OHCHR comments on Sri Lanka's Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026

13 October 2026

Executive summary

The Office notes that PSTA the Bill contains some additional safeguards and improvements on previous drafts, but is concerned that it reproduces or expands a number of shortcomings in the PTA and earlier proposed counter-terrorism legislation. In particular, concerns remain regarding broad and insufficiently precise terrorism offences; restrictions affecting protected expression and civic activity; administrative detention and inadequate judicial control; extensive arrest and search powers; executive discretion; safeguards against torture and ill-treatment; due process and fair-trial guarantees; and effective accountability and remedies.

The Office respectfully recalls that terrorism and related offences must comply with the principle of legality and be defined clearly, narrowly and foreseeably. Counter-terrorism legislation should contain effective safeguards for freedom of expression, peaceful assembly, association, religion or belief and participation in public affairs, and any restriction must be lawful, necessary and proportionate to a legitimate aim.

The Office is concerned that administrative detention remains central to the proposed framework. Any deprivation of liberty must be subject to prompt and effective judicial control and periodic review. Every initial and extended detention order should therefore require independent judicial approval, with the court empowered to refuse detention and order release. The deadline for judicial production should run from the time of arrest and apply consistently, irrespective of the arresting authority.

With regard to arrest, search, entry and seizure, the Office notes that broad powers may be exercised without prior judicial authorization and, in specified circumstances, by armed-forces and coast-guard personnel. Judicial warrants should be the rule for intrusive powers, subject only to narrowly defined emergency exceptions and rapid court review. Any exercise of law-enforcement powers by the armed forces or coast guard should be genuinely exceptional, time-limited, under clear civilian authority and accompanied by effective accountability safeguards.

The PSTA Bill should include robust safeguards against torture, ill-treatment, enforced disappearance and coercive interrogation. These should include prompt and confidential access to legal counsel from first contact, including during questioning; timely family notification; interpretation where required; independent medical safeguards; judicial supervision; legal aid where necessary; and full respect for the presumption of innocence and equality of arms. All evidence obtained through torture, coercion, unlawful detention or serious procedural violations should be excluded.

The Office further expresses concern regarding the breadth and concentration of discretionary powers vested in executive authorities, including in relation to detention, directives, proscriptions, restrictions and prohibited places. Such powers should be governed by strict requirements of necessity and proportionality, written reasons, disclosure, clear time limits and prompt independent review. They should be accompanied by independent oversight, transparency and effective avenues for accountability and remedy. Immunity provisions should not shield unlawful arrest, torture, ill-treatment, enforced disappearance, recklessness, gross negligence or other serious human rights violations. OHCHR also notes the restrictive bail framework, including the transfer of bail jurisdiction to the High Court and the exceptional-circumstances threshold for offences punishable by life imprisonment.

The Office encourages the Government to undertake a further comprehensive review of the draft Bill before its enactment, in consultation with independent institutions, civil society organisations and legal experts.

The Office respectfully recommends, in particular, that the Government:

1) **Narrow and clarify the definition of terrorism and related offences; remove or significantly revise provisions capable of criminalizing protected expression and civic activity;**
2) **Require prompt, independent and effective judicial oversight of every arrest and detention;**
3) **Strengthen safeguards against torture, ill-treatment, arbitrary detention and enforced disappearance;**
4) **Reinforce due process and fair-trial guarantees;**
5) **Make judicial warrants the rule for intrusive search, entry and seizure powers;**
6) **Ensure civilian police primacy;**
7) **Establish effective independent oversight, accountability and remedies;**
8) **Narrow immunity provisions; and**
9) **Conduct meaningful public consultation before further legislative action.**

The Office stands ready to continue its constructive dialogue with the Government on this important legislation and to provide technical assistance toward the development of counter-terrorism legislation fully consistent with international human rights law and applicable international counter-terrorism standards.

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I. Introduction

This submission by the UN Office of High Commissioner for Human Rights (OHCHR) to the Government of Sri Lanka contains preliminary comments on elements of the Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, and its compliance from OHCHR's perspective with Sri Lanka's obligations under international human rights law. It does not constitute a comprehensive analysis or a complete listing of concerns, but rather a basis for further technical exchanges and to inform public debate.[1] These comments should be considered alongside earlier observations by OHCHR,[2] UN human rights treaty bodies,[3] and UN Special Procedures mandate holders[4] regarding the current Prevention of Terrorism Act (PTA), its previous amendments, and earlier drafts of proposed counter-terrorism legislation, in particular the 2023 draft Anti-Terrorism Bill and the 2025 draft PSTA Bill.[5]

OHCHR welcomes the Government's stated intention to repeal the PTA and replace it with legislation that complies with international human rights norms and standards, in line with Sri Lanka's obligations under international human rights law, and as recommended by UN Human Rights mechanisms and the UN High Commissioner for Human Rights. Compared with the previous draft of the PSTA from December 2025, OHCHR acknowledges some positive developments. In particular, the current Bill:

- includes additional elements that contribute to a more precise and specific definition of terrorism;
- removes the sovereignty and territorial-integrity purpose limb and several ordinary crimes from the listed consequences;
- removes confession to police as admissible evidence;
- provides some safeguards for persons engaged in journalism, research, civil society activity, human rights documentation and dissent;
- removes recklessness from the inducement and publication offences; and deletes the separate statutory curfew power;

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[1] The analysis is grounded in Sri Lanka's obligations under international human rights law, including the International Covenant on Civil and Political Rights (ICCPR) and other major human rights treaties ratified by Sri Lanka (https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=164&Lang=EN) as well as key "benchmarks" highlighted by the UN Special Procedures mandate holders for Sri Lanka's counter-terrorism legislation to be human rights compliant (OL LKA 7/2021).

