



TG ASA 37/2023.4179

Minister of Justice, Prison Affairs and Constitutional Reforms
Ministry of Justice - Sri Lanka
No 19,
Sri Sangaraja Mawatha,
Colombo 10.

31 May 2023

Honourable Minister,

Amnesty International is writing to you with concerns regarding the proposed Anti-Terrorism Act. Earlier this month, the Ministry of Justice sought public comments and proposals on the bill that was issued on the gazette on 22 March 2023.¹ Amnesty International has previously commented on the amendment brought to the Prevention of Terrorism Act (PTA) in 2022² as well as the Counter-Terrorism bill gazetted in 2018.³

Amnesty International finds the latest Anti-Terrorism bill very worrying. The draft law infringes on many human rights, including the rights to freedom of expression, peaceful assembly, association, liberty and security, and the presumption of innocence as guaranteed by the International Covenant on Civil and Political Rights (ICCPR), to which Sri Lanka is a state party. The bill is also in contravention of fundamental rights enshrined in Sri Lanka's own Constitution.

Amnesty International is further concerned that there is no precise definition of the offenses that would be criminalized under this bill, and the law provides unnecessary and unchecked powers to the State security apparatus with little room for scrutiny or judicial oversight. Further, we're disappointed that drafters have not considered the benchmarks⁴ laid out by UN experts in order to ensure that all counter-terrorism measures are in line with international human rights law and standards. Amnesty International believes the bill would need substantial amendments to be brought in line with Sri Lanka's obligations under international law.

What we have noted below is not an exhaustive list of concerns but include some of the most salient issues that do not meet international human rights law and standards in the context of counter-terrorism.

- The offences in the Anti-Terrorism bill are overly-broad, vague and subjective, which make them ripe for their arbitrary application and abuse, including new offences that seek to make acts of civil disobedience a terror offence. Even offences already in existing legislation under Sri Lanka's domestic ICCPR Act (that gives effect domestically to certain articles in the international covenant) are formulated as terror offences under the proposed Act. All counter-terrorism laws must be consistent with international human rights law and standards, including with the obligation to comply with the principle of legality.⁵ Criminal offences must be

¹ Proposed Anti-Terrorism Bill issued by gazette, 22 March 20123, http://documents.gov.lk/files/bill/2023/3/304-2023_E.pdf

² Amnesty International, *Sri Lanka: Commentary on the Prevention of Terrorism Act Amendment Bill*, 18 March 2022, <https://www.amnesty.org/en/documents/asa37/5372/2022/en/>

³ Amnesty International, *Countering terrorism at the expense of human rights: Concerns with Sri Lanka's Counter Terrorism Bill*, 31 January 2019, <https://www.amnesty.org/en/documents/asa37/9770/2019/en/>

⁴ UN experts' joint communication to the Sri Lankan government, 9 December 2021,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26863>

⁵ The principle of legality under international law provides for guarantees against the state's arbitrary exercise of its powers, and

formulated with sufficient precision to enable an individual to regulate their conduct accordingly and must be made accessible to the public. Laws must not confer unfettered discretion on authorities, but rather provide sufficient guidance to those charged with their application to enable them to ascertain the sort of conduct that falls within their scope. With regard to criminalization, the principle of legality requires that the law must classify and describe offences in precise and unambiguous language that narrowly defines the punishable behaviour.

- The new bill still retains provisions to enable prolonged detention of up to one year without charge, which the High Court can extend by request of the Attorney General. International human rights law requires that people detained in connection with a criminal offence either be charged promptly and tried within a reasonable time in proceedings which fully comply with international fair trial guarantees, or else be released. Prolonged detention without charge or trial undermines fair trial rights, including the right to be promptly informed of any charges, the rights to be free from arbitrary detention, torture and other ill-treatment and the presumption of innocence. One year of pre-charge detention is not in keeping with these standards protecting the right to liberty and to a fair trial – and so violates Sri Lanka’s international human rights obligations.⁶ According to the UN Human Rights Committee, even if detention is in terms of the law, it may still be arbitrary. Assessment of arbitrariness is made after considering “inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality”.⁷
- The bill provides the Police with access to those who are already indicted and in judicial remand, and enables suspects to be removed from remand custody for the purpose of conducting further investigations under the authority of an order made by a Magistrate. This provision could facilitate torture and other ill-treatment, especially in a context that is rife with allegations of torture in custody. Following his mission to Sri Lanka in 2017, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism noted that “the PTA had been used to commit some of the worst human rights violations, including widespread torture and arbitrary detention, in the run-up to and during the conflict, particularly to target minorities and suppress dissent”.⁸ The Human Rights Commission of Sri Lanka (HRCSL) in its 2016 submission to the UN Committee against Torture also highlighted the blatant use of torture within the Sri Lankan context. They noted that according to complaints received by the Commission, “torture is routinely used in all parts of the country regardless of the nature of the suspected offence for which the person is arrested.”⁹ The absolute prohibition of torture and other ill-treatment has been codified in various international treaties, including Article 7 of the ICCPR and the Convention against Torture, to which Sri Lanka is a state party, and is also a norm of customary international law.
- The bill confers powers to the military that go beyond what these forces are trained and enabled to do, including powers to carry out arrests without warrants. Such powers should only be reserved to civilian law enforcement authorities like the police since the army is not trained nor equipped to be involved in the maintenance of public order.
- The bill retains unchecked powers of the executive, including to proscribe persons and organisations without judicial oversight. According to international human rights law and standards, the decision to ban or involuntarily dissolve an organization are among the severest restrictions on the right to freedom of association, protected under article 22 of the ICCPR. Given the severity of the measure, it may only be used

