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Sri Lankas Failure to Reform the Prevention of Terrorism Act

Security personnel gesture to stop motorists at a checkpoint in Divulapitiya on the outskirts of the Sri Lankan capital of Colombo on October 4, 2020. 2020 Ishara S. Kodikara /AFP via Getty Images

Sri Lankas Prevention of Terrorism Act (PTA) has been used for over 40 years to enable prolonged arbitrary detention, to extract false confessions through torture, and to target minority communities and civil society groups. After years of domestic and international criticism of the law, the Sri Lankan government of President Gotabaya Rajapaksa on January 27, 2022, published a bill to amend the act. However, the proposed amendments leave the most often abused provisions of the law intact, and if enacted, will do little to bring the PTA into compliance with Sri Lankas international human rights obligations.

The proposed amendments would not have prevented the abuses suffered by Ahnaf Jazeem, a 26-year-old Muslim poet, who was arrested under the PTA on May 26, 2020, because broadly drawn speech related offences remain unchanged. He was accused without basis of promoting religious extremism in a 2017 book of Tamil verse. In a newspaper interview after he was released on bail following nearly two years in detention, Jazeem said that the police Terrorism Investigation Division kept me handcuffed and isolated for 14 days. They forced me during this time to deliver a confession. He said they threatened to keep him in prison for 15 or 20 years and to arrest the woman he was arranged to marry. That is how they threatened a confession out of me.

If the amendments are adopted, the PTA would still not meet any of the five necessary prerequisites described by seven United Nations special rapporteurs in December 2021 to comply with international human rights standards.

The PTA was enacted in 1979 as a temporary measure when it was presented in parliament, debated, and enacted all in one day. It allows the authorities to carry out arrests without warrant for unspecified unlawful activities, and permits detention for up to 18 months without producing the suspect before a court. Many suspects have been held on remand for years awaiting trial. Statistics indicate that most are tortured in custody, and convictions frequently rely on confessions obtained under torture. During this 18-month period you are at the mercy of whichever security agency is detaining you, a defense lawyer in numerous PTA cases told Human Rights Watch.

Since Gotabaya Rajapaksa won the presidential election in November 2019, his administration has used the PTA to target perceived political opponents and members of the minority Tamil and Muslim communities. Meanwhile, the authorities have threatened the victims of past human rights violations, human rights activists and lawyers, journalists, and members of civil society groups under the guise of countering terrorism. As a human rights activist working with the Tamil community based in the north of Sri Lanka said: They are using PTA to create fear among activists. When we talk to the families of the disappeared, they say they can be arrested at any time. Police are arresting people for posting pictures on Facebook. They can arrest you for anything.

The Rajapaksa government has rejected pledges by the previous administration of Maithripala Sirisena to repeal the law. Instead, it has used the PTA to target religious and ethnic minorities, fuelling concerns the government aims to further institutionalize Sinhala Buddhist nationalism in keeping with President Rajapaksas ethnically divisive campaign rhetoric. He has also promised to strengthen the countrys abusive intelligence agencies and protect military commanders he calls war heroes from war crimes prosecutions.

In January 2021 the Rajapaksa government pledged to review abusive provisions of the PTA, which is a key condition of Sri Lankas tariff-free trading access to the European Union. The Prevention of Terrorism (Temporary Provisions) Act of 1979 Amendment Bill (the Amendment Bill), published in January 2022, includes revisions that could reduce some abuses under the law, such as shortening, from 18 to 12 months, the period a suspect can be held without judicial oversight. But this still violates the prohibition against arbitrary detention.

The Amendment Bill does not provide a definition of terrorism, as called for by United Nations experts to help prevent the PTAs widespread misuse. The bill does not alter the sweeping powers the law gives to authorities to charge people with speech-related offenses: authorities can still arrest anyone deemed to be causing or intending to cause racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups. This is the provision used to detain the poet Ahnaf Jazeem and a prominent lawyer called Hejaaz Hizbullah.

Crucially, the Amendment Bill does not change the status of confessions given to the police as evidence in PTA cases. While such evidence is inadmissible under other Sri Lankan laws, it is admissible under the PTA. This has led the police to routinely use torture and other ill-treatment to extract confessions from PTA prisoners. Furthermore, the bill does not remove the authority from officials to move and keep a suspect in any place for the purpose of interrogation, which has repeatedly been used to facilitate torture and increases the risk of enforced disappearance.

Other proposed amendments merely replicate existing provisions of Sri Lankan law that have done little to date to prevent abuses, such as mandating magistrates to make monthly visits to places of detention to check whether prisoners are being tortured. The Human Rights Commission of Sri Lanka told Human Rights Watch it had informed the Supreme Court chief justice that magistrates had made no visits to Criminal Investigation Department and Terrorism Investigation Division detention centres. The Amendment Bill would also add a requirement to notify the Human Rights Commission of PTA arrests a requirement that already exists but that the police often ignore.

Meanwhile, President Rajapaksa in 2021 introduced regulations that would make the PTA even more abusive of rights, by enabling up to two years detention without trial for rehabilitation. Additionally, proposed changes to the Code of Criminal Procedure weaken requirements for in-person court attendance by defendants, a key safeguard against mistreatment in custody including torture and denying adequate access to legal counsel, mirroring provisions of the PTA that enable rights violations.

This report provides a critical assessment of the PTA and information on its recent use by the Rajapaksa administration. It demonstrates that despite promises to international partners that the law would be reformed, proposed amendments would leave the abusive framework of the PTA largely intact. The administration appears committed to using the PTA to further policy goals that undermine the rights of Tamils, Muslims and other minorities and civil society groups and the media on the pretext of countering terrorism.

The Rajapaksa administrations actions have proved louder than its misleading reform proposals. Friends of Sri Lanka including the European Union, United States, and United Kingdom, as well as the United Nations should hold the Sri Lankan government to its commitments and withdraw their support from the countrys counterterrorism apparatus until there are concrete, time-bound steps to end abuses and to repeal the PTA. The EU should insist that Sri Lanka meet its human rights commitments, in exchange for which it receives tariff-free access to European markets, by requiring immediate and genuine action to revoke the PTA and ensure any new counterterrorism legislation meets international human rights standards.

Before enacting any counterterrorism law, the government should conduct meaningful and inclusive consultations with civil society groups and adopt the December 2021 benchmarks from seven UN human rights experts that they consider to be necessary prerequisites for meeting Sri Lankas international human rights obligations. The statutory safeguards that the government, in its response, said exist and are used for protecting the rights of PTA detainees, have in practice been repeatedly bypassed by security agencies.

Between 1983 and 2009, when Sri Lanka was wracked by a brutal civil war between the government and the separatist Liberation Tigers of Tamil Eelam (LTTE), the authorities primarily used the Prevention of Terrorism Act against those accused of involvement with the LTTE or other militant groups, thus mostly ethnic Tamils.

Twelve years since the end of the war, the government is still targeting Tamils but also using the PTA against Muslims, particularly since 2019, when Islamist militants carried out the deadly, coordinated Easter Sunday bombings on churches and hotels, killing over 260 people.

The PTA denies fundamental due process rights and removes safeguards that would help protect detainees from abuse, creating what is effectively a legal black hole.

Scores of people have remained in prison for years, even decades, awaiting trial on terrorism charges, or following convictions based on confessions extracted using torture. A lawyer described a case in which Barmasiri Chandrayar Ragupathi Sharma, a Tamil Hindu priest, arrested in February 2000 for suspected involvement in an LTTE attack, was held pre-trial under the PTA until 2015, when he was convicted and sentenced to 300 years in prison, based on a confession he says was obtained through repeated torture and recorded in a language he could not understand. A 2002 medico-legal report confirms that the injuries, burns, and scars sustained on his body are consistent with the torture he reported. His appeal has been pending since 2015.

A 2020 report by the constitutionally mandated Human Rights Commission of Sri Lanka (HRCSL) found that, as of September 2018, at least 29 PTA prisoners had spent 5 to 10 years on remand (pretrial detention), and 11

had spent 10 to 15 years on remand. The commission said the longest period a person had been in remand before trial was then 15 years. The longest period a trial had been ongoing was 16 years. The study also found that about 84 percent of PTA prisoners are tortured after their arrest, and over 90 percent of those were forced to sign a document in a language, Sinhala, they could not understand. Very often, PTA prisoners are denied proper access to legal representation.

In September 2021, the Committee for Protecting Rights of Prisoners, a Sri Lankan human rights organization, wrote to the UN high commissioner for human rights, Michelle Bachelet, listing 11 PTA suspects they said had been in detention for 12 to 14 years, and were facing trials that have so far lasted between seven and nine years without reaching a verdict.

