Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the right to privacy and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: OL LKA 1/2026
(Please use this reference in your reply)

9 February 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right to privacy and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 58/14, 60/8, 54/14, 53/4, 52/4, 55/3 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the draft Protection of the State from Terrorism Act (PSTA).**

We have previously raised serious concern regarding Sri Lanka's current Prevention of Terrorism Act (PTA) and subsequent amendments in LKA 3/2021[1] and LKA 4/2023.[2] We welcome your Excellency's Government's commitment to reviewing Sri Lanka's counter-terrorism legislation and publishing the bill for public consultations. We are also encouraged by improvements in the PSTA, including the recognition in the Preamble of the importance of respect for the rule of law and fundamental rights and freedoms, as well as the addition of safeguards in various sections. However, we remain deeply concerned that the PSTA does not remedy the substantive deficiencies of the PTA and falls significantly short of conformity with international law.

The analysis below does not review each section of the PSTA, but analyses some of the most concerning sections to assist your Excellency's Government to ensure the PSTA is consistent with international human rights law and Pillars I and IV of the Global Counter-Terrorism Strategy. In so doing, particular attention is drawn to the five key benchmarks outlined in LKA 4/2023:

Benchmark 1: employ definitions of terrorism that comply with international norms

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1 Response of the Government of Sri Lanka received on 11 August 2021 and available at: https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=36496

2 See also A/HRC/44/50/Add.1; A/HRC/40/52/Add.3; A/HRC/33/51/Add.2; A/HRC/42/40/Add.1.

Benchmark 2: ensure precision and legal certainty, especially when this legislation may impact the rights of freedom of expression, opinion, association, and religion or belief

Benchmark 3: institute provisions and measures to prevent and halt arbitrary deprivation of liberty

Benchmark 4: ensure the enforcement of measures to prevent torture and enforced disappearance and adhere to their absolute and non-derogable prohibition

Benchmark 5: enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel.

We stand ready to provide your Excellency's Government with any further technical advice it may require, including by holding a technical meeting with the drafting Committee or other relevant Government entities. We respectfully request that this communication and the analysis below be shared with the Committee.

Definition of terrorism

The proposed definition of terrorism under s. 3, while improving that of the PTA, remains significantly vague and overbroad and falls short of best practice international standards. We emphasize that vague and overbroad definitions are prone to both unintended consequences and deliberate abuse, often leading to violations of other rights. The principle of legality under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, including to target civil society, including human rights defenders, on political or other unjustified grounds (A/70/371, para. 46(b)) and suppress the exercise of fundamental rights and freedoms (A/HRC/40/52).

Although no universal treaty generally defines "terrorism", States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,[3] the General Assembly's Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the revised model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear, "best practice" guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51 (2010) as revised by A/HRC/61/52 (2026)). We encourage your Excellency's Government to revise its definition of terrorism following the model definition.

[3] See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.

Specific intent elements

Section 3(1) proposes four alternative specific intent elements. The first two are largely duplicative ("provoking a state of terror" or "intimidating the public or any section of the public") and only one, not both, should be included. The fourth alternative, "propagating war, or violating territorial integrity or infringing the sovereignty of Sri Lanka or any other sovereign country", should be deleted because it is vague and overbroad, does not satisfy the requirement of legality under article 15 of the ICCPR, and goes beyond acts that are genuinely terrorist according to best practice international standards.

The revised model definition of terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51 (2010) as revised by A/HRC/61/52 (2026)) recommends including an additional cumulative element that the conduct must be intended to advance a political or ideological purpose, including to differentiate terrorism from privately motivated crime, including organised crime.

Physical conduct elements

Regarding the physical elements of the definition in s. 3(2), according to best practice international standards terrorism should be limited to conduct causing death, serious bodily injury or hostage taking.[4] Mere "hurt" is not sufficiently serious. The definition should further not include mere harm to property which is not intended to cause death or serious injury; such acts can be effectively addressed under other criminal laws. It should also not treat robbery, extortion or theft (s. 3(2)(f)) and weapons offences (s. 3(2)(k)) as terrorism.

The Special Rapporteur's model definition does not recommend that the definition of terrorism extend to the conduct under s. 3(2)(e) and (g)-(j). However, where such conduct is included in the definition, the Special Rapporteur has recommended that the thresholds of harm must be sufficiently high (A/HRC/61/52, para. 69). Thus, the elements of:

- "serious damage to any place of public use, any public property, any public or private transportation system or any infrastructure facility or environment" (s. 3(2)(e)) should be raised to require extensive destruction which intentionally causes a high likelihood of danger to life or major economic loss.

- harm to the "environment" in s. 3(2)(e) should be separated into a distinct sub clause and the threshold raised from "serious damage" to refer to severe and widespread, or long-term, damage to the environment, which intentionally causes a high likelihood of danger to life or major economic loss;

[4] See Security Council resolution 1566 (2004); A/59/565 and A/59/565/Corr.1; A/HRC/16/51

- "serious risk to the health and safety of the public or a section of the public" (s. 3(2)(g)) should be raised to require a high likelihood of danger to life;

- "serious obstruction or damage to, or interference with" the information, computer and electronic systems in s. 3(2)(h) and (j) should be raised to require disablement, extensive damage or destruction of, or serious interference which intentionally causes a high likelihood of danger to life or major economic loss;

- "destruction of, or serious damage to, religious or cultural property" should be raised to refer to extensive destruction to tangible cultural property, which intentionally causes a high likelihood of danger to life, major economic loss, or serious loss of cultural heritage of national or international significance.

