newswire.lk/2021/12/02/azath-salleys-acquittal-three-slpp-mps-summoned-to-court/> (accessed December 10, 2021).

⁸¹ See the letter from the Human Rights Commission of Sri Lanka, received by Human Rights Watch on January 7, 2022, in the appendix to this report.

⁸² Shreen Abdul Saroor and Mytili Bala, “Terrorising Minorities through ‘Counterterrorism’,” *Muslims in Post-war Sri Lanka, Repression, Resistance and Reform*, <https://www.minormatters.org/storage/app/uploads/public/615/69b/d3b/61569bd3b3d59076872669.pdf> (accessed December 13, 2021).

ideologies that support separatism, extremism and terrorism.”⁸³ If it is not blocked by the Supreme Court, the PTA regulation on “deradicalization,” introduced by the government in 2021,⁸⁴ which allows up to two years of custodial “rehabilitation” without trial for people deemed by the government to have “by words either spoken or intended to be read ... [caused] religious, racial or communal disharmony,” could also be used to target minority communities.

Cases Related to the 2019 Easter Sunday Bombings

The Easter Sunday bombings on April 21, 2019, carried out by Islamist militants, killed over 260 people. Suicide bombers entered three crowded churches and three luxury hotels in Colombo, the capital, and nearby Negombo, and the eastern city of Batticaloa. There were two other bombings, one in a guesthouse in Dehiwala and the other in a suspected militant safehouse in Dematagoda. The bombings were the worst violence since Sri Lanka’s three-decade long civil war ended in May 2009.

In the weeks and months that followed, the authorities arrested and detained hundreds of people under counterterrorism and emergency laws, some on grounds that knives or Islamic books were recovered from their homes.⁸⁵ In a letter to the inspector general of police dated July 2, 2019, the Human Rights Commission of Sri Lanka said it had received “a number of complaints alleging illegal arrests” and stated “the Commission observes that police investigations are conducted after the arrest.”⁸⁶

While evidence may exist against some of those detained, the government has presented no basis for detaining many others besides that they were acquainted or had family ties

⁸³ President’s address to the Nation, November 18, 2020, <https://www.presidentsoffice.gov.lk/index.php/2020/11/18/presidents-address-to-the-nation-on-18-11-2020/> (accessed November 11, 2021).

⁸⁴ Gazette of the Democratic Socialist Republic of Sri Lanka No. 2218/68, March 12, 2021, http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf (accessed November 6, 2021); “Sri Lanka: ‘Religious Disharmony’ Order Threatens Minorities,” Human Rights Watch, March 16, 2021, <https://www.hrw.org/news/2021/03/16/sri-lanka-religious-disharmony-order-threatens-minorities> (accessed November 7, 2021); “Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act,” Centre for Policy Alternatives, March 18, 2021, <https://www.cpalanka.org/concerns-relating-to-the-recent-regulations-issued-under-the-prevention-of-terrorism-act/> (accessed November 7, 2021).

⁸⁵ “Sri Lanka: Muslims Face Threats, Attacks,” Human Rights Watch, July 3, 2019, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks> (accessed December 14, 2021).

⁸⁶ Underlining in the original. See annexures to the letter from the Human Rights Commission of Sri Lanka, received by Human Rights Watch on January 7, 2022, in the appendix to this report.

with the bombers.⁸⁷ For example, two men remain in PTA detention because they were found in possession of motorcycles registered to relatives of the bombers.⁸⁸ Arrests, purportedly in connection with the Easter attacks, continue two-and-a-half years later. The first trial of 25 men accused in connection with the attack, began on November 22, 2021. Defense lawyers said that because prosecutors have brought over 23,000 charges, it may take a decade to reach a verdict.⁸⁹

In a statement to parliament on May 19, 2021, the public security minister, Adm. (retd.) Sarath Weerasekera said that 704 people had been arrested in connection with the Easter Sunday bombings, of whom 287 remained in custody while 244 were on bail, 168 had been released (without bail), “and 32 indicted.”⁹⁰ (These figures actually total 731, not 704, or 699 if the indicted are among the 287 in custody.)⁹¹ In August, Inspector General of Police C.D. Wickramaratne said that 311 people were then in custody in connection with the attacks.⁹²

According to court filings reviewed by Human Rights Watch, some of these suspects, who remain in detention over two years since they were arrested, were arbitrarily arrested for no

⁸⁷ “Sri Lanka: Muslims Face Threats, Attacks,” Human Rights Watch, July 3, 2021, <https://www.hrw.org/news/2019/07/03/sri-lanka-muslims-face-threats-attacks> (accessed November 8, 2021); Shreen Abdul Saroor and Mytili Bala, “Terrorising Minorities through ‘Counterterrorism’,” *Muslims in Post-war Sri Lanka, Repression, Resistance and Reform*,

<https://www.minormatters.org/storage/app/uploads/public/615/69b/d3b/61569bd3b3d59076872669.pdf> (accessed December 13, 2021); Marisa de Silva, “PTA: Terrorising Sri Lanka For 42 Years,” *Colombo Telegraph*, November 17, 2020, <https://www.colombotelegraph.com/index.php/pta-terrorising-sri-lanka-for-42-years/> (accessed December 13, 2021).

⁸⁸ “The information to be furnished to the magistrate,” Case No. B/427/19, Batticaloa, August 30, 2021.

⁸⁹ Hannah Ellis-Petersen, “Trial begins of 25 men over Sri Lanka Easter bombings in 2019,” *The Guardian*, November 23, 2021, <https://www.theguardian.com/world/2021/nov/23/trial-begins-of-25-men-over-sri-lanka-easter-bombings-in-2019> (accessed December 10, 2021).

⁹⁰ According to Weerasekera, of those in detention 203 were in remand custody (i.e. prisons) while 84 are held under detention orders (ie police custody). “Easter Sunday massacres: Grand conspiracy and questions as to who the mastermind is,” *Sunday Times* May 23, 2021, <https://www.sundaytimes.lk/210523/columns/easter-sunday-massacres-grand-conspiracy-and-questions-as-to-who-the-mastermind-is-444679.html> (accessed November 8, 2021). On April 24, 2021, Police Spokesman DIG Ajith Rohana said a total of 702 “suspects” had been arrested, of whom 202 were in remand custody while 83 were detained by the Criminal Investigations Department (CID) and Terrorism Investigation Division (TID) for interrogations. “Over 700 arrested over Easter Sunday attacks,” *Daily Mirror*, April 24, 2021, https://www.dailymirror.lk/breaking_news/Over-700-arrested-over-Easter-Sunday-attacks/108-210570 (accessed November 8, 2021).

⁹¹ It is not clear how these figures correspond with data provided by the Human Rights Commission of Sri Lanka, which show a total of 626 for all PTA arrests in 2019, 2020 and 2021, including cases not connected to the Easter bombings. See the letter from the Human Rights Commission of Sri Lanka, received by Human Rights Watch on January 7, 2022, in the appendix to this report.

⁹² “IGP says Easter Sunday Attacks well-planned,” *ColomboPage*, August 25, 2021, http://www.colombopage.com/archive_21B/Aug25_1629907850CH.php (accessed November 6, 2021).

apparent reason at all except their being Muslim. In many cases, the detainees alleged that they were not told the reason for their arrest, that they were not provided with detention orders authorizing their detention under the PTA, that they were denied access to lawyers, and that they were threatened, physically abused, or kept in unsanitary and degrading conditions.

Activists said that, of those in detention, around 100 are from Kattankudy near the city of Batticaloa in eastern Sri Lanka. They include numerous people who were related to, or had other sometimes remote associations with, the suicide bombers. In May 2021, for example, a local Muslim businessman who had employed one of the bombers on a building project in 2018 was detained under the PTA.

Also among these detainees were 11 women who were arrested on December 4, 2020, because they attended a sermon organized by one of the bombers in 2018, including his mother-in-law and her daughter.⁹³ Two of the women are accompanied by children, both of whom were born after the attack and are reportedly suffering from heat and infections in prison.

The Kattankudy detainees are spread over nine detention facilities around the country, in many cases far from their homes, and have suffered long periods without family visits or access to lawyers, partly due to restrictions imposed because of the Covid-19 pandemic.

According to a lawyer representing several detainees held in connection with the Easter Sunday attacks, the bombers had conducted several “training camps” in the years before the attack. He said that his clients were teenage students, who attended one of these events because they were told they would receive “vocational training.” They have been held without charge for over two years.⁹⁴ An activist familiar with the cases said some of those detained for links to the bombers had raised concerns about the bombers with the police prior to the attacks. However, while their warnings went unheeded these people were subsequently detained and remain in custody without charge.⁹⁵

⁹³ Human Rights Watch telephone interview, human rights defender KK, details withheld, August 12, 2021.

⁹⁴ Human Rights Watch telephone interview, lawyer RR, details withheld November 8, 2021.

⁹⁵ Email communication with activist FF, details withheld, December 1, 2021.

In January 2022, a report by domestic human rights activists on the impact of the bombings in the Batticaloa region found that “[p]ersons who seemingly did not commit or aid or abet an offence, and only had a peripheral connection to accused persons or to persons who engaged in the bombing have been arrested. For instance, boys and young men who were either forced to attend or were misinformed about the destination and purpose of events [organized by the bombers]..., and attended for only one or two days were arrested.”⁹⁶ Among those that remain in custody, the families of some detainees alleged that their relative had been tortured. The report found that families of detainees had been subjected to harassment and intimidation by the security forces, as well as social stigma, and had suffered economic hardship as a result of their relatives’ prolonged detention. Meanwhile, the non-denominational Christian community in the region, which was among the bombers’ targets, has also suffered continuing discrimination and harassment at the hands of officials and the security forces, part of a long standing pattern of discrimination against protestant Christians.⁹⁷

Hejaaz Hizbullah

Hejaaz Hizbullah, a prominent lawyer who has acted in minority rights cases, was arrested on April 14, 2020, under the PTA.⁹⁸ He was initially accused of aiding and abetting Inshaf Ahamed, one of the suicide bombers on April 21, 2019, an accusation that has since been withdrawn. The allegations against Hizbullah have been changed several times and his detention has been extended for over 19 months.

The latest allegation, on which an indictment was filed against Hizbullah in the High Court on February 18, 2021, was a speech-related offense of causing “communal disharmony,” one of several overly broad offenses provided under the PTA. The indictment is based on a statement to the Criminal Investigation Department (CID) of the police made by a teenage student regarding a speech allegedly given by Hizbullah in Puttalam. Other students, who were questioned at the same time by the same officers, filed complaints with the Human

⁹⁶“Report of the Fact Finding Mission to Batticaloa to Study the Impact of the Easter Sunday Bombings,” January 4, 2021, <https://www.minormatters.org/storage/app/uploads/public/61d/281/690/61d28169031b5163048128.pdf> (accessed January 5, 2022).

⁹⁷ Ibid.

⁹⁸ “Sri Lanka: Free Rights Activist,” Human Rights Watch and others, July 28, 2021, <https://www.hrw.org/news/2021/07/28/sri-lanka-free-rights-activist> (accessed November 8, 2021).

Rights Commission and brought fundamental rights petitions before the Supreme Court claiming they were coerced to falsely implicate Hizbullah.⁹⁹

At least five other men have been detained under the PTA in connection with Hizbullah's case—all remain in custody and have been prevented from retaining or meeting lawyers for extended periods.¹⁰⁰ Among them is Mohamed Sulthan, an employee of the organization Save the Pearls, who told a magistrate in October 2021 that three named police officers tortured him in an attempt to obtain testimony against Hizbullah.¹⁰¹ Mohamed Shakeel, a school principal, was arrested on February 21, 2021, for allegedly “aiding and abetting” Hizbullah.¹⁰²

Hizbullah's lawyer alleges that while he was in police custody, Hizbullah was prevented from meeting his legal counsel in private until an order was issued by the Court of Appeal. After being charged in February 2021, Hizbullah was moved to judicial remand custody, where he was able to speak with his family for the first time in 10 months. Thereafter visitation rights were again restricted. He remains in custody at the time of writing.