[2] See the statement of the Deputy High Commissioner for Human Rights to the Human Rights Council of 8 September, (https://www.ohchr.org/en/statements-and-speeches/2026/09/sri-lanka-needs-greater-momentum-change-says-deputy-high)

[3] For example, see the concluding observations of the UN Committee on Enforced Disappearances on the report of Sri Lanka of 3 November 2025(CED/C/LKA/CO/1)

[4] For example, the communication from several special procedure mandate holders on the draft Protection of the State from Terrorism Act (OL LKA 1/2026) (https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=30742)

[5] OHCHR preliminary comments on Sri Lanka's draft Anti-Terrorism Bill, 3 May 2023, (www.ohchr.org/sites/default/files/documents/countries/sri-lanka/OHCHR-sri-lanka-preliminary-review-ATB.pdf), and OHCHR's comment on Sri Lanka's draft Protection of the State from Terrorism (PSTA) Bill, 24 February 2026 (https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-sri-lanka-psta.pdf)

- introduces necessity and proportionality safeguards for several restrictive orders;
- requires audio-visual recording of police interviews and statements before a Magistrate; and
- shortens requirement of notification of detention to the Human Rights Commission of Sri Lanka to 48 hours; and establishes a central database of arrests and case outcomes.

However, the PSTA Bill still contains multiple provisions that risk contravening the State's obligations under international human rights law and domestic constitutional guarantees, and carries risks of continuation and recurrence of serious human rights violations observed recurrently under the existing PTA regime.

In particular, it is concerning that the PSTA Bill reproduces and expands specific deficiencies previously identified in the PTA, while introducing new risks and concerns. These include:

- overcriminalization through the remaining breadth of section 3 and related offences;
- unjustified restrictions on freedoms of expression, including media freedom, peaceful assembly and association, despite the new safeguards in sections 3 (4), 8 (2), 10 (3) and 11;
- broad executive powers that remain insufficiently constrained, particularly with regard to Detention Orders, Restriction Orders and Proscription Orders;
- exposure to arbitrary arrest and prolonged executive detention without sufficiently prompt and effective judicial control;
- continuing exposure to torture, other ill-treatment and enforced disappearance, notably because important safeguards are incomplete or delayed; and
- remaining gaps with regard to due process, fair trial and effective remedy, including under the transitional provisions in Section 73.

Particular attention is required to sections 72 and 73. Although section 72 would repeal the PTA upon the new Act's commencement, section 73 would preserve pending PTA cases and significant elements of the PTA framework. Repeal should therefore be effective and comprehensive in substance as well as in form, with transitional arrangements reviewed to ensure that no person remains subject to proceedings, detention, evidentiary rules, proscriptions or regulations that are incompatible with international human rights law.

Accordingly, OHCHR urges the Government to substantively redraft the PSTA Bill before enactment. Important reforms, such as Sri Lanka's counter-terrorism framework, should fully comply with Sri Lanka's international human rights obligations, and the principles of legality, necessity, proportionality, non-discrimination and effective judicial control. It should also avoid replicating, through its substantive, procedural or transitional provisions, the structural and operational flaws of the PTA, which have given rise to past practices such as arbitrary detention, torture and other

ill-treatment, and enforced disappearances. This should be undertaken through a meaningful, transparent and inclusive consultation process involving civil society, affected communities, legal professionals, independent institutions and other stakeholders across Sri Lanka.

OHCHR stands ready to provide further technical assistance, legal advice and comments, in accordance with international human rights standards and its mandate.

II. Definition of Offences

A. Definition of terrorism

OHCHR welcomes the narrowing of the definition of terrorism under section 3 of the Bill compared to the earlier definition set out in the 2025 draft PSTA Bill (2025 PSTA Bill), and that it better aligns with some elements of the definition of terrorism as provided by UN Security Council resolution 1566 (2004), the model definition of terrorism recommended by the UN Special Rapporteur on Counter Terrorism and Human Rights (SR CT), and OHCHR's guidance note on defining terrorism in domestic criminal legislation.

For instance, section (3)(1) partially includes the three cumulative material, mental and terrorist purpose elements. It limits the terrorist crime to intentional violent acts that result in serious outcomes, namely death, grievous hurt and hostage-taking, with the purpose of provoking a state of terror, and unduly compelling a government or an international organization to advance a political or ideological objective. Furthermore, contrary to the 2025 PSTA Bill, the current Bill no longer includes abduction, robbery, extortion, theft and weapons possession as acts of terrorism.

