

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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AMNESTY INTERNATIONAL COMMENTARY ON THE PREVENTION OF TERRORISM ACT AMENDMENT BILL

On 27 January 2022, the Sri Lankan government gazetted amendments to the Prevention of Terrorism Act (PTA).¹ Amnesty International's analysis of the proposed amendments show that they fail to address critical gaps in the law. Some of these are listed below. The bill requires substantial amendment beyond what has already been determined by the Sri Lankan Supreme Court as going against the Sri Lankan Constitution, to bring it in line with international law and standards. The Act must be repealed, and the Sri Lankan government must immediately establish a moratorium on the use of the PTA in the interim period.

- The amendments do not make any changes to the offences of what constitutes 'terrorism' which as it stands currently, are fairly ill-defined. Time and time again, these vague and broadly defined offences have been abused to target minorities, critics and journalists.²
- The Act allows for confessions to be admissible as evidence - a key reason why those detained under the PTA are routinely tortured. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment is guaranteed under the Convention Against Torture and is prohibited absolutely under international law.
- The Act permits arbitrary arrests and prolonged detention that is not subject to judicial scrutiny for its lawfulness. Article 9 (1) of the ICCPR, to which Sri Lanka is a state party, guarantees the right to liberty and security of person. It says, 'No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.'
- The Act places no obligation on law enforcement authorities to inform a suspect at the time of arrest, the reasons for the arrest - a guarantee under Article 9 (2) of the ICCPR.
- The proposed amendments have no provision to permit anyone arrested or detained on a criminal charge to be brought promptly before a judge, to be entitled to trial within a reasonable time or to release – a guarantee under Article 9 (3) of the ICCPR.

Additionally, with regards to the amendments proposed, they

- Permit the detention of a 'suspect' without charge or trial for up to a year. This is against Sri Lanka's obligations under international human rights law and standards, including under the ICCPR.
- Do not adequately put in place mechanisms to report or prevent torture since there is no obligation on the Magistrate to move any detainee who makes a complaint of torture or ill-treatment to a safe location. As it stands, detainees are made to stay in the same location of detention at the risk of further torture and ill-treatment after reporting to a Magistrate. The Supreme Court determination too flags this as a point of concern inconsistent with constitutional safeguards.

¹ Prevention of Terrorism (Temporary Provisions) (Amendment) Bill can be found here: http://documents.gov.lk/files/bill/2022/2/178-2022_E.pdf

² Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, July 2018, https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJuly2018.PDF, page 5

- Do not make it mandatory for a Magistrate to direct a suspect to be produced before a Judicial Medical Officer for medical examinations even where the Magistrate is of the opinion that a suspect has been tortured. (“...the Magistrate **may** direct that the suspect be produced before a Judicial Medical Officer for medical examination...” as opposed to “... the Magistrate **shall** direct...”)
- Attempt to show that providing the Human Rights Commission of Sri Lanka (HRCSL) with a certified copy of the Detention Order as a form of protection. The Act establishing the HRCSL already provides for law enforcement officers to inform the Commission of any arrests or transfers of suspects held under the PTA and permits visits from the HRCSL (or any person authorized by the Commission) to enter any place of detention at any time. Amnesty International has observed that this is not a sufficient protection mechanism against torture and ill-treatment.
- Attempt to show that there will be unfettered access to legal representatives and families. In practice there is no effective access to these due-process safeguards during preventive detention and may only have access to legal representation at trial stage. Furthermore, Amnesty International has observed that due to transfers and places of detention being far away from the hometowns of ‘suspects’, families seldom have access to the detainees and incur a significant financial burden in trying to access detention centres.
- Enable consecutive-day trials, however this does not mean there is any reduction in the time spent by a suspect in police detention or in judicial remand as the provision does not reduce a ‘suspect’s’ time in pre-trial or administrative detention.
- The aim to repeal section 14 on the prohibition of publications is welcome.