Ahnaf Jazeem

Ahnaf Jazeem, a 26-year-old poet, was arrested on May 26, 2020 on allegations that an anthology of verse he published in 2017 promoted “religious extremism.” Tamil scholars who have read the book say it promotes peace and toleration. He had briefly stayed in teachers' accommodation belonging to Hizbullah's organization Save the Pearls.¹⁰³

⁹⁹ “Hejaaz Hizbullah: Case Reduced To A Single Child's Statement,” *Colombo Telegraph*, February 21, 2021, <https://www.colombotelegraph.com/index.php/hejaaz-hizbullah-case-reduced-to-a-single-childs-statement/> (accessed November 19, 2021).

¹⁰⁰ Human Rights Watch interview with lawyer QQ, details withheld, November 16, 2021.

¹⁰¹ “Suspect tells Magistrate he was tortured to implicate Hejaaz Hizbullah,” *Daily Mirror*, October 29, 2021, https://www.dailymirror.lk/latest_news/Suspect-tells-Magistrate-he-was-tortured-to-implicate-Hejaaz-Hizbullah/342-223585 (accessed November 16, 2021).

¹⁰² Riyaz ul Khaliq, “Sri Lanka arrests school head over 2019 Easter attacks,” Anadolu Agency, February 18, 2021, <https://www.aa.com.tr/en/asia-pacific/sri-lanka-arrests-school-head-over-2019-easter-attacks/2149507> (accessed November 7, 2021).

¹⁰³ Pamodi Waravita, “TID officers said I'm a terrorist because I didn't own Buddhist books: Ahnaf Jazeem,” *The Morning*, January 18, 2022, <https://www.themorning.lk/tid-officers-said-im-a-terrorist-because-i-didnt-own-buddhist-books-ahnaf-jazeem/> (accessed January 20, 2022).

According to Jazeem’s lawyer, the arrest was first disclosed by the authorities in court filings relating to Hizbullah’s case a month after Jazeem was detained.¹⁰⁴ It remained widely unknown until December, when Jazeem first obtained legal representation, by which time the courts were closed due to the Covid-19 pandemic. His lawyers filed a fundamental rights petition seeking his release on April 9, 2021, but were prevented from having a lengthy, private consultation with Jazeem until August 2021. The authorities concealed information concerning his case from his family and lawyers.

An affidavit filed with the Supreme Court on his behalf on October 22, 2021 states that while in police custody, Jazeem was forced to witness or hear other detainees being tortured, and was threatened that he would receive the same treatment, including being suspended from the ceiling and beaten, if he did not confess.¹⁰⁵ This allegedly occurred on at least 10 occasions. During Jazeem’s first two weeks in detention, the affidavit said, his hands were cuffed to a table leg, even while sleeping. He later suffered “inhuman and degrading treatment” while detained at a TID facility on Chaitya Road in Colombo, to which he was transferred on March 8, 2021, the same day as his first brief meeting with lawyers. His affidavit alleges that this transfer was in “retaliation” for obtaining legal counsel and that the TID facility was “sweltering hot” and infested with mice and cockroaches. The police allegedly coerced him to sign self-incriminating statements he was not allowed to read. According to the affidavit, while Jazeem was in custody his family was subjected to continuous police harassment.

The affidavit alleges that Jazeem was held at Colombo Remand Prison at a time when Sri Lanka was experiencing a major wave of Covid-19 infections, with around 50 others in a cell known as the “ISIS Cell,” where other Muslims remanded after the Easter Sunday attacks were also being held. “Remandees who are punished for using cell phones and persons who are suspicious to have contracted COVID-19 virus are all sent to this cell,” the statement claims.¹⁰⁶

¹⁰⁴ Human Rights Watch telephone interview with lawyer SS, details withheld, November 8, 2021.

¹⁰⁵ Affidavit on behalf of Muhammadhu Jazeem Muhammadhu Ahnaf, October 22, 2021, <https://www.scribd.com/document/537697457/Poet-and-Teacher-Ahnaf-Jazeem-s-Counter-Affidavit-in-response-to-the-Limited-Affidavit-of-Director-TID-the-3rd-Respondent> (accessed November 11, 2021).

¹⁰⁶ Affidavit on behalf of Muhammadhu Jazeem Muhammadhu Ahnaf (Ahnab) alias Mannaramudhu Ahnaf, July 22, 2021, <https://www.scribd.com/document/537697457/Poet-and-Teacher-Ahnaf-Jazeem-s-Counter-Affidavit-in-response-to-the-Limited-Affidavit-of-Director-TID-the-3rd-Respondent> (accessed November 11, 2021).

Jazeem was released on bail in December 2021.¹⁰⁷ The *Daily FT* noted in an editorial that his “lengthy detention and the six months he spent inside a prison cell with no access to a lawyer speaks volumes about the draconian and cruel nature of the PTA and how easily the law can be politically weaponised against foes perceived and real.”¹⁰⁸

Rishad and Riyad Bathiudeen

Rishad Bathiudeen, a member of parliament and former minister, and his brother Riyad Bathiudeen, were arrested on April 21, 2021, for an alleged connection to the Easter Sunday bombings.¹⁰⁹ A presidential commission of inquiry into the attacks had earlier investigated the allegations and found no evidence of any wrongdoing by the former minister.¹¹⁰ On June 4 a fundamental rights petition was filed in the case, but hearings were delayed after judges recused themselves. Rishad was released on bail on October 14, 2021, and Riyaj was granted bail by the Supreme Court on November 15.¹¹¹

Recent Arrests of Tamils under the PTA

“The use of the PTA is very high now,” a lawyer in the north said in June, adding that lawyers had been filing cases challenging detentions.¹¹² At the beginning of July an activist in the north said they had received information about numerous cases but, unlike previously, they were unable to confirm them. “Things have changed,” the activist said.

¹⁰⁷ Following his release Ahnaf Jazeem gave an interview to a newspaper describing his treatment in detention. He said, “They forced me during this time to deliver a confession. They threatened me saying that they would keep me in prison for 15 or 20 years. At the time, I had a proposal for an arranged marriage – they threatened me saying that the girl would also be arrested. That is how they threatened a confession out of me... I was only allowed to use the bathroom twice a day – once in the morning and once in the evening. During the 14 days [when he was held on the second floor of the TID headquarters in Colombo], I was also made to kneel down with my hands cuffed behind me, and threatened in harsh language to confess that I was connected to ISIS or Al Qaeda. They would hit other people while I watched and would ask: ‘Will you do as we say or hit you like this?’” Pamodi Waravita, “TID officers said I’m a terrorist because I didn’t own Buddhist books: Ahnaf Jazeem,” *The Morning*, January 18, 2022, <https://www.themorning.lk/tid-officers-said-im-a-terrorist-because-i-didnt-own-buddhist-books-ahnaf-jazeem/> (accessed January 20, 2022).

¹⁰⁸ A Broken Justice System, *Daily FT*, December 18, 2021, https://www.ft.lk/ft_view__editorial/A-broken-justice-system/58-727748 (accessed December 19, 2021).

¹⁰⁹ “Sri Lanka arrests Muslim leader over 2019 Easter Sunday attacks,” *Al Jazeera*, April 24, 2021, <https://www.aljazeera.com/news/2021/4/24/sri-lanka-arrests-muslim-leader-over-easter-attacks> (accessed November 7, 2021).

¹¹⁰ “Judicial Recusals, Delays In Shani, Rishard Cases Spark Concern Judges Are Running Scared Of Gota Regime,” *Colombo Telegraph*, June 7, 2021, <https://www.colombotelegraph.com/index.php/judicial-recusals-delays-in-shani-rishard-cases-spark-concern-judges-are-running-scared-of-gota-regime/> (accessed November 8, 2021).

¹¹¹ “Riyaj Bathiudeen released from detention order,” *anaderana.lk*, November 15, 2021, <http://www.adaderana.lk/news/78439/riyaj-bathiudeen-released-from-detention-order> (accessed November 16, 2021).

¹¹² Human Rights Watch telephone interview, lawyer II, details withheld, June 25, 2021.

“We can’t talk to the police about it. They usually don’t give any information on why they are arresting someone or where they are going to be taken to.”¹¹³

The situation is further obscured because prisoners are sometimes held under other laws as well as the PTA. “Sometimes what they do is hold them on other charges then also bring a PTA count” because this allows authorities to detain the person indefinitely, a lawyer said.¹¹⁴ It can take weeks for a reported case to come to the attention of human rights activists, who then struggle to discover where a person is held or whether they have been released.

There have been numerous arrests and detentions for social media posts commemorating Tamil fighters who died during the civil war. In June 2021, a Tamil opposition politician, Shanakiyan Rasamanickam, claimed in parliament that over 100 people had been arrested under the PTA for social media posts.¹¹⁵ In Batticaloa, police detained 19 people in November 2020 for allegedly posting online birthday wishes for the late LTTE leader Velupillai Prabhakaran, who was killed in 2009.¹¹⁶

While many are believed to have been released in such cases, others have not. For instance, journalist Murugupillai Kokulathan was arrested in November 2020 for allegedly posting pictures on Facebook of Prabhakaran.¹¹⁷ In a July 12, 2021 letter to the

¹¹³ Human Rights Watch telephone interview, human rights defender BB, details withheld, July 1, 2021.

¹¹⁴ Human Rights Watch interview, lawyer NN, details withheld, November 4, 2021.

¹¹⁵ Mihi Perera, “Govt. has arrested over 100 youngsters for Facebook posts: Rasamanickam,” *The Morning*, June 22, 2021, <https://www.themorning.lk/govt-has-arrested-over-100-youngsters-for-facebook-posts-rasamanickam/> (accessed November 8, 2021)

¹¹⁶ “Sri Lankan police arrest 19 and mark further 55 for posting Prabhakaran birthday messages,” *Tamil Guardian*, November 27, 2020, <https://www.tamilguardian.com/content/sri-lankan-police-arrest-19-and-mark-further-55-posting-prabhakaran-birthday-messages> (accessed November 7, 2021). In other similar cases, Mugunthan Divanya and Wimal Raj, web journalists at the YouTube channel “TubeTamil,” were arrested by the TID on March 29, 2021, in Jaffna and transferred to Colombo. Police spokesman Ajith Rohana said “the suspects have been operating a website and a YouTube channel promoting the LTTE and related terrorism activities.” They were charged under the Prevention of Terrorism (Proscription of the Liberation Tigers of Tamil Eelam) Regulations No. 1 of 2011. “Journalists Detained and Jailed in South Asia May 1, 2020 – April 30, 2021,” International Federation of Journalists, <https://samsn.ifj.org/SAPFR/jailed-detained/> (accessed November 7, 2021); “Two arrested for promoting LTTE on YouTube and website,” *Colombo Gazette*, March 29, 2021, <https://colombogazette.com/2021/03/29/two-arrested-for-promoting-ltte-on-youtube-and-website/> (accessed November 7, 2021). Ganapathipillai Mohan was arrested on May 2, 2021 by police in Eravur, near Batticaloa, for allegedly sharing a photo of LTTE leader, Velupillai Prabhakaran. “Suspect arrested for promoting LTTE through social media,” *Adaderana.lk*, May 3, 2021, <http://www.adaderana.lk/news/73524/suspect-arrested-for-promoting-ltte-through-social-media> (accessed November 7, 2021).