However, the definition of terrorism remains overly broad and vague. 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. Specifically, with regard to sections 3(1) and 3(2), paragraphs (d), (e), (f), (g), (h), (i), and (j):

- The weakening of the mental element of "any person, who intentionally or "knowingly" commits any terrorism act" under 3 (1) is problematic, as terrorism offences should not include a lesser standard of liability than specific intention, given the gravity of the crime. Reliance on knowledge as an alternative risks weakening the culpability threshold and increasing exposure to arbitrary or discriminatory enforcement.

- The reference to "unduly compelling a government or an international organization" is not further defined, remaining too vague and broad and could be used to target protected conduct such as peaceful protests or acts of civil disobedience, despite the procedural safeguards provided by 3(4).

- The list of consequences in section 3(2), paragraphs (d), (e), (f), (g), (h), (i), and (j), which encompasses property, environmental, electronic, cultural and communications-related harms, remain overbroad, going beyond harms that are genuinely terrorist in nature within the meaning of paragraph 3 of Security Council Resolution 1566 (2004). Furthermore, "substantial economic loss" and "likelihood of danger to life" are not further defined and should not be included in a definition of terrorism, being elements of offences that should be dealt with under ordinary criminal law.

- The reference in section 3(2)(j) to offences under treaties listed in the First Schedule[6] also imports distinct treaty offences into the general terrorism framework without requiring every element of the section 3 model to be satisfied. The definition should be confined to intentional violent acts of the requisite gravity and purpose.

The safeguards in section 3 (4) to exclude protest, advocacy, dissent, strikes, lockouts and other industrial action, as well as the provision of humanitarian and medical aid, as potential terrorist offences are framed as an evidential caution, rather than an express exclusion clause of protected conduct. While it provides that such conduct is "not by itself" sufficient to infer the required mental elements, it does not expressly exclude protected conduct from the offence. As a result, its implementation is open to varying interpretation on an issue of fundamental scope to the entire PSTA regime. The safeguard in section 3(4) should be strengthened by explicitly excluding such acts from the scope of terrorism or ancillary terrorist offences.

The weakening of the necessary mental element, combined with the broad range of listed consequences that are not genuinely terrorist in nature, increases the risks of arbitrary application and abuse, including the targeting of civil society organizations, human rights defenders, or dissent more generally, and of corresponding suppression of the exercise of human rights. Additionally, such a broad and vague definition would enable the prosecution

[6] These include the Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971; The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973; the International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979; The Convention on Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980; The Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988; Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988; The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988; and the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

to pursue as terrorist offences conduct that would otherwise properly fall within the scope of ordinary criminal law.

Speech-related offences (Sections 2, 8–11, 15, 74)

i. Overbroad Definition of "Confidential Information" (Section 74)

The definition of "confidential information" included in the PSTA is similar to the one included in the December 2025 Bill. OHCHR's concerns outlined in in its earlier legal comment continues to stand. In particular, section 74 (Interpretation) defines "confidential information" to include information relating to the "functions, movements, or whereabouts" of a specified person, as well as "any secret code, word, password or encryption detail relating to national security". The definition further extends to information "likely to have an adverse impact on national security and defence," rendering it excessively broad and imprecise and risking the criminalization of a wide range of legitimate activities. This could include monitoring and documentation of, for example, public-facing checkpoints, or other deployments and operations of security personnel, as well as routine reporting or social media posts relating to raids or arrests, thereby posing heightened risks to journalists, civil society actors, and for monitoring and documentation of militarized and other activities with broad human rights implications.

The definition should be read in conjunction with section 8(2), which criminalizes gathering or supplying confidential information while "knowing or having reasonable grounds to believe" that another person will use it in connection with an offence under the Act. Section 8(2) now includes a public interest safeguard, which is welcome. However, concerns remain because the definition extends to past police or military activity, arrests, investigations, detention sites and encryption details, while the safeguard does not expressly protect journalistic sources, legal professional privilege or monitoring and documentation of human rights violations.

ii. Vague Speech Crimes (Sections 9 and 10) and Overbroad "Terrorist Publication" (Section 10(2))

OHCHR welcomes the removal of the notion of recklessness from the December 2025 Bill and the inclusion of safeguards in sections 10(3) and 11 for lawful and good-faith forms of expression, including in the areas of journalism, research, civil society, human-rights work, and dissent.

However, sections 9 and 10 contain broad and indeterminate terms that continue to raise concerns with regard to compliance with the principle of legality and could fail to satisfy the requirement of foreseeability. For example, in sections 9 and 10, the term "inducing" to commit a terrorism offence is not adequately defined and remains inherently vague as to scope. Sections 9 and 10 also do not require proof that the conduct in question created an actual risk that a terrorist offence would be committed. The mental element in sections 9

and 10 – “indirectly inducing the public” with “knowledge of directly or indirectly inducing the public” – also falls below the threshold required for incitement offences. As recommended by the Special Rapporteur on counter-terrorism and human rights, incitement offences require the intention to communicate a message and an intention that the message incited the commission of a terrorist act. Finally, both sections 9 and 10 refer generally to intent or knowledge without limiting criminal liability to unlawful inducement. These provisions therefore risk sweeping in conduct that may be protected or covered by legitimate legal defences.

Specifically, sections 10 (1) and 10 (2) refer to the dissemination of terrorist publication in vague terms such as “the provision of service”, or “the transmission of content” and include publications considered “useful” for the commission or preparation of terrorist acts. The term “useful” material remains open-ended and may readily capture material with legitimate uses unless the offence is tied clearly to specific intent and a demonstrable risk.