In accordance with international best practice standards, the commission of offences under the international counter-terrorism conventions (s. 3(5)) should not be regarded as terrorism unless the terrorist specific intent/purpose elements (as under s. 3(1)) are also satisfied.

Mental element

The mental element for terrorism offences should be intention rather than also extending to knowledge, or in some cases even recklessness (as under ss 9(3) and 10(2)) (A/HRC/61/52, para. 31).

Exclusion clauses

We welcome the partial exclusion of "any protest, advocacy or dissent [...] or strike, lockout or other industrial action" (s 3(4)). However, the qualification that such acts do not constitute a sufficient basis for inferring terrorism by themselves is vague and runs counter to the principle of legal certainty under article 15 of the ICCPR. Absent any intentional death or serious bodily injury, such acts should not be criminalized as terrorism (A/HRC/61/52, paras. 61-62 and 68). It is recommended to enact the following exclusion clauses, for (see A/HRC/61/52, paras. 47-65 and 68):

1. An act of advocacy, protest, dissent or industrial action that does not intentionally cause death or serious bodily injury;

2. Conduct committed in armed conflict that does not violate international humanitarian law;

3. The provision of humanitarian [and medical] activities by impartial humanitarian organizations in accordance with international humanitarian law;

4. The activities of State military forces in the exercise of their official duties, inasmuch as they are accordance with international law; and

5. Acts intended to establish or re-establish democracy, constitutional government or the rule of law, or to exercise or safeguard human rights.

Penalties

Certain offences under the PSTA appear to attract mandatory life imprisonment (s 4(a) and (c)). Mandatory sentences are not consistent with the principles of proportionality and judicial discretion under international human rights law and the general principles of criminal law. It is recommended that such terms be applied as "maximum" penalties.

Inchoate and preparatory offences under the PSTA attract the same penalties as the principal offences (s 5(1)). It is recommended to specify lower penalties than for principal offences, and to preserve judicial discretion in sentencing, in order to ensure penalties reflect the relative degrees of culpability of the different offenders.

Criminal offences

Offences associated with a proscribed terrorist organisation

Offences associated with a proscribed terrorist organisation (s 6) should ensure that there is a sufficiently narrow and precise link to an individual's conduct and the terrorist activities of the group in order to avoid unjustified liability. The person's conduct should materially and proximately contribute to the commission of a terrorist act by the group; each offence must satisfy the requirements of legality and certainty under article 15 of the ICCPR so that individuals may reasonably foresee what behaviour is criminal; and the person must have knowledge of the group's terrorist purpose, in addition to intending to commit the physical conduct (A/80/284, practice 10). Vague and overbroad offences are highly susceptible to arbitrary interpretation and enforcement, risking undue restrictions on the rights to freedom of expression and opinion (ICCPR, article 19) and freedoms of peaceful assembly and of association (ICCPR, articles 21 and 22).

It is accordingly recommended to review and amend the s. 6 offences accordingly, particularly as regards offences such as membership and joining (these are also unnecessarily repetitive offences under s. 6(a), (b) and (g)), participating in meetings, harbouring, "promotes, encourages, supports, advises, assists, or acts on behalf of", participating in any activity or event, possessing or disseminating materials or disseminating information (repetitive offences as between s. 6(l) and (o)), financing or engaging any transaction (repetitive as between s. 6(k) and (n)), "espouses the cause of or represents". Financing offences should also be consistent with international standards.

Offence of harbouring, concealing or otherwise obstructing

While harbouring and concealment offences can be consistent with international law, s. 8(1) additionally criminalises anyone who "in any other manner, wrongfully prevents, hinders or interferes with the identification, arrest, custody or detention of a person knowing or having reasonable grounds to believe that such person has committed or is concerned in committing an offence" under the PSTA. The open-ended

reference to conduct undertaken "in any other manner", coupled with the absence of any definition of "wrongful" interference, fails to provide the degree of legal precision and foreseeability required by the principle of legality under article 15 of the ICCPR. The offence confers excessive discretion on law enforcement authorities in its enforcement and risks arbitrariness. It risks extending criminal liability to conduct that is remote, incidental, or lawful, including conduct undertaken in the exercise of protected rights or professional duties, or conduct based on association or proximity. It could have a chilling effect on the exercise of privacy and expressive rights under articles 17, 19, 22, and 23 of the ICCPR. Moreover, the mental element is too low, by extending beyond knowledge (which should be interpreted as a virtual certainty) to include "having reasonable grounds to believe" that another person has committed or "is concerned in committing" an offence under the PSTA.

Expression and related offences

Several offences under the PSTA, in addition to lacking legal certainty, appear incompatible with the right to freedom of expression under article 19. Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline, and includes not only the exchange of information that is favourable, but also that which may criticize, shock, or offend.

Any restriction on the right to freedom of expression must be compatible with the requirements set out in article 19(3) of the ICCPR. Restrictions must (i) be provided by law; (ii) pursue one of the legitimate aims for restriction, which are the respect of the rights or reputations of others and the protection of national security or of public order *(ordre public)*, or of public health or morals; and (iii) be necessary and proportionate for those objectives. To be provided by law, a restriction must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly, must not confer unfettered discretion, and must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not (general comment No. 34, para. 25). Any restriction on expression or information that a government seeks to justify on grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant, proving "in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat" (general comment No. 34, para. 35). A restriction must be "the least intrusive instrument among those which might achieve their protective function" (para. 34).

