



Commentary

Prevention of Terrorism (Temporary Provisions) (Amendment) Bill 2022

Centre for Policy Alternatives

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Introduction

This commentary examines in brief, proposed amendments for the Prevention of Terrorism (Temporary Provisions) Act (PTA) which were approved by Cabinet on 24 January 2022 and subsequently gazetted. The Centre for Policy Alternatives (CPA) has prepared this document as an initial comment to the proposed amendments with further advocacy to follow after the tabling of the bill in Parliament.

At the outset CPA notes that the proposed amendments follow a minimalist approach, introducing only basic reforms which are insufficient to address ground realities. Many of the aspects which require urgent reform as highlighted by legal scholars, civil society actors and even the Supreme Court of Sri Lanka have not been addressed in the Bill. In this light, the proposed amendment to the PTA appears to be more a token effort to address international pressure rather than a genuine and effective exercise to address ground realities and the abuses and violations brought about by the PTA. The present document raises several of these concerns with CPA reiterating its previous call for the repeal of the PTA. Further, while reiterating CPA's earlier concerns and the need for new legislation upon the repeal of the PTA, CPA calls for an immediate moratorium on the use of PTA until an acceptable law can be drafted.

Background: In June 2021, a Committee was appointed by the President to make recommendations to the Cabinet Sub-Committee (chaired by Foreign Minister Prof. G.L. Peiris¹) to review the PTA. The Committee is chaired by Defence Secretary, General (Retd.) Kamal Gunaratne and consists of senior representatives from the Ministries of Justice, Public Security, and Foreign Affairs as well as officials from the Legal Draftsman's Department, Attorney General's Department, Police and Intelligence Services.²

The Committee was tasked with deciding whether to amend the PTA or draft a new counter-terrorism law. The Committee also explored the possibility of utilising certain provisions of the Counter Terrorism Bill formulated by the previous administration.³ On 15 November 2021, the first report of the Committee appointed to review the PTA was presented to President Gotabaya Rajapaksa. However, the report was not made public.⁴ According to Foreign Minister Prof. G. L. Peiris, Cabinet approval had been granted for the proposed amendments on 24th January 2022.⁵ The Bill containing the proposed amendments was gazetted on the 27th January 2022. As per Constitutional requirements, the Bill can be tabled in Parliament anytime after the lapse of one week from the date it was published in the gazette.

¹ The Cabinet Sub-Committee chaired by the Foreign Affairs Minister also includes the Ministers of Justice, Defence, and Public Security.

² PTA review Report presented to President', Ceylon Today (17 November 2021)
<https://ceylontoday.lk/index.php/news/pta-review-report-presented-to-president>.

³ PTA to be amended after 43 years - Minister', Daily News (28 January 2022)
<https://www.dailynews.lk/2022/01/28/local/271274/pta-be-amended-after-43-years-minister>.

⁴ Report of the Officers Committee appointed to review Prevention of Terrorism (Temporary Provisions) Act presented to President (Presidential Secretariat)
<https://www.presidentsoffice.gov.lk/index.php/2021/11/15/report-of-the-officers-committee-appointed-to-review-prevention-of-terrorism-temporary-provisions-act-presented-to-president/>

⁵ 'Cabinet approves final PTA amendments' The Morning (28 January 2022)
<https://www.themorning.lk/cabinet-approves-final-pta-amendments/>

International Dimension: Sri Lanka promised to replace the PTA with anti-terrorism legislation in line with international best practices and the international human rights law obligations of Sri Lanka when it co-sponsored UN Human Rights Council Resolution 30/1 in October 2015. A Counter Terror Bill was introduced in 2018 which witnessed robust debate from different stakeholders in Sri Lanka.⁶ However, the present government withdrew the proposed Counter Terrorism Bill, in December 2019, soon after Gotabaya Rajapaksa's victory at the presidential election.⁷

Further, Sri Lanka's progress in implementing the 27 international conventions applicable under the Generalised Scheme of Preferences Plus (GSP+), with the European Union is now up for review. In October 2021, a visiting mission of senior EU officials discussed the PTA, recalling that its amendment was a key commitment in readmitting Sri Lanka to the GSP+ in 2017.⁸ The European Union (EU) and the Democratic Socialist Republic of Sri Lanka Joint Commission meeting is to be held in February and the timing of the proposed amendments confirms concerns that these amendments are cosmetic amendments brought about to address international pressure, rather than address real concerns with the PTA that CPA and others have raised continuously.

Several key concerns consistently raised by CPA and others and in the jurisprudence on the PTA have not been addressed in the amendments.