Read together with Section 2(1) of the PSTA, the offence would apply extraterritorially and could thereby improperly criminalize lawful expression and documentation by persons abroad, including members of diaspora communities, both in traditional and social media, concerning matters of public interest in Sri Lanka.

Considering the broad definition of terrorism in section 3, sections 9 (inducement to terrorism) and 10 (dissemination of terrorist publications) risk incompatibility with international human rights law, especially ICCPR articles 15, 19, 21 and 22, due to their breadth, vagueness, and potential for misuse to unduly restrict and criminalize freedom of expression, including media freedom, and right of peaceful assembly.

III. Executive and Public Order Powers

i. Proscription Order

Similar to the December 2025 Bill, the current PSTA Bill grants substantial powers to the executive branch. Section 59 authorizes the President to proscribe an organization on “reasonable grounds” that an organization is engaged in an act amounting to an offence under the Bill. While the Bill establishes a nexus to terrorism-related conduct (contrary to the December 2025 Bill), a number of broad and vague provisions could contravene freedom of association protected in article 22 of the ICCPR as well as other interlinked rights such as freedoms of expression and opinion, the right of peaceful assembly, and the right to work:

- As the scope of the proscription is determined by the breadth of the underlying offences defined in the Act, the overly broad definitions in the draft Bill extend proscription beyond legitimate counter-terrorism objectives. As a result, legitimate activities such as political dissent, human rights advocacy and participation in peaceful assemblies could be sanctioned.

- The threshold of "reasonable grounds" of the Proscription Order could benefit from more precision. A Proscription Order must include sufficient expression of the factual grounds relied upon and the actual threat posed at the time when the decision is taken. This is important to allow effective challenge to the decision provided in section 59(5).
- The words "member of" or "associated with" in section 59(2)(a) lack precision and could allow for arbitrary or discriminatory application. Defining these terms further would allow individuals to better foresee the legal consequences of their conduct, consistent with the principle of legality, and ensure that any proscription is necessary and its impact on individuals and groups proportionate.

Furthermore, because the consequences for membership, activities, fundraising, publications and association with a proscribed organization are so serious, the language in section 59 should be formulated with greater precision, and additional safeguards should be included to further strengthen the existing protections. For instance:

- The open-ended duration of proscription, where the Proscription Order continues until rescinded without automatic expiry or periodic review, may be incompatible with the principles of necessity and proportionality. A Proscription Order should have a fixed duration subject to renewal based on updated evidence and periodic independent review, including in the courts.
- There should be an opportunity for the organization or a relevant individual to present new information regarding the organization or changes to its aims or membership so that the authorities can be better informed to assess whether there is any continuing, meaningful threat posed by it.
- Even when an individual or organization meets the formal criteria, listing must be necessary and proportionate to the circumstances, including by demonstrating that less invasive means would be ineffective.
- The PSTA Bill does not include an independent review of Proscription Orders. Periodic and independent review would ensure that Proscription Orders remain necessary and proportionate in assuring the intended purpose of the sanction.
- Section 59(2)(l) is a catch-all provision that could penalize the provision of humanitarian support to a proscribed organization. As such, the Bill should include effective humanitarian exemptions to allow local actors on the ground to provide humanitarian relief to alleviate the impact of measures on populations in need, and to be able to do so in time.
- Whilst the requirement of publication of the Proscription Order is welcome, the Bill does not require the government to promptly inform the organization and individuals associated with the proscribed organization of the Proscription Order.

ii. Prohibited places

Section 61 introduces some important safeguards with respect to the Secretary of Defence's power to declare a place prohibited for up to 72 hours, including requirements of necessity

and proportionality, and protection for lawful professional, journalistic, humanitarian activities.

However, concerns remain regarding the undefined term “credible material”, the executive nature of the initial order where judicial oversight is discretionary, and restrictions on media entry, photography and recording that may impede public interest reporting. Such measures should be interpreted narrowly, applied only where strictly necessary and proportionate, and be subject to prompt, independent and effective review.

iii. Order to protect the public

Section 51 allows the police to issue short-term directives affecting movement, meetings, assemblies, activities and vehicles where there is a “clear and present danger” and when the measure is necessary to protect persons from harm. In some cases, support from the armed forces can be sought. The draft law includes some procedural safeguards such as a limited duration up to 72 hours, the possibility of humanitarian exceptions, and the notification of detentions to the Human Rights Commission.

However, there is lack of judicial oversight - section 51(1) does not make it compulsory to make an application to the courts, allowing urgent restrictions imposed “in the interest of national security” to operate for up to 24 hours before judicial approval. Moreover, any Officer in Charge of a Police Station can issue urgent directions, should be at least at a higher rank (section 51 (2) proviso).

In addition, the undefined "clear and present danger" threshold could grant unduly broad discretionary powers to the police, risking arbitrary or disproportionate interference with freedom of movement and the right of peaceful assembly. Similar to the December 2025 Bill, subsection (e) of section 51(1), which permits directions "not to congregate at any particular location", effectively creates a temporary *de facto* assembly ban, which may adversely affect the right of peaceful assembly and related rights.

