

END THE USE OF AND REPEAL THE DRACONIAN PTA

43 years since it was first passed as a temporary measure, the draconian PTA continues to be used by the Government of Sri Lanka to target, and harass minorities, activists, journalists and critical voices. Despite assurances to amend the problematic legislation, proposed amendments have fallen severely short of safeguarding rights protected by international human rights law and the Constitution of Sri Lanka. This briefing documents two cases, out of the many people detained under the PTA.



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1. INTRODUCTION

The Sri Lankan Prevention of Terrorism Act¹ (PTA) was initially passed in 1979 as a temporary measure to tackle “elements or groups of persons or associations”² attempting to bring about a change of government. It was then made a permanent law in 1982.³ Sri Lankans, and minorities in particular, still bear the burden of this draconian legislation which is used to detain people for prolonged periods of time, without charge and often times in contravention of due process guarantees recognised by international law. Despite the Sri Lankan government’s multiple assurances⁴ that the PTA would be reformed in line with international law and standards, to date no adequate reforms⁵ have taken place and the PTA continues to be used as a tool to arbitrarily arrest and detain people, violate fair trial rights, and put detainees at risk of torture or other ill-treatment, amongst other violations. On 27 January 2021, the Sri Lankan government gazetted amendments⁶ to the PTA, however Amnesty International has found that these fail to address critical gaps in the law. This statement documents two cases, out of the many people detained under the PTA.

Amongst other deeply flawed provisions of the PTA, the following are notable for contributing to the violation of the human rights of people detained under the law:

- Detainees can be held for up to 18 months without charge.
- Arbitrary orders can be made by the Minister of Defence, restricting freedom of expression and association, with no right of appeal in courts.
- Contains special rules of evidence, allowing for confessions to be admissible in court.
- Places the burden on a suspect to prove to a court that a statement was made under duress.
- Unclear provisions on procedure of granting bail and therefore some detainees are not granted bail due to this lack of clarity

¹ Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)

² Preamble, Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)

³ By way of the passing of the Prevention of Terrorism (Temporary Provisions) Amendment Act No. 10 of 1982

⁴ UN Human Rights Council, *Resolution 30/1 Promoting reconciliation, accountability and human rights in Sri Lanka*, 14 October 2015, www.mfa.gov.lk/wp-content/uploads/2018/03/RES-30-1.pdf

⁵ France24, *Sri Lanka agrees to reform terror law to keep EU trade deal*, 5 October 2021, www.france24.com/en/live-news/20211005-sri-lanka-agrees-to-reform-terror-law-to-keep-eu-trade-deal

EconomyNext, *Sri Lanka president strikes reconciliatory note in policy statement*, 18 January 2022, economynext.com/sri-lanka-president-strikes-reconciliatory-note-in-policy-statement-89716/

⁶ In 2018, the government of the day brought in a new legislation bill to replace the PTA, however provisions of the bill contravened international law and standards. See: 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/>

⁶ Gazette of the Democratic Socialist Republic of Sri Lanka, *A Bill to amend the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979*, 27 January 2022, documents.gov.lk/files/bill/2022/1/171-2022_E.pdf

As noted above, the Government of Sri Lanka attempted to pacify both local and international calls for the repeal of the draconian PTA by making grossly inadequate amendments. These amendments however still do not bring the legislation in line with international human rights law and standards and are thereby wholly insufficient. Amnesty International has found that the amendment still:

- does not change the vague, overly broad and ill-defined offence of ‘terrorism’, which has been abused to target minorities, critics and journalists;
- continues to allow confessions to be admissible evidence despite documentation of the routine torture of PTA detainees. The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment is guaranteed by the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), which Sri Lanka acceded to on 3 January 1994,⁷ and also enshrined in Article 11 of the Constitution of Sri Lanka;⁸
- permits arbitrary arrests and prolonged detention that is not subject to judicial scrutiny for its lawfulness. Article 9 (1) of the ICCPR, to which Sri Lanka acceded to on 11 June 1980,⁹ guarantees the right to liberty and security of person;
- places no obligation on law enforcement authorities to inform a suspect at the time of arrest, the reasons for the arrest, a guarantee under Article 9(2) of the ICCPR;¹⁰
- has no provision to require anyone arrested or detained on a criminal charge to be brought promptly before a judge, to be entitled to trial within a reasonable time, failing which the person should be released. – a guarantee under Article 9 (3) of the ICCPR.¹¹

