

මගේ අංකය
எனது இல.
My No.

ඔබේ අංකය
உமது இல.
Your No.



දිනය
திகதி
Date. } 01.10.2026

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

Hon. Harshana Nanayakkara,
Minister of Justice and National Integration,
Ministry of Justice and National Integration,
19, Sri Sangaraja Mawatha,
Colombo 01.

Hon. Minister,

Observations on Protection of the State from Terrorism Bill

We write to you with reference to the draft Bill titled 'Protection of the State from Terrorism Act' published in the official website of the Ministry of Justice. We have reviewed the said draft Bill and wish to share our observations in terms of our mandate under section 10(c) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996. The said provision empowers the Commission to 'advise and assist the government in formulating legislation...in furtherance of the promotion and protection of fundamental rights'.

The Commission observes that the Prevention of Terrorism Act (PTA), No. 48 of 1979 remains a serious blight on Sri Lanka's statute book and the time for its repeal cannot be more appropriate. Reiterating its previous observations, expressed in Press Notice dated 26 October 2022, its letter to the former President on 12 September 2023, and its letter to the Minister of Justice on 13 June 2025, the Commission recommends that the offence of 'terrorism' be dealt with under general law.

We also wish to note that, while legislative reform is crucial to ensuring counterterrorism measures are compliant with human rights standards, such reform should not be perceived as a panacea or a substitute to *institutional* reform. The selective and bad faith application of even legal provisions modelled on international human rights standards, such as section 3(1) of the International Covenant on Civil and Political Rights Act, No. 56 of 2007, underscores the importance of prioritising and investing time and resources towards reforming the security sector.

In any event, the following general recommendations are presented for your consideration in view of ensuring that the law pertaining to any offence concerning 'terrorism' fully complies with the fundamental rights chapter of the Sri Lankan Constitution and Sri Lanka's international human rights obligations:

1. Substantially revise the definition of the 'offence of terrorism' by narrowing its scope;
2. Ensure any detention order issued against any persons suspected of the 'offence of terrorism' be subject to judicial oversight as envisaged by article 13(2) of the Constitution;

ප්‍රධාන කාර්යාලය
தலைமைக் காரியாலயம்
Head Office
දුරකථන
தொலைபேசி
Telephone
14, අර්. ඒ. ද මෙල් මාවත, කොළඹ - 04.
14, ஆர்.ஏ.த.மெல் மாவத்தை, கொழும்பு-04.
14, R.A.De Mel Mawatha, Colombo - 04.
94-11- 2505580/81/82

සභාපති
தவிசாளர்
Chairperson
ලේකම්
செயலாளர்
Secretary
011-2505451
011-2505521

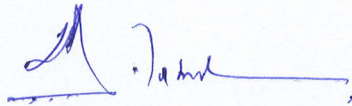
ෆැක්ස්
தொலைநகல்
Fax
ක්ෂණික
தூரித அழைப்பு
Hotline
011 2505541/74
011-2505575
1996

විද්‍යුත් තැපෑල
மின்னஞ்சல்
E-mail
වෙබ්
இணையம்
Web
sechrcsl@gmail.com
www.hrcsl.lk

3. Ensure that a judge is, **at all times**, vested with meaningful authority to grant bail to any suspect taken into custody on suspicion of the 'offence of terrorism';
4. Ensure any person deprived of liberty be granted prompt and meaningful access to legal counsel without arbitrary or unreasonable conditions;
5. Ensure that a suspect is given meaningful access to legal counsel prior to making any statement to a Magistrate.
6. Ensure the meaningful independence of the so-called Independent Review Committee.

We enclose herewith our detailed observations on the specific provisions of the draft Bill (Annex 1). We regret to note that many of the detailed observations contained in the Annexure were previously communicated to the then Minister of Justice on 26 October 2023 when the Commission shared its observations on the previous 'Anti-Terrorism Bill'. The Commission invites your Ministry to consider these observations in determining whether it is appropriate to pursue enactment of the proposed Bill. We thank you for your Ministry's cooperation and continued engagement.

Sincerely,



Justice L.T.B. Dehideniya,
Chairman,
Human Rights Commission of Sri Lanka.