OHCHR reiterates that counter-terrorism measures affecting assemblies must be strictly necessary, proportionate, and subject to prompt judicial oversight, particularly for executive orders, and must not be used to suppress legitimate dissent, peaceful assemblies or other protected conduct.

iv. Restriction Order

Section 60 empowers a senior police officer to apply for a Restriction Order to control a person’s movements, travel, communications, associations and other limiting conditions, where the person is believed to be engaging in, has engaged or is preparing the commission of a terrorist offence. The revised draft includes some safeguards in response to the concerns identified in the December 2025 Bill. For instance, the provision imposes a time limit of three months for each Order and subjects it to a Magistrate decision and judicial

review. It also expressly requires that the necessity and proportionality of the Order, the nature and seriousness of the risk, and the likely impact on the fundamental rights and freedoms of each Order is assessed, and that consideration is given to less intrusive alternatives. It also provides that the person shall be given a reasonable opportunity to be heard, as well as the right to revision or judicial review and the right to remedy if the Restriction Order is found to be unreasonable.

It should, however, be acknowledged that the issuance of a Restriction Order imposes far-reaching restrictions in the absence of charge or conviction. In this regard, the PSTA Bill raises two concerns: first, the Bill does not set an overall limit on the renewal, resulting in the possibility for Restriction Orders to be renewed indefinitely. Second, it permits the issuance of an initial *ex parte* Order in urgent circumstances without requiring a specified time frame within which the affected person must be reviewed by a court. This can affect the right of the affected individual to effectively challenge the order. As these Orders engage multiple rights under ICCPR, including articles 9 (liberty), 12 (freedom of movement), 19 (expression), 21 (assembly), and 22 (association), any extension should require updated evidence and be subject to rigorous and independent periodic review.

v. General directive

Section 69 of the Bill grants the President power to issue directions regarding the implementation of the Act. Although such directions must be published and comply with the Constitution and applicable law, the provision grants the executive a significant role in shaping the operation of the counter-terrorism framework, without Parliamentary scrutiny. Given the breadth of powers established under the Bill and the broad definition of terrorism, this provision risks permitting executive influence over the interpretation and application of key aspects of this Bill including its safeguards. Any directions issued under the Act should be narrowly confined to administrative matters, publicly accessible, subject to effective judicial review and parliamentary oversight, and otherwise consistent with international human rights obligations.

IV. Law enforcement powers, deprivation of liberty and militarization

i. Extension of Powers to Police and Armed Forces

Similar to the December 2025 Bill, the current PSTA Bill grants members of the police and the armed forces broad powers to stop, question, arrest and detain, as well as enter and search any premises or land, largely dependent on whether the suspected conduct qualifies as offences under the Act.

Sections 19, 20 and 24 extend powers of search and arrest to members of the armed forces and coast guard in specified exceptional circumstances. Section 24 requires transfer to

police as soon as possible and, in any event, within twenty-four hours. While the exceptional circumstances threshold is an improvement, the pre-transfer period adds a further 24-hour detention period to a suspect who is arrested by the armed forces or the coast guard (compared to a suspect arrested by the police), excluding travel time, creating a material differential detention period based on the specific arresting authority. This raises concerns of equality before the law, and serious risks for potential abuse, including even of enforced disappearance.

Additionally, the suspect remains in military or coast guard custody without express guarantees of immediate access to counsel, private medical examination, audio-visual recording of questioning, or direct judicial oversight. These gaps heighten risks of coercion, torture or other ill-treatment, arbitrary deprivation of liberty, and undue interference with privacy. In particular, the pre-transfer period may facilitate compelled access to digital devices and data. Given the breadth of several offences under the Bill, the exercise of these powers may result in arbitrary deprivation of liberty and arbitrary interferences with privacy, contrary to articles 9 and 17 of the ICCPR.

Although section 24 confines military arrest powers to specified exceptional circumstances, those circumstances include situations where the armed forces are deployed for the maintenance of public order or counter-terrorism operations under lawful authority. The provision may therefore permit the exercise of arrest and search powers by military personnel in circumstances extending well beyond isolated emergencies. Given the exceptional nature of military involvement in law enforcement functions, the PSTA should ensure that such powers remain strictly limited, necessary, and subject to effective civilian oversight and accountability.

Section 20 authorizes any police officer who has reasonable suspicion of an offence under the Act to stop, search and question persons, enter and search premises, and seize property. While these powers are subject to the ordinary requirement of reasonable suspicion, the Bill does not require prior authorization, supervision, or subsequent review by a senior police officer. Given the breadth of several offences under the Act and the intrusive nature of these powers, consideration should be given to requiring senior level authorization and prompt supervisory review, particularly in relation to entry, search, seizure and arrest powers exercised under the Act.