On 11 June 1980, Sri Lanka acceded to the International Covenant on Civil and Political Rights (ICCPR). As such, Sri Lanka is bound to protect the rights set out, which include freedom from torture, or cruel, inhuman or degrading treatment,¹² the right to liberty and security of person,¹³ the right to be tried without undue delay,¹⁴ freedom of expression,¹⁵ the right to peaceful assembly,¹⁶ and freedom of association.¹⁷ Furthermore, the Constitution of Sri Lanka too protects Sri Lankans from torture, or cruel, inhuman or degrading treatment or punishment,¹⁸ freedom from arbitrary arrest, detention and punishment,¹⁹ and freedom of expression,²⁰ peaceful assembly,²¹ association.²²

In practice, authorities use the PTA to detain suspects for lengthy periods without charge and trial. They deny the accused and their families basic due process safeguards such as producing an arrest warrant, informing suspects of the reason for their arrest, producing an arrest receipt notifying the family of where they will be held, access to legal representation, access to family, being promptly produced before a judge. These safeguards have become increasingly important in a context where during the period of the war and after, there have been a number of enforced disappearances, where people who have been taken away by Sri Lankan authorities were never to be heard from again. Sri Lanka has received significant international condemnation for widespread enforced disappearances.²³

⁷ UN Treaty Body Database, *Sri Lanka*, tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN

⁸ Article 11, Constitution of the Democratic Socialist Republic of Sri Lanka

⁹ UN Treaty Body Database, *Sri Lanka*, tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN

¹⁰ Article 9(2), International Covenant on Civil and Political Rights

¹¹ Article 9(3), International Covenant on Civil and Political Rights

¹² Article 7, International Covenant on Civil and Political Rights

¹³ Article 9, International Covenant on Civil and Political Rights

¹⁴ Article 14 (c), International Covenant on Civil and Political Rights

¹⁵ Article 19 (2), International Covenant on Civil and Political Rights

¹⁶ Article 21, International Covenant on Civil and Political Rights

¹⁷ Article 22, International Covenant on Civil and Political Rights

¹⁸ Article 11, Constitution of Democratic Socialist Republic of Sri Lanka

¹⁹ Article 13, Constitution of Democratic Socialist Republic of Sri Lanka

²⁰ Article 14 (1) (a), Constitution of Democratic Socialist Republic of Sri Lanka

²¹ Article 14 (1) (b), Constitution of Democratic Socialist Republic of Sri Lanka

²² Article 14 (1) (c), Constitution of Democratic Socialist Republic of Sri Lanka

²³ UN Commission on Human Rights, *Report of the Working Group on Enforced or Involuntary Disappearances*, 18 January 2002, UN Doc: E/CN.4/2002/79, ap.ohchr.org/documents/alldocs.aspx?doc_id=2910

In 2012, Amnesty International found that tens of thousands of Tamils with suspected links to the Liberation Tigers of Tamil Eelam (LTTE), a Tamil-armed group, were detained under the PTA.²⁴ In 2018, the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism described the PTA as being “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”²⁵. More recently, Amnesty International documented the cases of Ahnaf Jazeem, a Muslim poet, and Hejaaz Hizbullah, a prominent Muslim lawyer who was declared Prisoner of Conscience by Amnesty International, who were detained under the PTA for prolonged periods of time, without charge and whose detention contravened due process principles.²⁶ Further, Amnesty International expressed concern about new regulations under the PTA on the “de-radicalization of people from holding violent extremist religious ideology”,²⁷ which may be used to disproportionately target a broad group of government critics, including members of the Muslim community.²⁸

The following two cases were narrated to Amnesty International by the family members of the detainees, and where possible, their lawyers or legal representatives:

2. DIVANIYA MUKUNTHAN

Name: Divaniya Mukunthan
From: Killinochchi, Sri Lanka
Ethnicity: Tamil
Age: 34 years
Profession: Director of YouTube channel, TubeTamil
Period of detention: Over 10 months
Formally charged by the state: No



Divaniya Mukunthan is a 34-year-old director of TubeTamil,²⁹ a YouTube channel with 334,000 subscribers, reporting on global and Sri Lankan news in the Tamil language. Divaniya has been in detention for more than 10 months and is yet to be formally charged with an offence.