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

Cc: H.E. Anura Kumara Disanayake
President of the Republic of Sri Lanka
Minister of Defence,
Presidential Secretariat
Colombo 01

Annex 1

Observations on the Draft Protection of the State from Terrorism Bill

1. Definition of Terrorism

The PTA does not contain a clear definition of ‘terrorism’, and instead contains vague and open-ended offences. For example, it contains a vague and open-ended offence in section 2(1)(h) of the PTA, which makes it an offence to cause ‘religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups’ through ‘words either spoken or intended to be read or by signs or by visible representations’.

At the outset, it is observed that the primary focus of the proposed Protection of the State from Terrorism Bill appears to be protecting the ‘State’ as opposed to the ‘People’ from acts of terrorism. The primary reason, if any, for singling out ‘terrorism’ as a separate and egregious crime is that it indiscriminately targets civilians. A Bill that shifts the focus from protecting civilians to the ‘state’ risks overemphasis on the protection of state institutions from opposition and dissent as opposed to protecting civilians from indiscriminate violence.

The Bill contains a definition that appears to draw from some elements of the model definition developed by a former UN Special Rapporteur on Human Rights and Counter-Terrorism.¹ However, this model definition does not include the targeting of property, and is confined to hostage taking, or causing death or serious bodily injury to, or lethal or serious physical violence against, one or more members of the general population or segments of it. Yet, the acts constituting the offence of ‘terrorism’ found in **Clauses 3(2)(d), (e), (g), (h), and (i)** of the Bill relate to property, infrastructure, or the environment.

We observe that, in **Clause 3(1)**, the Bill sets out the criteria for the offence of terrorism by introducing certain ‘intentions’ that can make ordinary offences amount to the offence of ‘terrorism’. These intentions are:

- (a) provoking a state of terror in the public or a group of persons; or
- (b) unduly compelling a government or an international organisation, to do or to abstain from doing any act.

We note that intention ‘**(b)**’, i.e., ‘*unduly* compelling a government or an international organisation, to do or to abstain from doing any act’ (emphasis added) may include public protests and demonstrations, strike action, and acts of civil disobedience, which are integral to the fundamental rights of all citizens to the freedoms of expression, association, and peaceful assembly. We are deeply concerned that the term ‘unduly’ is vague and overbroad and may be distinguished from more precise legal terms such as ‘wrongfully’ or ‘unlawfully’.

Clauses 3(2)(d) and (e) of the Bill respectively provide that the act of ‘serious damage to any place of public use, any public property, any public or private transportation system or any infrastructure facility, which causes a likelihood of danger to life or substantial economic loss’ and ‘serious or long-term damage to the environment, which causes a likelihood of danger to life or substantial economic loss’ if carried out with one of the abovementioned intentions, can amount to the ‘offence of terrorism’.

¹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, *Report on ten areas of best practices in countering terrorism* (2010) UN Doc. A/HRC/16/51, para 28.

While an act targeting property, infrastructure, or the environment may amount to a criminal offence under the Penal Code Ordinance, No. 2 of 1883 (as amended), the Commission is concerned that such an act is now capable of being characterised as an ‘offence of terrorism’ when committed with the intention of compelling a government to do or to abstain from doing any act. For example, public protests against a particular governmental policy may escalate to the point where serious damage to a place of public use may occur. While perpetrators of such damage may be dealt with under ordinary criminal law, the characterisation of such acts as an ‘offence of terrorism’ is unreasonable and disproportionate, particularly given that such suspects would be subjected to a separate procedural regime under the proposed Bill. For example, by virtue of being a suspect with respect to the offence of ‘terrorism’ as opposed to under the ordinary criminal law, a suspect would be liable to be detained under a detention order without prospect for bail.

The effects of the overbroad definition of the ‘offence of terrorism’ are compounded by other provisions of the Bill. For example, under **Clause 9(1)** of the Bill, a person ‘who, with the intention of directly or indirectly inducing the public or any section of the public, to commit, attempt, abet, conspire to commit or prepare to commit, the offence of terrorism, publishes or causes to be published any statement, or speaks any word or words, or makes any sign or visible representation’ also commits an offence. Considering this example, if serious damage to places of public use in the context of a public protest can be deemed an ‘offence of terrorism’, encouragement of that protest may be considered a separate offence under **Clause 9(1)** of the Bill. This framework further jeopardises the people’s fundamental right to the freedom of speech and expression (guaranteed under article 14(1)(a) of the Constitution) which includes the right to call for peaceful protests against governmental policies.