Gotabaya Rajapaksa was the defense secretary in the government led by his brother, President Mahinda Rajapaksa, between 2005 and 2015, during and after the final phase of the civil war. He had direct responsibility for the conduct of government security forces that committed war crimes including indiscriminate attacks, summary executions, and rape. The scale of the abuses against ethnic Tamils was particularly great during the final months of the war in 2009, and its immediate aftermath. The government did not acknowledge these crimes or seek to hold those responsible to account, but instead embarked upon a triumphalist campaign that treated the defeat of the LTTE as a victory for majority Sinhala Buddhist political dominance.

After the electoral defeat of Mahinda Rajapaksa, President Sirisena's government from 2015-2019 undertook a number of police investigations into human rights violations committed in Colombo and elsewhere, that revealed evidence of official responsibility for killings and enforced disappearances. In 2015, the Sirisena administration agreed to a landmark consensus resolution at the UN Human Rights Council to promote truth, justice, and reparations, and take steps to protect rights including by repealing the PTA. The government also committed to numerous human rights reforms and to repeal the PTA as part of its negotiations to restore a preferential trading arrangement called the General Scheme of Preferences Plus (GSP+) with the European Union in 2017.

In line with the resolution, the government drafted a new Counter-Terrorism Act (CTA) to replace the PTA, but it was never adopted. The Easter Sunday bombings in 2019 brought renewed use of the PTA, as hundreds of Muslims were arrested, often without any evidence. Some were released in the ensuing weeks and months, but about 300 remain in custody without trial.

The Rajapaksa family's new political party, the Sri Lanka Podujana Peramuna (SLPP), campaigned in the wake of the Easter Sunday bombings on a platform of enhancing public security, as well as reversing any steps towards accountability which it portrayed as penalizing war heroes. The SLPP's 2019 presidential election campaign had the backing of ultra-nationalist Sinhala Buddhist groups including clergy who incited hostility against Muslim minorities.

After winning the presidency in 2019, Gotabaya Rajapaksa promptly derailed important investigations into rights violations, disavowed the 2015 Human Rights Council resolution, and pardoned one of the very few soldiers ever convicted of serious abuses. One of the first acts of his administration, in January 2020, was to abandon attempts to draft alternative counterterrorism legislation that had been made by the previous government, and proclaim support for the PTA. The PTA is back in the statute book, empowering the police and armed forces to face any threat posed to national security from any quarter, the cabinet spokesperson, Minister Bandula Gunawardana, announced.

In a speech on November 18, 2020, President Rajapaksa invoked nationalist fears that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and ideologies that support separatism, extremism and terrorism. Such rhetoric has been repeatedly used by the president and members of his government to stigmatize and justify discrimination against minorities.

On February 25, 2021, the Sri Lankan government published a list proscribing several terrorist organizations and naming several hundred individuals as alleged terrorists, including many rights activists in the Tamil diaspora. The list also included several diaspora groups engaged in advocacy at the Human Rights Council in support of international accountability for violations committed in Sri Lanka. The list created a lot of fear, said a northern-based activist, who pointed out that many mothers of victims of enforced disappearance have received funds from the designated diaspora groups to support their campaign. Also, among those listed were some who are already under PTA detention, such as Dr. Sinnaiya Sivaruban, a Tamil judicial medical officer in Kilinochchi who had served as a medical witness in human rights cases and whom the police Terrorism Investigation Division arrested on August 18, 2019.

On March 9, 2021, President Rajapaksa introduced the Prevention of Terrorism (de-radicalization from holding violent extremist religious ideology) Regulations No. 1 of 2021, which is attached to the PTA and seeks to expand its powers. The regulation broadly allows the authorities to detain and rehabilitate anyone who by words either spoken or intended to be read or by signs or by visible representations causes the commission of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups. Instead of being tried, the suspect faces detention in a reintegration center for up to one year, on the recommendation of the attorney general. The defense minister, currently President Rajapaksa, is empowered to extend the detention for a second year. At the time of writing the implementation of the order is suspended while the Supreme Court considers fundamental rights petitions against it.

As Sri Lanka's human rights situation has deteriorated under Gotabaya Rajapaksa, the shrinking of civil society space and weakening of independent institutions has made it harder for lawyers and activists to track abuses under the PTA. In 2020 the Rajapaksa-dominated parliament passed an amendment to the constitution that eliminates key checks on presidential power, including by putting the president in control of appointments of senior judges and members of previously independent institutions such as the Human Rights Commission of Sri Lanka.

Human rights defenders told Human Rights Watch that they hear frequent reports of arrests under the PTA but are no longer able to verify them for reasons including the Human Rights Commission's loss of independence. Now there is no verification, one activist said. At the beginning of July, another activist in the north said that they had received information about numerous cases but, unlike before, they were unable to confirm them. Things have changed, the activist said. We can't talk to the police about it. They usually don't give any information on why they are arresting someone or where they are going to be taken to.

In previously undisclosed information provided to Human Rights Watch on January 7, 2022, the Human Rights Commission of Sri Lanka said it recorded 109 arrests under the PTA in 2021.

Hejaaz Hizbullah, a prominent Muslim lawyer, was arrested under the PTA in April 2020 and his lawyers told Human Rights Watch he has repeatedly been denied access to them for extended periods. He was initially accused of aiding one of the Easter Sunday suicide bombers who belonged to a wealthy trading family. Hizbullah's lawyers said that his relationship was that of a legal counsel in the family's business affairs. While the initial allegations were dropped, the police filed new cases accusing Hizbullah of causing communal disharmony. Some students alleged that they were forced to testify that Hizbullah incited violence at a school event hosted by a group called Save the Pearls. Police subsequently arrested at least five other men connected to Hizbullah, including staff at the organization and teachers at a school called Arabic College. The lawyers said that some of these men allege that they were tortured, and others that they were threatened and pressured to give false testimony against Hizbullah. They were denied access to lawyers for long periods. All remain in custody under the PTA.

Among other high-profile cases, Murugupillai Kokulathasan, a freelance Tamil journalist, was arrested in the eastern city of Batticaloa on November 28, 2020, after posting on social media about commemoration events related to the civil war. He remains in custody. Keerthi Ratnayake, a freelance journalist, was summoned to a police station and arrested under the PTA, on August 14, 2021. He remains in custody without charge. Ten Tamils were arrested from a memorialization event at beach in Batticaloa on May 18, 2021, and accused under the PTA of commemorating the LTTE. They were released on bail on December 8, although after seven months in custody no indictment had been brought against them.

Had the governments proposed amendments to the PTA in January 2022 been in effect earlier, they would neither have prevented these detentions, nor given the detainees any legal recourse during the first year of their detention. The Amendment Bill states that a detention order issued by the defense minister under the PTA shall be final and shall not be called in question in any proceedings or in any court of law, except by a fundamental rights petition in the Supreme Court. This is the same as under the law as it currently exists, except that the maximum duration of detention orders would be reduced to 12 from 18 months. Under the Amendment Bill, if a prisoner is remanded in pre-trial detention beyond the period of the detention order they would have an opportunity to apply to a court for bail.

UN human rights experts and the UN high commissioner for human rights, Michelle Bachelet, have repeatedly expressed alarm over deteriorating rights in Sri Lanka, and repeatedly highlighted the role of the PTA in sustaining abuses.

On December 9, 2021, seven UN special procedures wrote to the Sri Lankan government noting the repeated findings by their mandates that the PTA contravenes Sri Lanka's obligations under international human rights law, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. They wrote that instead of taking remedial measures, the government is advancing an additional set of rights denying measures through new regulations attached to the PTA.

The UN experts set out five benchmarks for PTA reform that are necessary prerequisites to making the law compliant with international law:

The amendments subsequently proposed by the government would not bring the PTA into compliance with international law on any of these benchmarks.

The UN experts expressed particular concern over the threat the PTA poses to ethnic and religious minorities, and its use to curtail political dissent, and called for an immediate moratorium until the necessary amendments are made. In response the government noted that amendments were then being drafted, and also said that PTA prisoners now had the opportunity to make representations to an advisory board appointed by the president, and provided a copy of guidance issued to police in October on evaluating whether to arrest people under the PTA, using the example of the possession of banned images on a mobile phone.

Faced with the prospect of the UN Human Rights Council adopting a resolution, and calls from the European Union to meet human rights commitments linked to GSP+, the government had announced on January 25, 2021, that it would review and amend the PTA to bring it into compliance with its human rights obligations.

This task was given to the Presidential Commission of Inquiry for Appraisal of the Findings of Previous Commissions and Committees, which the government had mandated to review previous reports as a supposed alternative to the international evidence gathering process then under discussion at the Human Rights Council. The council nevertheless adopted resolution 46/1 on March 26, establishing a UN Sri Lanka Accountability Project to collect evidence of past abuses, over the objections of the Sri Lankan government.

The European Parliament adopted a resolution in June that called for the withdrawal of Sri Lanka's trading privileges under the GSP+ scheme if it continued to fail to meet its human rights commitments, particularly in relation to the PTA. Following the resolution, the Rajapaksa administration repeated assurances that it was willing to amend the PTA, without providing any details or specific commitments.

On June 21, 2021, President Rajapaksa received an interim report on PTA reform from the presidential commission of inquiry. However, the commission's recommendations did not address the gravity or extent of abuses under the law, and none were adopted in full by the president. On June 22, the justice minister, Ali Sabry, announced in parliament that the government intended to reform the PTA, and to free prisoners in cases where there is no court case. Two days later, Rajapaksa pardoned 94 prisoners, including 16 people convicted under the PTA. However, the PTA prisoners were either nearing the end of their sentences or had already been incarcerated for a period exceeding their sentence.

During that parliamentary debate an opposition member of parliament stated that PTA abuses were continuing. Namal Rajapaksa, the minister for youth and sports and son of the prime minister, said that the political opposition, by raising recent detentions, was attempting to disrupt the government's policy to release long-term prisoners. There are people who have been imprisoned for our lifetimes, he said. Why are you talking about people who were only arrested yesterday?

Ahead of the September session of the Human Rights Council, the Sri Lankan government circulated a briefing document to foreign diplomats, claiming progress on human rights and misleadingly stating that the government was intensifying and expanding a consultation process on PTA reform, which activists and the Bar Association of Sri Lanka denied at that time. In October, the government offered similar assurances of PTA reform to an EU delegation assessing Sri Lanka's compliance with its GSP+ obligations.

Even as the government sought to reassure governments about its intention to reform the PTA, the prisons minister, Lohan Ratwatte, visited Anuradhapuraprison where he made PTA prisoners kneel and held a handgun to their heads, ordering them to confess. The administration subsequently fired him as prisons minister, but he retained another ministerial portfolio.

On November 15, Defense Secretary Gen. (ret'd) Kamal Gunaratne, who led forces that were implicated in war crimes at the end of the civil war, submitted a report on PTA reform to the president. At around the same time, the government invited a small group of civil society figures to discuss PTA reform, but failed to include key stakeholders.

In a letter to Human Rights Watch in January 2022, the Sri Lankan Foreign Ministry stated that under a process to release detainees held in judicial custody for extended periods under charges relating to the PTA 13 more persons were discharged as of 13 January 2022. No further details of the releases were available. In the same letter, the government said it had conducted extensive discussions with multiple stakeholders on PTA reform, a

claim disputed by lawyers and human rights activists.

The Amendment Bill was ultimately published by the government on January 27, two weeks ahead of a joint commission meeting between Sri Lanka and the EU, at which Sri Lankas compliance with its human rights obligations under the GSP+ trading scheme would be discussed.

The EU should hold Sri Lanka to its commitment to end all abuses under the PTA. The many years of unfulfilled government promises to reform the PTA have merely provided cover for continuing violations. The PTA should be repealed. Those currently detained under the PTA should promptly be brought to trial on internationally recognizable charges, if there is an evidentiary basis to do so—or they should be released, and charges dropped. Convictions under the PTA should be reviewed and quashed if they rely on confessions made under torture or other ill-treatment, or otherwise disregarded fundamental due process standards. Where torture has been committed, the authorities should prosecute those responsible, including as a matter of command responsibility. Victims of torture and prolonged arbitrary detention should receive treatment and compensation.

This report is based on Human Rights Watch research on the Prevention of Terrorism Act carried out since 2018, interviews conducted between January and December 2021, and a review of newly available court documents.

Due to travel restrictions during the Covid-19 pandemic, all interviews in 2021 were conducted by telephone or via email. Given the security challenges, the inability to conduct in-person interviews greatly limited our ability to include the voices of victims of abuses and their families.

In 2021 Human Rights Watch interviewed 19 lawyers and human rights activists involved in PTA cases in Colombo, the capital, and in Sri Lankas predominantly Tamil and Muslim north and east.

We informed all interviewees of the purpose of the interview, its voluntary nature, and provided no remuneration or other inducement. In most cases we have concealed the identity of interviewees due to security concerns within Sri Lanka. The letters we have chosen for initials in the pseudonyms we use bear no relation to the persons actual name. Interviews were conducted in English.

Human Rights Watch also reviewed recent court filings and other documentation provided by lawyers and activists. In many instances we have not published details of individual cases at the request of lawyers who fear retaliation against their clients.

On December 9, 2021, Human Rights Watch wrote to Sri Lankas attorney general, the Human Rights Commission of Sri Lanka, and the United Nations Office on Drugs and Crime asking for their responses to queries about the PTA and its use so that they could be included in this report. Replies were received from the United Nations Office on Drugs and Crime on December 21, 2021, and from the Human Rights Commission of Sri Lanka on January 7, 2022. This correspondence is published in an appendix to the report.

Sri Lankas Prevention of Terrorism Act (PTA), first enacted as a temporary measure in 1979, allows arrests without warrant for unspecified unlawful activities, and permits detention for up to 18 months on government issued detention orders without a court appearance, or opportunity for bail.^[1] During this 18 month period you are at the mercy of whichever security agency is detaining you, a lawyer acting in PTA cases said. ^[2] Prisoners are then remanded to pre-trial detention, where they can languish in jail for years awaiting trial.

During the civil war between the Sri Lankan government and the Tamil separatist group the Liberation Tigers for Tamil Eelam (LTTE) from 1983-2009, the law was used primarily against members of the countrys ethnic minority Tamil community. Following 2019 bombings on Easter Sunday that killed over 260 people, the use of the PTA has been expanded to target members of the Muslim minority.

Prisoners held without trial under the PTA do not have access to legal recourse, and are at heightened risk of torture and cruel, inhuman, or degrading treatment. A Sri Lankan lawyer described the case of a Tamil man whom the military arrested under the PTA in 2001. While detained, he was tortured and forced to sign confessions in Sinhala and blank sheets of paper. His family only learned of the place where he was detained about six to seven months after his arrest, and he says he was kept hidden during visits by an international humanitarian agency. In 2015, after spending 13 years in remand detention, he was sentenced to 30 years in prison for conspiracy and aiding and abetting a 1999 suicide bombing, following a trial conducted in Sinhala, a language he could not understand. He received no reduction in sentence for the time he had already spent in detention. His lawyers have appealed the verdict and the appeal was first called two-and-a-half years later, in 2017, and is ongoing.

After promising to reform the law to address concerns of international partners, particularly as the European Union is evaluating Sri Lankas compliance with GSP+ requirements, the Sri Lankan government on January 27, 2022, published a proposed Act to amend the Prevention of Terrorism (Temporary Provisions) Act of 1979 (the Amendment Bill).^[3]

The Amendment Bill effectively acknowledges that the existing PTA violates international human rights standards, but even if provisions of the new bill were fully implemented the most often abused provisions of the law would remain intact.

Some of the changes, such as reducing the time that the defense minister can order a persons detention without judicial oversight from 18 to 12 months, and measures that may expedite trials in cases in which charges are ultimately brought, could reduce the level of abuses. But other proposed clauses in the bill, such as a requirement to inform the Human Rights Commission of Sri Lanka of detentions, and monthly inspections of prisoners welfare, only replicate procedures that already exist under domestic law, and which have not previously proved an effective safeguard against torture.

Most importantly, the Amendment Bill does not address the worst features of the law that have led to arbitrary detention and torture. Confessions given to the police remain admissible as evidence without any safeguards, suspects can be detained and interrogated anywhere and by anyone the authorities choose, and there remains no judicial oversight or criteria for the use of detention orders. There is still no definition of terrorism under the law, and suspects can be arrested and held for up to year without evidence.

Human Rights Watch reiterates the call made by many human rights experts for many years to repeal the PTA, and in the interim to impose an immediate moratorium on the use of PTA until an acceptable law can be drafted.

Nongovernmental organizations in Sri Lanka and abroad, along with UN human rights experts, have long called for the PTA to be repealed or revised to meet international due process standards. In May 2013, the Colombo-based Centre for Policy Alternatives (CPA) described the PTA as a law that is wholly inconsistent with contemporary human rights standards, and which not merely permits, but also encourages the pervasive violation of fundamental rights otherwise protected by the Constitution of Sri Lanka.^[4] In January 2022, the CPA said that the governments proposed amendments follow a minimalist approach, introducing only basic reforms which are insufficient to address ground realities.^[5]

In January 2021, a team of 11 prominent women activists issued a report on the impact of the Easter bombings in Batticaloa, eastern Sri Lanka, describing an ongoing pattern of arbitrary arrests and detention [including] many persons [who] were arrested prior to investigation, detained on detention orders for months, and thereafter discharged for lack of evidence.^[6] Others who had personal contact with the bombers remain in detention without apparent evidence against them, while their families face destitution and harassment by the security services. They include, for example, two men who bought motorcycles from the suicide bombers when they were disposing of their possessions prior to the attacks. The report calls for the government to [r]epeat the PTA, and in the interim implement an immediate moratorium on the use of the law, adding that [a]ny law that purports to deal with terrorism must adhere to international human rights standards after community consultation and expert input.

The UN Working Group on Enforced or Involuntary Disappearances has called for a repeal of the PTA since 1999.^[7] including in July 2016 following a visit to Sri Lanka.^[8] After a country visit in December 2017, the UN Working Group on Arbitrary Detention called for its immediate repeal, describing it as one of the key enablers of arbitrary detention for over four decades.^[9]

Juan Mndez, then the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, described the use of torture including sexual abuse after his 2016 visit to Sri Lanka and called for a complete overhaul of the PTA.^[10] He also urged authorities to ensure that any replacement of the law comply with international law and practices. A summary report by Ben Emmerson, then the special rapporteur on human rights while countering terrorism, after his July 2017 country visit found that 80 percent of those arrested under the PTA complained of torture or other ill-treatment following their arrest.^[11]

The preamble to the PTA states that its purpose is to prevent unlawful activities within Sri Lanka or outside Sri Lanka.^[12] The effect of the PTA is to deprive people accused by the government of vaguely defined terrorist acts of due process rights, enabling detention without trial that can last for years or even decades, and removing protections that would reduce the risk of torture.

A lawyer who has defended suspects in numerous PTA cases said that the authorities bring cases and only then begin their investigation: If they cannot find any evidence then they record a confession. I have not seen any confession that was recorded in compliance with procedures. My experience is that in only a few cases the confessions have been rejected by the judges.^[13] The effect, the lawyer said, is that prisoners know they are in a legal black hole. They cant see the light at the end of the tunnel. They know that they have no future.

This characterization is borne out by the many cases in which suspects are held, sometimes for years, without the government indicating having any evidence against them. A court filing of August 30, 2019,^[14] informing a magistrate about the detention of 65 people in connection with the Easter Sunday bombings, repeatedly states that a suspect was identified due to a personal connection with the suicide bombers, and is being held while their financial and telephone records and their travel history are investigated, and that statements have been recorded from their relatives.

On July 2, 2019, the Human Rights Commission of Sri Lanka wrote to the inspector general of police that it had received a number of complaints alleging illegal arrests. The commission observed that the police were making arrests prior to conducting an investigation, and directed the police to gather evidence before detaining a suspect (see correspondence published in the appendix).

The most frequently abused provisions include:

Maithripala Sirisena defeated incumbent Mahinda Rajapaksa in the August 2015 presidential election. In October, the Sirisena administration agreed to a consensus resolution at the UN Human Rights Council. ^[16] The resolution committed the government to ensure accountability for conflict-related abuses by enacting several transitional justice mechanisms. Along with other human rights commitments under the resolution, the government pledged to review and repeal the PTA and to replace it with anti-terrorism legislation in accordance with contemporary international best practices. However, despite drafting alternative counterterrorism legislation, which despite some improvements contained provisions incompatible with human rights standards, the PTA remained in place and abuses continued.

Several drafts of a new counterterrorism law were floated during Sirisenas presidency, but none complied with international human rights standards, and none were adopted. In May 2017, the cabinet approved a draft Counter Terrorism Act (CTA), intended to replace the PTA. Although the bill provided some potential safeguards against abuses, it fell far short of the governments pledges to the Human Rights Council and the European Union to end abusive detention without charge.^[17] Among his concerns with the draft law, Emmerson, the then special rapporteur on human rights while countering terrorism, noted that its broad definition of terrorism poses a real risk that the legislation could be used in circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner.^[18]

In June 2016, the Human Rights Commission of Sri Lanka made recommendations to ensure that any replacement legislation adhered to international human rights standards.^[19] That month, the president adopted directives issued by the Sri Lankan Human Rights Commission that were intended to protect PTA detainees until the law was repealed. The directives reasserted the commissions mandate to be promptly informed of all PTA arrests, to access any person arrested or detained under the PTA, and to access any place of detention at any time. For over three years this led to some increased transparency in the application of the act.

However, the adoption of the 20th amendment to the constitution in 2020 empowered the president to appoint the commissioners to the Human Rights Commission, which the Rajapaksa government used to undermine the commissions independence. Human rights activists and lawyers told Human Rights Watch that they were no longer able to engage with the commission on PTA arrests, and the commission no longer effectively tracked PTA detentions.^[20] Four human rights activists, three of whom are based in the north or east of Sri Lanka, said that while they were previously able to verify PTA arrests with the Human Rights Commission, they are no longer able to do so. A lawyer involved with PTA cases said of the current commission, they are not very open, not very transparent.^[21]

Human Rights Watch wrote to the commission seeking information on its monitoring procedures as well as data on current PTA detentions. In response the commission wrote that it receives information related to PTA detainees from the relevant Authorities from time to time. (The correspondence is published in the appendix to this report.) The response described the commissions broad mandate under the 1996 Human Rights Commission Act to monitor PTA detainees, and cited four meetings with the police, two each in 2020 and 2021, regarding the status and welfare of detainees detained under the PTA. The commission also cited six visits to PTA detainees, three in 2019, two in 2020, and one in 2021.

The commission said it had received eight complaints of torture against PTA detainees in the last three years, including six received by its Jaffna regional office and two in Colombo. The commission said that in one of

these cases (from 2020) it had taken steps to get statements from the PTA detainees in the Remand Prison of Magazine for further investigation.

According to data, disclosed for the first time by the Human Rights Commission, as of January 7, 2022, 392 people were being held on remand under the PTA and another 92 people were held on PTA detention orders. In 2021, 109 people were arrested under the PTA. However, it is not clear how to reach consistent totals from the numbers presented in the tables compiled by the commission (see appendix).

The commission also provided a number of supporting documents, which are published in the appendix to this report. They include a January 2022 letter from the commission to the inspector general of police, stating that the police do not consistently inform the commission of PTA arrests as required by law, and a letter from the commission to the chief justice of the Supreme Court, also from January 2022, stating that magistrates are not fulfilling their mandate to visit places of detention.

In December 2021 the Global Alliance of National Human Rights Institutions (GANHRI) announced that the Human Rights Commission of Sri Lanka would have its A status removed in one year because it no longer meets standards of independence and effectiveness.^[22]

Continuing abuses by President Mahinda Rajapaksa's government following the end of the civil war in 2009 and the failure to address impunity for wartime atrocities led the United Nations and a number of governments to press for reform of the PTA.

The UN first documented abuses committed during the final months of the conflict in a 2011 report by a Panel of Experts appointed by UN Secretary-General Ban Ki-moon.^[23] The UN Human Rights Council in March 2014 called for an independent investigation by the UN Office of the High Commissioner for Human Rights (OHCHR); its 2015 report, known as the OISL Report, found horrific wartime abuses committed by both sides to the conflict.^[24] The Human Rights Council, in the same year, passed a landmark consensus resolution that set out detailed steps for Sri Lanka to pursue accountability and reconciliation, as well as to review and repeal the Prevention of Terrorism Act, to prevent future abuses.^[25] Much of the resolution, including PTA reform, remained unimplemented in 2020 when the Gotabaya Rajapaksa administration repudiated these commitments.^[26]

In her January 2021 report to the Human Rights Council, the UN high commissioner for human rights, Michelle Bachelet, recommended that UN member states consider imposing targeted sanctions against State officials and other actors credibly alleged to have committed or be responsible for grave human rights violations or abuses in Sri Lanka.^[27]

In March 2021 the Human Rights Council adopted resolution 46/1, mandating the OHCHR to collect, consolidate, analyse and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law.^[28]

At the 48th session of the Human Rights Council in September 2021, the Core Group on Sri Lanka urged the government of Sri Lanka to bring its counter-terrorism legislation in line with its international human rights obligations. Referring to the 2021 regulations enabling up to two years detention for rehabilitation, it added, We call on the government of Sri Lanka to reconsider their intention to introduce a rehabilitation process under the Prevention of Terrorism Act that lacks judicial oversight.^[29]

On December 9, 2021, seven UN special rapporteurs wrote to the Sri Lankan government noting the repeated findings by their mandates that the PTA contravenes international human rights law, including provisions of the Universal Declaration of Human Rights and core international human rights treaties.^[30] They wrote that instead of taking remedial measures, the government is advancing an additional set of rights denying measures through new regulations attached to the law.

The special rapporteurs set out five necessary prerequisites to make the law compliant with Sri Lanka's international legal obligations:

The rapporteurs expressed particular concern at the threat the PTA poses to ethnic and religious minorities, and its use to curtail political dissent, and called for an immediate moratorium until the necessary amendments are made.

As a member of the core group on Sri Lanka at the Human Rights Council, the UK has taken a leading role in the adoption of successive resolutions urging respect for human rights and accountability in Sri Lanka.

Under its Conflict, Stability and Security Fund, the UK also provides law enforcement and military assistance to Sri Lanka.^[31] A component of this program, involving police training delivered by Police Scotland, was cancelled by Police Scotland in 2021 following criticism that abusive Sri Lankan police units had benefitted.^[32] The program also involves targeted non-kinetic training and high-level dialogue in the defense sector.^[33]

A freedom of information application by Human Rights Watch, seeking further details of UK security assistance to Sri Lanka and asking whether the UK provides counterterrorism support, was rejected on national security and other grounds.^[34] On January 19, 2022, the Sri Lankan Foreign Ministry issued a statement expressing deep appreciation to the UK for the support extended in the sphere of counter-terrorism.^[35]

In 2010 the European Union withdrew Sri Lanka's access to its trading preference scheme, known as GSP+, which grants tariff-free access to the EU market in exchange for ratifying and implementing 27 international agreements, including human rights conventions.^[36] The step was taken amid large-scale international humanitarian law and human rights violations by the then administration of President Mahinda Rajapaksa.

In 2017, following overall improvements in the human rights situation and reform measures undertaken by the Sirisena administration, the EU restored Sri Lanka's access to GSP+. ^[37] In its January 2017 report on Sri Lanka's application to re-join the scheme, the EU noted, In particular, the Government has committed to replace the PTA with a new Bill on counter-terrorism, to be presented to the Parliament in January 2017 . . . which is to be compatible with international human rights conventions and counter-terrorism standards.^[38]

Five years later, the PTA remains in force and hundreds of people remain detained under it. In its most recent GSP+ assessment, prior to the assessment that is currently in preparation, the commission wrote, The Prevention of Terrorism Act (PTA), which is reported to facilitate detentions without charge, has not been repealed yet, despite Sri Lanka's commitment to do so under GSP+ and UN Human Rights Council Resolution 30/1.^[39] The European Parliament adopted a resolution in June 2021 that called for the withdrawal of Sri Lanka's trading privileges under the GSP+ scheme if it continued to fail to meet its human rights commitments, particularly in relation to the PTA.^[40]

Meanwhile, the European Union has also provided counterterrorism support to Sri Lanka's law enforcement and security agencies by funding programs implemented by the UN Office on Drugs and Crime (UNODC).^[41] The European Parliament resolution also called upon the European Commission to urgently evaluate its funding for a UN Office on Drugs and Crime (UNODC) and INTERPOL project entitled Support to Sri Lanka on Counter-Terrorism so long as counterterrorism in Sri Lanka is in certain cases being used as a pretext on which to persecute members of ethnic and religious groups and civil society.^[42] UNODC's counterterrorism programs in Sri Lanka do not appear to be in compliance with UN human rights due diligence policy, which forbids assistance to security forces in which there is a real risk of grave violations of international human rights law.^[43]

Human Rights Watch wrote to UNODC seeking information on its counterterrorism projects in Sri Lanka, and its interpretation of the UN's human rights due diligence policy. In response the UNODC said, Through various projects, UNODC and the rest of the United Nations family advocate for compliance with international norms, mindful of concerns with the Prevention of Terrorism Act (PTA)... These continued efforts, however, should not be confused with support for non-compliant measures. UNODC is currently phasing out the project Support to Sri Lanka on Counter-Terrorism, with the project scheduled to be completed by 31 January, 2022. (The correspondence is published in the appendix to this report.)

On February 14, 2020, the United States banned the Sri Lankan chief of defense staff, Gen. Shavendra Silva, from travel to the US due to credible information of his involvement, through command responsibility, in gross violations of human rights, namely extrajudicial killings.^[44] On December 10, 2021, the United States imposed similar travel bans on two more Sri Lankans, Chandana Hettiarachchi, a navy intelligence officer, implicated in enforced disappearances at Trincomalee naval base, for his involvement in gross violations of human rights, namely, the flagrant denial of the right to liberty of at least eight Trincomalee 11 victims, from 2008 to 2009, and Sunil Ratnayake, a former staff sergeant in the Sri Lanka Army, for his involvement in gross violations of human rights, namely the extrajudicial killings of at least eight Tamil villagers in December 2000.^[45] On December 5, another Sri Lankan officer, Maj. Gen. (ret'd) Udaya Perera, was turned away from a flight to the United States by airline staff, apparently because his visa had been cancelled.^[46]

After Gotabaya Rajapaksa took office in November 2019, one of the first acts of the new administration, in January 2020, was to drop the draft CTA and proclaim support for the PTA. The PTA is back in the statute book, empowering the Police and Armed Forces to face any threat posed to national security from any quarter, the cabinet spokesperson Minister Bandula Gunawardana announced.^[47]

However, faced with growing international pressure over the country's deteriorating human rights situation, the government announced on January 25, 2021, in a joint statement with the European Union, that it would review and amend the PTA to bring it into compliance with human rights standards.^[48] This task was added to the mandate of the Presidential Commission of Inquiry for Appraisal of the Findings of Previous Commissions and Committees,^[49] which had recently been created to review previous reports as a supposed alternative to the international evidence-gathering process then under discussion at the Human Rights Council.

Nevertheless, one month later the Sri Lankan government published a list proscribing terrorist organisations and listing several hundred individuals as alleged terrorists, including many who are rights activists in the Tamil diaspora.^[50] The list included several nonviolent diaspora groups which at that time were engaged in advocacy at the Human Rights Council to promote accountability for past violations.

On March 12, 2021, President Rajapaksa issued the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021, under the PTA, which expands its powers.^[51] The regulation allows the authorities to detain and rehabilitate anyone who by words either spoken or intended to be read or by signs or by visible representations causes the commission of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups. Instead of being tried, the suspect faces detention in a reintegration center for up to one year on the recommendation of the attorney general. No standards for making such a recommendation are set out. Following the introduction of the regulations in March 2010, Commissioner General of Rehabilitation Maj. Gen. Darshana Hettiarachchi said the government intended to use the powers to rehabilitate people detained during the Easter Sunday bombings inquiry who had been found not to be linked to the attacks.^[52] The defense minister, currently President Rajapaksa, is empowered to extend the detention for a second year. At the time of writing, implementation of the order is suspended while the Supreme Court considers fundamental rights petitions against it.^[53]

On June 4 President Rajapaksa issued a gazette notice creating a new detention site for PTA prisoners at a police facility in Colombo. The step was taken days after the Human Rights Commission wrote to the government to ask about a prisoner being held at the site, which up to that point was an unauthorized place of detention.^[54]

On June 21 President Rajapaksa received an interim report on PTA reform from the presidential commission of inquiry. The commission opposed repealing the act. Instead, it focused on just three provisions (9, 11 and 13) and made three recommendations: expedite the hearing of cases by filing indictments against those held for over three months; confine detainees to their own home under special security instead of detaining them in prisons; and establish an advisory board consisting of at least three people representing Sri Lanka's three major ethnic groups.^[55]

On the same day, a cabinet sub-committee was appointed to further consider PTA reform.^[56] However, none of the commissions interim recommendations were adopted in full by the president. Although an advisory board was established, it is appointed by the president (who is also minister of defense) and does not offer independent oversight.^[57]

On June 22 Justice Minister Ali Sabry announced in parliament that the government intended to reform the PTA, and to free prisoners in cases where there is no court case.^[58] During the debate an opposition MP claimed that during the previous year over 100 young people had been arrested under the PTA in connection with Facebook posts.^[59] In response the minister for youth and sports, Namal Rajapaksa, who is the nephew of the president and the son of the prime minister, alleged that the opposition was attempting to disrupt the government's new policy to release long term prisoners. There are people who have been imprisoned for our lifetimes. Why are you talking about people who were only arrested yesterday? he said.^[60]

On June 24, 2021, President Rajapaksa pardoned 16 people convicted under the PTA most were either nearing the end of their sentences or had already been incarcerated for a period exceeding their sentence.^[61] On the same day he appointed a second committee, this one composed of officials and chaired by the defense secretary, Gen. (ret'd) Kamal Gunaratne, who commanded forces implicated in alleged war crimes and crimes against

humanity during the civil war,^[62] to work on changes to the PTA. In July, Gunaratne said intelligence reports did not indicate any terrorist activity in Sri Lanka.^[63] He was responding to the threat level shown on the US government travel advisory for the country, which Gunaratne said reflected only the Covid-19 pandemic and not any terrorist threat. Nevertheless, the security forces have continued to arrest people under the PTA.

Ahead of the September 2021 session of the Human Rights Council, the Sri Lankan government circulated a briefing document to foreign diplomats claiming progress on human rights.^[64] It partially described the interim recommendations of the presidential commission for PTA reform,^[65] stated that the cabinet sub-committee appointed to revisit the PTA would report by September 24, and claimed without basis to be intensifying and expanding the consultation process by including all stake holders such as civil society the Bar Association of Sri Lanka and academic institutions.

However, even as the government sought to reassure diplomats about its intention to reform the PTA, Prisons Minister Lohan Ratwatte visited Anuradhapuraprison, where he made PTA prisoners kneel and held a gun to their heads, ordering them to confess.^[66] He was subsequently sacked as prisons minister, but retained another ministerial portfolio.

In October, similar assurances of PTA reform were also offered to an EU delegation assessing Sri Lankas compliance with its GSP+ obligations.^[67]

The committee of officials chaired by Defense Secretary Gunaratne submitted a report on PTA reform to the president on November 15.^[68] On around the same date the government invited a group of civil society figures known as the Sri Lanka Collective for Consensus (SLCC) to discuss PTA reform. Up to that point no known consultations had taken place, including with the Bar Association of Sri Lanka.

At a November 27 meeting between the SLCC and members of the cabinet subcommittee on PTA reform, ministers said they did not yet have a draft of proposed changes to the law but described at least eight amendments the government intends to make.^[69] In response to the SLCCs account of the meeting, a group of 47 prominent civil society figures and 13 civil society organisations issued a statement noting that nearly all so-called changes proposed already exist in law and do not address any of the shortcomings in the PTA that enable grave human rights violations.^[70] They said, We call for repeal of the PTA and in the interim an immediate moratorium on the use of the law.

In a letter to Human Rights Watch in January 2022,^[71] the Sri Lankan foreign ministry stated that under a process to release detainees held in judicial custody for extended periods under charges relating to the PTA 13 more persons were discharged as of 13 January 2022.^[71] No further details of the releases were available.

On January 27, 2022, the government published a bill to amend the PTA.^[72] If the Amendment Bill is adopted, it would do little to help Sri Lanka meet the five necessary prerequisites set out by seven UN special rapporteurs in December 2021 to bring Sri Lankas counterterrorism legislation into compliance with Sri Lankas international human rights obligations.^[72]

The five necessary prerequisites are:

1. Employ definitions of terrorism that comply with international norms.

The PTA contains no definition of terrorism, and the Amendment Bill does not address this.

2. Ensure precision and legal certainty, especially when this legislation may impact the rights to freedom of expression, opinion, association and religion or belief.

The Amendment Bill does not affect the sweeping criminalization of speech under section 2 of the PTA, including a vague provision that allows authorities to arrest anyone whose speech they deem to have caused or be intended to cause racial or communal disharmony or feelings of illwill or hostility between different communities or racial or religious groups.

In their December 2021 communication the UN special rapporteurs drew particular attention to this provision, which can be used to violate numerous provisions of the International Covenant on Civil and Political Rights (ICCPR) and other human rights conventions. The Amendment Bill leaves the provision fully intact and would not prevent abuses such as in the case of the lawyer Hijaaz Hizbullah, or the poet Ahnaf Jazeem, who were detained under the PTA for allegedly causing communal disharmony.

3. Ensure preventive measures are in place to prevent and halt arbitrary detention and deprivation of liberty.

Under the Amendment Bill, clause 2, the period for which a person can be held under a detention order issued by the defense minister is reduced from 18 to 12 months. This merely shortens the possible period of arbitrary detention, but does not end it. There remains no judicial oversight of the imposition of detention orders, no criteria for their use, and no requirement to produce any form of evidence against the detainee.

Under the Amendment Bill, clause 4, detention orders shall not be called into question in any proceedings or in any court of law. An apparent exception is made for proceedings under articles 126 and 140 of the Sri Lankan constitution however these relate to fundamental rights petitions in the Supreme Court, which are already brought on behalf of PTA detainees under the current law. There remains no opportunity under the Amendment Bill for people held on detention orders to seek bail. The proposed law would do nothing to prevent the arbitrary detention of any suspect during the first year after their arrest.

4. Ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition.

Crucially, the Amendment Bill does not change the status of confessions given to the police as evidence in PTA cases. Whereas such evidence is inadmissible under other Sri Lankan laws, it is admissible under the PTA. This has led the police to routinely use torture to extract confessions from PTA detainees, as documented in numerous reports by special rapporteurs, the Sri Lankan Human Rights Commission, and human rights groups.^[74]

Furthermore, the Amendment Bill does not alter the power of authorities under section 7(3) of the PTA to move a suspect to any place for the purpose of interrogation and from place to place for the purposes of investigation. Nor does it alter the power of the defense secretary under PTA section 15(a) to order that a detainee be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests [of national security or public order]. These provisions have repeatedly been used to enable torture and other ill-treatment, and increase the risk of enforced disappearance.

Clause 3 of the Amendment Bill would require authorities to notify the Human Rights Commission of Sri Lanka of detentions under the PTA within an (unspecified) reasonable period, although a similar duty already exists under the Human Rights Commission Act.^[75] The Human Rights Commission, in a letter to Human Rights Watch dated January 7, 2022, acknowledged that the police do not consistently uphold this provision.^[76]

Clause 3 of the Amendment Bill also contains provisions relating to monthly inspections of places of detention by magistrates. In its letter to Human Rights Watch, the Human Rights Commission recognized that these powers already exist, but acknowledged that they are not applied in practice. And the Amendment Bill creates no obligation on magistrates to initiate an investigation of suspected torture, stating only that they may do so. The bill also does not ensure that prisoners are able to meet magistrates or judicial medical officers (JMOs) in private, nor provide for their transfer to another place of detention in case they have allegedly been tortured, nor make clear the procedural basis for magistrates to pursue any action, since those held under detention orders do not have cases filed at the magistrates court. This contravenes article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture), which states that, Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.^[77]

Clause 10 of the Amendment Bill reiterates provisions for official impunity in the existing act, stating no suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any Order made or direction given under this Act. This is contrary to article 14 of the Convention against Torture, which states that Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.^[78]

5) Enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel.

Clause 5 of the Amendment Bill provides that [a]n Attorney-at-Law representing a person remanded or detained under this Act, shall have the right of access to such person and to make representations on behalf of such person, subject to such conditions as may be prescribed by regulations made under this Act or as provided for in other written law. Since the defense minister has broad powers to introduce new regulations under the act, the proposed law therefore imposes unspecified restrictions on prisoners access to a lawyer. In principle the right of access to a lawyer already exists in Sri Lankan law, although it is frequently violated for PTA detainees, and the confidentiality of meetings with lawyers has also been routinely violated under the PTA.^[79]

The proposed Amendment Bill contains a provision in clause 8 that may expedite the conduct of trials, stating that hearings should normally be conducted on a day to day basis. In the past, trials have often lasted years, with only intermittent hearings. Under clause 10 of the Amendment Bill, if a trial has not begun 12 months after the date of their arrest, a detainee may apply to the High Court or Court of Appeal for bail. Under the existing PTA, bail can normally be granted only if the attorney general makes no objection

Since the Gotabaya Rajapaksa administration took office in November 2019, the authorities have continued to make arrests and hold people in detention under the PTA without producing evidence of terrorism against them. This is because the PTA permits detention without evidence.

In one of the few cases that went to trial, on November 2, 2021, the Colombo High Court acquitted former provincial governor Azath Salley of terrorism after he had been held in custody since March 16, 2021. The charges alleged that Salley had caused communal disharmony with comments he had made about Sharia (Islamic law), but the judge found that Salley had not made such a statement.^[80] He had been arrested following a complaint by three ruling party members of parliament.

According to data provided by the Human Rights Commission of Sri Lanka, 212 people were arrested under the PTA in 2020, and 109 in 2021.^[81] The data show that one person was bailed under the PTA in 2020 and 23 were bailed in 2021, while the attorney general instructed that 10 PTA prisoners should be released in 2020, and 45 in 2021. However, it is not clear when the prisoners who were bailed or released had been arrested. Human Rights Watch wrote to the attorney general requesting data on PTA detentions but received no reply.

Most of the people known to have been detained under the PTA belong to either the Tamil or Muslim minority communities.^[82] Members of the government have also frequently used rhetoric to inflame majoritarian sentiments and stigmatise these minorities by associating them with terrorism. In a speech on November 18, 2020, President Rajapaksa invoked legitimate fears that the Sinhala race, our religion, national resources and the heritage would be threatened with destruction in the face of various local and foreign forces and ideologies that support separatism, extremism and terrorism.^[83] If it is not blocked by the Supreme Court, the PTA regulation on deradicalization, introduced by the government in 2021,^[84] which allows up to two years of custodial rehabilitation without trial for people deemed by the government to have by words either spoken or intended to be read [caused] religious, racial or communal disharmony, could also be used to target minority communities.

The Easter Sunday bombings on April 21, 2019, carried out by Islamist militants, killed over 260 people. Suicide bombers entered three crowded churches and three luxury hotels in Colombo, the capital, and nearby Negombo, and the eastern city of Batticaloa. There were two other bombings, one in a guesthouse in Dehiwala and the other in a suspected militant safehouse in Dematagoda. The bombings were the worst violence since Sri Lankas three-decade long civil war ended in May 2009.

In the weeks and months that followed, the authorities arrested and detained hundreds of people under counterterrorism and emergency laws, some on grounds that knives or Islamic books were recovered from their homes.^[85] In a letter to the inspector general of police dated July 2, 2019, the Human Rights Commission of Sri Lanka said it had received a number of complaints alleging illegal arrests and stated the Commission observes that police investigations are conducted after the arrest.^[86]

While evidence may exist against some of those detained, the government has presented no basis for detaining many others besides that they were acquainted or had family ties with the bombers.^[87] For example, two men remain in PTA detention because they were found in possession of motorcycles registered to relatives of the bombers.^[88] Arrests, purportedly in connection with the Easter attacks, continue two-and-a-half years later. The first trial of 25 men accused in connection with the attack, began on November 22, 2021. Defense lawyers said that because prosecutors have brought over 23,000 charges, it may take a decade to reach a verdict.^[89]

In a statement to parliament on May 19, 2021, the public security minister, Adm. (retd.) Sarath Weerasekera said that 704 people had been arrested in connection with the Easter Sunday bombings, of whom 287 remained in custody while 244 were on bail, 168 had been released (without bail), and 32 indicted.^[90] (These figures actually total 731, not 704, or 699 if the indicted are among the 287 in custody.)^[91] In August, Inspector General of Police C.D. Wickramaratnesaid that 311 people were then in custody in connection with the attacks.^[92]

According to court filings reviewed by Human Rights Watch, some of these suspects, who remain in detention over two years since they were arrested, were arbitrarily arrested for no apparent reason at all except their being Muslim. In many cases, the detainees alleged that they were not told the reason for their arrest, that they were not provided with detention orders authorizing their detention under the PTA, that they were denied access to lawyers, and that they were threatened, physically abused, or kept in unsanitary and degrading conditions.

Activists said that, of those in detention, around 100 are from Kattankudy near the city of Batticaloa in eastern Sri Lanka. They include numerous people who were related to, or had other sometimes remote associations with, the suicide bombers. In May 2021, for example, a local Muslim businessman who had employed one of the bombers on a building project in 2018 was detained under the PTA.

Also among these detainees were 11 women who were arrested on December 4, 2020, because they attended a sermon organized by one of the bombers in 2018, including his mother-in-law and her daughter.^[93] Two of the women are accompanied by children, both of whom were born after the attack and are reportedly suffering from heat and infections in prison.

The Kattankudy detainees are spread over nine detention facilities around the country, in many cases far from their homes, and have suffered long periods without family visits or access to lawyers, partly due to restrictions imposed because of the Covid-19 pandemic.

According to a lawyer representing several detainees held in connection with the Easter Sunday attacks, the bombers had conducted several training camps in the years before the attack. He said that his clients were teenage students, who attended one of these events because they were told they would receive vocational training. They have been held without charge for over two years.^[94] An activist familiar with the cases said some of those detained for links to the bombers had raised concerns about the bombers with the police prior to the attacks. However, while their warnings went unheeded these people were subsequently detained and remain in custody without charge. ^[95]

In January 2022, a report by domestic human rights activists on the impact of the bombings in the Batticaloa region found that [p]ersons who seemingly did not commit or aid or abet an offence, and only had a peripheral connection to accused persons or to persons who engaged in the bombing have been arrested. For instance, boys and young men who were either forced to attend or were misinformed about the destination and purpose of events [organized by the bombers], and attended for only one or two days were arrested.^[96] Among those that remain in custody, the families of some detainees alleged that their relative had been tortured. The report found that families of detainees had been subjected to harassment and intimidation by the security forces, as well as social stigma, and had suffered economic hardship as a result of their relatives prolonged detention. Meanwhile, the non-denominational Christian community in the region, which was among the bombers targets, has also suffered continuing discrimination and harassment at the hands of officials and the security forces, part of a long standing pattern of discrimination against protestant Christians.^[97]

Hejaaz Hizbullah, a prominent lawyer who has acted in minority rights cases, was arrested on April 14, 2020, under the PTA.^[98] He was initially accused of aiding and abetting Inshaf Ahamed, one of the suicide bombers on April 21, 2019, an accusation that has since been withdrawn. The allegations against Hizbullah have been changed several times and his detention has been extended for over 19 months.

The latest allegation, on which an indictment was filed against Hizbullah in the High Court on February 18, 2021, was a speech-related offense of causing communal disharmony, one of several overly broad offenses provided under the PTA. The indictment is based on a statement to the Criminal Investigation Department (CID) of the police made by a teenage student regarding a speech allegedly given by Hizbullah in Puttalam. Other students, who were questioned at the same time by the same officers, filed complaints with the Human Rights Commission and brought fundamental rights petitions before the Supreme Court claiming they were coerced to falsely implicate Hizbullah.^[99]

At least five other men have been detained under the PTA in connection with Hizbullahs caseall remain in custody and have been prevented from retaining or meeting lawyers for extended periods^[100] Among them is Mohamed Sulthan, an employee of the organization Save the Pearls, who told a magistrate in October 2021 that three named police officers tortured him in an attempt to obtain testimony against Hizbullah.^[101] Mohamed Shakeel, a school principal, was arrested on February 21, 2021, for allegedly aiding and abetting Hizbullah.^[102]

Hizbullahs lawyer alleges that while he was in police custody, Hizbullah was prevented from meeting his legal counsel in private until an order was issued by the Court of Appeal. After being charged in February 2021, Hizbullah was moved to judicial remand custody, where he was able to speak with his family for the first time in 10 months. Thereafter visitation rights were again restricted. He remains in custody at the time of writing.

Ahnaf Jazeem, a 26-year-old poet, was arrested on May 26, 2020 on allegations that an anthology of verse he published in 2017 promoted religious extremism. Tamil scholars who have read the book say it promotes peace and toleration. He had briefly stayed in teachers accommodation belonging to Hizbullahs organization Save the Pearls.^[103]

According to Jazeems lawyer, the arrest was first disclosed by the authorities in court filings relating to Hizbullahs case a month after Jazeem was detained. ^[104] It remained widely unknown until December, when Jazeem first obtained legal representation, by which time the courts were closed due to the Covid-19 pandemic. His lawyers filed a fundamental rights petition seeking his release on April 9, 2021, but were prevented from having a lengthy, private consultation with Jazeem until August 2021. The authorities concealed information concerning his case from his family and lawyers.

An affidavit filed with the Supreme Court on his behalf on October 22, 2021 states that while in police custody, Jazeem was forced to witness or hear other detainees being tortured, and was threatened that he would receive the same treatment, including being suspended from the ceiling and beaten, if he did not confess.^[105] This allegedly occurred on at least 10 occasions. During Jazeems first two weeks in detention, the affidavit said, his hands were cuffed to a table leg, even while sleeping. He later suffered inhuman and degrading treatment while detained at a TID facility on Chaitya Road in Colombo, to which he was transferred on March 8, 2021, the same day as his first brief meeting with lawyers. His affidavit alleges that this transfer was in retaliation for obtaining legal counsel and that the TID facility was sweltering hot and infested with mice and cockroaches. The police allegedly coerced him to sign self-incriminating statements he was not allowed to read. According to the affidavit, while Jazeem was in custody his family was subjected to continuous police harassment.

The affidavit alleges that Jazeem was held at Colombo Remand Prison at a time when Sri Lanka was experiencing a major wave of Covid-19 infections, with around 50 others in a cell known as the ISIS Cell, where other Muslims remanded after the Easter Sunday attacks were also being held. Remandees who are punished for using cell phones and persons who are suspicious to have contracted COVID-19 virus are all sent to this cell, the statement claims.^[106]

Jazeem was released on bail in December 2021.^[107] The *Daily FT* noted in an editorial that his lengthy detention and the six months he spent inside a prison cell with no access to a lawyer speaks volumes about the draconian and cruel nature of the PTA and how easily the law can be politically weaponised against foes perceived and real.^[108]

Rishad Bathiudeen, a member of parliament and former minister, and his brother Riyad Bathiudeen, were arrested on April 21, 2021, for an alleged connection to the Easter Sunday bombings.^[109] A presidential commission of inquiry into the attacks had earlier investigated the allegations and found no evidence of any wrongdoing by the former minister.^[110] On June 4 a fundamental rights petition was filed in the case, but hearings were delayed after judges recused themselves. Rishad was released on bail on October 14, 2021, and Riyaj was granted bail by the Supreme Court on November 15.^[111]

The use of the PTA is very high now, a lawyer in the north said in June, adding that lawyers had been filing cases challenging detentions.^[112] At the beginning of July an activist in the north said they had received information about numerous cases but, unlike previously, they were unable to confirm them. Things have changed, the activist said. We cant talk to the police about it. They usually dont give any information on why they are arresting someone or where they are going to be taken to. ^[113]

The situation is further obscured because prisoners are sometimes held under other laws as well as the PTA. Sometimes what they do is hold them on other charges then also bring a PTA count because this allows authorities to detain the person indefinitely, a lawyer said.^[114] It can take weeks for a reported case to come to the attention of human rights activists, who then struggle to discover where a person is held or whether they have been released.

There have been numerous arrests and detentions for social media posts commemorating Tamil fighters who died during the civil war. In June 2021, a Tamil opposition politician, Shanakiyan Rasamanickam, claimed in parliament that over 100 people had been arrested under the PTA for social media posts.^[115] In Batticaloa, police detained 19 people in November 2020 for allegedly posting online birthday wishes for the late LTTE leader Velupillai Prabhakaran, who was killed in 2009.^[116]

While many are believed to have been released in such cases, others have not. For instance, journalist Murugupillai Kokulathasan was arrested in November 2020 for allegedly posting pictures on Facebook of Prabhakaran.^[117] In a July 12, 2021 letter to the Human Rights Commission, Kokulathasans lawyer wrote, my client had only posted on his Facebook wall several photographs of bereaved relatives commemorating their loved ones [who were killed during the civil war]... The photographs were captioned with poetic texts expressing the griefand sentiments of those relatives.^[118]He remains in custody.

The PTA has also been used to attempt to suppress memorialization events organized by members of the Tamil community to commemorate people who died during the civil war. Prior to planned memorialization events in May 2021, the authorities issued orders banning memorialization events on the basis that they glorify a banned terrorist organization, the LTTE, which is an offense under the PTA. For instance, police arrested 10 people on May 18, 2021 at Kalkudah near Batticaloa for organizing a memorial event.^[119] They were released on bail on December 8.^[120]

I have appeared in [PTA] cases where suspects were taken into custody while they were appearing at a protest, a lawyer told Human Rights Watch. There have been cases where people participating in commemorations [of people who died during the civil war] were taken into custody.^[121]

Banning of memorialization [events] under the guise of PTA and under the guise of Covid has occurred, another lawyer said. Using the PTA or the ICCPR Act^[122] to curb memorialization is nothing new. ^[123] The Amendment Bill published in January 2022 would have no effect on these abuses.

The Rajapaksa administration has reversed the partial reopening of civil society space made under the previous Sirisena administration. The abuse of the governments counterterrorism authority has been a key plank in this strategy. Intelligence and security agencies, including the Terrorism Investigation Division (TID) of the police, have intrusively surveilled and intimidated victims of past abuses and their families, human rights defenders working on their behalf, as well as the families of people detained under the PTA, civil society organizations seeking to support them, and other groups working on unrelated issues.^[124] Frequently, the authorities use powers under the PTA to threaten or in some cases detain people for exercising their rights. The governments Amendment Bill includes no provisions that would curb such abuses.

The use of counterterrorism measures as a pretext and tool to suppress civil society is most pervasive in the Tamil and Muslim majority regions of the north and east. A lawyer representing Tamil clients in human rights cases said that even lawyers live in fear, and that their organization had received an official notice in 2021:

Our organization and some of our partner organizations were sent a letter under the PTA requiring us to give details of our work. Our staff, and other human rights activists, also feel fear because they can make any allegation and arrest us. No lawyers from Jaffna [city in the north] are willing to appear with me. They can be put in custody without a charge sheet. This is very dangerous nowadays. We cant talk about human rights. We cant talk about the government. We have to be very careful when we work. When we do work, they [police and intelligence agencies] follow us. They followed me and my staff when we went to the Human Rights Commission [of Sri Lanka] to complain.^[125]

A Muslim activist said that many Muslims in particular fear the government could use false allegations related to the Easter Sunday bombings as a pretext to arrest them. That would be enough, he said.^[126] A human rights activist based in the north said, They are using PTA to create fear among activists. When we talk to the families of the disappeared, they say they can be arrested at any time because they are arresting people for [posting] pictures on Facebook. They can arrest you for anything.^[127]

Several activists described visits to their homes or offices by members of the TID, the Criminal Investigation Department (CID), or intelligence services. When an intelligence officer goes to your home and asks where you are working then there is a subtle pressure from the family front, said an activist who lives in Colombo. Its much worse in the north and east, [or] Kandy. Such visits are much more common.^[128]

The pretext of targeting terrorist financing has been used by the Rajapaksa administration to curtail funding for civil society groups without any evidence that they are channeling money to violent extremists. While the TID and other security agencies demand access to organizations financial records, the central bank has interfered in international transfers of funds to such groups.^[129]

One activist said their organization had received a visit from TID in 2021 demanding to inspect records of suspected terrorist financing.^[130] Another said their organization experienced over a months delay in having an international transfer of funds released by the central bank, with no explanation given.^[131] A third activist, who is based in the north, said that They [the TID] regularly visit the NGOs and talk about the financial reports and staff lists and phone numbers. TID visits the NGOs regularly, its kind of routine.^[132]

On February 25, 2021, while Sri Lankan activists and human rights groups were engaging with the 46th session of the UN Human Rights Council in Geneva, the Rajapaksa administration published a list designating hundreds of individuals and organizations as terrorists.^[133] Among those listed were some who were already under PTA detention, such as Dr. Sinnaiya Sivaruban, a judicial medical officer at Palai Hospital in Kilinochchi, who had served as a medical witness in human rights cases, who was arrested by the TID on August 18, 2019.^[134] However, the majority of those listed were members of the Tamil diaspora, including several mainstream organizations outside of Sri Lanka that were engaged in advocacy at the Human Rights Council at the time they were listed.

Human rights activists in the country said these designations had a long-term chilling effect on civil society groups, and particularly on victims of past abuses and their families. Many within Sri Lanka, especially in the north and east, were in contact with the designated diaspora groups or individuals and some received charitable funding through them. Those contacts left them vulnerable to accusations of terrorist activity.

The list created a lot of fear, said an activist based in the north, who pointed out that many mothers of victims of enforced disappearance have received funds from the designated diaspora groups to support their campaign to learn the fate of their missing children and to seek accountability.^[135] Another activist, in the east, said the designations had caused huge concern.^[136] Victims will be at huge threat if they try to make contact with those designated, the activist said. So we have to try to secure them.

A representative of a diaspora group designated as terrorist, which was widely viewed as a mainstream organization campaigning for accountability, said that since the listing they were no longer able to financially support any humanitarian and welfare causes inside Sri Lanka.^[137]

On October 11, 2021, Kapilan Kathiraveluw was acquitted at trial after being held under the PTA for 12 years since the age of 17. He had been accused of links to the LTTE, for which prosecutors were unable to produce sufficient evidence.^[138] On December 14 the Colombo High Court acquitted another long-term prisoner, Thevarasa Sivapalan, 45, who had been held under the PTA for 15 years, accused of gun smuggling.^[139]

Scores of Tamils have been detained under the PTA for many years, either awaiting trial or following convictions based on confessions obtained under torture. Sri Lankan activists handling cases of PTA detainees say that some have been in custody for decades awaiting trial, or during trials lasting years. Many prisoners have said they did not have adequate legal representation. Appeals processes can also last many years.

Barmasiri Chandraiyeer Ragupathi Sharma, a Hindu priest, arrested under the PTA in February 2000 for suspected involvement in an LTTE bombing at Colombo town hall, has spent over 20 years in prison.^[140] A medico-legal report from 2002 confirms that 2002 confirms that the injuries, burns, and scars observed on his body are consistent with the torture he reported. He has alleged that he was unable to obtain legal representation for at least 18 months. He was later sentenced to 300 years in prison. His case has been on appeal since 2015. His wife, who was also arrested, was acquitted in 2015 after spending 15 years in detention.

Vikneswaranathan Paartheepan was arrested when he was 19, and has been in detention for nearly 25 years.^[141] He was arrested after a bomb blast in his Colombo neighborhood, seemingly because he was the only person shouting in Tamil. He says he was tortured during interrogation in police custody. He was convicted in 2002 and sentenced to life imprisonment. He appealed in 2002 against the verdict and the case is ongoing.

A man said he had been in PTA detention since August 2009 when a group of people in civilian clothing approached him and told him to go with them.^[142] He was put into a jeep, blindfolded, and handcuffed, and then beaten. In December 2012, he was produced in the High Court for the first time, and the case is ongoing.

A man who had been forcibly recruited by the LTTE as a child said he was arrested by police in 2009 and has remained in detention for over 12 years.^[143] His family learned about his whereabouts nearly three years after his arrest. He was repeatedly assaulted during interrogation with wires and metal cables and asked to sign a document written in Sinhala that he says was not explained to him. When he refused to sign the document, he was beaten until he signed. He was sentenced to life imprisonment in 2017, which he appealed. The case is ongoing.

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The basis for a clear and specific definition of what constitutes terrorism;

That the burden of proof to show an individual poses a threat and should be detained always lies upon the state, and that burden increases with the length of the detention;

[R]eview by a court of such detention in a prompt and regular manner is imperative to prevent any violation of the detainees rights,

[E]nabling the admissibility of confessions coupled with-prolonged periods of administrative detention creates space for torture and ill-treatment . . . Only confessions voluntarily made to a judicial officer should be admissible in evidence.

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European Union Should Press for Repeal of Prevention of Terrorism Act

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