

Draft Anti -Terrorism Bill & Its Dreadful Intentions

# Human Rights Update

Sri Lanka Brief Update | April 2023



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1. Government of Sri Lanka (GoSL) gazetted the draft [Anti-Terrorism Act](#) (ATA) on 22 March 2023. The new act is to replace draconian [Prevention of Terrorism Act of 1979](#). In 2018 GoSL introduced a [Counter Terrorism Bill](#) for the same purpose but had to withdraw in the face of mounting opposition. Present president [Ranil Wickremasinghe](#) has been a Minister and PM in two previous occasions.
2. In the face of criticism against the new Anti-Terrorism Bill from local and International human rights organisations, [Justice Minister Wijeyadasa Rajapakshe said](#) the government would not bring about any fundamental changes to the current version. The bill, already announced in the gazette notification, is to be presented in Parliament for debate and enactment.
3. Three major ‘strategies’ have been used in this draft bill on anti-terrorism 2023. which create very great confusion about the meaning of the contents of the proposed law and its implications. **The first** of these strategies is not to define the meaning of terrorism. **The second** strategy is to blur or even to erase the distinction between the laws relating to anti-terrorism and the criminal law. **The third** is to peruse what amounts to a repeal, alteration or a fundamental change of the constitution, under the guise of an ordinary act of parliament and their by virtually displace many of the core principles on which constitution has been based. ([AHRC](#))
4. The Act **does not define the meaning of terrorism** and provides vast range of activities under the term terrorism (clause 3). It does not comply with the [definition provided by United Nations](#). This ambiguity is deliberate act to use the ATA as a tool for suppression and pose a major threat to fundamental rights.
5. **International standards** recommend that the definition of terrorism in anti-terror legislation meets a threshold of three separate conditions: 1) involving an identified ‘trigger offence’ found in 10 of the international anti-terrorism conventions in force AND 2) be perpetrated with the intention to cause death, serious bodily injury, or taking hostages AND

3) be for the purpose of invoking a state of terror, intimidating a population, or compelling a government or international organisation. ([Ermiza Tegal](#))

6. The ATA's expansive definition of terrorism seriously fails to meet these international standards and dramatically lowers the threshold for what acts can be classified as terrorism, by including many which are already covered under normal criminal law (i.e. property damage, unlawful assembly, robbery, theft, damage to religious or cultural property) and some which are even protected by rights under the Sri Lankan Constitution (i.e. freedom of assembly, freedom of expression and freedom of movement). ([Ermiza Tegal](#))

7. Any anti-terror legislation that is required must be specific in its definition and should adopt the ordinary criminal procedure, as has been done in the UN Convention on The Suppression of Terrorist Financing Act No. 25 of 2005. The ATA fails to meet two key **demands from the domestic and international communities**: (1) to stop resorting to extraordinary executive powers which are highly susceptible to abuse, and (2) to refrain from casting ordinary criminal offences as acts of terrorism. ([Ermiza Tegal](#))

8. The Bill creates a category of 'terrorist publications with media (print, electronic, web-based media etc) selling, circulating, or distributing the same or having possession thereof, deeming to commit an offence. That applies similarly to 'any person' who 'encourages' terrorism' by causing it to be published or publishing a statement to that effect. Additionally, the Bill defines 'terrorism associated acts' as having been committed by any person who, inter alia, **'gathers'** or **'supplies'** confidential information knowing or having reasonable grounds to believe that this will be used for an offence under the Act. ([Kishali P.Jayawardene](#))

9. In the draft ATA, a large of numbers of functions which are presently exercised by various Ministries, organs of the State and other officers, **are being taken by the President**, directly under his control. This implies that on any matters that may arise, by way of commission or omission, which at present would give rise to the right of the citizen to seek the redress of courts, are to be taken away, as the president enjoys unlimited immunity. ([AHRC](#))

10. Under the ATA the definition of acts of terrorism is further **expanded by creating new offences**. Within a scheme where terrorism is both vaguely and broadly defined, publications that 'directly or indirectly' encourage members of the public to acts of terrorism (clause 11) and giving or receiving instruction or training in terrorism (clause 12) are made offences. By clause 16, wilfully failing or neglecting to comply with a direction issued under the Act is defined is a (terrorism-related) offence. ([Ermiza Tegal](#))

11. This clause read together with clause 61 effectively creates a **host of new offences** by persons not complying with any of the following directions of a Senior Superintendent of Police: not to enter any specified area or premises; to leave a specified area or premises; not to leave a specified area or premises and to remain within such area or premises; not to travel

on any road; not to transport anything or to provide transport to anybody; to suspend the operation of a specified public transport system; to remove a particular object, vehicle, vessel or aircraft from any location; to require that a vehicle, vessel, ship or aircraft to remain in its present position. ([Ermiza Tegal](#))