¹¹⁷ “Sri Lanka: Tamil journalist arrested for social media posts,” International Federation of Journalists, December 3, 2020, <https://www.ifj.org/es/centro-de-medios/noticias/detalle/category/press-releases/article/sri-lanka-tamil-journalist->

Human Rights Commission, Kokulathasan's lawyer wrote, "my client had only posted on his Facebook wall several photographs of bereaved relatives commemorating their loved ones [who were killed during the civil war]... The photographs were captioned with poetic texts expressing the grief and sentiments of those relatives."¹¹⁸ He remains in custody.

The PTA has also been used to attempt to suppress memorialization events organized by members of the Tamil community to commemorate people who died during the civil war. Prior to planned memorialization events in May 2021, the authorities issued orders banning memorialization events on the basis that they "glorify" a banned terrorist organization, the LTTE, which is an offense under the PTA. For instance, police arrested 10 people on May 18, 2021 at Kalkudah near Batticaloa for organizing a memorial event.¹¹⁹ They were released on bail on December 8.¹²⁰

"I have appeared in [PTA] cases where suspects were taken into custody while they were appearing at a protest," a lawyer told Human Rights Watch. "There have been cases where people participating in commemorations [of people who died during the civil war] were taken into custody."¹²¹

"Banning of memorialization [events] under the guise of PTA and under the guise of Covid has occurred," another lawyer said. "Using the PTA or the ICCPR Act¹²² to curb memorialization is nothing new."¹²³ The Amendment Bill published in January 2022 would have no effect on these abuses.

arrested-for-social-media-posts.html (accessed November 7, 2021). The detainee's last name is sometimes written Kokilan Thasan.

¹¹⁸ Inform Human Rights Documentation Centre, "Repression of Dissent in Sri Lanka: July-Sep 2021," November 24, 2021, <https://www.inform.lk/repression-of-dissent-in-sri-lanka-july-sep-2021/> (accessed December 13, 2021).

¹¹⁹ "10 arrested for commemorating LTTE leader in Kalkudah," *Daily Mirror*, May 18, 2021, https://www.dailymirror.lk/breaking_news/10-arrested-for-commemorating-LTTE-leader-in-Kalkudah/108-212234 (accessed November 7, 2021).

¹²⁰ Aazam Ameen, "10 held under PTA for remembering victims of war released after 7 months," *The Morning*, December 8, 2021, <https://www.themorning.lk/10-held-under-pta-for-remembering-victims-of-war-released-after-7-months/> (accessed December 10, 2021).

¹²¹ Human Rights Watch telephone interview, lawyer MM, details withheld, October 5, 2021.

¹²² The 2007 ICCPR Act established the International Covenant on Civil and Political Rights in Sri Lankan law, but is frequently misused to prosecute members of minority communities under a provision that criminalizes the advocacy of "national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." See "Misuse of ICCPR Act and Judicial System to Stifle Freedom of Expression in Sri Lanka," Civicus, July 5, 2019, <https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/> (accessed November 9, 2021).

¹²³ Human Rights Watch telephone interview, lawyer RR, details withheld, November 8, 2021.

Use of Counterterrorism Authority to Suppress Civil Society

The Rajapaksa administration has reversed the partial reopening of civil society space made under the previous Sirisena administration. The abuse of the government's counterterrorism authority has been a key plank in this strategy. Intelligence and security agencies, including the Terrorism Investigation Division (TID) of the police, have intrusively surveilled and intimidated victims of past abuses and their families, human rights defenders working on their behalf, as well as the families of people detained under the PTA, civil society organizations seeking to support them, and other groups working on unrelated issues.¹²⁴ Frequently, the authorities use powers under the PTA to threaten or in some cases detain people for exercising their rights. The government's Amendment Bill includes no provisions that would curb such abuses.

The use of counterterrorism measures as a pretext and tool to suppress civil society is most pervasive in the Tamil and Muslim majority regions of the north and east. A lawyer representing Tamil clients in human rights cases said that even lawyers live in fear, and that their organization had received an official notice in 2021:

Our organization and some of our partner organizations were sent a letter under the PTA requiring us to give details of our work. Our staff, and other human rights activists, also feel fear because they can make any allegation and arrest us. No lawyers from Jaffna [city in the north] are willing to appear with me. They can be put in custody without a charge sheet. This is very dangerous nowadays. We can't talk about human rights. We can't talk about the government. We have to be very careful when we work. When we do work, they [police and intelligence agencies] follow us. They followed me

¹²⁴ Human Rights Watch, "Sri Lanka: Families of 'Disappeared' Threatened," February 16, 2020, <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened> (accessed November 3, 2021); Human Rights Watch, "Sri Lanka: Security Agencies Shutting Down Civic Space," March 3, 2020, <https://www.hrw.org/news/2020/03/03/sri-lanka-security-agencies-shutting-down-civic-space> (accessed November 3, 2021); Human Rights Watch, "Sri Lanka: Due Process Concerns in Arrests of Muslims," April 23, 2020, <https://www.hrw.org/news/2020/04/23/sri-lanka-due-process-concerns-arrests-muslims> (accessed November 3, 2020); Human Rights Watch, "Sri Lanka: Human Rights Under Attack," July 29, 2020, <https://www.hrw.org/news/2020/07/29/sri-lanka-human-rights-under-attack> (accessed November 3, 2021); "Report of the Fact Finding Mission to Batticaloa to Study the Impact of the Easter Sunday Bombings," January 4, 2021, <https://www.minormatters.org/storage/app/uploads/public/61d/281/690/61d28169031b5163048128.pdf> (accessed January 5, 2022).

and my staff when we went to the Human Rights Commission [of Sri Lanka] to complain.¹²⁵

A Muslim activist said that many Muslims in particular fear the government could use false allegations related to the Easter Sunday bombings as a pretext to arrest them. “That would be enough,” he said.¹²⁶ A human rights activist based in the north said, “They are using PTA to create fear among activists. When we talk to the families of the disappeared, they say they can be arrested at any time because they are arresting people for [posting] pictures on Facebook. They can arrest you for anything.”¹²⁷

Several activists described visits to their homes or offices by members of the TID, the Criminal Investigation Department (CID), or intelligence services. “When an intelligence officer goes to your home and asks where you are working then there is a subtle pressure from the family front,” said an activist who lives in Colombo. “It’s much worse in the north and east, [or] Kandy. Such visits are much more common.”¹²⁸

Targeting Activist Groups

The pretext of targeting “terrorist financing” has been used by the Rajapaksa administration to curtail funding for civil society groups without any evidence that they are channeling money to violent extremists. While the TID and other security agencies demand access to organizations’ financial records, the central bank has interfered in international transfers of funds to such groups.¹²⁹

One activist said their organization had received a visit from TID in 2021 demanding to inspect records of suspected “terrorist financing.”¹³⁰ Another said their organization experienced over a month’s delay in having an international transfer of funds released by the central bank, with no explanation given.¹³¹ A third activist, who is based in the north,

¹²⁵ Human Rights Watch telephone interview, lawyer II, details withheld, June 25, 2021.

¹²⁶ Human Rights Watch telephone interview, human rights defender CC, details withheld, April 7, 2021.

¹²⁷ Human Rights Watch telephone interview, human rights defender BB, details withheld, July 1, 2021.

¹²⁸ Human Rights Watch telephone interview, human rights defender EE, details withheld, May 5, 2021.

¹²⁹ Human Rights Watch telephone interview, human rights defender CC, details withheld, June 29, 2021.

¹³⁰ Human Rights Watch telephone interview, human rights defender FF, details withheld May 7, 2021.

¹³¹ Human Rights Watch telephone interview, human rights defender CC, details withheld, June 28, 2021.

said that “They [the TID] regularly visit the NGOs and talk about the financial reports and staff lists and phone numbers. TID visits the NGOs regularly, it’s kind of routine.”¹³²

On February 25, 2021, while Sri Lankan activists and human rights groups were engaging with the 46th session of the UN Human Rights Council in Geneva, the Rajapaksa administration published a list designating hundreds of individuals and organizations as “terrorist.”¹³³ Among those listed were some who were already under PTA detention, such as Dr. Sinnaiya Sivaruban, a judicial medical officer at Palai Hospital in Kilinochchi, who had served as a medical witness in human rights cases, who was arrested by the TID on August 18, 2019.¹³⁴ However, the majority of those listed were members of the Tamil diaspora, including several mainstream organizations outside of Sri Lanka that were engaged in advocacy at the Human Rights Council at the time they were listed.

Human rights activists in the country said these designations had a long-term chilling effect on civil society groups, and particularly on victims of past abuses and their families. Many within Sri Lanka, especially in the north and east, were in contact with the designated diaspora groups or individuals and some received charitable funding through them. Those contacts left them vulnerable to accusations of terrorist activity.

The list “created a lot of fear,” said an activist based in the north, who pointed out that many mothers of victims of enforced disappearance have received funds from the designated diaspora groups to support their campaign to learn the fate of their missing children and to seek accountability.¹³⁵ Another activist, in the east, said the designations had caused “huge concern.”¹³⁶ “Victims will be at huge threat if they try to make contact with those designated,” the activist said. “So we have to try to secure them.”

¹³² Human Rights Watch telephone interview with human rights defender HH, details withheld, June 8, 2021.

¹³³ The Gazette of the Democratic Socialist Republic of Sri Lanka No. 2216/37, February 25, 2021, http://fiusrilanka.gov.lk/docs/UNSCR/List/2216_37/2216_37_E.pdf (accessed November 4, 2021).

¹³⁴ “Tamils protest arrest of doctor with ‘expertise to expose war crimes,’” *The Leader*, 31 August 2019, <https://english.theleader.lk/news/484-tamils-protest-arrest-of-doctor-with-expertise-to-expose-war-crimes> (accessed November 4, 2021). Dr Sinnaiya Sivaruban also appeared in a United States embassy cable leaked by Wikileaks, in which he is cited sharing information with the US government, see “SRI LANKA: CONDITIONS DETERIORATING IN JAFFNA; EMBASSY INTERLOCUTORS LEAVING,” July 25, 2007, https://wikileaks.org/plusd/cables/07COLOMBO1036_a.html (accessed November 4, 2021).

¹³⁵ Human Rights Watch telephone interview, human rights defender BB, details withheld, April 6, 2021.

¹³⁶ Human Rights Watch telephone interview, human rights defender, CC, details withheld, April 7, 2021.

A representative of a diaspora group designated as “terrorist,” which was widely viewed as a mainstream organization campaigning for accountability, said that since the listing they were no longer able to financially support any humanitarian and welfare causes inside Sri Lanka.¹³⁷

Prolonged Arbitrary Detention and Unfair Trials

On October 11, 2021, Kapilan Kathiravelu was acquitted at trial after being held under the PTA for 12 years since the age of 17. He had been accused of links to the LTTE, for which prosecutors were unable to produce sufficient evidence.¹³⁸ On December 14 the Colombo High Court acquitted another long-term prisoner, Thevarasa Sivapalan, 45, who had been held under the PTA for 15 years, accused of gun smuggling.¹³⁹

Scores of Tamils have been detained under the PTA for many years, either awaiting trial or following convictions based on confessions obtained under torture. Sri Lankan activists handling cases of PTA detainees say that some have been in custody for decades awaiting trial, or during trials lasting years. Many prisoners have said they did not have adequate legal representation. Appeals processes can also last many years.

Barmasiri Chandraiya Ragupathi Sharma, a Hindu priest, arrested under the PTA in February 2000 for suspected involvement in an LTTE bombing at Colombo town hall, has spent over 20 years in prison.¹⁴⁰ A medico-legal report from 2002 confirms that the injuries, burns, and scars observed on his body are consistent with the torture he reported. He has alleged that he was unable to obtain legal representation for at least 18 months. He was later sentenced to 300 years in prison. His case has been on appeal since 2015. His wife, who was also arrested, was acquitted in 2015 after spending 15 years in detention.