The same problem arises with respect to offences relating to ‘terrorist publications’ under **Clause 10** of the Bill, as what constitutes a ‘terrorist publication’ includes a publication that is ‘a direct or indirect inducement to commit, attempt, abet, conspire to commit or prepare to commit the offence of terrorism. Therefore, considering the above example, any publication that encourages such a public protest, which falls within the technical definition of an offence of terrorism, may be treated as a ‘terrorist publication’, and may constitute a separate offence.

Additionally, the failure to report an offence or preparation of an offence is separately criminalised under **Clause 15** of the Bill. Considering the above example, such an offence can apply to those who are aware of plans to stage a public protest (which is treated as an ‘offence of terrorism’) but fails to report such plans.

The Commission accordingly reiterates its previous observation, expressed in Press Notice dated 26 October 2022 and its letter to H.E. the President on 12 September 2023, that ‘the offence of terrorism can be dealt with under general law’.

It is recommended that any new offence with respect to ‘terrorism’ introduced under any law should contain a specific and narrow definition of ‘terrorism’, such as the following: ‘Any person who engages in hostage taking, or causes death or serious bodily injury to, or lethal or serious physical violence against, one or more members of the general population, with the intent to spread fear among such population or segment thereof in furtherance of a political, ideological, or religious cause, commits the offence of terrorism’.

2. Long Term Detention

The PTA permits long term detention – up to twelve months – without a trial. The Commission notes the scores of cases in which persons accused of offences under the PTA have languished in detention without any substantial progress in framing charges against them.

Under **Clause 27** of the Bill, the Inspector General of Police (IGP) or any officer not below the rank of a Deputy Inspector General of Police (DIG) authorised by the IGP may apply to the Secretary to the Ministry of Defence to obtain a detention order against a suspect. Such detention order may be valid for a period of two months and can be extended for further two-month periods up to an aggregate of twelve months. Therefore, the proposed Bill enables the same total period of detention currently authorised by the PTA.

We also note that **Clause 27** of the Bill enables the *Secretary* to the Ministry of Defence to issue a detention order for an initial period of two months. This provision may be contrasted with section 9 of the PTA, which only enables the Minister of Defence (often the President of the Republic) to issue a detention order. A detention order is an extraordinary measure that amounts to a restriction on the fundamental right to the freedom from arbitrary detention guaranteed by article 13(2) of the Constitution. An executive official, such as the Secretary to the Ministry of Defence, ought not to be vested with such extraordinary power.

Article 13(2) of the Constitution provides that no person is held in custody, detained, or deprived of personal liberty *except upon and in terms of the order of [a] judge*’ (emphasis added). However, under **Clause 26(3)(a)** of the Bill, when a detention order has been issued in terms of **Clause 27**, and is placed before the Magistrate for his inspection, ‘the Magistrate *shall* make an order giving effect to such Detention Order’ (emphasis added). In such a context, the judge is not given any discretion to refuse to give effect to a detention order that they believe to be wrongly issued, and is, therefore, precluded from issuing a judicial order on the matter. We observe that this denial of meaningful judicial oversight with respect to a detention order is inconsistent with article 13(2) of the Constitution.

It is recommended that the operation of a detention order, from the outset, be subject to an order of a judicial officer to ensure that no person is ‘held in custody, detained, or deprived of personal liberty except upon and in terms of the order of [a] judge made in accordance with procedure established by law’ as per article 13(2) of the Constitution (emphasis added).

3. Denial of bail

It is recalled that under section 7 of the PTA, the Magistrate is required to remand a suspect until the conclusion of the trial. The Magistrate (and after the indictment is served, the High Court) is precluded from granting a suspect (and thereafter, an accused person) bail. At present, the Attorney-General may consent to bail when the case is before the Magistrate, and the Court of Appeal may grant bail when the case is before the High Court, and after the indictment is served.