therefore any restriction on human rights must be “provided” or “prescribed” by law. See Articles 12, 17, 18, 19, 21 and 22 of the ICCPR.

⁶ See for example, Article 9(1), (2) and (4) of the ICCPR, and in particular 9(3) which states that “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

⁷ UN Human Rights Committee General Comment 35, para. 12

⁸ Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism, July 2018, https://www.ohchr.org/Documents/Countries/LK/Sri_LankaReportJuly2018.PDF

⁹ Report of the Human Rights Commission to the Committee Against Torture, Review of the 5th periodic report on Sri Lanka, October 2016, <https://www.hrcls.lk/wp-content/uploads/2020/01/Report-to-CAT-Committee-.pdf>

when there is a clear and imminent threat to a legitimate interest, such as national security or public order, and it must be strictly necessary and proportionate to the legitimate aim pursued and used only when less restrictive means would be insufficient. Such a decision must only be made by an independent and impartial court, and must be subject to appeal.

- The bill empowers any Deputy Inspector General of Police (DIG) to issue 3-month Detention Orders (a power formerly vested under a warrant by the Defence Minister under the Prevention of Terrorism Act). There is limited judicial oversight in the bill over this discretion provided to DIGs.
- Penalties for some offences under the bill include the death penalty. The death penalty is irreversible and is the ultimate cruel, inhuman and degrading punishment. Amnesty International opposes the death penalty in all cases without exception – regardless of who is accused, the nature or circumstances of the crime, guilt or innocence or method of execution.

For the reasons listed above, and other concerns already highlighted by both UN experts¹⁰ and civil society organizations,¹¹ we urge you to reconsider the bill in its entirety and ensure that any further legislative initiative to adopt counter-terrorism laws are fully consistent with Sri Lanka's obligations under international law. In the interim period, we urge the government of Sri Lanka to desist from making any further arrests or to continue with the prosecution of those already detained under the PTA as witnessed in the arrest of four persons under the PTA on 18 May 2023¹² and issue a genuine moratorium on its use.

We remain available for further discussion and consultation on the topic.

Thanking you,



Sincerely,

Smriti Singh
Deputy Regional Director – South Asia
Amnesty International

¹⁰UN experts' joint communication to the Sri Lankan government, 28 April 2023,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28057>

¹¹ The Morning, *Anti-Terrorism Bill: The good, bad and the ugly*, Ambika Satkunanathan, March 2023,

<https://www.themorning.lk/articles/exU6u3BcqtdePFQNTam>; Groundviews, *When Repeal Is Not Reform: An Anti-Terrorism Act Worse Than The PTA*, Ermiza Tegal, 28 March 2023, <https://groundviews.org/2023/03/28/when-repeal-is-not-reform-an-anti-terrorism-act-worse-than-the-pta/>; Centre for Policy Alternatives, *CPA Statement on the Anti-Terrorism Bill – 2023*, 27 March 2023, <https://www.cpalanka.org/cpa-statement-on-the-anti-terrorism-bill-2023/>; Human Rights Watch, *Sri Lanka: Reject New Counterterrorism Bill*, 7 April 2023, <https://www.hrw.org/news/2023/04/07/sri-lanka-reject-new-counterterrorism-bill>

¹² Four persons, Mohamed Asfer Mohamed Anas, Mohamed Jusair Abdul Hameed Jabir, Mohamed Azeez Abu Bakr Siddique, and Rawutar Naina Asnar Marrikar were arrested by the Sri Lankan Police on 18 May 2023 for charges under the Penal Code and the PTA in connection with the 21 April 2019 bombings.