¹³⁷ Human Rights Watch telephone interview, diaspora organization TT, details withheld, April 10, 2021.

¹³⁸ “Tamil political prisoner acquitted after 12 years in Sri Lankan jail,” *Tamil Guardian*, October 12, 2021, <https://www.tamilguardian.com/content/tamil-political-prisoner-acquitted-after-12-years-sri-lankan-jail> (accessed December 10, 2021).

¹³⁹ Savitri Hensman, “An Unjust Justice System Needs to Be Changed,” *Groundviews*, December 28, 2021, <https://groundviews.org/2021/12/28/an-unjust-justice-system-needs-to-be-changed/> (accessed January 5, 2022).

¹⁴⁰ Ambika Satkunathan, “False Promises: The Myth of Security and the Prevention of Terrorism Act,” *Groundviews*, July 14, 2021, <https://groundviews.org/2021/07/14/false-promises-the-myth-of-security-and-the-prevention-of-terrorism-act/> (accessed January 5, 2022).

Vikneswaranathan Paartheepan was arrested when he was 19, and has been in detention for nearly 25 years.¹⁴¹ He was arrested after a bomb blast in his Colombo neighborhood, seemingly because he was the only person shouting in Tamil. He says he was tortured during interrogation in police custody. He was convicted in 2002 and sentenced to life imprisonment. He appealed in 2002 against the verdict and the case is ongoing.

A man said he had been in PTA detention since August 2009 when a group of people in civilian clothing approached him and told him to go with them.¹⁴² He was put into a jeep, blindfolded, and handcuffed, and then beaten. In December 2012, he was produced in the High Court for the first time, and the case is ongoing.

A man who had been forcibly recruited by the LTTE as a child said he was arrested by police in 2009 and has remained in detention for over 12 years.¹⁴³ His family learned about his whereabouts nearly three years after his arrest. He was repeatedly assaulted during interrogation with wires and metal cables and asked to sign a document written in Sinhala that he says was not explained to him. When he refused to sign the document, he was beaten until he signed. He was sentenced to life imprisonment in 2017, which he appealed. The case is ongoing.

¹⁴¹ Ibid.

¹⁴² Material provided to Human Rights Watch by a Sri Lankan lawyer, September 13, 2021, details withheld.

¹⁴³ Ibid.

Recommendations

To the Government of Sri Lanka

- Impose an immediate moratorium on the use of the Prevention of Terrorism Act, promptly repeal the law, and ensure any counterterrorism legislation enacted meets Sri Lanka's obligations under international human rights law.
- End efforts to amend the PTA with superficial amendments that do not address the documented failings of the law.
- Promptly review all cases of detainees held under the PTA and unconditionally release everyone detained without a justified legal basis or for exercising rights protected under international law.
- Any proposed counterterrorism law needs to comply with Sri Lanka's international human rights obligations and include:

Safeguards at the time of arrest

- Instructing arresting officers to identify themselves and inform the detainee of the reason for their arrest, in a language understood by that person;
- Making it mandatory to issue an arrest receipt at the time of arrest, in a language understood by the detainee;
- Establishing objective criteria before warrantless arrests and searches are carried out under the PTA;
- Requiring that the arrest of a female suspect be carried out by a female officer or in the presence of a female officer, ensuring that the questioning of a female suspect is undertaken by a female officer or in the presence of a female officer, and ensuring that the search of a female suspect is always be conducted by a female officer;
- Ensuring that PTA detainees are only held at authorized places of detention;
- Ensuring that PTA detainees have access to lawyers;
- Ensuring that a detainee's family is informed of any transfer to a different place of detention;
- Providing records of all PTA detentions to judicial authorities, as well as to the family and lawyers of detainees;

Safeguards against arbitrary detention

- Amending section 7 to allow a magistrate to release suspects detained under PTA on bail at their discretion, without requiring the consent of the attorney general. Provisions of the Bail Act should apply, and bail should be denied only if any of the exceptional circumstances set out in the Bail Act are met;
- Ensuring that administrative detention orders for PTA prisoners are only issued by a court, not by the minister of defense as currently. All orders should be reviewed and renewed on a monthly basis;
- Providing copies of the detention orders to the detainee, their family, legal representative, and the Human Rights Commission within 24 hours;
- Ensuring that PTA detainees can communicate with their family and lawyers;
- Incorporating rights and protections provided under the Sri Lankan Constitution and in other Sri Lankan laws into the PTA.

Safeguards against torture

- Repealing section 16, which allows confessions made to a police officer to be admissible as evidence. Consistent with other offenses under the Evidence Ordinance, admissible confessions should only be made to a judicial authority, and in a language the suspect understands;
- Repealing sections 7(3) and 15(a), which give blanket authorization for detention without judicial oversight or other protections, facilitating torture;
- Requiring magistrates to make unannounced visits, at least weekly, to check on PTA detainees, speaking to them without guards present, to reduce the risk of torture in custody;
- A guarantee of prompt medical attention to detainees upon request;
- Directing the inspector general of police to investigate any suspicion of torture found in medical reports.
- Adopt the benchmarks set out by seven UN special rapporteurs including to employ definitions of terrorism consistent with international norms; to ensure legal certainty, especially where it may impact rights to freedom of expression, opinion, association, and religion or belief; to prevent and halt arbitrary deprivation of liberty; to prevent torture and enforced disappearance; due process and fair trial guarantees, including judicial oversight and access to legal counsel.
- Undertake a consultative process with victim rights and other civil society groups, human rights lawyers, and relevant experts regarding any proposed replacement or revision of the PTA.

- Investigate all reports and allegations of torture and other ill-treatment of detainees and appropriately discipline or prosecute all officials responsible, regardless of position or rank.
- End arbitrary surveillance, intimidation and arrests of human rights defenders, minority community members, and victims' families.
- Publicly denounce groups and individuals whose comments and acts incite violence, discrimination and hostility including against Muslims, Tamils, and other minorities.
- Take action necessary to restore the independence of the Human Rights Commission of Sri Lanka and other government institutions that promote respect for human rights.
- Remove all those credibly alleged to have committed war crimes and serious human rights violations from official positions pending independent, impartial, and transparent investigations.

To the Human Rights Commission of Sri Lanka

- Actively and independently fulfil the commission's mandate to monitor places of detention and the welfare of detainees, including by conducting regular, unannounced visits to meet with PTA detainees without guards present, to investigate whether mistreatment or torture is occurring.
- Systematically record evidence of mistreatment and abuses, including attempts to coerce detainees into making confessions, denial of access to lawyers, or attempts to dissuade detainees from seeking legal remedy.
- Actively investigate torture allegations, including by obtaining medical reports and interviewing alleged perpetrators.
- Engage with detainees' families to proactively obtain information about cases, and to support them in obtaining legal representation.
- Co-operatively engage with human rights defenders and civil society organizations that seek to monitor the use of the PTA, to protect the rights of detainees and to support the families of detainees.

To International Trading Partners, Donors, and the United Nations

- Publicly call upon the Sri Lanka government to comply with its international human rights obligations and cooperate with investigations by United Nations human rights experts.
- Maximize leverage provided by trading schemes such as the European Union's and the United Kingdom's Generalised Scheme of Preferences to press the Sri Lankan government to comply with its human rights obligations, including by bringing the PTA and other legislation in line with international standards, as outlined by UN Special Procedures, and by adopting an immediate moratorium on its use and immediately and unconditionally releasing those arbitrarily detained under its provisions.
- Set clear benchmarks and timelines for Sri Lanka to meet its commitments to end PTA-related abuses and adopt measures to address other human rights concerns.
- Adopt the recommendation by UN High Commissioner for Human Rights Michelle Bachelet in her January 2021 report that UN member states consider imposing targeted sanctions "against State officials and other actors credibly alleged to have committed or be responsible for grave human rights violations or abuses" in Sri Lanka. This includes action under the UK Global Magnitsky law; the US Global Magnitsky Law, and the EU Human Rights Sanctions Regime. Individuals who should be considered for sanctions include:
 - Gen. Shavendra Silva, chief of defense staff. During the final months of the civil war in 2009, General Silva commanded the 58th Division of the Sri Lankan army. The 2015 OHCHR Investigation of Sri Lanka (OISL) report found evidence that soldiers from the 58th Division were responsible for shelling protected targets including civilians, hospitals and infrastructure used by the UN, extrajudicially executed prisoners, and torture.¹⁴⁴ In 2020, Silva was banned from travelling to the United States due to "credible information of his involvement, through command responsibility, in gross violations of human rights, namely extrajudicial killings, by the 58th Division of the Sri Lanka Army during the final phase of Sri Lanka's Civil War in 2009."¹⁴⁵

¹⁴⁴ *Report of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx> (accessed November 9, 2021).

¹⁴⁵ Public Designation, Due to Gross Violations of Human Rights, of Shavendra Silva of Sri Lanka Under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, February 14, 2021, <https://2017-2021.state.gov/public-designation-due-to-gross-violations-of-human-rights-of-shavendra-silva-of-sri-lanka-under-section->

- Gen. (retd.) Kamal Gunaratne, defense secretary. At the end of the war in 2009, General Gunaratne commanded the 53rd Division of the Sri Lankan army, which participated in fighting in which civilians, hospitals and other protected targets were repeatedly shelled, including Putumattalan hospital and the UN hub in February 2009. The OISL report also found evidence that soldiers of the 53rd Division were responsible for extrajudicially executing and torturing prisoners.¹⁴⁶ Immediately after the war, Gunaratne was made the Competent Authority in charge of over 200,000 internally displaced people (IDPs) who were illegally held in deplorable conditions, some of whom were subjected to torture and enforced disappearance.
- Vinyagamoorthy Muralitharan, previously known as Col. Karuna Amman, is a former LTTE commander who changed sides in 2004 to form a pro-government armed group. While an LTTE commander, he was implicated in the summary execution of hundreds of police officers and civilians, and the recruitment of child soldiers.¹⁴⁷ Reports by the UN and others found that the Karuna-led armed group was responsible for the extensive recruitment and use of children in armed conflict, enforced disappearances, and torture.¹⁴⁸ He is one of few surviving former LTTE leaders.
- Support victims of rights abuses, victims’ families, and human rights defenders by pressing the Sri Lankan government publicly to end arbitrary surveillance, intimidation, and arrests.
- Provide financial assistance to civil society organisations offering legal and other support to detainees and their families.
- Call upon the Sri Lankan government to stop freezing funds for civil society groups or intimidating defenders through arbitrary investigation of alleged “terrorist financing.”

7031c-of-the-department-of-state-foreign-operations-and-related-programs-appropriations-a/index.html (accessed December 14, 2021).

¹⁴⁶ *Report of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx> (accessed November 9, 2021).

¹⁴⁷ “Sri Lanka: Probe into LTTE Crimes Should Start with Karuna,” Human Rights Watch, March 28, 2013, <https://www.hrw.org/news/2013/03/28/sri-lanka-probe-ltte-crimes-should-start-karuna> (accessed January 5, 2022).

¹⁴⁸ “Zeid urges creation of hybrid special court in Sri Lanka as UN report confirms patterns of grave violations,” OHCHR, September 16, 2015, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16432&LangID=E> (accessed January 5, 2021); Working Group on Enforced or Involuntary Disappearances Post-sessional document, A/HRC/WGEID/100/1, September 27, 2013, https://www.ohchr.org/Documents/Issues/Disappearances/A-HRC-WGEID-100-1_en.pdf (accessed January 5, 2021); *Report of the OHCHR Investigation on Sri Lanka*, A/HRC/30/CRP.2, September 16, 2015, <https://www.ohchr.org/en/hrbodies/hrc/pages/oisl.aspx> (accessed November 9, 2021).