Similar to the 2025 PSTA Bill, the extension of law-enforcement powers to the armed forces under the Bill raises serious concerns regarding accountability and effective civilian oversight, as the PSTA does not clearly define chains of command or lines of authority when military personnel exercise powers of arrest, search, questioning, or custody. The absence of clarity as to whether such powers are exercised under civilian police control or military command risks creating fragmented or parallel accountability structures, undermining responsibility for human rights violations and heightening the risk of impunity. The Bill also does not establish a clear operational hierarchy, reporting lines, or disciplinary authority for joint police-military operations. The absence of defined command-and-control

arrangements creates uncertainty regarding responsibility for operational decisions, oversight, and accountability, notably where both institutions exercise contemporaneous powers under the Act. Clear lines of authority and responsibility are essential to ensure effective civilian oversight, prevent gaps in accountability, and facilitate effective investigation, accountability, and access to remedies where human rights violations occur.

OHCHR recalls that, where military personnel are deployed in law-enforcement functions, international human rights law requires that they operate under clear civilian authority, be subject to ordinary criminal jurisdiction, and be governed by precise legal frameworks ensuring accountability, transparency, and access to effective remedies.

ii. Deprivation of liberty

A number of provisions relating to the deprivation of liberty of a suspect are concerning and risk significant restriction to due process and fair trial rights of suspects, remove discretion of the judicial authority of the court to examine all aspects of a criminal case, and fall short of prompt, independent and effective judicial review required under article 9 of the ICCPR.

Executive detention. Sections 27 and 28 retain Detention Orders. Extensions beyond the initial two months require High Court approval; the suspect must be brought before a Magistrate at least every fourteen days; and section 30 establishes an Independent Review Committee to assess the legality, necessity and proportionality of the order. These are procedural improvements on the earlier Bill, but they do not address the central concern that the initial deprivation of liberty for a significant period is ordered by the executive rather than a court, as the power to do so lies with the Secretary to the Ministry of Defence (a further reduction on seniority from the Minister of Defense foreseen in the PTA) who may authorize detention for up to two months at a time, with an aggregate maximum of one year. The UN Human Rights Committee has noted that such detention presents severe risks of arbitrary deprivation of liberty.

Pre-trial detention. As regards pre-trial detention, it is concerning that section 26(3)(b) makes it mandatory for the Magistrate to remand the suspect even where no Detention Order is presented. The removal of the Magistrate's power to make an individualized assessment on the opportunity of detention by taking into account all the circumstances runs contrary to the right to liberty in article 9(3) of the ICCPR. The Human Rights Committee has observed that pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.[7] Section 29(2) further provides a maximum remand period of one year. In its concluding observations on Sri Lanka 6th periodic report, the Human Rights Committee expressed concern over the prolonged pretrial detention of up to 12 months, without charge.[8] Prolonged pretrial detention also jeopardizes the presumption of innocence under article 14(2) of the ICCPR. States are under

[7] CCPR, General Comment no. 35, para. 38.
[8] CCPR/C/LKA/CO/6, para. 16.

the obligation to demonstrate that such detention does not last longer than necessary, that the overall length of possible detention is limited and that they fully respect the guarantees provided for by article 9 in all cases.[9]

Discretionary power of the Magistrate. Under section 26(3)(a), a Magistrate presented with the initial Detention Order must give effect to it – this removes the discretionary power of the judiciary to examine the legality, necessity or proportionality of the detention. This makes the first two months of detention on such a basis mandatory, regardless of circumstances. Additionally, production before a Magistrate may occur up to 48 hours after police arrest, or up to 72 hours from an armed forces arrest because of the permitted transfer period. Whilst the Magistrate's express inquiry focusing on the suspect's well-being is welcome, there is no ability for the Magistrate to separately assess the legality, necessity and proportionality of the detention.

Independent Review Committee. The Independent Review Committee, which is appointed by the Minister of Defence, is mandated to make recommendations while the Minister of Defence makes the final decision. This undermines the independence and power of the Independent Review Committee to make any binding determinations.

Confidential submissions. Section 28(3) permits the High Court to issue orders to protect the confidentiality of submissions supporting an application to extend detention. While legitimate confidentiality interests may arise in ongoing investigations, the provision does not specify the safeguards applicable where disclosure is restricted. The Bill should ensure that any limitations on access to information are strictly necessary and proportionate and do not undermine the detainee's ability to effectively challenge the legality, necessity and proportionality of continued detention, as per article 9 of the ICCPR.

Right to an Attorney-at-Law. Sections 34 and 40 recognize access to an Attorney-at-Law, and the Bill removes the earlier prior permission requirement. However, section 34 subjects visits to undefined "necessary supervision," and section 40 leaves the right to communicate and to be visited "subject to the conditions established by written law". The provision in section 34 and the vagueness in section 40 risk restricting the right of the suspect to prompt and confidential access to a lawyer. The right to an Attorney-at-Law should be fully guaranteed, including ensuring that meetings between the suspect and his/her lawyer should not be within hearing of a police/institution official and must be conducted in full confidentiality.[10] This right can be restricted only in exceptional circumstances, specified by law, and considered indispensable by a judicial or other authority in order to maintain security and good order.[11] The Bill does not guarantee prompt access to counsel within a determined period, before every questioning, or in conditions that protect confidentiality.

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[9] CCPR, General Comment no. 35, para. 15

[10] Rule 93 of the Standard Minimum Rules For the Treatment of Prisoners,1955 and Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

[11] Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 1988.

These safeguards should apply from the outset of custody and throughout all police, military and detention questioning.

Right to family visits. Section 34 permits family visits subject to "necessary supervision", but does not define the scope or limits of that supervision. The absence of clear criteria may permit unnecessary monitoring, recording, restriction, or interruption of family contact. Any supervision should be strictly limited to specific and demonstrable security requirements, be proportionate to the risk identified, and not undermine the essential purpose of family access. The Bill should define the term, require written reasons where supervision is imposed, and provide for review where restrictions are challenged.

While sections 34 and 40 recognize access to relatives, the Bill does not establish minimum standards regarding the timing, frequency, or duration of family contact. Meaningful family access is an important safeguard against incommunicado detention, torture and other ill-treatment, and enforced disappearance. In addition, the Bill should require prompt notification of all transfers between places of detention to family members, legal representatives, courts, and the Human Rights Commission of Sri Lanka. Accurate and timely information concerning a detainee's whereabouts is a fundamental protection against arbitrary detention and abuse.

Notification to the Human Rights Commission of Sri Lanka. Sections 25 and 35 require notification of arrest and detention to the Human Rights Commission of Sri Lanka (HRCSL) within 48 hours, aligning the maximum period with the HRCSL Act. Section 64 also requires the creation of a central database covering arrest, detention, remand, bail, discharge, prosecution and case outcomes. These safeguards are welcome. The Bill should nevertheless require notification as soon as possible rather than treating 48 hours as routine, and should provide defined, prompt access to relevant database information for detainees, families, lawyers, courts and the Commission, subject only to narrowly-tailored protections.

Interpretation. The Bill does not expressly guarantee access to qualified and independent interpretation services at all stages of proceedings. Effective participation in criminal proceedings requires that persons who do not understand or speak the language used by law-enforcement authorities, courts, or detention officials receive interpretation free of charge and without delay. Reliance on investigating, custodial, or security personnel for interpretation may compromise accuracy, confidentiality, and the ability of the individual to exercise procedural rights effectively. The Bill should expressly guarantee access to independent interpretation and translation services from arrest through trial, appeal and review proceedings.

Audio-visual recording. The Bill also requires audio-visual recording of police interviews and statements before a Magistrate, subject to a limited exception requiring written reasons and Magistrate approval, and strengthens responses to suspected torture cases by requiring medical examination, a change of detention place where warranted, and an investigation with a view to prosecution. These measures are positive. Remaining gaps include the

absence of an express requirement that the Magistrate and the Human Rights Commission's interviews occur privately and without monitoring, and the absence of a comprehensive exclusionary rule and clear remedies for unlawful detention, denial of counsel, coercive questioning or interference with oversight.

Deferment and suspension of prosecution. Sections 52 and 53 regarding deferment and suspension of prosecution now require a consensual agreement, High Court approval, verification that consent is free and informed, protection against coercion, respect for the presumption of innocence, proportionality of conditions, and a right to seek variation or cancellation. These safeguards are welcome. However, deferment or suspension may continue for up to twenty years, with no express entitlement to disclosure of sufficient evidence before consent or mandatory recording of negotiations. The conditions that may be imposed by the Attorney-General in section 52(3) (such as public remorse/apology and payment of reparation to victims) may contravene the presumption of innocence guaranteed in article 14 (2) of the ICCPR as they can be imposed without proof of guilt. Additionally, a deferment and suspension of up to 20 years could keep the suspect in a lengthy state of uncertainty about their fate, in contravention of article 14(3)(c) of the ICCPR. Specifically, the rehabilitation programme that could be ordered against the suspect raises the question of voluntariness of the suspect's participation, given that the suspect may be faced with a choice between accepting the programme, which may involve significant restrictions on liberty, and continued detention pending trial.

Post-indictment detention. Section 54 permits post-indictment detention under a Detention Order given effect by the High Court on broad grounds of national security, public order or apprehended serious harm. The provision does not expressly confer a right to seek bail or require periodic individualized review of whether detention remains necessary. More broadly, the Bill does not expressly guarantee free legal assistance from arrest through trial or compensation and record correction for unlawful arrest or detention. Section 66(2)'s good faith immunity provision should not impede accountability or an effective remedy for unlawful, reckless or grossly negligent conduct.

Medical examination. Section 48 (2) provides that when a suspect does not consent to be examined by a medical practitioner, the suspect shall submit to an examination by a medical officer when the police deem such examination necessary for the conduct of an investigation; upon an order from a Magistrate, the suspect shall submit to an examination by a medical officer. This raises concerns with regard to the suspect's right to security, including protection of their bodily and mental integrity protected by article 7 of the ICCPR.[12] It could also engage the right to health, which includes the right to be free from non-consensual medical treatment and requires the informed consent of all who possess legal capacity be obtained prior to the administration of medical treatment.[13] Additionally, since such medical examination is pursuant to the conduct of any investigation, health personnel

[12] CCPR/C/GC/35, para.56.
[13] A/HRC/23/41/Add.1, para. 56.

involved may find themselves in contravention of medical ethics, as their professional relationship with detainees should solely be to evaluate, protect or improve their physical and mental health.[14]

Transitional provision. Section 73 creates a separate transitional concern. It preserves pending PTA proceedings under the repealed Act, including its procedural and evidentiary rules, and continues existing regulations and proscriptions. Without prompt individualized review, these provisions may perpetuate the safeguards deficits that the repeal of the PTA is intended to remedy. Transitional arrangements should require review of every pending detention, prosecution, proscription and restriction for compliance with legality, necessity, proportionality and fair-trial guarantees, with discontinuance, release and effective remedies where those standards are not met.