²⁴ Amnesty International, *Locked away: Sri Lanka's security detainees*, 2012, <https://www.amnesty.org/download/Documents/20000/asa370032012en.pdf>

²⁵ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms, *Visit to Sri Lanka - Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 14 December 2018, UN Doc: A/HRC/40/52/Add.3, ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/52/Add.3

²⁶ Amnesty International, *Sri Lanka: Poet detained for one year without charge: Ahnaf Jazeem*, 14 May 2021, Index No: ASA 37/4119/2021, www.amnesty.org/en/documents/asa37/4119/2021/en/

Amnesty International, *Sri Lanka: Concerns mount for detained lawyer: Hejaaz Hizbullah*, 27 April 2020, Index No: ASA 37/2221/2020, www.amnesty.org/en/documents/asa37/2221/2020/en/

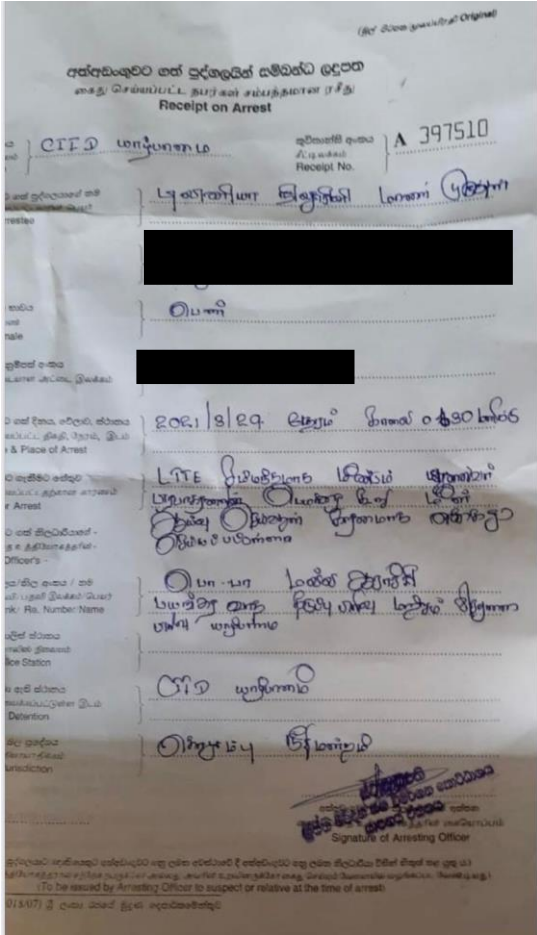
²⁷ Groundviews, “Denying Justice While Dehumanizing a Community at Large”, 21 April 2021, groundviews.org/2021/04/21/denyingjustice-while-dehumanizing-a-community-at-large/; Emergency (Miscellaneous Provisions and Powers) Regulation, No. 1 of 2019, published in the Gazette Extraordinary No. 2120/5 of April 22, 2019, documents.gov.lk/files/egz/2019/4/2120-05_E.pdf

²⁸ Amnesty International, *Increased Marginalization, Discrimination and Targeting of Sri Lanka's Muslim Community*, 19 March 2021, Index No: ASA 37/3866/2021, www.amnesty.org/en/documents/asa37/3866/2021/en/

²⁹ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

2.1 DUE PROCESS SAFEGUARDS

On 29 March 2021, at 6.30pm, Divaniya was arrested from the TubeTamil office located in Jaffna, in the Northern Province of Sri Lanka.³⁰ At the time of her arrest she was told that she was being arrested for attempting to revive the LTTE.³¹ According to media reports,³² Divaniya’s colleague, Nimalraj Juvanis was arrested from his home in Jaffna at the same time. Divaniya’s detention order states that she has been arrested for attempting to revive the LTTE.³³ Divaniya’s arrest receipt has the same reason,³⁴ however to date the authorities continue to detain her without charge. Divaniya is currently being represented by a lawyer pro-bono, as her family would be unable to afford legal representation otherwise.³⁵



© ↑ Divaniya’s detention order

Divaniya’s prolonged detention is a violation of her right to trial within a reasonable period of time, and her right to be tried without undue delay. Divaniya also has the right to be informed of the reason for her detention. This is set out clearly in Article 9 of the ICCPR which dictates that at the time of arrest, a suspect must be informed of the reason of their arrest and then promptly of any charges against them. They then are entitled to a trial within a reasonable time or should be released.³⁶ Having been

³⁰ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone
³¹ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone
³² Sri Lanka Brief, *Sri Lanka: Call for immediate release of all Tamil women detained under PTA : Divaniya, Jinitha and Thuvitha*, 14 September 2021, srilankabrief.org/sri-lanka-call-for-immediate-release-of-all-tamil-women-detained-under-pta-divaniya-jinitha-and-thuvitha/
³³ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone
³⁴ Amnesty International has seen a copy of the arrest receipt
³⁵ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone
³⁶ Article 9, International Covenant on Civil and Political Rights

detained for over 10 months with no charge, Divaniya's trial has yet to begin. As a result, there has been no opportunity for her or her lawyers to challenge any evidence that the state may have against her.