Section 8(2) of the PSTA read together with s. 78 risks unduly restricting the right to freedom of expression. Section 8(2) criminalizes gathering "confidential information" with the intention of supplying it, or "supplying such information" where the person knowingly or has reasonable grounds to believe that it will be used by another to commit, attempt, abet, conspire to commit, or prepare to commit an offence under the PSTA. The extensively broad definition of "confidential information" under s. 78 virtually extends the definition to any media reporting on security operations,

including documentation of militarization, troop deployment and checkpoints, reporting on police misconduct, human rights violations and places of detention, or any information "the dissemination of which is likely to have an adverse impact on the national security and defence of Sri Lanka". The overbroad restrictions on expression created by ss 8(2) and 78, absent any terrorist intent, do not appear to comply with the requirements of article 19(3) of the ICCPR. Noting that the media plays a crucial role in informing the public about acts of terrorism, the Human Rights Committee has noted that its capacity to operate should not be unduly restricted and that journalists should not be penalized for carrying out their legitimate activities (general comment No. 32, para. 46).

Section 9 of the PSTA criminalizes the "encouragement" of terrorism. Security Council resolution 1624 (2005) calls for the prohibition of "incitement to terrorism"; the term "encouragement" sets the threshold too low and is too vague. Section 9 also retains the lower mental element of "recklessness" present in the PTA, contrary to best practice international standards that require intent. As noted by the Special Rapporteur on human rights and counter-terrorism (A/HRC/16/51, para. 31), the offence of incitement to terrorism (a) must be limited to the incitement to conduct that is truly terrorist in nature; (b) must restrict the freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals; (c) must be prescribed by law in precise language, including by avoiding reference to vague terms such as "glorifying" or "promoting" terrorism; (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to two elements of intent, namely intent to communicate a message and intent that this message incite the commission of a terrorist act; and (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to "unlawful" incitement to terrorism. Without the double intent requirement to communicate a message and that the message incite a terrorist act, and the existence of an actual risk that such an act be committed, the offence risks unduly restricting the right to freedom of expression and chilling legitimate speech.

Section 10 of the PSTA prohibits the "dissemination of terrorist publications" which may "encourage" or "induce" the commission of a terrorist act, whether the publication is disseminated intentionally, knowingly or recklessly. The exceptionally broad scope of the offence and of the definition of "terrorist publication" (s. 10(3)), together with the low threshold for criminal liability, raise significant concern about inconsistency with the right to freedom of expression. Individuals may incur liability solely on the basis of possession of such material, including journalists, researchers, or activists who may be in possession of the publication for legitimate purposes such as reporting, research, education, or the dissemination of information in the public interest.

We note that s. 11 of the PSTA includes an exemption for statements and publications made "in good faith with due diligence for the benefit of the public or in the national interest" and "any opinion, legitimate criticism, satire, parody, caution or imputation made in good faith". While the exemption is welcome, its scope remains undefined, particularly as regards public benefit and "national interest", raising concerns as to how it may be interpreted and applied in practice by prosecutorial and judicial authorities, particularly given the broad scope of the offence under s. 10. Adding more specific exemptions would be desirable, including for journalism, academic discourse, and civil society commentary. We are further concerned that, read

together with s. 2(1) of the PSTA, the offence would apply extraterritorially and would thereby risk criminalizing lawful expression and documentation by diaspora communities, including social media commentary on internal developments.

Section 15 of the PSTA criminalizes the failure to disclose information or providing false or misleading information about any offence or person who attempts, abets, conspires, or has committed an offence, absent a "reasonable excuse", with penalties extending to seven years imprisonment. The provision, which extends to the digital context, provides no detail as to what would constitute a "reasonable excuse", which allows for varying and uncertain interpretation, contrary to the principle of legal certainty. It specifies no exception for legally protected information or information covered by professional secrecy, or even self-incriminating evidence. In this regard, we remind that principle 22 of the Basic Principles on the Role of Lawyers provides that consultations between lawyers and their clients within their professional relationship are confidential; general comment No. 34 on article 19 of the ICCPR states that journalistic privilege not to disclose information sources is part of freedom of expression; and article 14(g) of the ICCPR provides that no one should be compelled to testify against oneself or to confess guilt.

Arrest and detention powers

The PSTA confers broad arrest and detention powers to the police and military, with inadequate safeguards to protect the right to liberty and security of the person under article 9 of the ICCPR (and also protection against risks of torture and other ill-treatment), as discussed in the following sub-sections. Under international law, judicial review of administrative detention should occur within 48 hours, except in absolutely exceptional and fully justified circumstances (see ICCPR, article 9(3) and general comment No. 35, para. 33). Review of detention must be carried out by an authority that is independent, objective and impartial and who must be empowered to decide to release the individual (para. 36). Furthermore, individuals must be "promptly" informed of any charges against them, and the decision to keep a person in any form of detention should be subject to periodic re-evaluation by effective judicial review of the justification for continuing the detention; otherwise it may become arbitrary (paras. 24-25).

We also refer to the standards in articles 17(2)(c)-(f) of the International Convention for the Protection of All Persons from Enforced Disappearances, ratified by Sri Lanka on 25 May 2016, concerning the legal safeguards for persons deprived of liberty necessary to prevent enforced disappearances. We also recall the 1992 Declaration on the Protection of All Persons from Enforced Disappearance. In particular articles 7, 10, 12, 13, 16 of the Declaration establish that no circumstances whatsoever, may be invoked to justify enforced disappearances; and require States to: ensure access to a prompt and effective judicial remedy; ensure that competent national authorities have access to all places of detention; ensure that persons deprived of liberty are held in an officially recognized place of detention, and brought before a judicial authority promptly and after detention; provide accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest; maintain official up-to-date registers of all detained persons in every place of detention; and suspend persons presumed responsible for enforced disappearances from official duties during the investigation and try them only before competent ordinary courts.