The Commission observes that the guarantee of judicial oversight of the welfare of persons in custody, and the guarantee that all accused persons are afforded a fair trial, are basic features of the Sri Lankan Constitution encapsulated in article 13 of the Constitution. The exercise of powers and functions in this respect remains the exclusive province of the judiciary of Sri Lanka and must not be assigned to executive officials. The fundamental right to be free from torture, and inhuman or degrading treatment (article 11), and the fundamental right to a fair

trial (article 13) can only be meaningfully guaranteed if judicial officers are entrusted with such powers and functions.

Under **Clause 26(3)** of the Bill when a suspect is produced before a Magistrate, the Magistrate is precluded from granting bail and is compelled to either give effect to a detention order or remand the suspect. The Magistrate has no option to set aside the detention order even where they are of the opinion that it lacks a basis. The Bill, therefore, strips the judiciary of its fundamental authority to make orders with respect to the deprivation of liberty of a person, and such authority is transferred to executive officers, i.e., the police officer producing the suspect or the secretary to the Ministry of Defence.

In any event, **Clause 28** of the Bill grants the authority to the High Court to approve any extension of a detention order beyond the initial period of two months. Clause 28(4)(b) authorises the High Court to refuse to give effect to the extended detention order, stating the reasons therefor, and upon inquiry, remand the suspect or release them on bail. The question that then arises is why such judicial authorisation cannot be sought at the outset to ensure full compliance with article 13(2) of the Constitution, i.e., the safeguard that an independent judicial officer determines the appropriateness of depriving a person of their liberty.

It is recommended that a judicial officer be vested with meaningful authority to grant bail to any suspect taken into custody on suspicion of the offence of ‘terrorism’, and such authority be in terms of the Bail Act, No. 30 of 1997.

4. Access to an Attorney-at-Law

Clause 40(1) of the Bill provides: ‘a suspect remanded or detained under this Act shall have the right to communicate with and be visited by his relatives, Attorney-at-Law or any other person of his choice, subject to the conditions established by written law’. It is noted that ‘written law’ is defined in article 170 of the Constitution as ‘any law and subordinate legislation [and includes statutes made by a Provincial Council, Orders], Proclamations, Rules, By-laws and Regulations made or issued by any body or person having power or authority under any law to make or issue the same’. Therefore, a suspect’s access to an attorney-at-law may be subject to conditions stipulated by subordinate legislation including police or prison circulars, which are not subject to parliamentary oversight.

Although the right to access legal counsel is not explicitly guaranteed in the Sri Lankan Constitution, the Commission observes that every person deprived of liberty in Sri Lanka has a statutory right to access legal counsel. Section 15(2) of the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018 provides: ‘any person deprived of liberty shall have the right to communicate with and be visited by his...attorney-at-law...subject only to the conditions established by written law.’

The Commission is of the view that any conditions with respect to a person’s ability to access legal counsel while being deprived of liberty must be set out by written law in a manner consistent with the fundamental right to a fair trial guaranteed by article 13(3) of the Constitution and Sri Lanka’s international human rights obligations.

Article 9 of the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka is party to, guarantees the right to liberty and the security of persons. It also recognises the freedom from arbitrary arrest or detention, and the right to due process established by law. The United Nations Human Rights Committee, the treaty body responsible for interpreting the ICCPR, has elaborated on the state’s obligations under article 9. In General Comment No. 35,

the Committee observes that article 9 imposes an obligation on states to 'permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention'. The Committee also opines that arrested persons should be afforded 'prompt and regular access' to lawyers. Article 14 of the ICCPR meanwhile provides that every person shall have the right 'to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.' The Committee has elaborated on this right in General Comment No. 32 and has observed that 'the right to communicate with counsel requires that the accused is granted prompt access to counsel.' Therefore, the ICCPR clearly recognises the right to prompt and meaningful access to legal counsel.

It is recommended that no conditions with respect to accessing legal counsel be imposed through 'written law', including circulars, except where they are fully compliant with article 13(3) of the Constitution and Sri Lanka's international human rights obligations. Persons deprived of liberty ought to be guaranteed prompt and meaningful access to legal counsel without arbitrary or unreasonable conditions being placed on such access.