V. Priority Recommendations

1. Redefine and narrowly tailor the definition of terrorism in the PSTA Bill to satisfy the principles of legality and legal certainty, and to prevent arbitrary or discriminatory application[15] and strictly align with UN Security Council Resolution 1566, the model definition proposed by the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, and OHCHR's guidance on defining terrorism in domestic legislation.

   In particular:

   a) Terrorist acts should be confined to intentional violent acts with serious outcomes that are genuinely terrorist in nature - namely death, serious bodily injury, or hostage taking – undertaken to provoke a state of terror in the public or compel a government or an international organization to do or to abstain from doing any act.

   b) Remove or define with sufficient precision the remaining terms "directly or indirectly"; "useful"; "knowingly" and "unduly compelling"; require specific terrorist intent and a real and objective risk that a terrorist act be committed as elements of speech-related offences; and narrow the definition of "confidential information," with express protection for journalistic sources, legal professional privilege and humanrights monitoring documentation. Any restriction on expression must satisfy article 19(3) of the ICCPR, whereby the Rabat Plan of Action provides additional guidance.

   c) Strengthen section 3(4) by converting its evidential safeguard into an express exclusion for advocacy, protest, dissent, industrial action and impartial humanitarian

[14] Principle 3, Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 37/194.
[15] A/HRC/16/51, para. 31.

or medical activities and clarify the treatment of conduct governed by international humanitarian law.

2. Require senior-level Police authorization, written reasons, or prompt supervisory review for the exercise of coercive search, entry, seizure and arrest powers under the Act.

3. Comprehensively redraft the section of the Bill on executive and public order powers with clearly defined legal thresholds, prior judicial authorization, effective appeal and review mechanisms, and sunset clauses that are reasonable in length, to prevent indefinite application of proscription and restriction orders. All executive measures must be accessible, transparent, and clearly articulated in law, and must be based on individualized risk assessments rather than broad or collective assumptions.

4. Limit the scope of presidential directions under section 69 of the Bill to administrative matters only, require publication and effective and independent oversight, and ensure that executive directions cannot diminish rights or safeguards established by law.

5. Remove broad powers given to the armed forces in the Bill to stop, question, enter and search any premises or land, and arrest and detain, and ensure explicit provisions are included in the Bill to guarantee that all arrests and detention are carried out under ordinary criminal law standards, subject to immediate judicial scrutiny from the outset.

6. Clearly delineate accountability, civilian oversight, and command responsibility for any involvement of the armed forces in law enforcement functions exercised under the Bill, including by specifying unambiguous chains of command, operational reporting lines, disciplinary authority, and oversight mechanisms. All military personnel exercising police powers should operate under civilian authority and ordinary criminal jurisdiction.

7. Enhance the Bill's torture prevention safeguards by guaranteeing, immediate and confidential access to legal counsel; requiring private, confidential and unmonitored interviews by Magistrates, and the HRCSL; ensuring prompt access to the central database for detainees, families, lawyers and oversight bodies; and establishing enforceable consequences and remedies for failures to record questioning, notify authorities, provide counsel or permit oversight.

8. Require production before a magistrate as soon as possible and ordinarily within 24 hours of all suspects detained under authority of the Bill regardless of arresting authority; provide the magistrate with the power to assess the legality, necessity and proportionality of arrest and detention and to order release, bail or alternative measures to pretrial detention[16] on all detention orders; require private, confidential interviews

[16] CCPR/C/LKA/CO/6, para. 29(c).

between lawyers and detainees; and strengthen unannounced detention visits and follow-up powers to prevent torture and other forms of ill-treatment.

9. Guarantee free access to qualified and independent interpretation and translation services from arrest under the Bill through trial, appeal and review proceedings, and ensure that all detainees receive prompt notification of transfers, meaningful family contact, and access to information regarding their place of detention.

10. Explicitly incorporate into the Bill the absolute prohibition of torture, cruel, inhuman or degrading treatment or punishment, and of enforced disappearance, and include an interpretive clause requiring that all its provisions be applied consistently with the international human rights treaties binding on Sri Lanka.

11. Include provisions to ensure that individuals subjected to wrongful arrest, detention, or other human rights violations under the Bill have access to prompt and effective remedies, including adequate compensation and redress.

12. Amend sections 52 and 53 of the Bill relating to suspension/deferment of prosecution to include independent judicial review, full voluntariness of a suspect's decisions in this regard, protection against self-incrimination and of presumption of innocence, and inclusion of a considerably shortened period of suspension/deferment to avoid lengthy states of legal uncertainty for affected persons and their families.

13. Ensure any exchange of information or data obtained during joint investigations in section 43(4) of the Bill, including with any foreign State, is carried out in full compliance with international human rights law.

14. Transitional arrangements under the Bill should require review of every pending detention, prosecution, proscription and restriction for compliance with legality, necessity, proportionality and fair-trial guarantees, with discontinuance, release and effective remedies where those standards are not met.

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