Speaking to Amnesty International, Divaniya's family member said that on 31 March 2021, she was transferred from the Jaffna police to the fourth floor of the Terrorism Investigation Division (TID) building,³⁷ in the capital city of Colombo, 360km from Divaniya's hometown of Jaffna.

2.2 IMPACT ON FAMILY AND ACCESS

Since Divaniya's arrest, her family were able to visit her only once in Colombo, in April 2021 however after that due to the Covid-19 pandemic, they have been unable to visit her. On 20 August 2021, Divaniya's father passed away of a heart attack.³⁸ According to Divaniya's family member, he had no ailments before Divaniya's arrest, and they believe that he died of shock after his daughter's arrest.³⁹ According to Divaniya's family members, the second, and last time they spoke to Divaniya was the day after his death.⁴⁰ It was during this call when Divaniya told her family member that she had been moved to a prison in Tangalle, in the Southern Province of the country, over 558km from Jaffna. The Tangalle Old Prison was designated as a detention centre for people arrested under the PTA on 4 September 2020.⁴¹ According to Divaniya's family, they had not been informed of her transfer by any officials or authorities.⁴²

In September 2021, after not receiving any calls from Divaniya since August, her family member said they called the number that they received Divaniya's call from.⁴³ Her family member said the person who picked up the phone told them that Divaniya had contracted Covid-19 and could not speak to them.⁴⁴ Here too, no state officials or authorities contacted Divaniya's family to inform them that she had contracted Covid.⁴⁵

Her family members said that they have been visited at home five times by police officers in civilian clothing, from the Kilinochchi police, the local police for the district they live in, 66km from Jaffna. According to them, each time different officers would visit, with at least one officer who could speak Tamil, however on all the five visits, they were asked the same questions- about Divaniya's school, job, etc.

2.3 ACCESS TO BAIL

Divaniya's lawyer had made an application for bail in the Magistrate's Court in Colombo. When the case was taken up on 13 January 2022, the Magistrate gave an order that he had no jurisdiction to grant bail under the PTA, despite Section 7 of the PTA which lays out the criteria for a Magistrate to release a suspect from custody on bail. International standards require that anyone arrested or detained is brought promptly before a judge or other officer authorized by law to exercise judicial power in order for their detention to be reviewed.⁴⁶ In addition, everyone deprived of their liberty has the right to take proceedings to challenge the lawfulness of their detention before a court. The court must rule without delay and order release if the detention is unlawful.⁴⁷

³⁷ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

³⁸ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

³⁹ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴⁰ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴¹ Ceylon Today, *Terrorism suspects to be detained at Tangalle Old Prison*, 5 September 2020, ceylontoday.lk/news/tangalle-old-prison-declared-to-hold-detainees

⁴² Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴³ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴⁴ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴⁵ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴⁶ See, for example, ICCPR Art 9(3)

⁴⁷ See, for example, ICCPR Art 9(4)

Divaniya has yet to be charged under the PTA and remains in detention, 10 months after her arrest.

2.4 ECONOMIC IMPACT

As Divaniya is a single mother, her 10-year-old daughter, who was diagnosed with Autism, is being cared for by Divaniya's 56-year-old mother, who is a cancer survivor. As Divaniya was the breadwinner of the family, they now must survive off an LKR 15,000 (approximately USD \$74) monthly stipend that Divaniya's mother gets as a Local Council member.⁴⁸ Divaniya's family says this is insufficient for them both to live off, and that some nights they can only afford enough bread for Divaniya's daughter, and her mother only has a cup of tea for dinner.⁴⁹

Divaniya's prolonged detention is a violation of her right to liberty and to a fair trial, as protected by the ICCPR and enshrined in the Constitution of Sri Lanka.

3. MOHAMED IMAAM MOHAMED IMRAN

Name: Mohamed Imaam Mohamed Imran
From: Kattankudy, Sri Lanka
Ethnicity: Muslim
Age: 23 years
Profession: Student and sales representative for electrical bulbs
Period of detention: Over two years and eight months
Formally charged by the state: No



23-year-old Mohamed Imaam Mohamed Imran, is a computer engineering student and sales representative for electrical bulbs who lives in Kattankudy, a town on the Eastern Province of Sri Lanka. He is the breadwinner who provides for his 54 year-old mother, a single mother who sold her house to pay for Imran's education, and his grandmother.⁵⁰ Imran has been in detention for over two years and eight months and is yet to be charged and no evidence of him committing an internationally recognizable crime has been produced by the state.