Armed forces and coast guard powers

Sections 19 to 30 of the PSTA significantly extend police powers to the armed forces and coast guard, worryingly normalizing a permanent state of militarized emergency, and without clarifying the circumstances in which the military are to exceptionally operate or the division of competencies between the police and the military. We recall that counter-terrorism powers should be conferred, to the greatest extent possible, upon the civilian authorities entrusted with the functions related to the combating of crime, and in the exercise of their ordinary powers, with appropriate measures to ensure that discretionary powers are not exercised arbitrarily or unreasonably (see A/HRC/16/51, practice 3 and para. 15; see also A/HRC/60/21, para. 61(k)).

Of further concern is s. 24 under which a member of the armed forces or coast guard may detain a person for up to 24 hours before transferring the suspect to police custody, excluding travel time to the police station where the arrest is made outside Sri Lanka or on board any aircraft or vessel. Section 24 requires that the individual be transferred "without unnecessary delay" and that the arrest be notified "as soon as practicable" to a designated authorized superior who shall then inform the police station "forthwith". In contrast, under s. 23 of the PSTA, a police officer must produce the arrested individual before the officer-in-charge of the police station "forthwith". While it may take additional time to bring persons apprehended oversea or at sea to shore, we are concerned that there is no maximum limit on the exclusion for "necessary" travel time, which could potentially invite abuse and result in protracted military detention outside judicial control; and that such exclusion applies to arrests on board any aircraft or vessel even if such conveyance is in Sri Lankan territory (including at a port or airport). Further, while s. 26 requires a person arrested by police or transferred to police custody under s. 24 to be produced before a magistrate within 48 hours from the time of arrest, again travel time is excluded, both from the place of arrest as well as if the arrest was made outside Sri Lanka or board any aircraft or vessel, risking further protracted detention outside judicial control. In the light of historical abuses by the military, we are concerned that the possibility of military detention for 24 hours (or more with travel time) creates serious risks for the potential for abuse, as well as short-term enforeced disappearances.

Protracted pre-trial detention

Further, s. 28 of the PSTA allows for detention for up to two years, including up to one year on remand. Article 9(3) of the ICCPR guarantees the right to be tried within a reasonable time or else released. The Human Rights Committee has emphasized that extremely prolonged pretrial detention may also jeopardize the right to be presumed innocent under article 14(2) of the ICCPR and that "[p]ersons who are not released pending trial must be tried as expeditiously as possible, to the extent consistent with their rights of defence" (general comment No. 35, para. 37). It further noted that the "[r]easonableness of any delay in bringing the case to trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused during the proceeding and the manner in which the matter was dealt with by the executive and judicial authorities" and that "[w]hen delays become necessary, the judge must reconsider alternatives to pretrial detention" (ibid). The allowance for

extended pre-trial detention under s. 28 of the PSTA, particularly up to one year of pre-charge detention, is alarming, particularly in light of Sri Lanka's historical use of prolonged pre-trial detention, notably in terrorism-related cases.[5]

Section 29 of the PSTA raises further concerns in so far as it allows the Secretary, part of the Executive branch, to issue two-month detention orders up to an aggregate period not exceeding one year, with no requirement of judicial authorization or review. Section 26 of the PSTA provides that where a detention order has been issued under s. 29 and a suspect is produced before a Magistrate, the latter "shall" make an order giving effect to the detention power (subject to the provisions of s. 27 on torture or cruel, inhuman or degrading treatment or punishment). Read together, ss 26 and 29 remove judicial discretion and preclude independent judicial review of administrative detention orders. Individuals may languish in administrative detention for up to a year without any effective judicial review of the legality of their detention. Where they are presented before a Magistrate, the latter is deprived of any effective power to decide on the legality of the detention or to order the release of the individual, regardless of whether there is any evidence to justify the detention. We recall that the right to take proceedings before a court, in order for that court to decide without delay on the lawfulness of the detention and order the person's release if the detention is not lawful under article 9(4) of the ICCPR "applies to all detention by official action or pursuant to official authorization, including detention in connection with criminal proceedings, military detention, security detention, counter-terrorism detention" (general comment No. 35, para. 40). We refer your Excellency's Government to the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on Best practices to protect human rights while using administrative measures to prevent terrorism (A/80/284, particularly paras. 40-61 on administrative security detention).

Further, s. 35(2) and (3) together provide that detention orders requested beyond the two-month period under s. 29 may be requested by a police officer by filing a confidential report which shall not be disclosed to any person, including the detainee or their lawyer, unless the magistrate believes such disclosure is in the interest of justice. This provision risks undermining the ability for the detained individual to effectively know and challenge the factual and/or legal basis of the detention, thereby rendering the right to judicial review under article 9(4), the right to effective remedy under article 2, and the right to compensation under article 9(5) of the ICCPR ineffective.

Denial of bail

We also note that the total prohibition of bail on an individual's own recognizance (ss 26, 28 and 35) risks discriminating against indigent individuals who may not have the means to comply with financial bail conditions. We remind your Excellency's Government of the principles of equality before the law and non-discrimination under articles 2 and 26 of the ICCPR.