⁶'Questions & Answers- Proposed Counter Terrorism Act', Centre for Policy Alternatives, (April 2019) https://www.cpalanka.org/wp-content/uploads/2019/04/CTA_OA.pdf ; CPA Intervenes on the Challenge to the Proposed Counter Terrorism Bill (17th October 2018) <https://www.cpalanka.org/cpa-intervenes-on-the-challenge-to-the-proposed-counter-terrorism-bill/> ; Comparing the Proposed Counter Terrorism Bill to the Prevention of Terrorism Act (October 2018) <https://www.cpalanka.org/comparing-the-proposed-counter-terrorism-bill-to-the-prevention-of-terrorism-act/>

⁷ 'Possibility of borrowing from yahapalana govt.'s counterterror bill explored', Sunday Island (10th November 2021) <https://island.lk/possibility-of-borrowing-from-yahapalana-govt-s-counterterror-bill-explored/>

⁸ Sri Lanka must reform terror law to keep European Union trade deal: Statement' The New Indian Express (6th October 2021) <https://www.newindianexpress.com/world/2021/oct/06/sri-lanka-must-reform-terror-law-to-keep-european-union-trade-deal-statement-2368316.html>

- The amending Bill does not address problems with the admissibility of statements and confessions under the PTA. The provisions of the PTA waive the application of the Evidence Ordinance and there are no safeguards to be followed in recording confessions and statements from suspects. This has been particularly pointed out as a matter for concern by the Supreme Court of Sri Lanka in *Maridas v The State*.
- The period of 72 hours after arrest and before production before a magistrate has not been amended. This is a loophole in the PTA which facilitates the torture of those arrested under the PTA while in custody.
- The lack of judicial oversight during investigations has not been addressed by the amendments. The extensive powers granted to investigating officers including to take suspects from place to place, creates space for the continued violation of their rights as many reported being subjected to torture during such periods of being taken out of prison for interrogation.
- The definition of the acts which fall within the offence of terrorism is of a broad and vague nature, and has allowed the PTA to be used even in instances where its use is not warranted. This has not been addressed by the amendments.
- The access to an attorney-at-law is already provided for by law and the amending provision does not ensure the protection of the right to representation of the accused. Many PTA prisoners mention difficulties, particularly financial difficulties they face retaining legal counsel, as well as due to the nature of the cases, since there is stigma attached to appearing for a PTA accused. The amendments fail to address this issue.
- There is no provision in the PTA for information to be provided at the time of arrest on the cause of arrest and the rights of the suspect. This is in violation of Article 13(1) of the Constitution and Sri Lanka's international obligation under Article 9(2) of the ICCPR.
- The PTA gives broad rule making powers to the minister and this has led to several instances where regulations which enable abuse and human rights

violations have been made under these provisions. Most recently, the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021 which can further jeopardise the rights and liberties of persons, especially religious and ethnic minorities, and curtail political dissent with no effective due process guarantees has been promulgated under this provision.⁹ The amendment fails to address this.

- Section 6 of the PTA gives extensive powers of search and seizure. The implementation of these powers should be carried out in a manner consistent with the inherent dignity of the person and international human rights law. The implementation of these measures relating to search and seizure should be professional and transparent and subject to oversight and judicial scrutiny. The amendment fails to address this.

The present document consists of two parts. Part I, will provide a brief initial comment on the impact of the proposed amendments to the PTA. CPA concludes that the proposed amendments are grossly inadequate and represent an absolute minimalist approach, introducing only basic reforms which are insufficient to address ground realities. In this light, the proposed amendment to the PTA appears to be more a token effort to address international pressure rather than a genuine and effective exercise to address ground realities and the abuses and violations brought about by the PTA.

Part II will give a brief overview of the historic criticism of the PTA, including pronouncements made by the Supreme Court of Sri Lanka questioning the constitutional legitimacy of the law.

⁹ 'Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act', Centre for Policy Alternatives (18 March 2021)

<https://www.cpalanka.org/concerns-relating-to-the-recent-regulations-issued-under-the-prevention-of-terrorism-act/>; *Centre for Policy Alternatives v Attorney General* (SC (FRA) 91/2021)

<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fra-91-2021/>

Part I - Prevention of Terrorism (Temporary Provisions) (Amendment) Bill 2022

This table analyses the proposed amendments, comparing them with the existing PTA provision and examining the impact of and concerns with the amending provisions. An initial examination of the amending Bill confirms fears that the proposed amendments are unlikely to make a difference to the use of the PTA to perpetrate human rights violations and the lack of due process safeguards for those arrested under the PTA. Hence, CPA maintains these to be merely superficial changes which are insufficient to address the serious concerns with the PTA and its implementation.