- Regularly engage with civil society groups including those promoting minority rights.
- Condition the direct and indirect supply, sale, or transfer of all weapons, munitions, and other military-related equipment, including dual-use goods such as vehicles, communications, and surveillance equipment, as well as the provision of training, intelligence, counterterrorism, and other security assistance on the government's demonstrated commitment to reform its human rights record.
- Ensure that support to Sri Lankan security forces delivered by UN agencies including UNODC complies with the UN due diligence policy on human rights.
- Support the UN Sri Lanka Accountability Project set up under Human Rights Council resolution 46/1 (2021).
- Following the decision by the Global Alliance of National Human Rights Organisations to downgrade the Human Rights Commission of Sri Lanka—which currently vets members of the Sri Lankan security forces prior to their deployment as UN peacekeepers - to “B” status, press for rigorous and independent vetting of Sri Lankan security forces before any deployment to UN missions.

Acknowledgments

This report was researched and written by Human Rights Watch staff, and edited by Meenakshi Ganguly, South Asia director. It was reviewed by James Ross, legal and policy director; John Fisher, Geneva advocacy director; Claudio Francavilla, European Union advocate; Letta Tayler, associate crisis and conflict director; and by Joseph Saunders, deputy program director. Production and editorial assistance were provided by Shivani Mishra and Racqueal Legerwood, with the Asia Division; and Travis Carr, senior publications coordinator.

Human Rights Watch would like to thank our external reviewers, and all the experts and activists who kindly agreed to speak with us. For security reasons, those who helped with the report have chosen to remain anonymous. We acknowledge all the critical work conducted by Sri Lankan organizations, activists, and lawyers to demand truth and accountability and struggle for an open society in Sri Lanka.

Appendix 1: Human Rights Watch Letters to the Human Rights Commission of Sri Lanka, the Attorney General of Sri Lanka, and the United Nations Office on Drugs and Crime

On December 9, 2021, Human Rights Watch sent letters to the Attorney General of the Government of Sri Lanka, Sanjay Rajaratnam, P.C, the Human Rights Commission of Sri Lanka, and the United Nations Office on Drugs and Crime. A copy of the letters is on the following page.

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December 9, 2021

Human Rights Commission of Sri Lanka
No 14 R. A. De Mel Mawatha,
Colombo 04,
Sri Lanka.

Email

Fax: (

Re: Human Rights Commission of Sri Lanka and the Prevention of
Terrorism Act

Dear Human Rights Commissioners,

We write to enquire about the role of the Human Rights Commission of Sri Lanka (HRCSL) in monitoring the Sri Lankan government's use of the Prevention of Terrorism Act (PTA), and the commission's data on the current application of that law. The PTA will be the subject of a forthcoming Human Rights Watch report. Human Rights Watch monitors human rights issues involving state and non-state actors in over 100 countries. We have worked on human rights in Sri Lanka for over 30 years, including on police reform, freedom of expression, and the rights of children. For many years we documented abuses committed by all parties to the armed conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE), as well as violations that continued after the LTTE's defeat.

In order to ensure the accuracy and fairness of our reporting, we would appreciate your responses to the following questions and any supporting material you can provide. Responses received by December 21, 2021, will be reflected in our forthcoming report.

1. Please describe the role and current activities of the HRCSL in monitoring the use of the PTA, including procedures for tracking the number of cases and identifying and responding to allegations or evidence of torture.
2. Do the relevant government authorities accurately and fully report details of all PTA arrests and ongoing PTA detentions to the HRCSL? Please describe any concerns in this regard.



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3. Has the HRCSL had continuous and unrestricted access to people detained under PTA since the beginning of 2019? Please describe any problems in this regard.
4. In the past three years has the HRCSL received any complaint or evidence of torture committed against any person detained under PTA? Is the HRCSL currently taking action in any cases of alleged torture committed against any person detained under PTA? If so, please state the number of such cases, and the actions taken by the HRCSL.
5. According to the HRCSL's information, how many people have been arrested under the PTA in each of the years 2018, 2019, 2020 and 2021? For each year how many were released, bailed, or continue to be held under detention orders, on remand with indictment and without indictment, or following conviction?
6. According to the HRCSL's information, what is the current total number of people imprisoned following conviction under the PTA, on remand while undergoing trial under the PTA, on remand following indictment and awaiting trial under the PTA, on remand under the PTA but unindicted, and in custody under detention orders issued under the PTA?

Thank you for your attention to these matters.

As noted, to reflect your response in our report we will need to receive it by December 21. Please do not hesitate to contact me through my colleague Shivani Mishra at [REDACTED]

Yours sincerely,

[REDACTED]

John Fisher
Geneva director
Human Rights Watch

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December 9, 2021

Sanjay Rajaratnam, P.C.
Attorney General
Government of Sri Lanka
Colombo

Email: [REDACTED]

Fax: [REDACTED]

Re: Use of the Prevention of Terrorism Act

Dear Attorney General,

We are writing because Human Rights Watch is preparing a report on the Prevention of Terrorism Act (PTA). We would like to be able to include your responses about the current use of this law in Sri Lanka. Human Rights Watch monitors human rights issues involving state and non-state actors in over 100 countries. We have worked on human rights in Sri Lanka for over 30 years, including on police reform, freedom of expression, and the rights of children. For many years we documented abuses committed by all parties to the armed conflict between the government and the Liberation Tigers of Tamil Eelam (LTTE), as well as violations that continued after the defeat of the LTTE.

In order to ensure the accuracy and fairness of our reporting, we would appreciate your responses to the following questions and any supporting material you can provide. Responses received by December 21, 2021, will be reflected in our report.

1. How many prisoners are currently held following conviction for crimes under the PTA? Among them how many currently have ongoing appeals against their conviction?
2. How many prisoners are currently in remand detention under the PTA? Among them how many have not been indicted? How many have been indicted and are awaiting trial? And how many are currently being tried for crimes under the PTA?
3. How many people are currently held on detention orders under the PTA?
4. How many people are currently on bail under the PTA?
5. How many people have been arrested under the PTA in each of the years 2018, 2019, 2020 and 2021? For each year, how many were released,



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bailed, or continue to be held under detention orders, on remand, or following conviction?

6. Please provide details of the number cases since 2018 in which a judicial medical officer (JMO) has identified evidence of torture committed against a person held under the PTA, and the steps taken by your office in response to evidence of torture in these cases.

Thank you for your attention to these matters.

As noted, to reflect your response in our report we will need to receive it by December 21. Please do not hesitate to contact me through my colleague Shivani Mishra on



Yours sincerely,



John Fisher
Geneva director
Human Rights Watch

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Manny Maung, *Researcher*
Sophie McNeill, *Researcher*
Yaqiu Wang, *Researcher*
Shayna Bauchner, *Assistant Researcher*
Ryo Yoshioka, *Senior Program Officer*
Teppel Kasai, *Program Officer*
Nicole Tooby, *Senior Coordinator*
Seashia Yang, *Senior Coordinator*
Racquel Legerwood, *Senior Coordinator*

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James Ross, *Legal and Policy Director*
Bruno Stagno Ugarte, *Chief Advocacy Officer*

United Nations Office on Drugs and Crime (UNODC)
Vienna International Centre
Wagramer Strasse 5
A 1400 Vienna
Austria

Email: [REDACTED]

December 9, 2021

Re: UNODC counterterrorism support to the Sri Lankan government

Dear Director-General Ghada Fathi Waly,

We write concerning the United Nations Office of Drugs and Crime (UNODC)'s counterterrorism support to the government of Sri Lanka. Sri Lanka's counterterrorism laws and practices, in particular the Prevention of Terrorism Act (PTA), will be the subject of a forthcoming Human Rights Watch report.

We had previously written to Mr. Troels Vester, UNODC's senior programme manager in Sri Lanka, on April 26, 2021, but received no reply.

Human Rights Watch monitors human rights issues involving state and non-state actors in over 100 countries. We have worked on human rights in Sri Lanka for over 30 years, including on police reform, freedom of expression, and abuses under national security legislation.

In our letter of April 26, we expressed concern that while UNODC's counterterrorism support to Sri Lanka aims to improve adherence to human rights and the rule of law, the Sri Lankan security agencies it assists have been repeatedly linked to serious violations of human rights, including arbitrary arrest and detention, torture and other ill-treatment, and the repression of the rights to freedom of expression, association, and peaceful assembly. The abuses, often enabled by the PTA and justified on the pretext of "countering terrorism," have targeted minority communities and civil society groups, and have been detailed in repeated UN reportsⁱ as well as the reporting of Human Rights Watch and others.ⁱⁱ

That the Sri Lankan government has used purported counterterrorism measures to harass and suppress civil society groups, even while receiving support from UNODC, is particularly unfortunate given the emphasis placed by the UN on engaging and supporting civil society as a means to confront the threat of terrorism.ⁱⁱⁱ Concern at the abuse of counterterrorism powers in Sri Lanka was again reiterated by UN High Commissioner for Human Rights Michelle Bachelet in her report to the Human Rights Council in January this year.^{iv}



HRW.org

Grave violations including torture and prolonged arbitrary detention have been enabled by the PTA since it was introduced in 1979. Despite pledges by successive Sri Lankan governments since 2015 either to repeal and replace the law or to amend its abusive provisions, to date no such action has been taken. On the contrary, in March President Gotabaya Rajapaksa introduced new regulations that would make the PTA more abusive.^v According to the human rights due diligence policy on UN support to non-United Nations security forces,

United Nations support cannot be provided where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law and where the relevant authorities fail to take the necessary corrective or mitigating measures. For the same reasons, if the United Nations receives reliable information that provides substantial grounds to believe that a recipient of United Nations support is committing grave violations of international humanitarian, human rights or refugee law, the United Nations entity providing such support must intercede with the relevant authorities with a view to bringing those violations to an end. If, despite such intercession, the situation persists, the United Nations must suspend support to the offending elements.^{vi}

In order to ensure the accuracy and fairness of our reporting, we would appreciate your responses to the following questions and any supporting material you can provide. Responses received by December 21, 2021, will be reflected in our report.

1. Please describe UNODC's counterterrorism engagement in Sri Lanka, including which Sri Lankan agencies and security forces benefit and have benefitted from this engagement, and what support is and has been provided including financial support, training and equipment supplied in connection with these programs. Please provide available documentation in relation to these programs, including any human rights assessments.
2. What are the risks of Sri Lankan entities receiving UN counterterrorism assistance of committing grave violations of international human rights law? Has UNODC interceded with the relevant authorities with a view to bringing any such violations to an end?
3. Given continuing evidence of prolonged arbitrary detention and torture committed by Sri Lankan security forces, on what basis has UNODC determined that counterterrorism support to Sri Lanka is compliant with UN human rights due diligence standards?
4. If the Sri Lankan government introduces revisions to the PTA, how will UNODC determine whether these revisions are sufficient to prevent grave rights violations?

Thank you for your attention to these matters.

As noted, to reflect your response in our report we will need to receive it by December 21. Please do not hesitate to contact me through my colleague Shivani Mishra at

[REDACTED]

Yours sincerely,



Louis Charbonneau
United Nations director, Human Rights Watch

Cc
UNODC Colombo
UNODC Regional Office Delhi
UNOCT
OHCHR
Hanaa Singer, UN Resident Coordinator in Sri Lanka
Fionnuala Ní Aoláin, UN Special Rapporteur on The Promotion And Protection Of Human Rights And Fundamental Freedoms While Countering Terrorism

¹ See for example Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/2000/64, December 21 1999, <https://undocs.org/E/CN.4/2000/64> (accessed November 24, 2018); 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?OpenElement> (accessed November 24, 2021); "Sri Lanka must urgently implement reforms to end arbitrary detention, UN rights experts say," OHCHR, December 15, 2017, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22543&LangID=E> (accessed November 24, 2021); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his

mission to Sri Lanka, A/HRC/34/54/Add.2, December 22, 2016, <https://sangam.org/wp-content/uploads/2017/01/SR-Torture-report-Dec-22-2016.pdf> (accessed November 24, 2021).