12. Failure to follow any such directive would **constitute an offence under the ATA**, even though these acts are themselves not offences nor need necessarily be related to terrorism. Under the ATA, mere suspicion of the broad range of acts that falls within its remit permits the police to investigate, arrest and detain persons as terrorists, to subject persons to restriction orders, to declare organisations as proscribed, to declare prohibited places and to impose curfew. ([Ermiza Tegal](#))

13. The President may also declare any place: a “prohibited place”, if so, requested by the IGP or the commanders of the armed forces or the Director General of the Coast Guard (clause 85). There is no time limit set for the period of prohibition and any place can potentially be declared a “prohibited place”. This easily allows for repression of any dissent since the police **need not have to go before the Magistrate** to obtain time limited restraining orders against protests as is the current practice, but instead, immediately get the site of protest declared a prohibited place. ([ICJ](#))

14. The ATA also **empowers the President** to declare organisations as ‘proscribed organisations’ (clause 82), to secure ‘restriction orders’ (clause 83) and declare places as ‘prohibited places’ (clause 85). A declaration proscribing an organisation can inter alia prohibit any person being a member of such organisation; prohibit the organisation recruiting members; prohibit any person acting in furtherance of the objectives of the organisation; prohibit conducting meetings, activities and programmes; prohibit the use of bank accounts; prohibit the organisation entering into contracts; prohibit raising of funds and receiving grants and bequests; prohibit transferring funds and assets of the organisation; prohibit lobbying on behalf of such organisation and prohibit any person publishing of any material in furtherance of the objects of such organisation. ([Ermiza Tegal](#))

15. The Bill places the **power to make Detention Orders** in the hands of a Deputy Inspector General of Police (DIG), a power which under the PTA is held by the Minister of Defense. However, while the 2018 CTA allowed for the initial Detention Order by a DIG to extend up to 2 weeks, the Bill is more similar to the regime under the PTA, allowing the Detention Order to be made for up to 3 months. This could lead to the suppression of the liberties of persons accused under this Bill, even if there is no substance to such allegations. Detention Orders can thereafter be extended beyond the initial 3 months, up to a year, but the extension must be approved by a Magistrate. ([CPA](#))

16. There are around two dozen DIGs in Sri Lanka and ATA empowers all of them to issue detention orders.

17. The bill grants the **power to any member of the armed forces** or coast guard to search any person, vehicle, vessel, or train, or any premises or land **without any prior authorisation**, warrant, or oversight, which can lead to the abuse of power. Similarly, it allows members of the armed forces to take any document or article into custody. ([Ambika S.](#))

18. The bill contains sections which enable the Police **to take the person from remand custody in prison** back into Police custody via a Detention Order if they ‘receive information’ which they ‘believe to be true’ that the person is committing or planning to commit an offence or escape. Since most violations under the PTA, such as torture, have been recorded in Police custody and not in prison, the transfer of a person back to Police custody can make the person vulnerable to abuse. ([Ambika S.](#))

19. There seems to be an insidious attempt **to undermine the powers of the Human Rights Commission of Sri Lanka** (HRCSL) by establishing a parallel institution (Independent Review Panel – IRP) to receive and inquire into complaints of alleged violations of fundamental rights that take place during the implementation of the proposed law. Receiving and inquiring into alleged violations of fundamental rights is a core function of HRCSL and hence raises questions how the IRP will function vis-à-vis the HRCSL. ([Ambika S.](#))

20. The clause that requires the **IRP to maintain strict confidentiality** about the complaints it receives appears more of a gag order to prevent information about the alleged violations being made public, and thereby protect perpetrators rather than concern for the privacy or safety of the complainants. ([Ambika S.](#))

21. The bill requires the notification of arrest to the HRCSL **within 72 hours** from ‘the commencement of detention’. Whereas the Human Rights Commission Act requires notification to be done within 48 hours ‘from the time of arrest or detention’. The oversight bodies established by the proposed law, i.e., **the Board of Review**, which is chaired by the secretary to the Ministry of Defence and the Independent Review Panel, which is **appointed by the President**, are not independent, and hence not fit for the purpose, as they cannot function as a check on the abuse of power by the police. ([Ambika S.](#))

22. The Anti-Terrorism Bill makes **the President the law** and the law to become an unimportant factor in dealing with many of the matters in Sri Lanka which have been brought under an overall umbrella called ‘Anti-Terrorism’. Above all, Anti-Terrorism will be soon recognised more like a ‘political instrument’ for controlling those who represent dissent, those who represent various Opposition political parties, trade unions, medical associations such as the associations of doctors, and of other professions, journalists, academic associations, and all those who normally exercise their fundamental freedoms. ([AHRC](#))