[5] A/HRC/39/45/Add.2, paras. 21 and 35.

Ineffective judicial remedies

Finally, we note that magistrates lack the power to unconditionally release individuals, since they may only fully discharge a person when the police file a report attesting that no offence was committed, or where the Attorney-General gives consent. We emphasise that effective judicial review of detention under article 9 of the ICCPR, and the right to effective remedy under article 2 of the ICCPR, require that the judiciary has a binding power to order the release of any person from unlawful or arbitary detention under international human rights law.

Torture and other ill-treatment

We welcome the inclusion of important safeguards to protect against torture and other ill-treatment, including the requirement that a Magistrate visit places of detention at least once a month and interview detainees to inquire into their welfare (s. 31); an explicit requirement of humane treatment in detention (s. 32); provisions for inquiries, visits and medical examination orders by a magistrate (s. 27); strengthened requirements to notify the Human Rights Commission of any detention (although this provision should be strengthened by requiring immediate notification) and to permit the Commission to visit detention facilities (ss 33-34); the requirement that detainees be produced before a magistrate every 14 days for the duration of a detention order (s. 37); and restrictions on the admissibility of statements as evidence (ss 60-62). These measures constitute significant improvements on the PTA. Nevertheless, concerns remain about the adequacy and sufficiency of such safeguards.

In particular, we note that s. 32 of the PSTA conditions access to a detainee by his or her next of kin and lawyer to the prior authorisation of the Officer in Charge of the place of detention, which appears contrary to rules 58 and 61 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

In addition, we are concerned that potentially long periods of isolation could be so psychologically harmful that they could risk constituting torture or other ill-treatment. S. 39(2) of the PSTA allows for the judicially authorized transfer of detainees back to police custody under specified conditions and upon the production of a detention order by the Secretary, including their placement in isolation. The detention order may be renewed every two weeks for a cumulative period not exceeding three months, potentially resulting in prolonged isolation. While we appreciate that isolation can be justified for reasons of security, prisoner safety, or to prevent witness tampering, there must be safeguards to prevent the total isolation of the individual. At reasonable times, the individual must have access to their lawyer to be able to properly prepare for trial, and to access regular medical assessments. In line with rules 43-45 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), solitary confinement should be used only in exceptional circumstances, as a measure of last resort, for the shortest possible time, subject to independent judicial review, and for no longer than 15 consecutive days. Due to the prisoner's lack of communication and the lack of witnesses, solitary confinement also enhances the risk of other acts of torture or other ill-treatment. Additionally, s. 58 of the PSTA authorises the Secretary, subject to judicial approval, to transfer a detainee to the custody of "any authority" in the interest of national security or public order or where there is a perceived threat to the life of the accused pending trial.

We recall that the absolute prohibition against torture is a non-derogable right under international law, codified in article 7, read alone and in conjunction with article 2(3) of the ICCPR and at least articles 1, 2, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Sri Lanka on 3 January 1994.

Fair trial and due process

Several sections of the PSTA raise concerns in relation to the rights to liberty and fair trial and due process under articles 9 and 14 of the ICCPR (and obligations to take all measures to prevent torture in article 2 of the CAT). Though we are encouraged that the PSTA explicitly guarantees the right to a lawyer and to be informed of such right, we recall concerns raised by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism following his country visit to Sri Lanka that counsel were not made available to detainees at every stage of the investigation, and sometimes not at all, and that some counsel provided through legal aid did not speak a language that detainees understood (A/HRC/40/52/Add.3, para. 23). To prevent such protection gaps, the PSTA should specifically provide for the right to counsel immediately after arrest and throughout all proceedings, including during interrogations. We emphasise that access to "effective" legal representation necessarily includes obtaining assistance from a counsel who speaks the same language, in accordance with articles 9 and 14 of the ICCPR (see general comments No. 35 and 32), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic principles on the right to a lawyer.

We are encouraged to observe the addition of safeguards during investigative interviews such as the recommendation that these be recorded (s 44(5)) though we regret this is not a requirement, particularly given previously recorded torture and other ill-treatment during interrogations (see A/HRC/40/52/Add.3, para. 31).

Sections 56 and 57 empower the Attorney-General to defer or suspend criminal proceedings for a period of up to 20 years, subject to the agreement of the suspect and to conditions approved by the High Court. These provisions permit the imposition of measures such as community service, participation in rehabilitation programmes, or the payment of reparations in the absence of any conviction or judicial determination of criminal responsibility. As such, they raise serious concerns in relation to the presumption of innocence guaranteed by article 14 of the ICCPR and risk exerting undue pressure on suspects to admit responsibility or acquiesce to punitive measures in order to avoid prosecution or continued deprivation of liberty, irrespective of a finding of guilt. These concerns are exacerbated by the overbreadth of the terrorism-related offences under the PSTA and the attendant risk of misuse. Where individuals may have been arrested on insufficient or erroneous grounds, the prospect of prolonged proceedings or continued detention may effectively compel consent to rehabilitation or other restrictive measures as a condition for securing release, thereby undermining the voluntary nature of such agreements and the safeguards inherent in criminal proceedings.

Section 43 grants the Inspector General of Police the power to appoint experts "or any other persons" to assist the investigation, and that person is deemed a "peace officer". Such position and the powers conferred upon it remain undefined in the law and do not appear subject to any oversight, rendering the provision vulnerable to misuse.