¹¹ Human Rights Watch, Locked Up Without Evidence: Abuses under Sri Lanka's Prevention of Terrorism Act, January 29, 2018, <https://www.hrw.org/report/2018/01/29/locked-without-evidence/abuses-under-sri-lankas-prevention-terrorism-act>. 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. The law also provides immunity for government officials responsible for abuses if they are 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.

¹² See for example, United Nations Office of Counter Terrorism Annual Report 2020, https://www.un.org/counterterrorism/sites/www.un.org.counterterrorism/files/uncct_annual_report_2020.pdf (accessed November 24, 2021).

¹³ Promotion reconciliation, accountability and human rights in Sri Lanka, Report of the Office of the High Commissioner for Human Rights, A/HRC/46/20, January 27, 2021.

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26695&LangID=E> (accessed November 24, 2021)

¹⁴ The Gazette of the Democratic Socialist Republic of Sri Lanka No. 2218/68, March 12, 2021, http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf (accessed November 24, 2021); "Sri Lanka: 'Religious Disharmony' Order Threatens Minorities," Human Rights Watch, March 16, 2021.

<https://www.hrw.org/news/2021/03/16/sri-lanka-religious-disharmony-order-threatens-minorities> (accessed November 24, 2021)

¹⁵ Human rights due diligence policy on United Nations support to non-United Nations security forces, A/67/775-S/2013/110, March 5, 2013, <https://undocs.org/A/67/775> (accessed November 19, 2021).

Appendix 2: Responses from the Human Rights Commission of Sri Lanka and the United Nations Office on Drugs and Crime

The Human Rights Commission of Sri Lanka responded the letter from Human Rights Watch set forth above on January 7, 2022, and the United Nations Office on Drugs and Crime responded on December 21, 2021. Their responses have been reproduced on the following pages. Human Rights Watch had not received a response from the Attorney General at the time of writing this report.

Mr John Fisher
Geneva Director
Human Rights Watch

Dear Mr John Fisher

Re: Human Rights Commission of Sri Lanka and the Prevention of Terrorism Act (PTA)

In response to your letter dated 9th December 2021 on the above subject, we, the Human Rights Commission of Sri Lanka (HRCSL), are pleased to provide the information required by you along with the supporting documents. The sources of information are primarily the letters, emails, faxes and reports received and obtained from the Criminal Investigation Department (CID), Terrorist Investigation Department (TID), Colombo Criminal Division (CCD) and the Department of Prisons. The database of HRCSL also serves as a source of information in this regard.

1. ROLE AND CURRENT ACTIVITIES OF THE HRCSL IN MONITORING THE USE OF THE PREVENTION OF TERRORISM ACT (PTA)

The HRCSL has a broad mandate to monitor all detainees, including those under PTA in all detention centres established in Colombo, Tangalle and Vavuniya¹. Section 11 (d) of the HRCSL Act specifically mentioned that; *"monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention and to make such recommendations as may be necessary for improving their conditions of detention."* The HRCSL plays an active role in monitoring the welfare of the detainees by carrying out regular inspections to places of detention and provides the opportunity for the families of PTA detainees to contact HRCSL via around-the-clock hotline 1996 facility to inquire about the conditions and wellbeing of their family members detained under PTA. Even amidst Covid – 19 outbreak, the HRCSL made surprise inspections to the detention centres by the head office and regional offices to inquire about detainees' welfare.

Furthermore, Section 28 (1) and 28 (2) of the HRCSL Act No.21 of 1996 confers the HRCSL with the power to monitor the detainees detained under the PTA.

The HRCSL shall inform the Department of Police to send the details of the PTA detainees in terms of Section 28 (1) of the HRCSL Act. The HRCSL maintains a separate database in respect of PTA detainees. This information helps to execute the mandate of HRCSL to monitor the PTA detainees and extend the HRCSL's efforts to safeguard the rights and freedoms of the detainees.

The HRCSL also conducts meetings with CID and TID concerning protecting human rights and maintaining proper detainment conditions for PTA detainees. Amongst the recent meetings held with CID, TID, CCD, and the Legal Division of the Department

¹ 1. Counter Terrorism Investigation Unit, Colombo 5, 2. TID, Tangalle, 3. Police Complex, Vavuniya 4. TID, Bambalapitiya

of Police were on 04th August 2020, 26th August 2020, 28th December 2021 and 29th December 2021 regarding the status and the welfare of the detainees detained under PTA. The outcome of these meetings and discussions are documented and frequently followed-up by the HRCSL.

After the Easter Sunday attack in 2019, the HRCSL visited PTA detainees in the TID Unit of the Navy Camp of Welisara on 13th June 2019 and on 14th March 2020 and observed the status and welfare of the detainees. The observations included the treatments, conditions and human rights violations faced by the detainees. A Field Inspection visit was made on 11th September 2020 by the HRCSL to review the welfare of the detainees detained by the CID.

The HRCSL collected details on all the suspects arrested and detained under the PTA after the Easter Sunday Attack on 21st April 2019.

Upon receiving numerous complaints alleging illegal arrests following the attacks, the HRCSL wrote to Inspector General of Police (IGP), Colombo directing the Police to follow the guidelines in arresting suspects strictly and complying with human rights standards.

After the visits to Welisara Detention Centre on 05th December 2019 and 09th December 2019, the HRCSL conducted a meeting with CID and TID officials regarding the welfare of the detainees and the complaints received from them.

On 01st April 2021, the human rights officers representing the HRCSL visited the Detention Centre functioning under Sri Lanka Navy in Chaithya Road, Colombo, to interview a suspect and fellow inmates arrested in connection with the Easter Sunday Attacks.

To monitor the current situation of the detainees, the HRCSL often requests updates from TID, CID, CCD, Police Head Quarters and relevant Prison authorities about the status of PTA detainees and the suspects. Accordingly, the Commission sent the letter dated 28th October 2019 to the IGP requesting to update detainees under the PTA.

The HRCSL also informed the IGP by its letter dated 24th November 2020 regarding the non-admissibility of forced confessions and self-incriminating statements.

In its first-ever national-level Prison Study Report, the HRCSL focused on the prisoners arrested under the PTA. And recommendations were forwarded to the relevant departments and Ministries dealing with such matters. Suggestions are as follows;

- Amend PTA according to international legal standards focusing on protection of human Rights
- Amending provision relating to the *voire dire* inquiry
- Granting bail to detainees who have been on remand for 12 months and remand to be on exceptional grounds

The HRCSL established a Working Committee consisting of the Department of Prisons, State Ministry of Prison Reforms and Ministry of Justice to implement the recommendations.

The Prison Study Report can be viewed via the HRCSL website.

More recently, the HRCSL has called meetings with CID and TID senior officials on 28/12/2021 and 29/12/2021 to review the status of detainees under PTA.

The HRCSL has directed the IGP by its letter dated 04/01/2022 that all arrests and detention under the PTA should be brought to the notice of the HRCSL within 48 hours of the arrest. He was informed that any transfer or release of a detainee must be done with information to the HRCSL.

The Judicial officers are required by Act No 14 of 2021 to visit the detention centres in their respective areas to ascertain the detainees' conditions. The HRCSL observed that this was not happening. The HRCSL thus decided to inform the Chief Justice to have the said provision implemented

The HRCSL regularly monitor cases filed under PTA, and the details of such cases are as follows:

Details of PTA cases observed by HRCSL

High Court	Case No	Number of Suspects
Kandy	32/2021, 301/2021	02
Gampaha	251/2020	01
Colombo	TAB 2972/2021	09
Nuwara Eliya	73/2021, 69/2021, 75/2021, 78/2021	03
Puttalam	148/2021	01
Galle	5673/2021	01
Kegalle	4485/2021	03
Mannar	10/2021	01
Total		21

Source: TID information 2021

2. DO THE RELEVANT GOVERNMENT AUTHORITIES ACCURATELY AND FULLY REPORT DETAILS OF ALL PTA ARRESTS AND ONGOING PTA DETENTIONS TO THE HRCSL?

The Department of Police and the units executing detentions under the PTA, i.e., CID and TID, update the HRCSL on the PTA detentions. The Police inform the HRCSL of all cases under the PTA, and each arrest is individually identified and monitored by the HRCSL.

See report below.

3. HAS THE HRCSL HAD CONTINUOUS AND UNRESTRICTED ACCESS TO PEOPLE DETAINED UNDER PTA SINCE THE BEGINNING OF 2019?

The HRCSL has had unrestricted access to people detained under the PTA to date, and the authorities have been cooperative in facilitating the HRCSL whenever necessary.

4. IN THE PAST THREE YEARS, HAS THE HRCSL RECEIVED ANY COMPLAINT OF EVIDENCE OF TORTURE COMMITTED AGAINST ANY PERSON DETAINED UNDER PTA? IS THE HRCSL CURRENTLY TAKING ACTION IN ANY CASES OF ALLEGED TORTURE COMMITTED AGAINST ANY PERSON DETAINED UNDER PTA? IS SO, PLEASE STATE THE NUMBER OF SUCH CASES AND THE ACTIONS TAKEN BY THE HRCSL?

The HRCSL received eight complaints on torture of personnel detained under the PTA, out of which six were received and handled by the Jaffna Regional Office, and two were received and handled by the Head Office HRCSL in Colombo.

A complaint received by the Jaffna Regional Office of HRCSL on an arrest made under the PTA on 10th March 2020 was later informed to have been subjected to torture while being held in the custody of TID. However, their relatives complained about the torture at later dates, i.e., on the 16th and 21st of December 2020. The HRCSL has taken steps to get statements from the PTA detainees in the Remand Prison of Magazine for further investigation.

5. TO THE HRCSL INFORMATION, HOW MANY PEOPLE HAVE BEEN ARRESTED UNDER THE PTA IN EACH OF THE YEARS 2018, 2019, 2020, AND 2021? FOR EACH YEAR, HOW MANY WERE RELEASED, BAILED OR CONTINUE TO BE HELD UNDER DETENTION ORDERS, ON REMAND WITH INDICTMENTS AND WITHOUT INDICTMENT, OR FOLLOWING CONVICTION?

The HRCSL receives information related to PTA detainees from the relevant Authorities from time to time.

Details	2019	2020	2021	Total
Number of arrests under PTA	305	212	109	626
Number of persons bailed	18	01	23	42
Number of released under the instruction of Attorney General	17	10	45	72
Remand with indictment	15	04	44	63
Remand without indictment	155	143	31	329
Continue to be held in the detention order			92	92

Source: CID, TID and CCD information - 2021

6. ACCORDING TO HRCSL'S INFORMATION, WHAT IS THE CURRENT TOTAL NUMBER OF PEOPLE IMPRISONED FOLLOWING CONVICTION UNDER THE PTA, ON REMAND FOLLOWING INDICTMENT AND AWAITING TRIAL UNDER THE PTA, ON REMAND UNDER THE PTA BUT UNINDICTED AND IN CUSTODY UNDER DETENTION ORDERS ISSUED UNDER THE PTA?

The statistics of the above question are as follows;

Details	Number of People
Currently, total - persons remanded under the PTA	392
Undergoing trial following indictment	63
Remand but unindicted.	329
Persons in custody under detention orders issued under PTA.	92

Comment: H.E. the President has appointed an Advisory Board as per Section 13 of the Prevention of Terrorism Act No. 48 of 1979.