Existing PTA provision	Amendment	Impact and concerns
<p><i>Section 9 - (1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time:</i></p>	<p>Clause 2</p> <p>The proviso to Section 9 (1) of the principal enactment is amended by the substitution for the words “eighteen months” of the words “twelve months”</p> <p>Clause 3</p> <p>Insertion of sections 9A and 9B whereby a certified copy of the Order made under section 9 shall be made available within a reasonable period to the Magistrate to enable the Magistrate to visit the place of detention to ensure that the suspect is protected to the extent provided for in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or</p>	<p>This amendment is an insufficient improvement on the existing provision. It does not address the issues arising out of the lack of procedural guarantees to be adhered to during arrest and detention. Most troubling is the lack of judicial supervision of the detention.</p> <p>The prohibition of arbitrary deprivation of liberty has acquired customary international law status and constitutes a <i>jus cogens</i> norm.</p>

<p><i>Provided, however, that the aggregate period of such detention shall not exceed a period of 18 months.</i></p>	<p>Punishment Act, No. 22 of 1994.</p> <p>It also imposes a duty on the Magistrate to visit the place of detention at least once in every month during the period of detention, personally see the suspect, and,</p> <ul style="list-style-type: none"> a) look into his well being, welfare and conditions under which he is kept at such place of detention b) record his observations and any complaint the suspect may make c) where the Magistrate is of the opinion, that the suspect may have been subjected to torture, the Magistrate may direct that the suspect be produced before a Judicial Medical Officer for medical examination, and a report be submitted by such Judicial Medical Officer to the Magistrate d) where the report of such Judicial Medical Officer reveals that the suspect has been subjected to torture, the Magistrate shall make an appropriate order, to provide necessary medical treatment to the suspect 	<p>The period of detention for 12 months means that a person can be held in remand or in detention for a minimum period of 12 months without such person having the possibility to make a case before a judge that there are sufficient reasons for granting bail. This is in violation of Sri Lanka's international human rights obligations.¹⁰</p> <p>Given that Magistrates in practice are unable to effectively supervise prisons as is currently within their mandate, there is no real practical value in this amendment. In any event, studies and experiences of PTA detainees and legal practitioners show that it is extremely unlikely that the person will report torture, ill-treatment or even poor conditions of detentions particularly if they are likely to</p>
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¹⁰ 'Initial reactions to PTA Amendment Bill: Failure to reform', The Morning (30th January 2022) <https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

	<p>e) the Magistrate may also direct the Inspector General of Police to commence an investigation into the alleged torture in order to enable the Attorney-General to institute criminal proceedings against the person who is alleged to have committed the torture.</p> <p>Further, the detention of any person under section 9 shall be communicated to the Human Rights Commission of Sri Lanka (HRCSL) for the persons authorised by the Human Rights Commission of Sri Lanka to visit the place of detention in terms of that Act.</p>	<p>continue to be kept in custody within the system.¹¹</p> <p>While the communication of detention to the HRCSL appears to be a salutary amendment, it makes no practical difference whatsoever to the suspect in terms of addressing any grievance relating to an arbitrary arrest or threat of prolonged detention.¹²</p> <p>The PTA allows arrest without a warrant (Section 6) and permits detention for an initial period of seventy two hours without the person being produced before a Magistrate (Section 7(1)). This section is also worded in such a way to exclude judicial discretion or even a consideration as to whether there is a reason for the detention in</p>
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¹¹ 'Initial reactions to PTA Amendment Bill: Failure to reform', The Morning (30th January 2022)