Search, Seizure, Interception and the right to privacy

A number of provisions in the PSTA are inconsistent with the right to privacy under article 17(1) of the ICCPR, which prohibits arbitrary or unlawful interferences with a person's privacy, family, home or correspondence, and unlawful attacks on a person's honour and reputation. Any interference with the right to privacy must be strictly necessary and proportionate in pursuit of a legitimate aim.

Section 20 of the PSTA confers broad stop-and-search powers on the police and the military forces without prior warrant or judicial authorisation. Police officers and military forces may, where there is a "reasonable suspicion of the commission of an offence" and absent any requirement of exigent circumstances, stop and search suspects or vehicles, question suspects, enter and search premises or land, and take into custody documents or objects used or reasonably suspected of being used or connected with the commission of an offence. Section 20(3) requires that any document or object taken into custody by the police be produced before the officer in charge of a police station "as soon as practicable" while s. 20(4) dispenses with any time requirement when the documents or objects are seized by the military. We are concerned that warrantless searches should only be permitted in narrow circumstances, such as where they are necessary to prevent the imminent commission of a crime or to relatedly interdict a weapon or other dangerous item or to preserve evidence.

Section 55 of the PSTA grants law enforcement authorities broad powers to compel decryption and intercept communications, upon prior authorisation of a magistrate. The provision requires that there are "reasonable grounds" to suspect that a person "has committed, is committing, or is likely to commit an offence" and the measures are "reasonably necessary" for the purpose of conducting the investigation, including as regards evidence gathering and preventing the commission of a terrorist offence. Whereas the PTA required applications for decryption and interception orders to be made by a police officer not below the rank of Superintendent, s. 55 of the PSTA permits applications from any officer in charge of a police station, thus expands those authorized to apply.

We welcome prospective judicial oversight of these powers. We are, however, concerned that s. 55 lowers the threshold under the PTA. We are particularly alarmed that it allows interception in relation to a person considered "likely" to commit an offence, which is a vague and overbroad standard that does not satisfy the requirement of legality and goes well beyond what could be justified as a necessary and proportionate restriction on the right to privacy under article 17 of the ICCPR (see also general comment No. 16). In accordance with internatioanl standards interception powers should be limited to criminal suspects.

The breadth of the decryption powers, applying to any communication medium and data system, further lowers the threshold in the PTA. Section 55(1)(a) even allows

compelled decryption from service providers even where they have no access to "end-to-end encyption" keys, thus seeking to weaken encryption contrary to international human rights guidance. These concerns are compounded by parallel device-seizure provisions and 24-hour military custody windows that enable password/biometric extraction outside meaningful judicial control. We recommend restricting s. 55 applications to senior officers, requiring a specific, individualized necessity and proportionality assessment, prohibiting measures that would weaken end-to-end encryption, and adding stronger independent oversight, delayed user notice, and effective remedies.

We recall that the Office of the High Commissioner for Human Rights has identified as a key enabler of privacy and other human rights in the digital space, calling on States to refrain from mandating access to encrypted data or creating backdoors.[6] As noted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, encryption plays a critical role in securing the right to privacy and the right to freedom of expression and is "especially useful for the development and sharing of opinions" (A/HRC/29/32, para. 16). In this context, any restriction on encryption should meet the requirements of legality, necessity, and proportionality (para. 57). General Assembly resolution A/RES/71/199 calls on States "to establish or maintain existing independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data" (para. 5(d); see also A/69/397, para. 61). Similar recommendations are contained in the Human Rights Council Resolution on the right to privacy in the digital age(A/HRC/RES/34/7).

Right to life

The power under s. 45 to use such force as may be necessary, as a last resort, to halt a vehicle, vessel, train, aircraft or unmanned vehicle under the PSTA should be qualified by the further specific principles that: (a) the use of force is necessary in order to protect life or prevent serious injury from an imminent threat, (b) the amount of force applied cannot exceed the amount strictly needed for responding to the threat, and (c) the force applied must be carefully directed, only against the attacker (general comment No. 36, para. 12).

Proscription of organisations as terrorist

We are concerned that proscription powers under the PSTA appear inconsistent with best practice international standards. In particular, s. 63(1) of the PSTA grants the Executive sweeping powers to proscribe organisations, including any entity that acts "in an unlawful manner prejudicial to the national security of Sri Lanka or any other country", a formulation so broad that it effectively dispenses with any meaningful nexus to terrorism and infringes the principle of legal certainty. Section 63(2) compounds this overbreadth by prohibiting an exceptionally broad and vague range of conduct associated with a proscribed organisation, including: "association"; "acting" or "publishing any material" "in furtherance" of the organisation's objectives, irrespective of intent or knowledge; and "any other activity relating to such organisation".

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[6] https://www.ohchr.org/en/press-releases/2022/09/spyware-and-surveillance-threats-privacy-and-human-rights-growing-un-report

Moreover, under s. 63(6), a proscription remains in force until rescinded, with no requirement for periodic or automatic review. The proscription order is also insulated from effective judicial oversight as s. 63(4) only provides affected persons or organisations a right to seek review or cancellation by the President, with no provision for judicial appeal or independent review. We remind your Excellency's Government that the designation of "terrorist" individuals or organizations must meet the requirements of due process and judicial protection under international human rights law, as set out by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para. 35; A/80/284, para. 37). Specifically:

(a) there must be reasonable grounds to believe that the person or entity has knowingly engaged in terrorism, as properly defined according to international standards, including the requirement of legality;

(b) the listed person or entity must be promptly informed of the listing and its factual grounds, the consequences of such listing and the applicable procedural rights;

(c) there must be a right to apply for de-listing and to have it reviewed within a reasonable time, and a right to judicial review of any resulting decision, in both cases affording due process, including sufficient disclosure of evidence and access to a lawyer;

(d) the listed individual or entity must be afforded the right to make a fresh application for de-listing or lifting of sanctions in the event of a material change of circumstances or the emergence of new evidence relevant to the listing;

(e) listings must lapse automatically after 12 months unless renewed afresh; and

(f) reparation, including compensation, must be available for any wrongful listing.