5. Admissibility of Statements

Currently, under section 16(1) of the PTA, a confession made by a suspect to an officer not below the rank of Assistant Superintendent of Police is admissible as evidence against the suspect. This provision has incentivised torture of suspects held in custody under the PTA and has led to the systematic denial of the right to a fair trial guaranteed by article 13(3) of the Constitution.

Under the proposed Bill, a statement made by a suspect to a police officer would not be treated as admissible as evidence against the suspect. **Clause 58** of the Bill sets out the conditions on which a statement to a Magistrate could be admissible against the suspect. Such conditions are that the suspect must be examined by a judicial medical officer immediately before and after the statement to a Magistrate, and the judicial medical officer's report should be produced by the prosecutor during the trial at the inquiry into the voluntariness of the statement.

Under **Clause 56(2)(a)** of the Bill, the person making a statement must be informed of their right to access an attorney-at-law. We reiterate the observations and recommendations presented above under the section on 'Access to an Attorney-at-Law'. It is imperative that any suspect who makes a statement that may be admissible as evidence against such suspect should have meaningful access to legal counsel *prior* to making such a statement. It is insufficient to merely inform such a suspect of the right to access an attorney-at-law if such right is not practically available to the suspect.

It is recommended that a suspect be given practical and meaningful access to an Attorney-at-Law of the suspect's choice prior to making any statement to a Magistrate.

6. Independent Review Committee

Clause 30 of the Bill establishes what is described as an 'independent' Review Committee with powers to review detention orders made under the Act. However, the members of the Committee will be appointed by the Minister of Defence. Moreover, **Clause 30(9)** provides that the Minister may make regulations prescribing the procedure to be followed by the Committee. Therefore, it is observed that the Committee comprises members appointed by a political authority and are subject to the control of such authority, thereby casting doubt over the nature of its independence.

It is recommended that the appointment procedure and regulatory framework applicable to the Independent Review Committee ensures meaningful independence from political control.

It is recommended that no conditions with respect to exercising legal counsel be imposed through 'written law', including directives, except where they are fully compliant with article 14(1) of the Constitution and Bill 1. Article 14(1) of the Constitution states that the right to legal counsel is a fundamental right and should be guaranteed promptly and meaningfully access to legal counsel without arbitrary or unreasonable conditions being placed on such access.

6. Admissibility of Statements

Currently, under section 16(1) of the PIA, a confession made by a suspect to an officer not below the rank of Assistant Superintendent of Police is admissible as evidence against the suspect. This provision has incentivised torture of suspects held in custody under the PIA and has led to the systematic denial of the right to a fair trial guaranteed by article 14(1) of the Constitution.

Under the proposed Bill, a statement made by a suspect to a police officer would not be treated as admissible as evidence against the suspect. Clause 38 of the Bill sets out the conditions on which a statement to a Magistrate could be admissible against the suspect. Such conditions are that the suspect must be examined by a judicial medical officer immediately before and after the statement to a Magistrate, and the judicial medical officer's report should be produced by the prosecutor during the trial as the basis for the admissibility of the statement.

Under Clause 38(1)(a) of the Bill, the person making a statement must be returned to their right to access an attorney-at-law. We reiterate the observations and recommendations presented above under the section on 'Access to an Attorney-at-Law'. It is imperative that any suspect who makes a statement that may be admissible as evidence against such suspect should have meaningful access to legal counsel prior to making such a statement. It is essential to merely inform such a suspect of the right to access an attorney-at-law if such right is not practically available to the suspect.

It is recommended that a suspect be given practical and meaningful access to an attorney-at-law at the suspect's choice prior to making any statement to a Magistrate.

6. Independent Review Committee

Clause 39 of the Bill establishes what is described as an 'Independent Review Committee' with powers to review detention orders made under the Act. However, the members of the Committee will be appointed by the Minister of Defence. Moreover, Clause 39(2) provides that the Minister may make regulations prescribing the procedure to be followed by the Committee. Therefore, it is observed that the Committee comprises members appointed by a political authority and are subject to the control of such authority, thereby casting doubt over the nature of its independence.