The Advisory Board is expected to make recommendations and advise the President on investigations, release, granting of bail and future action concerning all detained under the PTA. The Act provides the detainee reasonable access to the Advisory Board to complain about their grievances.

The Commission has documented every case concerning these detainees, and the Commission duly records those with and without indictment and the period of remand. The Commission has also directed that an officer from the Commission be present in the court to observe the proceedings when the case is mentioned to monitor each case's progress.

Yours respectfully.

Justice Rohini Marasinghe
Judge of the Supreme Court(retired)
Chairperson
Human Rights Commission of Sri Lanka

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கிலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

02.07.2019

Mr. Chandana Wickramaratne
Acting Inspector General of Police
Police Headquarters
Colombo 01

Re: Arbitrary Arrest

In the aftermath of the terror attacks perpetrated on April 21, we appreciate the efforts taken by your department in the investigation process to identify persons involved. While the security measures are completely justifiable under the present circumstances, the Human Rights Commission of Sri Lanka wishes to emphasize the need to ensure that arrests are made only on the basis of reasonable suspicion.

The Commission has recently received a number of complaints alleging illegal arrests. Some pertain to arrests made due to cultural misunderstandings or uncertainty and others due to suspicions expressed by members of the public. For example, one woman had been arrested due to a motif on her dress assumed to be inciteful; in some other instances persons have been arrested for possessing literature in Arabic even before ascertaining the contents; arrests have been made due to public pressure such as an arrest of a trader because some persons feared he had applied a toxic substance to certain garments he was selling. In most instances, the Commission observes that police investigations are conducted after the arrest.

In light of the above, the HRCSL recommends the following guidelines in order to avoid arbitrary and illegal arrests:

1. Whenever an arrest is to be made there should be solid evidence to form a reasonable suspicion pursuant to proper investigations. Arrests should not be made merely on hearsay.
2. Where cultural issues are involved, such as the identification of religious symbols or identifying contents written in an alien language, proper expert opinion should be obtained.
3. Where identification of chemical substances or contents of computer files or video footage or the like are involved expert opinion should be obtained.
4. It is vital that the arrests are made not before, but after receiving credible information based on expert analysis and opinion, and on reasonable suspicion.

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தலைமைக் காரியாலயம்

14, ආර්. ඒ. ද. මෙල් මාවත, කොළඹ - 04.

කොමිෂි
தலைவர்

Chairperson

011-2505451

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தொலைநகல்

Fax

011 2505541/74

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மின்னஞ்சல்

E-mail

secbresl@gmail.com

It is trite law that arbitrary arrests violate the Constitution. We wish to highlight the judgment of the Supreme Court in *Naomi Michelle Coleman v. The Hon. Attorney General* S.C (FR) Application 136/2014 S.C.M 15.11.2017 where Ms. Coleman's arrest, detention and deportation due to displaying a tattoo of the Buddha was held to be violative of Article 12(1) and 13(1) of the Constitution, and resulted in compensation and costs being required to be paid amounting to Rs. 800,000/- . The Supreme Court found that there was no possibility of a public outcry, though the police so alleged, due to the display of such a tattoo.

Therefore, please be good enough to bring these guidelines to the attention of police personnel with strict instructions requiring compliance.

Thank you,


Chairperson

Human Rights Commission of Sri Lanka

Dr. N. D. Udagama

Chairperson
Human Rights Commission of Sri Lanka



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பொலீஸ் தலைமையகம், கொழும்பு, இலங்கை
POLICE HEADQUARTERS, COLOMBO, SRI LANKA



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திகதி }
Date }

Dr. N.D.Udagama
Chairperson
Human Rights Commission of Sri Lanka
No: 14, R.A. De Mel Mawatha
Colombo - 04

Re: Arbitrary Arrest

This refers to your letter dated 02.07.2019 on the above noted subject.

As per your directions an instructional message has been circulated among all Police officers based on the guidelines issued by the Human Rights Commission of Sri Lanka in order to prevent arbitrary and unlawful arrests of persons. A copy of the same is attached herewith at Annexure "A".

Forwarded for your information, please.



C.D.Wickramaratne
Acting Inspector General of Police

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

Copy to: - 1. Secretary, Ministry of Defence
2. Secretary, National Police Commission
3. File

Reference letter of Chairperson HRC dated 02.07.2019 which at Annexure "B". A copy is attached herewith for your information please.



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මු.පො.ප.වරුන්,ස්ථානාධිපතිවරුන්

පුද්ගලයන් අත්අඩංගුවට ගැනීමේ දී නීතිය ක්‍රියාත්මක කළ යුතු ආකාරය පිළිබඳ උපදෙස්

නීතිය ක්‍රියාත්මක කරන නිලධාරීන් විසින් පුද්ගලයන් අත්අඩංගුවට ගැනීමේ දී, අත්තනෝමතික හා නීති විරෝධී ලෙස අත්අඩංගුවට ගැනීම වළක්වා ගැනීම සඳහා මානව හිමිකම් කොමිෂන් සභාව විසින් පහත සඳහන් මාර්ගෝපදේශ නිර්දේශ කරනු ලබයි:

1. අත්අඩංගුවට ගැනීමක් සිදු කරන සෑම අවස්ථාවකම නිසි විමර්ශනයකට අනුව සාධාරණ සැකයක් ඇති කිරීම පිළිබඳව ස්ථිර සාක්ෂි තිබීම වැදගත් වන අතර, අත්අඩංගුවට ගැනීම, හුදෙක් ප්‍රචාදන සාක්ෂි මත පමණක් නොකළ යුතුය.
2. එක් එක් සංස්කෘතිය පදනම් කර ගනිමින් ආගමික සංකේත හඳුනා ගැනීම හෝ අනාගත භාෂාවකින් ලියා ඇති පදනක අන්තර්ගතයන් හඳුනා ගැනීම වැනි කරුණු වලදී ගැටළු ඇති විට ඒ පිළිබඳව විශේෂඥ මතයක් ලබා ගත යුතුය.
3. රසායනික ද්‍රව්‍ය හෝ පරිගණක ලිපිගොනු හෝ විධියෙන් දර්ශන හෝ ඒ හා සමාන දෑ හඳුනා ගැනීමේදී ඒ පිළිබඳ විශේෂඥ මත ලබා ගත යුතුය.
4. අත්අඩංගුවට ගැනීම සිදු කළ යුත්තේ විශ්වසනීය තොරතුරු ලැබීමෙන් පසුව සහ සාධාරණ සැකයක් මත මිස පුද්ගලයකු අත්අඩංගුවට ගැනීමෙන් පසුව අත්අඩංගුවට ගැනීම සාධාරණීකරණය කිරීම සඳහා වැරදි සොයා යා යුතු නොවේ.

අත්තනෝමතික ලෙස අත්අඩංගුවට ගැනීම ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ සඳහන් මූලික අයිතිවාසිකම් උල්ලංඝනය කිරීමකි. නයෝමි මිෂෙල් කෝල්මන් එදිරිව නීතිපති (SC(FR) 136/2014 S.C.M.) බුදුන් වහන්සේගේ රුව සහිත පව්වයක් ප්‍රදර්ශනය කිරීම හේතුවෙන් කොල්මන් මහත්මිය අත්අඩංගුවට ගැනීම, රඳවා තබා ගැනීම සහ රටින් පිටුවහල් කිරීම ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 12(1) සහ 13(1) ව්‍යවස්ථාවන් උල්ලංඝනය කිරීමක ලෙස සලකනු ලැබූ අතර, එවැනි පව්වයක් ප්‍රදර්ශනය කිරීම හේතුවෙන් පොලීසිය එසේ චෝදනා කළද මහජන විරෝධය දැක්වීමේ හැකියාවන් නොමැති බව ශ්‍රේෂ්ඨාධිකරණය තීරණය කළේය.

ඉහතින් ලබා දී ඇති උපදෙස් සම්පත්තියෙන් සියලුම පොලිස් නිලධාරීන් දැනුවත් කිරීමට මු.පො.ප.වරුන් සහ ස්ථානාධිපතිවරුන් ආවේණික කළ යුතුය.

සි.පී.වික්‍රමරත්න
වැඩ බලන පොලිස්පති

සී. හී. තිත්‍යාගරත්න
වැඩ බලන පොලිස්පති

ක. සං. 016 පොදු මුද්‍රණය, කොට්. 01 - ශ්‍රී ලංකාව
දු. අං. 24327350, 24321111 දු. අං. 20690 ශ්‍රී ලං. 2446174 දු. අං. 2446174 දු. අං. 2446174



ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව
இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය
எனது இல.
My No.

ඔබේ අංකය
உமது இல.
Your No.

දිනය
திகதி
Date

24th Nov 2020

C. D.C. Wickremaratne,
Acting Inspector General of Police
Police Headquarters
Colombo 01.

Dear Sir,

Re: Detentions under the Prevention of Terrorism Act

We refer to our letter of 28 October requesting details of persons detained under the PTA and request you to urgently provide us with the same. As you are aware, under Section 11(d) of the HRCSL Act No. 21 of 1996 requires the Commission to continuously monitor the conditions of persons in custody.

As mentioned to you during our meeting with the National Police Commission, many detainees have complained of pressure in relation to self-incriminating statements. These include frequent trips to police headquarters where pre-prepared statements are proffered to detainees in Sinhala for their signature, inducements such as promises of release if statements are signed and threats such as charges based on falsehoods if they are not signed. We are attaching here, the letter provided by your Department where some element of these practices is clearly demonstrated – you will note the language of “advised to provide confessions” in relation to several detainees. As you are aware, the admissibility of self-incriminating statements, even under the PTA, is based on the test of voluntariness as required by Section 24 of the Evidence Ordinance. Please let us know what steps have been taken in this regard to ensure validity of statements made to the police since our discussion.

Yours faithfully,

Ramani Muttettuwagama

Commissioner in charge of Investigations & Inquiries

ප්‍රධාන කාර්යාලය பிதான அலுவலகம் Head Office	14, ආර්. ඩී. ඩී. මෙල් මාවත, කොළඹ - 04. 14, ஆர்.டி.டி.மேல் மாவத, கொழும்பு - 04. 14, R. A. De Mel Mawatha, Colombo - 04.	සභාපති தலைவர் Chairperson	011-2505451	සභාපති தலைவர் Chairperson	011-2505451	විද්‍යුත් மின்துறை e-mail	sechac@hrcsl.com
දුරකථන தொலைபேசி Telephone	94 -11- 2505580 / 81 / 82	සෙක්‍රටරි கெய்வாளர் Secretary	011-2505521	සෙක්‍රටරි கெய்வாளர் Secretary	011-2505521	විද්‍යුත් மின்துறை Web	www.hrcsl.lk
				24-වන தேதி Date	24 th Nov 2020		

මගේ අංකය }
 எனது இல. }
 My No. }

ඔබේ අංකය }
 உமது இல. }
 Your No. }



Annex-3

දිනය }
 திகதி } 01.04
 Date, }

ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව
கிளங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

සි.සී.වික්‍රමරත්න මයා,
 පොලිස්පති,
 පොලිස් මූලස්ථානය,
 කොළඹ 01.

තුස්තවාදය වැළැක්වීමේ පනත යටතේ අත්අඩංගුවට ගන්නා ලද සැකකරුවන් සම්බන්ධව

ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව පනතේ 28 වන වගන්තිය ප්‍රකාරව.

1. යම් තැනැත්තෙකු සිරභාරයට ගන්නා ලද අවස්ථාවක හෝ රඳවා ගන්නා ලද අවස්ථාවක අවස්ථාවෝචිත පරිදි ඒ සිරභාරයට ගැනීම හෝ රඳවා ගැනීම /රඳවා ගෙන ඇති ස්ථානය. එම වේලාවේ සිට පැය 48ක් නොඉක්මවන කාලයක් තුළ දී දැනුම් දීම.

2. ඉහත ලෙස අත්අඩංගුවට ගෙන රඳවා තබාගෙන ඇති තැනැත්තෙකු හෝ එසේ අත්අඩංගුවට ගත් තැනැත්තෙකු මුදාදීමක් හෝ වෙනත් රුද්‍රුම ස්ථානයකට මාරු කරනු ලබන විට ඒ පිළිබඳව ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව වෙත දැනුම්දීම කළ යුතුවේ.

ඒ අනුව විවිධ පොලිස් ස්ථානයන් විසින් ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව පනතේ 28 වන වගන්ති ප්‍රකාරව සිදු කරනු ලබන දැනුම්දීම් ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව විසින් අධීක්ෂණය කිරීම සඳහා. අත්අඩංගුවට ගැනීම් පිළිබඳ මාසික ලැයිස්තුවක් අප වෙත ලබාදීමට මෙයින් දැනුම් දෙනු ලැබේ. (ආකෘති පත්‍රය අමුණා ඇත.)

එසේම රඳවා තබාගෙන ඇති තැනැත්තෙකු හෝ එසේ අත්අඩංගුවට ගත් තැනැත්තෙකු මුදාගැනීමක් හෝ වෙනත් රුද්‍රුම ස්ථානයකට මාරු කරනු ලබන විට එම දැන්වීම ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව වෙත නිසියාකාරව නොලැබෙන හෙයින් ඒ පිළිබඳ මම නිලධාරීන් දැනුවත් කළ යුතුය. ඒ සඳහා ඔබගේ නිලධාරීන්ට මේ සමඟ අමුණා ඇති ආකෘති පත්‍රය භාවිත කිරීමට උපදෙස් ලබාදෙන ලෙස වැඩිදුරටත් දන්වා සිටිමි.

විශ්‍රාමලත් ශ්‍රේෂ්ඨාධිකරණ විනිසුරු රෝගිණී මාරසිංහ,
 සභාපතිනි.

ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව,
 ද/-

විනිසුරු රෝගිණී මාරසිංහ
ශ්‍රේෂ්ඨාධිකරණ විනිසුරු (විශ්‍රාමික)
සභාපති
ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව

බාහිර කාර්යාලය External Office විද්‍යුත් මාර්ගගත Telephone	14, ආර්. ඒ. ද. මෙල් මාවත, කොළඹ - 04. 14, ஆர்.ஏ.த.மெல் மாவத்தை, கொழும்பு-04. 14, R.A.De Mel Mawatha, Colombo - 04. 94-11- 2505580/81/82	සභාපති Chairperson ලේකම් Secretary	011-2505451 011-2505521	ෆැක්ස් Fax ස්වකීර්ණ Hotline	011 2505541/74 011-2505575 1996	විද්‍යුත් තැපෑල E-mail වෙබ් Web	sechrcsl@gmail.com www.hrcsl.lk
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Annex - 4

මගේ අංකය }
எனது இல }
My No. }

ඔබේ අංකය }
உமது இல }
Your No. }

දිනය }
திகதி } 06.01.2022
Date. }



ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව
கிலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Hon. Chief Justice Jayantha Jayasuriya, PC
Chairman
Judicial Service Commission
P.O Box 573, Hulltsdorp,
Colombo 12

Re: Visits to the TID and CID detention centers by the Magistrates as mandated by law

The Board of the Human Rights Commission of Sri Lanka held a meeting with the Directors of the Criminal Investigation Department (CID), Terrorism Investigation Department (TID) and the Police Legal Division on 29th December 2021 to discuss matters pertaining to detainees held under the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979.

During the meeting it was highlighted that Section 43B of the Code of Criminal Procedure (Amendment) Act of No.14 of 2021 mandates the Magistrates to visit police stations situated within their respective judicial divisions. However, it was made to understand that no visits are being made to CID and TID detention centers by the Magistrates thus far.

Henceforth, as the CID and TID detention centers also falls within the ambit of detention centers under police custody, please ensure that Magistrates visit CID and TID detention centers within their respective judicial divisions as prescribed by the Code of Criminal Procedure (Amendment) Act of No.14 of 2021.



Justice Rohini Marasinghe
Judge of the Supreme Court (Retired)
Chairperson
Human Rights Commission of Sri Lanka

Justice Rohini Marasinghe
Judge of the Supreme Court (Retired)
Chairperson
Human Rights Commission of Sri Lanka

ප්‍රධාන කාර්යාලය தலைமைக் காரியாலயம் Head Office	14, ආර්. ඒ. ද. මෙල් මාවත, කොළඹ - 04. 14, ஆர்.ஏ.தமெல் மாவத்தை, கொழும்பு-04. 14, R.A.De Mel Mawatha, Colombo - 04.	නායක தலைவர் Chairperson	011-2505541 Fax	011 2505541/74	විද්‍යුත් තැපෑල மின்னஞ்சல் E-mail	sechrcsl@gmail.com
දුරකථන தொலைபேசி Telephone	94-11- 2505580/81/82	ලේකම් செயலாளர் Secretary	011-2505521 Hotline	1996	වෙබ් இணையம் Web	www.hrcsl.lk

21 December 2021

Dear Mr. Charbonneau,

We wish to take this opportunity to thank you for your letters of 26 April 2021 and 9 December 2021 regarding UNODC counter-terrorism support to the Government of Sri Lanka.

The UNODC project portfolio in Sri Lanka is designed to move the country's counter-terrorism policies and practices toward alignment with the rule of law and away from potential violations. For us, the most important strategy for the United Nations in Sri Lanka has been to remain involved in the national counter-terrorism dialogue through an "Engage to Change" approach, to guide our Government counterparts to better value and uphold the rule of law and human rights through our interventions. This was the message conveyed to you and others by the UN Resident Coordinator in Sri Lanka and the Chief of the UNODC Terrorism Prevention Branch during the online roundtable discussion on situating United Nations counterterrorism and PVE efforts within the organization's reforms and prevention agenda, held on 29 April 2021.

Through various projects, UNODC and the rest of the United Nations family advocate for compliance with international norms, mindful of concerns with the Prevention of Terrorism Act (PTA), the Prevention of Terrorism (De-radicalization from holding extremist religious ideology) Regulations No. 01 of 2021 and related laws and regulations. These continued efforts, however, should not be confused with support for non-compliant measures. Remaining engaged with the Government representatives capable of enacting change is instead, we believe, a more effective method of promoting high-level legislative changes in line with our mandate. Invigorated by Human Rights Council resolution 46/1, UNODC is committed to delivering a comprehensive response, combining bottom-up and top-down approaches together with "do no harm" and due diligence principles, in coordination with other parts of the United Nations system.

The project "Support to Sri Lanka on Counter-Terrorism", implemented by UNODC in partnership with INTERPOL, was developed as a direct response to the harrowing 2019 Easter Sunday Attacks, aiming at building institutional capacity to effectively prevent, detect, investigate, prosecute and adjudicate terrorism cases in Sri Lanka, in line with international legal instruments and human rights norms, standards and good practices.

Mr. Louis Charbonneau
United Nations Director
Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299

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The main stakeholders of UNODC interventions under the project consist of relevant actors from the criminal justice sector and other regulatory bodies. Throughout implementation, UNODC has incorporated a number of measures to mitigate potential risks, in consultation with the United Nations Office of the High Commissioner for Human Rights (OHCHR), including human rights clauses and conditions in all equipment handover and following relevant due diligence policies in finalizing agendas, speakers and participants for organized events. UNODC has also recognized the unique platform provided by the project, with every event presenting an opportunity to advocate for the repeal of the PTA in a setting that emphasizes collaboration and transparency in the making of any amendments. Indeed, it was frequently stressed in this context how legislative change will enhance the possibilities of future cooperation.

Activities themselves have also proven invaluable in highlighting the essential nature of unbiased counter-terrorism frameworks and systems. Consultations with the President of the Bar Association of Sri Lanka led to the expansion of training courses to include defence lawyers as beneficiaries, emphasizing a balanced approach to counter-terrorism capacity-building that extends past the traditional focus on prosecutions. Engagement with the Government Analyst's Department, the forensic arm of the Ministry of Justice, has also worked to increase the availability of reliable scientific/forensic evidence and reduce dependence on confession-based approaches.

With that being said, UNODC is currently phasing out the project "Support to Sri Lanka on Counter-Terrorism", with the project scheduled to be completed by 31 January 2022. While unfortunate, we also recognize that legislative and policy changes remain a long-term process and we remain hopeful that engagement efforts by the United Nations system and others will produce the needed amendments in line with international standards.

Thank you for sharing your concerns in our area of mutual interest. We look forward to our continued support to the international community's efforts to prevent terrorism while respecting human rights.

Yours sincerely,



John Brandolino
Director
Division for Treaty Affairs

Appendix 3: Unofficial English translations of Sinhala documents included in the response to Human Rights Watch from the Human Rights Commission of Sri Lanka

Annex A

IGP Office

CRTM_285

2019.07.26

From the IGP

To all : senior DIGs
 DIGs
 Officers in command
 Officers in charge of division (active/regional)
 SPs, ASPs (active/regional)
 HQIs, OICs

Instructions regarding the implementation of law when arresting persons

The HRCSL provides the following guidelines to prevent illegal and arbitrary arrest of persons, when persons who are enforcing the law are arresting people.

1. Whenever an arrest is to be made there should be solid evidence to form a reasonable suspicion pursuant to proper investigations. Arrests should not be made merely on hearsay.
2. Where cultural issues are involved, such as the identification of religious symbols or identifying contents written in another language, proper expert opinion should be obtained.
3. Where identification of chemical substances or contents of computer files or video footage or the like are involved, expert opinion should be obtained.
4. It is vital that the arrests are made not before, but after receiving credible information based on expert analysis and opinion, and on reasonable suspicion

Arbitrary arrests are a violation of the fundamental rights mentioned in the constitution. Naomi Michelle Coleman v AG (SC FR 136/2014 S.C.M.) – arrest of Ms. Coleman for displaying a tattoo with lord Buddha, detention and deporting were found to be in violation of the Constitution’s articles 12(1) and 13(1). The Supreme Court also decided that there is no possibility of public protest, even though the police alleged so, due to the display of such a tattoo.

HQIs and OICs should take actions to make all police officers aware of the instructions above.

Signed
C.D.Wickramaratne
Acting IGP

Annex 3

HRCSL letterhead

2022.01.04

Mr. C.D.Wickramaratne
IGP
Police headquarters
Colombo 01

Regarding suspects arrested under the Prevention of Terrorism Act

As per article 28 of the Human Rights Commission of Sri Lanka (HRCSL) act,

1. When a person is arrested or detained, as opportunity arises,¹⁴⁹ no later than 48 hours from that time, inform [HRCSL] of the arrest or detention/the place of detention.
2. Concerning a person arrested and detained as mentioned above, inform HRCSL when such a person is released or is transferred to a different place of detention.

¹⁴⁹ Sinhala word used is සුදානුකූලව ආ

Therefore, for HRCSL to monitor the notices sent by different police stations to HRCSL as per article 28 of the HRCSL Act, we hereby inform you to send us a monthly list of arrests (format is attached).

Also, when a person in detention or a person who has been arrested is released or is transferred to a different place of detention, HRCSL is not duly informed – therefore your officers should be informed about that. I further inform you to provide instructions to your officers to use the format attached here in that regard.

Signed
Retired SC justice Rohini Marasinghe
Chair
HRCSL