In addition, to list an organization, it must have the substantial purpose of engaging in terrorist offences. It is not enough that some individuals commit isolated acts of terrorism while acting outside of the organization's legitimate purposes and leadership. Even where an individual or organization meets the formal criteria, listing must still be necessary and proportionate in the circumstances, including by demonstrating that less invasive means, such as surveillance and criminal investigation, would be ineffective. Proportionality will also depend on the nature and scope of the restrictive measures that flow from designation, including whether they apply automatically or in a tailored manner, and whether any offences are overbroad. Where listing activates criminal liabilities, the link between the organization and any offences must be articulated in a sufficiently narrow and precise manner, to avoid unjustified liability.

Additionally, we recall article 22 of the ICCPR providing for freedom of association. The overly broad and vague nature of the abovementioned sections appears to be incompatible with the standards set forth by the Special Rapporteur on freedom of peaceful assembly and of association: namely, that the suspension and involuntary dissolution of an association should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should furthermore be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient (see A/HRC/20/27, para. 75).

We also recall the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the United Nations Declaration on Human Rights Defenders, in particular, article 5(b) which states that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: to form, join and participate in non-governmental organizations, associations or groups.

Restriction orders

Section 64 raises serious concerns of undue infringement on the rights to freedom of movement (ICCPR, article 12), freedom of expression (ICCPR, article 19), freedom of peaceful assembly and association (ICCPR, articles 21 and 22), and the right to privacy (ICCPR, article 17). Pursuant to s. 64, a Magistrate may, upon consideration of an application made by a higher-ranking police officer, impose restrictions for up to one month, on travel, movement, communication, and association, as well as reporting requirements. The provision does not require any assessment of necessity or proportionality.

We emphasize that any restriction on rights protected under the ICCPR must be lawful, necessary, proportional and non-discriminatory, subject to specific conditions applicable to the specific right such as those enumerated under article 19(3) (see above analysis on "Expression and related offences"). We draw again your Excellency's Government's attention to the best practices of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism outlines to protect human rights while using administrative measures to prevent terrorism, including the procedural safeguards required for such measures to be human rights compliant (A/80/284).

Specifically, a restrictive order should be imposed, on the balance of probabilities, only where: (a) a person is presently engaged in terrorist offences, including preparatory offences, as properly defined by law; (b) The person presents a credible and serious risk of continuing to engage in terrorist offences; (c) The order and its specific restrictions are necessary to substantially assist in preventing a terrorist act (intentional death or serious personal injury for a terrorist purpose); and (d) The order is proportionate in the individual circumstances, including because less invasive alternatives would not be effective, such as surveillance, monitoring and post-custody reporting (A/80/284, paras. 12 and 14-15). Imposing an order merely to assist in investigation, as s. 64 of the PSTA would allow, is not justified.

In the same vein, we recall that under article 21 of the ICCPR, no restrictions may be placed on the exercise of the right of peaceful assembly other than in conformity with the law. The Human Rights Committee holds that the law in question "must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement" (general comment No. 37, para. 39).

Curfews and movement restrictions

Under s. 65, the President may declare a curfew either nationwide or in parts of the country, for renewable periods of 24 hours, on very vague and overbroad grounds "for the protection and maintenance of national security, public security, public order or public safety". The provision does not require any assessment of the necessity or proportionality of a curfew, although exemptions for certain persons and activities are available. No standard of proof is specified and there is no requirement of ex ante or post facto judicial authorisation or review.

Additionally, s. 66 allows for the Secretary to prohibit any place of public use or other location that is "reasonably suspected of being used to commit an offence" under the PSTA. Prohibitions include entry into the location and, where necessary on taking photographs, video recording and sketching of the place, subject to up to three years of imprisonment and/or a fine of up to three million rupees. Judicial authorization is only required to extend the initial 72 hour period. The provision does not require any assessment of necessity or proportionality, although exemptions for specified categorise of persons are available at the discretion of the police.

We are concerned that both ss 65 and 66 risk infringing on the right to freedom of movement and consequently upon many dependent rights (for example, freedoms of peaceful assembly and of association, family life, work, education and health). Section 66 additionally risks infringing right to freedom of expression, including media freedom. Both provisions also lack adequate provision for judicial authorisation or review, due process, and effective remedies for any violations.

Accountability and oversight

The PSTA retains an overbroad immunity clause under which "[n]o civil or criminal proceedings shall be instituted against any officer or person for any act done, or purported to be done, by him in good faith under this Act, in the exercise, performance, or discharge of the powers, duties, or functions conferred by this Act, if he proves that he acted in good faith and exercised all due diligence, reasonable care, and skill" (s 70). Further, the PSTA makes no mention of a right to an effective remedy.