<https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

¹² *ibid.*

		<p>determining the lawfulness of the arrest and detention. Bail cannot be granted under the PTA unless under the exceptionally high standards specified in the proviso to Section 19 and Section 7(1) which states that the Magistrate shall make order for remand of the suspect until the conclusion of the trial, and may release the person before the conclusion of the trial only where the Attorney General consents to the release (Section 7(1) proviso).</p> <p>The general pattern observed is that PTA prisoners reported that the arresting authorities were in civilian clothing and did not identify the agency/ entity of which they were a part, or even if they identified themselves, they did not produce evidence of identification.</p>
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		<p>These PTA provisions violate due process rights and are hence not in line with various international human rights standards, such as Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which sets out procedural guarantees to be adhered to during arrest and detention, including the right to be informed of the reason for the arrest, the charges against a person, and to be promptly brought before a judge to decide the lawfulness of detention.</p> <p>Similarly, in national law, Article 13 of the Constitution protects a person from arbitrary arrest and detention, including the right to be informed of the reason for arrest and to be produced before a judge without delay. There is no provision for the detention order to be issued to the family/next of kin.</p>
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		<p>The term “reasonable time” is vague. A detention order is a document issued by the minister and there should not be a barrier for such a document to be issued to the magistrate within 24 hours.</p>
<p><i>Section 10 - An 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.</i></p>	<p>Clause 4</p> <p>Section 10 of the principal enactment is repealed and a new section inserted to enable a detainee to apply for a remedy guaranteed under Article 126 or 140 of the Constitution, challenging an order made under section 9.</p> <p>Clause 5</p> <p>Inserted a new section 10A, enabling an Attorney- at- Law representing a remanded or detained person to access such person and to make representations on behalf of such person, subject to such conditions as may be prescribed by regulations made under the Act or as provided for in other written law.</p> <p>It also provides for the right of a person remanded or detained under the Act to communicate with his relatives, as provided for in written law.</p>	<p>While these provisions are an improvement upon the existing provisions, it fails to address the problematic situations faced by detainees under the PTA.</p> <p>The jurisdictions referred to (Article 126 and 140 of the Constitution) are in fact already accessible to PTA detainees and have been accessed from time to time mostly by those who have the means to access the Court of Appeal and the Supreme Court.</p> <p>This amendment affords no new legal safeguards and merely makes explicit</p>

		<p>an existing entitlement. Additionally, without a scheme to provide effective legal aid to those remanded or detained under the PTA, this provision is of limited practical value particularly to indigent persons affected by this law.¹³</p> <p>The right to representation is guaranteed under Article 13 of the Constitution and Sri Lanka's international obligation under Article 9(3) and 9(4) of the ICCPR. However, there is no provision in the PTA protecting the suspect's right to an attorney at law to represent the suspect, where they are unable to retain legal counsel. Many PTA prisoners mentioned the difficulties, particularly financial difficulties they faced retaining legal counsel, as well as due to the nature of the cases, since</p>
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¹³ 'Initial reactions to PTA Amendment Bill: Failure to reform', The Morning (30th January 2022) <https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

		<p>there is stigma attached to appearing for a PTA accused. Additionally, lawyers have also raised concerns about prison personnel standing by or being within earshot of the legal consultation. Therefore, the right to access an attorney at law, without expressing the need for confidentiality of communication has little meaning in practice.¹⁴</p> <p>The amending provision on the right to communicate with relatives also fails to address practical difficulties faced by PTA detainees. For example, some are remanded or detained in facilities hundreds of miles away which drastically reduces the ability of family members to visit. Family members of detainees have also reported instances where detainees are moved around from place to place</p>
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¹⁴ 'Initial reactions to PTA Amendment Bill: Failure to reform', The Morning (30th January 2022) <https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

		without family members being informed. ¹⁵
<p>Section 11- (1) <i>Where the Minister has reason to believe or suspect that any person is connected with or concerned in the commission of any unlawful activity referred to in subsection (1) of section 9, he may make an order in writing imposing on such person such prohibitions or restrictions as may be specified in such order in respect of</i></p> <p>(a) <i>his movement outside such place of residence as may be specified; or</i></p> <p>(b) <i>the places of residence and of employment of such person; or</i></p> <p>(c) <i>his travel within or outside Sri Lanka; or</i></p> <p>(d) <i>his activities whether in relation to any organization, association or body of persons</i></p>	<p>Clause 6</p> <p>Section 11 of the principal enactment is amended to enable the suspect to be produced before a judicial medical officer (JMO) to ensure that such person has not been subjected to torture before serving a restriction order.</p> <p>Further, such order shall be served on such person, by the Magistrate in whose judicial division such person resides and the report of the JMO shall be produced before the Magistrate.</p> <p>Where the report issued by the JMO reveals that such person has been subjected to torture, the Magistrate shall make an appropriate order to provide necessary medical treatment to such person and may also direct the Inspector General of Police to commence an investigation into the alleged torture in order to enable the Attorney-General to institute criminal proceedings against the person who is alleged to have</p>	<p>Despite this and other provisions in the Bill seeking to address the widespread issue of torture of detainees under the PTA, there are several problematic sections which have not been amended.</p> <p>Police officers’ access to suspects</p> <p>Section 7 (3) of the PTA grants far-reaching powers to a police officer to access a suspect in remand custody, including the right to “take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation.” The lack of judicial oversight in the process of</p>

¹⁵ ‘Initial reactions to PTA Amendment Bill: Failure to reform’, The Morning (30th January 2022) <https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>; Human Rights Commission of Sri Lanka, ‘Prison Study by the Human Rights Commission of Sri Lanka’ December 2020, available at <https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf> accessed October 25 2021.

<p><i>of which such person is a member, or otherwise; or</i></p> <p><i>(e) such person addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to, any organization, association or body of persons, or from taking part in any political activities, and he may require such person to notify his movements to such authority, in such manner and at such times as may be specified in the order.</i></p> <p><i>(2) Where the Minister makes a restriction order in respect of any person while an order of detention in respect of such person is in force, such restriction order shall, unless otherwise specified, take effect upon the expiry of the detention order.</i></p> <p><i>(3) Every order made under subsection (1) shall be in force for such period, not exceeding three months, as may be specified therein:</i></p>	<p>committed the torture</p> <p>This clause also reduces the aggregate period that a restriction order may be in force from 18 months to 12 months. It further enables a restriction order to be challenged in proceedings under Article 126 or 140 of the Constitution.</p>	<p>investigation greatly increases the risk of the suspect being tortured or subjected to cruel, inhuman or degrading treatment and punishment.</p> <p>The experiences of many prisoners arrested under the PTA illustrate that this provision creates space for the continued violation of their rights as many reported being subjected to torture during such periods of being taken out of prison for interrogation. It also undermines the protections afforded by judicial custody and the purpose of judicial oversight of detention.</p> <p>Admissibility of statements and confessions</p> <p>The provisions governing the admissibility of statements under the PTA deny the minimal safeguards</p>
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Provided, that the Minister may, by order in writing, extend such period from time to time for periods not exceeding three months at a time so however that the aggregate of such periods does not exceed eighteen months.

(4) Where an order is made under subsection (1), the Minister may by notice in writing served on the person to whom such order relates, vary, cancel or add to any prohibitions or restrictions imposed by such order on such person and the prohibitions or restrictions so varied or added to shall, unless earlier cancelled, continue in force for the unexpired portion of the period specified in such order or the period as extended under subsection (3).

(5) An order made by the Minister under subsection (1) shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.

required within a criminal justice system, overriding rules of evidence governing the admissibility of confessions (Section 16-18). Even confessions obtained through coercion are admissible, shifting the burden of proof of coercion to the accused (Section 16(2)). In practice, it is extremely difficult to prove that a confession was extracted under duress as there would be no witnesses to speak on behalf of the accused.

The role of a JMO where PTA detainees are concerned is crucial to ensure PTA detainees are able to prove whether they were forced to sign confessions under conditions of physical duress. However, the Human Rights Commission of Sri Lanka (HRCSL) received numerous allegations alleging collusion between police officers and JMOs, or JMOs not

		<p>being able to communicate with PTA prisoners due to language barriers. Thus, PTA prisoners would not enjoy the right to a fair trial due to the ineffective safeguards in place during their period of administrative detention, which would enable confessions obtained under torture to be admissible in court.</p>
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Section 14- (1) *Notwithstanding the coming into operation of this Act on the 24th day of July, 1979, the provisions of subsection (2) shall come into operation only upon an Order made in that behalf by the Minister from time to time and published in the Gazette for such period as may be specified in the Order.*

(2) (a) *No person shall, without the approval in writing of a competent authority, print or publish in any newspaper any matter relating to*

(i) *the commission of any act which constitutes an offence under this Act or the investigation of any such offence; or*

(ii) *incitement to violence, or which is likely to cause religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups.*

Clause 7

Section 14 of the principal enactment is repealed

(b) No person shall, without the approval in writing of a competent authority, distribute or be concerned in the distribution of any newspaper printed or published in Sri Lanka or outside Sri Lanka in respect of any matter the printing and publication of which is prohibited under paragraph (a).

(3) Any person who commits any act in contravention of any of the provisions of subsection (2) shall be guilty of any offence and shall on conviction be liable to imprisonment of either description for a period not exceeding five years.

(4) (a) Where any person is convicted of an offence under this section, the court may, in addition to the punishment it may impose for that offence under subsection (3), order that no person shall print, publish or distribute or in any way be concerned in the printing, publication or distribution of any such newspaper for such period as is specified in such order and that the printing press in

<p><i>which such newspaper was printed shall, for such period as shall be specified in such order, not be used for any purpose whatsoever or for any such purpose as is specified in the order.</i></p> <p><i>(b) Where any proceedings have been instituted against any person for the commission of any offence under this section, it shall be competent for the court to make an interim order that the printing press in which it is alleged that such newspaper or publication was printed shall not be used for any purpose whatsoever or for any such purpose as is specified in the order, until the conclusion of the trial.</i></p>		
<p>Section 15- <i>(1) Every person who commits an offence under this Act shall be triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury or before the</i></p>	<p>Clause 8</p> <p>Section 15 of the principal enactment is amended to provide for holding trials on a day-to-day basis to ensure the expeditious disposal of cases unless in the opinion of the court exceptional circumstances warrant postponement of the commencement or continuation of trial, for reasons which</p>	<p>This amendment fails to address the long years during which suspects are detained arbitrarily before getting to the trial stage and the years taken to conduct the trial.</p>

<p><i>High Court at Bar by three Judges without a jury, as may be decided by the Chief Justice.</i></p> <p><i>The provisions of sections 450 and 451 of the Code of Criminal Procedure Act, No. 15 of 1979, shall, mutatis mutandis, apply to the trial of offences under this Act by the High Court at Bar and to appeals from judgments, sentences and orders pronounced at any such trial held by the High Court at Bar.</i></p> <p><i>(2) Upon the indictment being received in the High Court against any person in respect of any offence under this Act or any offence to which the provisions of section 23 shall apply, the court shall, in every case, order the remand of such person until the conclusion of the trial.</i></p> <p><i>Section 15A-(1) Where any person is on remand under the provisions of subsection (2) of section 15, or section 19 (a),</i></p>	<p>shall be recorded by court.</p>	<p>Similar amendments have been brought in other laws with limited success to expedite trials. Considering the several examples of delays that the judicial system is afflicted with there cannot be any confidence that trials will be concluded in a timely manner. Speedy and effective conducting of trials requires, apart from modalities of day-to-day trial, a serious commitment to a practical case management system.¹⁶</p> <p>This amendment makes no efforts to address the abuses enabled by Section 15A. Section 15A allows the Secretary of Defence to exercise power over a person even after the person is remanded to judicial custody. This provision gives discretion to the Secretary of Defence to determine the</p>
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¹⁶ ‘Initial reactions to PTA Amendment Bill: Failure to reform’, The Morning (30th January 2022) <https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

notwithstanding any other provision of this Act or any other law, the Secretary to the Ministry of the Minister in charge of the subject of Defense may, if he is of opinion that it is necessary or expedient so to do, in the interests of national security or public order, make Order, subject to such directions as may be given by the High Court to ensure a fair trial of such person, that such person 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.

(2) Any Order made under subsection (1) shall be communicated to the High Court and to the Commissioner of Prisons and it shall be the duty of such Commissioner, to deliver the custody of such person to the authority specified in such order and the provisions of the Prisons Ordinance shall cease to apply in relation to the custody of such person.

place of detention even after a person has been remanded if the Secretary deems it “necessary or expedient...in the interests of national security”. The wide powers given to the Secretary allow him to order that the person “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”. This section does not set out any criteria for making this determination, and the decision is not subject to judicial review since the order is only required to be “communicated to the High Court and to the Commissioner of Prisons”.

According to a Prison Study by the HRCSL, there were prisoners who informed the Commission that they had been detained at various places of detention, such as Boossa and the TID

		<p>sixth floor, under this provision where they were subjected to torture.¹⁷</p> <p>A common pattern that was observed in the case of all detainees is that they were transferred to different places of detention, about which they stated their families were not informed, which would result in family members travelling from place to place. As such, many inmates would be deprived of contact with their family and legal representative while in police custody. Additionally, this also creates space for torture and enforced disappearances.¹⁸</p> <p>The proposed amendment also does not provide for a clear provision for the High Court to grant bail to an</p>
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¹⁷ Human Rights Commission of Sri Lanka, 'Prison Study by the Human Rights Commission of Sri Lanka' December 2020, available at <<https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>> accessed October 25 2021.

¹⁸ Human Rights Commission of Sri Lanka, 'Prison Study by the Human Rights Commission of Sri Lanka' December 2020, available at <<https://www.hrsl.lk/wp-content/uploads/2020/01/Prison-Report-Final-2.pdf>> accessed October 25 2021.

		accused during trial where the trial has commenced within twelve months of such person being arrested.
No comparative provision	<p>Clause 10</p> <p>Inserted is a new section; 15B to make provision for granting of bail to persons in remand or in detention.</p> <p>Notwithstanding anything to the contrary in the provisions of this Act, if the trial against a person remanded or detained under this Act has not commenced after the expiration of twelve months, from the date of arrest, the Court of Appeal may release such person on bail, upon an application in that behalf, made by the suspect or an Attorney- at-Law on his behalf:</p> <p>Provided however, the preceding provisions of this section shall not preclude the High Court from making an order to remand any person under subsection (2) of section 15, until conclusion of the trial:</p> <p>Provided further, where the trial against an accused in respect of whom the indictment has been forwarded and filed in the High Court, has not commenced after the expiration of twelve</p>	<p>The effectiveness of this proposed clause is undermined by the proviso to the same clause stating that the State has the power to secure an order from the High Court to keep the person in remand custody till the conclusion of the trial. Yet another provision within the same clause states that once 12 months has passed after an indictment has been served and if the trial is not commenced, that bail can be sought.</p> <p>This is an extremely ineffective clause because all the State is required to do to ensure that this suspect cannot make an application for bail is to commence the trial, meaning conduct at least one day of trial within the given 12 months. These provisions are</p>

	<p>months from the date of such filing, the High Court may consider to release such person on bail, upon an application in that behalf made by the accused or an Attorney- at-Law on his behalf.</p>	<p>completely ineffective and provide the State with all the leverage needed to keep persons in remand custody for extended periods of time.¹⁹</p> <p>This clause specifically retains the authority of the High Court to remand the accused until the conclusion of the trial. Despite the Attorney General consenting to bail, once the indictment is received by the High Court, a strict application of Section 15(2) makes it mandatory for the judge to remand the accused until the conclusion of the trial. This was demonstrated most recently when the Puttalam High Court rejected the bail application filed by Attorney-at-Law Hejaaz Hizbullah, who was arrested under the provisions of the PTA. The situation would have been no</p>
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¹⁹ ‘Initial reactions to PTA Amendment Bill: Failure to reform’, The Morning (30th January 2022)
<https://www.themorning.lk/initial-reactions-to-pta-amendment-bill-failure-to-reform/>

		different under an amended PTA as envisaged by the Bill. ²⁰
<p>Section 19- <i>Notwithstanding the provisions of any other written law</i></p> <p><i>(a) every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal;</i></p> <p><i>(b) any order made under the provisions of subsection (4) of section 14 shall, notwithstanding any appeal made against such order, continue in force until the determination of such appeal:</i></p> <p><i>Provided, however, that the Court of Appeal may in exceptional circumstances release on bail any such person referred to in paragraph (a) subject to such conditions as the Court of</i></p>	<p>Clause 11</p> <p>Section 19(b) of the principal enactment is repealed consequential to the repeal of Section 14.</p>	

²⁰ See Twitter, <https://twitter.com/GehanDG/status/1487326642963890187>

<p><i>Appeal may deem fit, or vary or suspend any order referred to in paragraph (6).</i></p>		
<p>Section 26- <i>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.</i></p>	<p>Clause 12</p> <p>Section 26 of the principal enactment is repealed and a new section inserted to make provision to question under Article 126 or 140 of the Constitution, an Order made or direction given under the PTA, despite the protection afforded to officers for any act or thing done or purported to be done in good faith.</p>	<p>Apart from enabling judicial review of administrative action under the PTA, the lack of parliamentary oversight in the operation of the Act has also been highlighted as a cause for its abuse by successive governments.</p>
<p>Section 31 - Interpretation</p>	<p>Clause 13</p> <p>Section 31 of the principal enactment is amended to remove the definitions of “newspaper” and “printing press” and to include a new definition for the term “torture”.</p> <p>“torture” shall have the same meaning assigned to such expression under the Convention Against Torture and other Cruel, Inhumane or degrading Treatment or Punishment Act, No.22 of 1994</p>	

Part II - History, Criticism and Concerns

The PTA enacted as a temporary piece of legislation in 1979 was later retained to become a permanent feature of Sri Lanka's criminal justice system.²¹ Many of its provisions have been widely criticized as denying the minimal safeguards required within a criminal justice system and it has been observed that the PTA has been used to 'commit some of the worst human rights violations, including widespread torture and arbitrary detention, particularly targeting minorities and to suppress dissent'.²² There has been increased use of the PTA following the Easter Sunday Attacks of 2019 and many of the instances where arrests and detentions have been made under the PTA demonstrate the issues and concerns consistently raised by civil society and others.

The Supreme Court of Sri Lanka has pointed out that several provisions of the PTA are inconsistent with the provisions of the Constitution of Sri Lanka. In *Weerawansa v Attorney General* (2000) 1 SriLR 387, Justice Mark Fernando observed,

"When the PTA Bill was referred to this court, the court did not have to decide whether or not any of those provisions constituted reasonable restrictions on Articles 12 (1), 13 (1) and 13 (2) permitted by Article 15 (7) (in the interests of national security etc), because the court was informed that it had been decided to pass the Bill with two-thirds majority (SC SD No. 7/79, 17.7.79). The PTA was enacted with two-thirds majority, and accordingly, in terms of Article 84, PTA became law *despite many inconsistencies with the constitutional provisions.*" (at pp.394-395, emphasis added)"

The constitutional provisions mentioned by Justice Fernando are some of the most important fundamental rights guaranteed by the Constitution, including the right to

²¹ Amnesty International, 'Countering Terrorism at the Expense of Human Rights: Concerns with Sri Lanka's Counter Terrorism Bill', January 2019, available at <<https://www.amnesty.org/en/documents/asa37/9770/2019/en/>> accessed October 25 2021.

²² Former UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, Ben Emmerson.

equality (Article 12 (1)) and the freedom from arbitrary arrest, detention and punishment (Articles 13 (1) and (2)).

Further, in *Maridas v The State* (1995) 1 SriLR 96, it was stated that Section 16 of the PTA is an exception to provisions governing confessions in the Evidence Ordinance.

“Therefore, as pointed out by the learned President's Counsel it was all the more necessary that there should be some safeguards to be adhered to when recording such a confession. Unfortunately, there are no such provisions in the Prevention of Terrorism (Temporary Provisions) Act. As submitted by the learned Deputy Solicitor-General even the recording of a confession under Section 16 of said Act has to be done by recourse to sections 109 and 110 of the Code of Criminal Procedure Act, No. 15 of 1979. Therefore, when a Court is called upon to give a ruling regarding the voluntariness of a confession recorded under Section 16 of the Prevention of Terrorism (Temporary Provisions) Act it is of utmost importance to examine and evaluate the evidence so as to guarantee to the accused person in criminal proceedings absolute fairness.”

CPA has raised continuous concerns about the various abuses and human rights violations permitted and even encouraged by the provisions of the PTA.²³

CPA has consistently maintained the need to repeal the PTA and replace it with counter-terrorism legislation in line with international best practices and the international human rights law obligations as well as the Constitution of Sri Lanka. The sweeping powers given to the executive by the PTA are in the nature of emergency powers, but the exercise of those powers is independent of and not subject to even the limited oversight framework of conventional emergency powers, such as proclamation

²³ Brief Submission (Update) by the Centre for Policy Alternatives, February 2020 https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_41638_E.pdf ; Submission by the Centre for Policy Alternatives regarding Sri Lanka's Response to the List of Issues Adopted https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_CSS_LKA_18292_E.pdf

and periodic parliamentary approval. Further, the PTA was enacted in 1979 as a temporary measure and the terrorist threat against which the PTA was officially justified for three decades has now been eliminated.²⁴

On several occasions, CPA has challenged regulations issued under the PTA which could potentially lead to further situations of abuse, including several instances where such regulations have been challenged before the Supreme Court of Sri Lanka.²⁵ Most recently, CPA challenged the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021 which allows administrative detention of individuals for up to two years without any legal proceedings being conducted before a competent court.²⁶

While reiterating CPA's earlier concerns and the need for new legislation, CPA calls for an immediate moratorium on the use of PTA.

²⁴The Need to Repeal and Replace the Prevention of Terrorism Act (PTA), Centre for Policy Alternatives (9th May 2013)

<https://www.cpalanka.org/the-need-to-repeal-and-replace-the-prevention-of-terrorism-act-pta/>

²⁵ CPA Statement on the new Regulations under the Prevention of Terrorism Act, Centre for Policy Alternatives, (23 September 2011)

<https://www.cpalanka.org/cpa-statement-on-the-new-regulations-under-the-prevention-of-terrorism-act/> ; Concerns Relating to the Recent Regulations Issued Under the Prevention of Terrorism Act, Centre for Policy Alternatives (18 March 2021)

<https://www.cpalanka.org/concerns-relating-to-the-recent-regulations-issued-under-the-prevention-of-terrorism-act/> ; *Centre for Policy Alternatives v Attorney General (SC (FRA) 91/2021)*

<https://www.cpalanka.org/centre-for-policy-alternatives-v-attorney-general-sc-fra-91-2021/>

²⁶ Recently the Supreme Court granted leave to proceed and issued an interim order suspending the operation of the above regulations till the conclusion of the case after considering three fundamental rights petitions filed by human rights activists including the Centre for Policy Alternative and its Executive Director Dr. Paikiasothy Saravanamuttu.