According to Imran's family member, on 9 May 2019, at 4.30pm, the police visited Imran's home and asked him to come with them for an inquiry, promising that after that he would be released.⁵¹ Imran was 19 years-old when he was arrested. Imran's family member told Amnesty International that on the same day, Imran's family had gone to the police station to give him some food to break his fast with, as it was the month of *Ramadan*, where Muslims abstain from eating and drinking from sunrise to sunset. Imran's family was not allowed to see him, and again the police said they would release Imran after the inquiry.⁵² Imran's family member said that the police only gave him the food and water at 9pm, despite the time to break fast being around 6pm, and was therefore without food or water for an additional three hours.⁵³ According to Imran's family, the day after his arrest Imran was taken to court, and then to the Batticaloa prison, 7km from Imran's hometown of Kattankudy.

⁴⁸ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁴⁹ Interview with family member of Divaniya Mukunthan on 18 January 2021 via telephone

⁵⁰ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵¹ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵² Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵³ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

3.1 DUE PROCESS SAFEGUARDS

Imran is being represented by a lawyer working pro-bono, as the family is unable to afford legal representation. According to Imran's lawyers, Imran has yet to be charged with an offence, two years and eight months since his arrest which is a flagrant violation of his rights to trial within a reasonable time, to be tried without undue delay.⁵⁴ According to Imran's family and his lawyer, they have also not been given any detention order, or arrest receipt.⁵⁵ These procedural lapses violate due process safeguards, international human rights law and his Fundamental rights as enshrined by the Constitution of Sri Lanka.

According to Imran's family, six months after he was detained in the Batticaloa prison he was moved to the Kegalle prison.⁵⁶

3.2 RENEWED DETENTION DESPITE NO CHARGES

Imran's family says that he has only been produced in court four times in the last two years and eight months since his arrest.⁵⁷ The last time he was produced was five months ago, in September 2021.⁵⁸ His lawyers told Amnesty International that the courts keep extending Imran's remand date every two weeks through video calls, citing Covid-19.⁵⁹ This is in spite of the fact that Imran has not been charged.

3.3 IMPACT ON FAMILY

Imran's family told Amnesty International that because Imran is in prison, Imran's mother has taken up domestic work to provide for herself and her ailing mother. They also told Amnesty International that Imran's sick grandmother was desperate to visit him, as she was very upset about his arrest.⁶⁰ Imran's grandmother passed away in the night on 12 January 2022; she was unable to visit him before her death.

Imran has been detained for over two years and eight months without charge and continues to languish in detention. This is a violation of his rights under international human rights law, and the Constitution of Sri Lanka.

⁵⁴ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵⁵ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵⁶ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵⁷ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵⁸ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁵⁹ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

⁶⁰ Interview with a family member of Mohamed Imran on 12 January 2021 via telephone

4. RECOMMENDATIONS

These two cases are emblematic and demonstrate how the state authorities use the PTA to repress minorities and stifle dissent, especially voices that may be critical of the government. While the Government of Sri Lanka continues to make assurances to the international community about PTA reforms, it is yet to issue a moratorium and end the use of this abusive law. In this process, the Sri Lankan authorities are in violation of their obligations under international human rights law and the fundamental rights enshrined in the Constitution of Sri Lanka.

Amnesty International calls on the Government of Sri Lanka to:

- Immediately release Divaniya Mukunthan, and Mohamed Imran, or if there is any credible and admissible evidence of wrongdoing, promptly charge them with an internationally recognizable criminal offences and try them in court in accordance with international fair trial standards;
- Repeal the Prevention of Terrorism Act (PTA) and issue an immediate moratorium on its use; Guarantee the protection of the human rights of all other PTA detainees including guarantees of due process and a fair trial, and protection from arbitrary arrest, detention, torture or other ill-treatment, including;
- Immediately review the detention of those held under the PTA, ensuring adequate access to fair bail hearings, and immediate release for all those not facing internationally recognisable charges;
- Ensure that all PTA detainees have regular access to legal counsel on a confidential basis and to family members and friends at regular intervals;
- Ensure the right to a fair trial, including pre-trial rights, of those accused under the PTA;
- Facilitate access to effective remedies and reparations to those whose human rights have been violated due to the use of the PTA;
- Ensure that any legislation or amendments proposed to counter terrorism must meet its obligations under international human rights law.

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