Article 2 of the ICCPR which requires States to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Violations of human rights should be promptly investigated and prosecuted and victims should have access to an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity, in line with article 2 of the ICCPR. Any unlawful deprivation of life or excessive use of force should be investigated and prosecuted, in accordance with article 6 of the ICCPR, general

comment No. 36, and the Minnesota Protocol on the Investigation of Potentially Unlawful Death. Any allegations of torture or ill-treatment must be promptly and independently investigated, in line with the Convention against torture and consistent with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

While we welcome the strengthened role of magistrates and the Human Rights Commission, additional and stronger oversight mechanisms are required. All counter-terrorism bodies and activities should be subject to effective independent oversight bodies empowered to review their exercise of powers, investigate allegations of unlawful, rights-violating, arbitrary or unreasonable, or unethical activity (see Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, A/HRC/14/46; and the Brussels Memorandum on Good Practices for Oversight and Accountability Mechanisms in Counterterrorism). The PSTA should be reviewed to specifically include the name of all relevant bodies and specify their powers in relation to counter-terrorism oversight.

We note that s. 25(4), requires the next of kin or other person to whom a notice of arrest of a suspect has been issued to return or produce such notice to the appropriate authority when the suspect is released from custody. We are concerned that this provision could deprive a victim of wrongful arrest, or of torture or ill-treatment in detention, of proof of their arrest in subsequent proceedings alleging violations of human rights, thus impeding acccountability.

In relation to extraterritorial investigations including joint investigations with foreign authorities (s. 50), the provision should specify that all such activities must comply with Sri Lankan law, including constitutional rights.

Victims of terrorism

The PSTA does not contain any comprehensive provisions on the rights of victims of terrorism, including to ensure their assistance, rehabilitation, and protection. It is recommended to consider enacting comprehensive provisions, whether in the PSTA Law or a separate law, drawing upon the United Nations Model Legislative Provisions to Support the Needs and Protect the Rights of Victims of Terrorism.[7]

In this regard we note that the title of the PSTA focuses on the protection of the "State" from terrorism, rather than the protection of the "people" or of Sri Lanka as a country beyond its political or institutional form. We encourage reconsideration of the title to refocus the legislation on protecting the population rather than the Government.

In conclusion, many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirm that any measures taken to combat terrorism and violent extremism must comply with international human rights law, refugee law and international humanitarian law.[8] Disregard for international law

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[7] https://www.un.org/counterterrorism/en/publication/The-Model-Legislative-Provisions

[8] Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others

can have exceptionally harmful effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society. States must also ensure that measures to combat terrorism do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.

2. Please explain how the PSTA aligns with international law, including international human rights law, international humanitarian law, and international refugee law, as reflected in the benchmarks set out in LKA 4/2023. In particular, please explain how:

    a. the definition of terrorism in s. 3(2) complies with best practice international standards;

    b. the penalties under ss 4 and 5 are consistent with the principles of proportionality and judicial discretion;

    c. the s. 6 offences associated with a proscribed terrorist organisation comply with the requirements of legality and certainty under article 15 of the ICCPR;

    d. the harbouring and concealment offences under s. 8 comply with international law, particularly articles 15, 17, 19, 22 and 23 of the ICCPR;

    e. the offences, particularly ss 8-11 and 75, read with s. 78, conform with the right to freedom of expression and opinion under article 19 of the ICCPR;

    f. the arrest and detention powers comply with the right to liberty and security under article 9 of the ICCPR, and will prevent torture and enforced disappearance;

    g. the PSTA's provisions, particularly ss 39 and 58, are consistent with the prohibition against torture and other ill-treatment under article 7 of the ICCPR and the Convention against Torture;

    h. the PSTA conforms with the rights to due process and a fair trial under article 14 of the ICCPR, particularly the right to a lawyer immediately upon arrest and throughout proceedings, the right to effective legal representation, the presumption of innocence and the right not to self-incriminate;

i. the PSTA conforms with the rights against arbitrary and unlawful interferences with individuals' privacy, family, home and correspondence, and unlawful attacks against individuals' honour and reputation, under article 17 of the ICCPR;

j. s 45 aligns with the right to life under article 6 of the ICCPR, particularly the requirements regulating the use of force;

k. the proscription powers and the range of conduct associated with proscribed organisations comply with best practice international standards, in particular under article 22 of the ICCPR, and what safeguards are envisioned to ensure freedom of association is maintained;

l. the ss 64-66 powers are in line with international law, particularly articles 2, 12, 14, 17, 19 and 21 of the ICCPR;

m. the immunity clause under s. 70 conforms with the right to an effective remedy under articles 2 and 6 of the ICCPR; and

n. the restrictive measures in ss 64 and 65 of the PSTA comply with the right to freedom of peaceful assembly under article 21 of the ICCPR.

3. Please detail what additional accountability and oversight mechanisms are envisaged to ensure that all counter-terrorism bodies and activities are subject to effective independent oversight. Please detail what powers will such bodies be granted to review and investigate allegations of unlawful, rights-violating, arbitrary or unreasonable, or unethical activity.

4. Please indicate whether the PSTA will be reviewed in light of the above analysis and submissions received from other stakeholders, including civil society and human rights defenders. Please also detail how such submissions will be taken into consideration and whether additional consultations will be held at subsequent stages of the drafting process.

5. Please indicate what steps have been taken by your Excellency's Government to ensure that public consultations on the PSTA are being carried out in a way that is representative, inclusive, and transparent.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Matthew Gillett
Vice-Chair of the Working Group on Arbitrary Detention

Gabriella Citroni
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz
Special Rapporteur on extrajudicial, summary or arbitrary executions

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Ana Brian Nougrères
Special Rapporteur on the right to privacy

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment