

# **Comparing the Proposed Counter Terrorism Bill to the Prevention of Terrorism Act**

Centre for Policy Alternatives  
October 2018



CENTRE FOR POLICY ALTERNATIVES

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

6/5, Layards Road, Colombo 5, Sri Lanka

Tel: +9411 2081384, +94112081385, +94112081386

Fax: +9411 2081388

Email: [info@cpalanka.org](mailto:info@cpalanka.org)

Web: [www.cpalanka.org](http://www.cpalanka.org)

Facebook: [www.facebook.com/cpasl](http://www.facebook.com/cpasl)

Twitter: @cpasl

**COMMENTARY**  
**COMPARING THE PROPOSED COUNTER TERRORISM BILL TO THE PREVENTION OF TERRORISM ACT**  
**by**  
**Centre for Policy Alternatives (CPA)**  
**October 2018**

This document is a comparison of the proposed Counter Terrorism Act (CTA) with the current legal regime operating under the Prevention of Terrorism Act (PTA) and regulations made thereunder prepared by the Centre for Policy Alternatives (CPA). The present document is limited to a comparison with the PTA to ensure there is a timely comment on the CTA and to inform the public on specific areas critical for individual liberties and fundamental freedoms. Future publications will, however, provide a more detailed analysis of the provisions in the CTA, other laws with which the CTA can be compared with, and their operation.

As per recent reports in the media, it has been suggested that there will be further committee stage amendments brought to the CTA before it is passed by Parliament. As has been reiterated by CPA on numerous occasions, this procedure is regrettable as it prevents citizens challenging the provisions added to the proposed Bill in court. This is especially egregious in the case of a Bill such as this which will have a major impact on the liberties and rights of the citizens of this country.

[CPA filed papers on the 17<sup>th</sup> of October 2018](#) intervening in one of the petitions challenging the proposed Counter Terrorism Bill.

| PROVISION                           | PREVENTION OF TERRORISM ACT (PTA)   | COUNTER TERRORISM BILL (PROPOSED CTA)   | COMMENTS   |
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| <p><b>Long title of the Act</b></p> | <ul style="list-style-type: none"> <li>• “for the prevention of acts of terrorism Sri Lanka, the prevention of unlawful activities of any individual/ group of individuals/ association/ organization or body of persons within Sri Lanka or outside Sri Lanka and for matters connected therewith or incidental thereto.”</li> </ul> | <p>“for the protection of Sri Lanka and the people of Sri Lanka from acts of terrorism and other offences associated with terrorism;</p> <p>for the prevention of terrorism and other offences associated with terrorism committed within or outside Sri Lanka;</p> <p>for the prevention of the use of Sri Lankan territory and its people for the preparation for terrorism outside Sri Lanka;</p> <p>to provide for the detection of acts of terrorism and other offences associated with terrorism; and</p> <p>to provide for the identification, apprehension, arrest, custody, detention, investigation, prosecution and punishment of any person who has committed an act of terrorism or any other offence associated with terrorism;</p> <p>for the repeal of the Prevention of Terrorism (Temporary Provisions)</p> | <p>Until the year 1982 the PTA was intended to be only a temporary provision, which was changed when section 29 of the PTA was repealed by act No. 10 of 1982. The proposed CTA is a permanent measure.</p> <p>The preamble of the proposed CTA is much more specific as to what it seeks to do, who it will apply to and where it will apply.</p> <p>The proposed CTA also mentions in preamble that it deals with matters relating to <i>identification, apprehension, arrest, custody, detention, investigation, prosecution and punishment</i>. The provisions in the CTA dealing with these areas are much more comprehensive than the sections in the PTA.</p> |

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|   |   | Act, No. 48 of 1979; and for matters connected therewith or incidental thereto”   |   |
| <b>Preamble – what are the guiding principles of the act?</b> | <p>“affirm that men and institutions remain free only when freedom is founded upon respect for the Rule of Law and that grievances should be redressed by constitutional methods”</p> <p>“public order in Sri Lanka continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka, and who have resorted to acts of murder and threats of murder of members of Parliament and of local authorities, police officers, and witnesses to such acts and other law abiding and innocent citizens, as well as the commission of other acts of terrorism such as armed robbery, damage to State property and other acts</p> | <p>Whereas terrorism has seriously threatened the sovereignty and territorial integrity of Sri Lanka, and has caused deaths and serious injury to the citizens of Sri Lanka, and has caused vast damage to public and private property of Sri Lanka, and has retarded national development”</p> <p>“terrorism in its various forms and manifestations is a major threat to the peace and security of the community of nations; and, it is a foremost duty of the Government to protect Sri Lanka, its people, and property from possible future acts of terrorism and related acts”</p> <p>“Sri Lanka is under obligation to enact laws to give domestic legal effect to international instruments relating to countering of terrorism to which Sri Lanka has become a signatory”</p> <p>“the Government of Sri Lanka is committed to protect other sovereign nations and their people from the scourge of terrorism”</p> | <p>The CTA acknowledges as aspired by international obligations the need to strike some balance between the need to combat terrorism on the one hand, and factors such as personal liberty and a fair system of criminal justice on the other. PTA addressed this balance to the extent that it said that grievances should be redressed by Constitutional methods.</p> <p>The PTA seems to speak more about specific examples of terrorist activities it seeks to combat, while the CTA speaks about the need to combat terrorism of broader grounds</p> |

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|  | <p>involving actual or threatened coercion, intimidation and violence;"</p> | <p>"Sri Lanka is committed and desirous of eradicating and preventing domestic and international terrorism through enforcing an effective system for the administration of criminal justice against terrorism, based on international norms and standards and domestic needs"</p> <p>" the Government of Sri Lanka is mindful of the need to ensure just and fair application of the system for the administration of criminal justice against terrorism"</p> |  |
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**PART I – APPLICATION OF THE ACT AND OFFENCES**

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| <p><b>Who does the Act apply to?</b></p> | <p><b>Section 24 – Act committed in relation to any vessel or aircraft</b></p> <p>Any person who commits an act in or in relation to any vessel or aircraft registered in Sri Lanka shall, if such act constitutes an offence under this Act, be guilty of an offence under this Act.</p> | <p><b>Clause 2 – Application of the Act</b></p> <p>(1) The provisions of this Act shall apply to–</p> <p>(a) any citizen of Sri Lanka, who commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka;</p> <p>(b) any person who commits an offence under this Act –</p> <p>(i) wholly or partly, in Sri Lanka;</p> <p>(ii) in or over territorial waters of Sri Lanka;</p> <p>(iii) in the airspace of Sri Lanka;</p> <p>(iv) on-board or in respect of an aircraft or vessel registered in Sri Lanka or belonging to or used by the Government of Sri Lanka;</p> <p>(v) wholly or partly within the office premises of a diplomatic mission of Sri Lanka, or a consular Post or officer of Sri Lanka, or at the residence of the Head of such diplomatic mission or consular post or at the</p> | <p>The proposed CTA is very specific as to who will fall within the ambit of the Act; it roughly includes offences committed by citizens of Sri Lanka, offences committed within Sri Lankan territory, offences committed against Sri Lankan citizens or government property, offences committed by former citizens of Sri Lanka (subject to certain conditions) and offences by those who have their habitual residence in Sri Lanka.</p> <p>The proposed CTA also strictly limits the application of the Act to those who commit an offence under the Act by way of subsection (2).</p> <p>The PTA does not have a similar section limiting the application of the Act, and Section 2 which specifies the offences under the Act says it applies to ‘any person’ who commits them. Section 24 however includes acts committed in or in relation to any vessel or aircraft registered in Sri Lanka within the ambit of the Act.</p> <p>The application of the proposed Bill is thus limited to situations with some</p> |
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|  |  | <p>residence of any diplomatic or consular officer or any other employee of such mission or post;</p> <p>(vi) wholly or partly within the office premises situated outside Sri Lanka of a statutory board of the government of Sri Lanka or within the residence of an employee of such statutory board;</p> <p>(c) any person, who commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka in respect of</p> <p>–</p> <ul style="list-style-type: none"> <li>(i) a citizen of Sri Lanka including a citizen deployed in an international peace-keeping or monitoring mission;</li> <li>(ii) a property owned by the Government of Sri Lanka;</li> </ul> <p>(d) any person who had been a citizen of Sri Lanka, and commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka:<br/>         Provided however, provisions of this Act shall be enforced in respect of such person, only if he continues to have his habitual residence in Sri Lanka:</p> | <p>connection to Sri Lanka, and will not have a universal application to unrelated terrorist offences.</p> |
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|  |  | <p>Provided further, that if he does not have his habitual residence in Sri Lanka, provisions of this Act, may be enforced with the concurrence of the foreign State of which he is a citizen; and</p> <p>(e) any person who has his habitual residence in Sri Lanka, commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka.</p> <p>(2) The provisions of this Act shall not be enforced to identify, detect, apprehend, arrest, take custody of, detain, investigate or prosecute a person who commits any offence other than an offence within the meaning of this Act, notwithstanding the complexity, aggravated nature or seriousness of the consequences of such offence and the difficulties that may be associated with conducting investigations into such offence, in terms of the provisions of the Code of Criminal Procedure Act or other relevant written law.</p> |  |
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| <p><b>What acts fall within the offence of terrorism?</b></p> | <p><b>Section 2(1) - Offences under this Act and Penalties</b></p> <p>(1) Any person who</p> <p>(a) causes the death of any specified person, or kidnaps or abducts a specified person, or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or</p> <p>(b) causes the death of any person who is a witness to any offence under this Act, or kidnaps or abducts or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or</p> <p>(c) commits criminal intimidation of any specified person or a witness referred to in paragraph (b); or</p> <p>commits the offence of robbery of the property of the</p> | <p><b>Clause 3 - Offence of terrorism</b></p> <p>(1) Any person, who commits any act referred to in subsection (2), with the intention of -</p> <p>(a) intimidating a population;</p> <p>(b) wrongfully or unlawfully compelling the government of Sri Lanka, or any other government, or an international organization, to do or to abstain from doing any act;</p> <p>(c) preventing any such government from functioning; or</p> <p>(d) causing harm to the territorial integrity or sovereignty of Sri Lanka or any other sovereign country, shall be guilty of the offence of terrorism.</p> <p>(2) An act referred to in subsection (1) shall be -</p> <p>(a) murder, attempted murder, grievous hurt, hostage taking or abduction of any person;</p> <p>(b) endangering the life of any person other than the person committing the act;</p> <p>(c) causing serious damage to property, including public or private property, any place of public use, a State or</p> | <p>The PTA has limited acts which would constitute an offence under the Act, though the broad nature of those limited acts has been the cause of much controversy in the country.</p> <p>The proposed CTA includes far more acts under the offence of terrorism as seen in Subsection (2) of Section 3, provided they are committed with the <i>mens rea</i> specified in Subsection (1) of the same section. It appears that this list of required intentions in subsection (1) is vague and could be interpreted widely, thus causing potential for the list of offences to be exploited and thereby interfering with the constitutionally granted liberties of the people.</p> <p>Subsection (3) of Section 3 excludes acts done 'in the lawful exercise of a fundamental right' from the ambit of the Act, provided it is done in 'good faith'. A restrictive interpretation of good faith may have the impact of interfering with people's liberties.</p> |
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|  | <p>Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society ; or</p> <p>(d) commits the offence of mischief to the property of the Government, any department, statutory board, public corporation, bank, cooperative union or co-operative society or to any other public property ; or</p> <p>(e) without lawful authority imports, manufactures or collects any firearms, offensive weapons, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or</p> <p>(f) possesses without lawful authority, within any security area, any firearms or any offensive weapon, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or</p> | <p>Governmental facility, any public or private transportation system or any infrastructure facility or environment;</p> <p>(d) causing serious obstruction or damage to essential services or supplies;</p> <p>(e) committing the offence of robbery, extortion or theft, in respect of State or private property;</p> <p>(f) causing serious risk to the health and safety of the public or a section thereof;</p> <p>(g) causing obstruction or damage to, or interference with, any electronic or automated or computerized system or network or cyber environment of domains assigned to, or websites registered with such domains assigned to Sri Lanka;</p> <p>(h) causing obstruction or damage to, or interference with any critical infrastructure or logistic facility associated with any essential service or supply;</p> <p>(i) causing destruction or damage to religious or cultural property or heritage; and</p> <p>(j) causing obstruction or damage to, or interference with any electronic, analog, digital or</p> |  |
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|  | <p>(h) by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups; or</p> <p>(i) without lawful authority erases, mutilates, defaces or otherwise interferes with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place; or</p> <p>(j) harbours, conceals or in any other manner prevents, hinders or interferes with the apprehension of, a proclaimed person or any other person, knowing or having reason to believe that</p> | <p>other wire-linked or wireless transmission system including signal transmission and any other frequency based transmission system.</p> <p>(3) Any action taken by any person in <i>good faith</i> in the lawful exercise of a fundamental right, or in pursuance of, or to give effect to a lawful order given to him, or in accordance with or to give effect to a judicial order, shall not amount to an offence under this Act.</p> |  |
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|  | <p>such person has committed an offence under this Act,</p> <p>shall be guilty of an offence under this Act.</p>   |  |   |
| <p><b>What are the penalties for the offence of terrorism?</b></p> | <p><b>Section 2(2) - Offences under this Act and Penalties</b></p> <p>(2) Any person guilty of an offence specified in;<br/> (i) paragraph (a) or (b) of subsection (1) shall on conviction be liable to imprisonment for life, and<br/> (ii) paragraphs (c), (d), (e), (f), (g), (h), (i) or (j) of subsection (1) shall on conviction be liable to imprisonment of either description for a period not less than five years but not exceeding twenty years.</p> <p><b>Section 4 - Forfeiture of Property</b><br/> Where any person is convicted by any court of any offence under section 2 or section 3, then, in addition to any other penalty that the court shall impose for such offence;</p> | <p><b>Clause 4 - Penalty for the Offence of Terrorism</b></p> <p>(1) Any person who-</p> <p>(a) commits an offence under section 3 with the intention to cause death, and causes the death of any other person in the course of committing such offence, shall, upon conviction by the High Court be punished with life imprisonment;</p> <p>(b) commits an offence under section 3 and causes the death of any other person in the course of committing such offence, of which the reasonable foreseeable consequence is the death of any other person, shall, upon conviction by the High Court be punished with imprisonment for a period which may extend to life imprisonment; or</p> <p>(c) commits an offence under section 3 other than the offences</p> | <p>The minimum sentence for offences provided under Section 2 (2) (ii) of the PTA is not imposed in the CTA. This will allow judicial discretion in sentencing, subject to the sentencing guidelines in Part X.</p> |

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|  | <p>(a) all property movable and immovable, of that person shall, by virtue of such conviction, be deemed to be forfeited to the Republic; and (b) any alienation or other disposal of such property effected by such person after the 24th day of July, 1979, shall be deemed to have been, and to be, null and void.</p> | <p>referred to in paragraph (a) and (b), shall upon conviction by the High Court be liable to imprisonment of either description for a term not exceeding twenty years and to a fine not exceeding rupees one million.</p> <p>(2) In addition to any other penalty imposed on such person under subsection (1) the court may order that all or any property of such person, be forfeited to the Republic.</p>  |  |
| <p><b>What are the offences associated to terrorism?</b></p> | <p>No equivalent provision in the PTA.</p>  | <p><b>Clause 6 - Other Offences Associated with Terrorism</b></p> <p>Any person or a member of a group of persons acting under a common purpose or a member of a proscribed terrorist organization who commits jointly or severally</p> <p>(a) a specified terrorist act, referred to in section 7; or<br/> (b) an aggravated criminal act associated with terrorism referred to in section 8; or<br/> (c) terrorism associated acts referred to in section 9; or<br/> (d) the acts of abetting terrorism referred to in section 10,</p> | <p>Clause 6 read with several other clauses (7,8,9 and 10) sets out additional offences associated with terrorism.</p> <p>This is a comprehensive list of acts, and without a narrow interpretation of them, there can be the effect of severely limiting the constitutionally guaranteed liberties of people.</p> <p>‘Any person or a member of a group of persons acting under a common purpose’ in Clause 6 is a wide category of persons and this read with ‘adversely affecting the territorial integrity of Sri Lanka’ or ‘intimidating or terrorizing a civilian population’ could result in the provisions of the Act being exploited against targeted persons including civil</p> |

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|                                 |                                     | <p>with the intention of, or having the knowledge of, or having reasonable grounds to believe that such conduct has the effect of, adversely affecting the territorial integrity, national security and defence of Sri Lanka or, intimidating or terrorizing a civilian population, shall be guilty of an offence under this Act.</p>  | <p>society activists and journalists, or to be used against accused persons for offences unrelated to terrorism.</p> <p>While Clause 5 of the proposed CTA provides for <i>inter alia</i> the punishment for the abetting the offence of terrorism, Clause 10 more specifically deals with abetting terrorism in general, which is a separate offence.</p> |
| <b>Specified Terrorist Acts</b> | No equivalent provision in the PTA. | <p><b>Clause 7 – Specified Terrorist Acts</b></p> <p>Acts which constitute an offence under paragraph (a) of section 6 shall be as follows:-</p> <p>(a) committing and attempting to commit the death, abduction, wrongful confinement, hostage taking, extortion, or criminal intimidation of any person, or any other offence under the Penal Code which shall be punished with a term of imprisonment of seven years or more;</p> | To be read with Clause 6(a).   |

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|   |                                     | <p>(b) committing an offence under section 8 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015, with regard to a victim of an offence under this Act or a witness to the commission of an offence under this Act;</p> <p>(c) committing robbery, extortion, theft or mischief or other damage to property of the State including intellectual property and State owned, controlled, or regulated critical infrastructure, automated system, digital data-base and logistical networks associated with any essential service;</p> <p>( c) without lawful authority, importing, exporting, manufacturing, collecting, obtaining, supplying, trafficking, possessing or using firearms, offensive weapons, ammunition, explosives or combustible or corrosive substances or any biological, chemical, electric or electronic or nuclear weapon.</p> |  |
| <b>Aggravated Criminal Acts Associated with Terrorism</b> | No equivalent provision in the PTA. | <b>Clause 8 – Aggravated Criminal Acts Associated with Terrorism</b><br>Acts which constitute an offence under paragraph (b) of section 6 shall be as follows:-<br>(a) committing-  | To be read with Section 6(b).<br>This includes an extensive list of offences, and unless carefully interpreted when reading it with Clause 6, it could lead to the use of the Act to |



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|  |  | <p>(i) an offence against the State, punishable under sections 114 and 116 to 126;</p> <p>(ii) an offence relating to Army, Navy and Air Force, punishable under sections 128 to 137;</p> <p>(iii) the offence of human trafficking under section 360c, of the Penal Code;</p> <p>(b) committing an offence under the Prevention of Hostage Taking Act, No. 41 of 2000;</p> <p>(c) committing any offence under the Computer Crimes Act, No. 24 of 2007;</p> <p>(d) committing any offence under the Payment and Settlement Systems Act, No. 28 of 2005;</p> <p>(e) committing any offence under the Foreign Exchange Act, No. 12 of 2017;</p> <p>(f) committing any offence relating to the trading of listed securities within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987;</p> <p>(g) committing any offence under the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218);</p> <p>(h) committing any offence under the Immigrants and Emigrants Act (Chapter 351).</p> | <p>prosecute offences that are unrelated to terrorism.</p> |
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| <p><b>Terrorism Associated Acts</b></p>  | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 9 – Terrorism Associated Acts</b></p> <p>Acts which constitute an offence under paragraph (c) of section 6 shall be as follows:-</p> <p>(a) committing any act, for organizing, preparatory to, or giving effect to any plan for the commission of an offence under this Act, outside the territory of the Republic of Sri Lanka;</p> <p>(b) functioning or serving as a leader, member or a cadre of a proscribed terrorist organization or recruiting persons to be a member or cadre of a proscribed terrorist organization which is proscribed under the United Nations Act, No. 45 of 1968.</p> | <p>To be read with Clause 6(c).</p>   |
| <p><b>Acts of Abetting Terrorism</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 10 – Acts of Abetting Terrorism</b></p> <p>Acts which constitute an offence under paragraph (d) of section 6 shall be as follows: -</p> <p>(a) recruiting or enticing or encouraging persons to join a proscribed terrorist organizations or</p>   | <p>To be read with Clause 6(d).</p> <p>The list of offences includes some that are vague and wide, and allow for potential abuse.</p> |

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|  |  | <p>movements of which an objective is to commit an offence under this Act;</p> <p>(b) joining, becoming a member of, supporting or representing a proscribed terrorist organization for the purpose of aiding and abetting the commission of an offence under this Act;</p> <p>(c) harbouring, concealing, or in any other manner, wrongfully or illegally preventing, hindering or interfering with the identification, arrest, custody or detention of a person knowing or having reasonable grounds to believe that such person has committed or has concerned in committing an offence under this Act;</p> <p>(d) committing robbery, extortion or theft of property, or otherwise obtaining money or any property or other material, for or on behalf of a proscribed terrorist organization or any person who is preparing to commit an offence under this Act, or to aid such other person to commit an offence under this Act;</p> <p>(e) recruiting, selecting, inciting, inducing, forcing, preaching or training, children to join a proscribed</p> |  |
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|  |  | <p>terrorist organization, or to commit an act of terrorism, or any other offence under this Act;</p> <p><i>(f)</i> voluntarily contributing money, property or material to a proscribed terrorist organization or any person, knowing or having reasonable grounds to believe that such money, property or material or the value thereof may be used to commit an offence under this Act;</p> <p><i>(g)</i> intentionally and unlawfully distributing or otherwise making available any information to the public, having intent to incite the commission of the offence of terrorism or other offence under this Act, and to cause the fear of such offence being committed, notwithstanding that such conduct does not expressly advocate such offence;</p> <p><i>(h)</i> voluntarily and willfully providing services to a proscribed terrorist organization for the purpose of the commission of an offence under this Act;</p> <p><i>(i)</i> voluntarily engaging in any illegal or unauthorized act for the purpose of</p> |  |
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|  |  | <p>gathering any confidential information, having the intention of supplying such information to a person who commits an offence under this Act;</p> <p>(j) voluntarily and illegally or in an unauthorized manner, gathering confidential information, for the purpose of supplying such information to a person who commits an offence under this Act;</p> <p>(k) voluntarily and illegally or unlawfully or in an unauthorized manner, gathering confidential information, for the purpose of supplying such information to a person who is conspiring, preparing, abetting, or attempting to commit an offence under this Act;</p> <p>(l) providing to any other person any confidential information, knowing or having reasonable grounds to believe that such information will be used by such other person to conspire, abet, attempt or commit an offence under this Act:</p> <p>Provided however, nothing published in <i>good faith</i> with due diligence for the benefit of the public or in national</p> |  |
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|  |   | <p>interest in registered print and electronic media, or in any academic publication, shall be deemed to be an offence under this section;</p> <p>(m) providing any gratification, inducement, threat, force or any other form of influence to any other person for the purpose of encouraging, compelling or inciting such other person to commit an offence under paragraphs (h), (i) or (j), or providing a gratification in consideration of such other person having committed an offence in terms of paragraphs (h), (i) or (j).</p> |   |
| <p><b>What is the offence of failure to provide information?</b></p> | <p><b>Section 5 - Penalty for Failure to Give Information</b></p> <p>Any person who;<br/> (a) knowing or having reasonable cause to certain believe that any person;<br/> (i) has committed an offence under this Act, or<br/> (ii) is making preparation or is attempting to commit an offence under this Act, fails to report the same to a police officer ; or</p> | <p><b>Clause 13 -Failure to Provide Information to be an Offence</b></p> <p>Any person who-<br/> (a) knowing or having reasons to believe that any other person-<br/> (i) has committed an offence under this Act; or<br/> (ii) is making preparation, attempting, abetting or conspiring to commit an offence under this Act, fails to report to the officer in charge of the nearest police station; or</p>  | <p>This clause in the proposed CTA is very similar to the corresponding Section under the PTA.</p> <p>This offence has the potential to be abused unless carefully interpreted so as to prevent violating the liberties of persons.</p> |

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|  | <p>(b) having in his possession any information relating to the movements or whereabouts of any person who has committed or is making preparations or is attempting to commit an offence under this Act fails to report the same to a police officer,</p> <p>shall be guilty of an offence under this Act and upon conviction by the High Court be liable to imprisonment of either description for a term not exceeding three years and to a fine not exceeding rupees five hundred thousand.</p> | <p>(b) having in his possession any information relating to the whereabouts of any person of whom he knows that has committed an offence of terrorism or an offence associated with terrorism, fails to provide such information or provides false or misleading information, to a police officer who question him,</p> <p>shall be guilty of an offence under this Act and upon conviction by the High Court be liable to imprisonment of either description for a term not exceeding three years and to a fine not exceeding rupees five hundred thousand.</p> |  |
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**PART II – INVESTIGATION OF OFFENCES**

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| <p><b>Who can conduct investigations?</b></p> | <p>PTA does not explicitly specify who is can conduct investigations under the Act. The wording of the Act indicates that investigations can be done by any police officer.<br/>(see section 7 and 8 of the PTA)</p> | <p><b>Clause 16 – who may conduct investigations</b><br/>An officer in charge of a police station or any other police officer authorized by an officer in charge of the police station, shall be entitled to commence and conduct investigation, of an offence under this Act or an act preparatory to the commission of an offence under this Act:</p> <p>Provided, however, where any person commits an offence under this Act in presence of a police officer, or person suspected of having committed an offence is arrested in the immediate aftermath of committing an offence, it shall be lawful for <u>any police</u> officer to arrest such a person to question and commence the investigation.</p> <p>Provided further, such police officer shall forthwith inform the officer in charge of the relevant police station, of the commencement of such investigation, and conduct the investigation subject to his instructions.</p> | <p>In contrast to the PTA, the proposed CTA specifies that the investigations under the Act can only be conducted by an officer in charge (OIC) of the police station or any other police officer authorized by an officer in charge of the police station. This is a significant improvement from the archaic PTA</p> <p>However, the proviso immediately after empowers <u>any</u> police officer to arrest a person in certain circumstances.<br/>Therefore, adequate measures should be taken to ensure that procedural safeguards stipulated in Clauses 21, 22, 23, 24 and 25 are adhered to even for arrests and investigations made under the proviso of Clause 16.</p> <p>Therefore, in order to maintain uniformity under the proposed CTA it is conducive that the investigations be conducted only by the OIC or a police officer authorised by the OIC.</p> |
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| <p><b>Who can arrest?</b></p>  | <p><b>Section 06 (1) (a) -</b><br/> (1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary"<br/> (a) arrest any person</p> | <p><b>Clause 17-Arrest by a police officer and other officers</b><br/> Any police officer, an officer or member of the armed forces or a coast guard officer, may arrest without a warrant, any person-<br/> (a) who commits in his presence, or whom he has reasonable grounds to believe, has committed, an offence under this Act; or<br/> (b) who has been concerned in committing an offence under this Act; or<br/> (c) in respect of whom he receives information or a complaint which he believes to be reliable that a person has committed or concerned in committing an offence under this Act; or<br/> (d) who is fleeing from Sri Lanka with the intention of evading arrest or is evading arrest after committing an offence under this Act; or<br/> (e) who is violating the conditions of bail, subject to which such person has been released, being a suspect for the commission of an offence under this Act.</p> | <p>The proposed CTA provides far-reaching powers to the police, members of the armed forces and coast guards to arrest a person without a warrant.</p> <p>The proposed CTA also broadens the categories of persons that can arrest suspects in comparison to the PTA. The PTA permitted only Police officers of a certain rank to make arrests for offences committed under the Act. The involvement of armed forces in the arrest can have a sweeping impact on fundamental liberties under the proposed CTA.</p> |
| <p><b>Procedure when arrest is carried out by an officer other than a police officer</b></p> | <p>Under the PTA only police officers were able to arrest suspects.</p>   | <p><b>Clause 18-Procedure when arrest is carried out by an officer other than a police officer</b><br/> (1) A person arrested by an officer other than a police officer, shall be produced before the officer in charge of the nearest police station or of a police officer designated from time to time, in that behalf by the Inspector General of Police, without unnecessary delay, and in any event within a period not exceeding twenty-four hours:<br/> Provided however, where such person has been arrested outside the territory of the Republic of Sri Lanka or on board of any aircraft or vessel, the</p>  | <p>In clause 17 of the proposed CTA titled 'Arrest by a police officer and other officers,' the other officers are limited to an officer or member of the armed forces or a coast guard. However, Clause 18 does not specify who is referred to as the '<i>an officer other than a police officer</i>'. Therefore, it is necessary that this clause is looked at in conjunction with Clause 17 and be given a strict interpretation.</p>   |

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|  |  | <p>period of time necessary for the journey from place of arrest to the relevant police station, shall be excluded in calculating such twenty-four hours' period:</p> <p>Provided further, if producing the person being arrested in terms of the preceding provisions of this subsection to the officer in charge of the nearest police station is not practicable due to reasons beyond the control of the person who carried out the arrest, the custody of such person shall be given to the officer in charge of any police station.</p> <p>(2) The officer who carried out the arrest shall as soon as practicable, notify the arrest to a <u>commissioned officer</u> or any other officer of a higher rank, who has been authorized to receive such information.</p> <p>(3) Subject to the provisions of sections 22 and 23, a person so arrested may be questioned and further searched by the commissioned officer or the other officer referred to in subsection (2) where it is necessary to protect the life of any person, to prevent any act of terrorism or to preserve evidence relating to an offence committed under this Act.</p> <p>(4) Such Commissioned officer or other officer shall forthwith inform of such arrest to the officer in charge of the nearest police station or to a police officer designated by the Inspector General of Police in that behalf.</p> | <p>Further, in the event of a Coast Guard, it is important to specify in the clause that they have the power to arrest only in the course of their duty and not otherwise.</p> |
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|  |  | <p>(5) At the time of taking the person so arrested into the custody of the officer in charge of the police station as provided for in this section, the officer who carried out the arrest, shall make a statement to such officer in charge, setting out the circumstances relating to the arrest carried out by him.</p> <p>(6) Such officer shall also handover to such officer in charge, all items that may have been found in the possession of the suspect, or found from the place of arrest.</p>  |  |
| <p><b>Procedure when arrest is carried out by a police officer</b></p> |  | <p><b>Clause 19-Procedure when arrest is carried out by a police officer</b></p> <p>(1) (a) Any person arrested by a police officer, shall without unnecessary delay, be produced before the officer, in charge of the police station to which such police officer is attached to.</p> <p>(b) Where such production is not practicable, the person arrested shall be produced before the officer in charge of the nearest police station.</p> <p>(2) It shall be lawful for a police officer to obtain the assistance of a member of the armed forces or a coast guard officer to carry out an arrest in terms of this Act, or to obtain such assistance to take the arrested person to a police station.</p> <p>(3) Every practicable measure shall be taken to protect an arrested person from any physical harm.</p> | <p>There are concerns regarding the necessity of seeking the assistance of the armed forces in carrying out arrests in times of peace. Therefore, this provision should be limited only to instances where seeking such assistance is necessitated by exceptional circumstances.</p> |

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| <p><b>Powers to search and seizure</b></p> | <p><b>Section 6 -search and seizure</b><br/> (1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary"<br/> (a) arrest any person;<br/> (b) enter and search any premises;<br/> (c) stop and search any individual or any vehicle, vessel, train or aircraft; and<br/> (d) seize any document or thing, connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.</p> <p>(2) Any person who obstructs or hinders any police officer lawfully exercising any power conferred on him by or under subsection (1), shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period not exceeding seven years.</p> | <p><b>Clause 20-Power to stop and search</b><br/> (1) Where there is reasonable grounds to arrest any person under section 18 or section 19, a police officer,<br/> (a) stop and search any person, vehicle, vessel, train or aircraft<br/> (b) question any person;<br/> (c) enter and search any premises or land; and<br/> (d) take into custody any document, thing or article, used, derived out of, connected with or, concerned in committing or, reasonably suspected of being used, derived out of, connected with, or concerned in committing an offence under this Act.<br/> (2) The exercise of the powers under this section shall be, notified to relevant parties in terms of the provisions of section 25.<br/> (3) Any such document, thing or article so taken into custody, shall as soon as practicable be produced before the officer in charge of the police station to which the relevant police officer is attached, or be produced before the officer in charge of the nearest police station.<br/> (4) The officer in charge of the police station referred to in subsection (3) shall produce a report in that regard to the Magistrate before whom the relevant suspect be produced who shall make an appropriate order with regard to the possession or release of the documents, things or articles so taken into custody.</p> | <p>While the PTA limited the powers of search and seizure only to police officers not below the rank of Superintendent or any other police officer, not below the rank of Sub-Inspector authorized in writing by him in that behalf, the proposed CTA empowers <i>any</i> police officer to exercise these powers.</p> <p>Therefore, the implementation of counter-terrorism measures under the CTA related to stopping and searching of persons should be carried out in a manner consistent with the inherent dignity of the person and international human rights law.</p> <p>Furthermore, counter-terrorism measures, such as stopping of persons, should not arbitrarily or unlawfully interfere with the freedom of movement guaranteed under Article 14(h) of the Constitution. Thus, the implementation of these measures relating to the search and seizure should be professional and transparent and subject to oversight and judicial scrutiny.</p> |
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| <p><b>Information to be provided at the time of arrest</b></p>    | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 21- Information to be provided at the time of arrest</b><br/> (1) The arresting officer shall inform the person being arrested, (hereinafter in this part referred to as the (“suspect”) at the time of the arrest–<br/> (a) the identity of the arresting officer;<br/> (b) the offence alleged to have been committed by the suspect;<br/> (c) the right of access of the person to an Attorney-at-Law as provided for in written law.<br/><br/> (2) Every reasonable measure shall be taken to convey such information in Sinhala, Tamil or English languages, whichever language understood by the suspect.<br/><br/> (3) Where it is not practicable to convey the information to the suspect as specified in subsection (1) at the time of arrest, such information shall be conveyed in a language understood by him, as soon as practicable.</p> | <p>This is an improvement from the PTA. Furthermore, this clause is in line with Article 13(1) of the Constitution and Sri Lanka’s international obligation under Article 9(2) of the ICCPR.<br/><br/> However, in order for this clause to be implemented effectively it is important that officers recruited should be conversant in the main languages thereby reducing the need to relay on provisions stipulated in sub clause 3 of Clause 21</p> |
| <p><b>Arrest to be carried out with due regard to privacy</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 22-Arrest to be carried out with due regard to privacy</b><br/> Every arrest shall be carried out, with due regard to the privacy of the person being arrested. Every possible measure shall be taken to ensure that the arrest of a female suspect is carried out by a female arresting officer, or in the presence of a female officer.</p>  | <p>This provision is an improvement from the PTA and is in line with international law and best practices</p>  |

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| <p><b>Searching and questioning females</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 23- Searching and questioning females</b><br/> (1) Every possible measure shall be taken to ensure that the questioning of any female is carried out by a female arresting officer or in the presence of a female officer.<br/><br/> (2) The search of a female, shall necessarily be conducted by a female officer.</p>  | <p>The addition of this provision to the proposed CTA is a significant improvement from the PTA. However, so far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched.</p> <p>Searches, whenever necessary, must be conducted with the least intrusive means possible and fully conform with the prohibition of cruel, inhuman or degrading treatment.</p> <p>All requests made by law enforcement officials while conducting a personal or strip search must meet the standards of necessity and proportionality under the specific circumstances</p> |
| <p><b>Medical examination of suspects</b></p>   | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 24 -Medical examination of suspects</b><br/> (1) The officer in charge of the police station in which the suspect is detained or a police officer authorized by such officer in charge, shall examine such suspect, to see whether he has any injury that may be visible.<br/> (2) If the suspect has any injury that may be visible, the officer in charge of the police station shall cause such person, to be examined by a judicial</p> | <p>This provision is a step in the right direction in contrast to the PTA. However, subclause (3) by referring to ‘any injury may be visible’ excludes the consideration of internal injury/ internal bleeding and also the mental health condition of the suspect. Therefore, a phrase such as “injury or health</p>   |

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|                                    |                                     | <p>medical officer or by a government forensic medical specialist and obtain a report.</p> <p>(3) Unless there is reason for medical treatment, the judicial medical officer or the government forensic medical specialist shall return the suspect to police custody, without any delay.</p>   | <p>condition that may be visible or apparent' is more suitable in this instance.</p>  |
| <b>Notification of the arrests</b> | No equivalent provision in the PTA. | <p><b>Clause 25 – Notification of the arrests</b></p> <p>(1) Any arresting officer who arrests a suspect in terms of the provisions of this Act, shall, if the next of kin or an adult member of the family of the suspect is present at the time of arrest, issue to such person, as soon as practicable and not later than twenty-four hours from the arrest, an acknowledgement of the arrest and custody pertaining to such suspect, in the format set out in the First Schedule to this Act.</p> <p>(2) Such acknowledgement shall include–</p> <ul style="list-style-type: none"> <li>(a) the date, time and place of arrest;</li> <li>(b) reasons for the arrest;</li> <li>(c) the location of custody or detention;</li> <li>(d) the name, identification number and rank of the arresting officer; and</li> <li>(e) any other information as may be necessary for the next of kin of the suspect, to have reasonable access to him, without prejudice to the conduct of investigations.</li> </ul> <p>(3) If such a person is not present, the arresting officer shall inquire from the suspect, the identity and whereabouts of a person to whom the acknowledgement referred to in subsection (1) shall be served, and if the suspect provides such information, every possible step shall be taken to</p> | <p>This provision is an improvement from the PTA and is in line with international law and best practices. However, it is preferable in this instance that the fact that the suspect is being arrested under the CTA is communicated immediately, even though the rest of the information is notified within twenty-four hours.</p> |

serve the acknowledgement on such person. A copy of the said acknowledgement shall be served on the suspect.

(4) The officer in charge of the police station wherein the suspect is detained shall, as soon as practicable, and in any event not later than twenty-four hours of the arrest, notify the Human Rights Commission of such arrest and detention, substantially in the format set out in the Second schedule to this Act, and notify the Inspector General of Police or his authorized representative, substantially in the format set out in the Third Schedule to this Act.

(5) Such notification shall include-

(a) the date, time and place of arrest;

(b) reasons for the arrest;

(c) the location at which the suspect is being held in detention;

(d) the name, identification number and rank of the arresting officer;

(e) any other information that would enable the Human Rights Commission to have prompt access to the suspect; and

(f) any other information the Human Rights Commission may call for, in order to determine whether such arrest and detention has infringed the fundamental rights of the relevant person.



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| <p><b>Central Data Base Register</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 26 -Central Data Base Register</b></p> <p>(1) The Inspector General of Police shall establish and maintain a Central Data Base and Register, which contains information with regard to each arrest, detention, remanding, grant of bail, discharge, prosecution, conviction or acquittal and punishment of persons arrested under this Act.</p> <p>(2) Such Data Base and Register shall also include such other information required to determine the-</p> <p>(a) lawfulness of the arrest, custody and detention;</p> <p>(b) lawfulness of the deprivation of liberty of the suspect; and</p> <p>(c) the need for continued detention or remand.</p> <p>(3) The Inspector General of Police shall provide information included in such Data Base and Register, to the Human Rights Commission, wherever the Human Rights Commission so requests.</p> <p>(4) The information received under subsection (3), shall be used only for the purposes of giving effect to the objectives of the Human Rights Commission.</p> <p>(5) It shall be the duty of the Human Rights Commission to ensure that no person shall use the information received under subsection (3) in such manner that may be prejudicial to the on-going investigations.</p> | <p>This provision is an improvement from the PTA. The maintaining of a Data- Base Register of this nature under the proposed CTA ensures accurate information concerning a person's arrest, detention etc. is communicated to the Human Rights Commission.</p> |
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| <p><b>Procedure for arrest and remand</b></p> | <p><b>Section 07- Remand orders</b><br/> (1) Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person :</p> <p>Provided that, where the Attorney-General consents to the release, of such person from custody before the conclusion of the trial, the Magistrate shall release such person from custody.</p> <p>(2) Where any person connected with or concerned in or reasonably suspected to be connected with or concerned in the commission of any offence under this Act appears or is produced before any court other than in the manner referred to in subsection (1), such court shall</p> | <p><b>Clause 27 – Production before Magistrate</b><br/> (1) A suspect who has been arrested and detained by a police officer in terms of this Act, shall be produced before <i>any</i> Magistrate not later than forty-eight hours following the arrest:</p> <p>Provided however, where the arrest has been carried out, outside the territory of the Republic of Sri Lanka or on board any aircraft or vessel, the period of time necessary for the journey from place of arrest to the relevant Magistrate shall be excluded in calculating such forty-eight hours.</p> <p>(2) Where, by the time the suspect is produced before a Magistrate–<br/> (a) a valid Detention Order has been issued in terms of section 31, and is placed before the Magistrate for his inspection, the Magistrate shall make an order to give effect to such Detention Order; or<br/> (b) a Detention Order has not been issued or such a Detention Order has not been placed before the Magistrate, the Magistrate shall–<br/> (i) if the officer in charge of the relevant police station makes an application seeking an order to remand the suspect, based on grounds that, the Magistrate deems reasonable in the circumstances, order that the suspect be placed in remand custody; or<br/> (ii) if the officer in charge of the relevant police station requests or has no objection to bail being granted, release the suspect on bail under the provisions of Bail Act, No.30 of 1997, upon</p> | <p>A significant improvement of the CTA is that it requires the suspect to be produced before the Magistrate within forty-eight hours, in comparison to the PTA which permitted the suspect to be kept in remand custody for a period not exceeding seventy-two hours before producing before a Magistrate.</p> <p>The proposed CTA stipulates that the suspect shall be produced before '<u>any</u> Magistrate' which could lead to injustice and may be exploited.</p> <p>Therefore, it is essential that the suspect is produced before the nearest available Magistrate in order to ensure the independence of the investigation.</p> <p>It is a welcome improvement that the Magistrate is able to personally see the suspect, and look into his wellbeing and welfare through a private interview, and record any comment the suspect may provide. However sub clause (4) should also exclude any police officer with any interest in the alleged offence in addition to excluding any police</p> |
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|  | <p>order the remand of such person until the conclusion of the trial:</p> <p>Provided that, if an application is made under the hand of a police officer not below the rank of Superintendent to keep such person in police custody for a period not exceeding seventy-two hours, the Magistrate shall authorize such custody and thereupon the order of remand made by the Magistrate shall remain suspended for the period during which such person is in police custody.</p> | <p>conditions to be stipulated by such Magistrate, excluding personal bail; or</p> <p>(iii) discharge the suspect, if the officer in charge of the relevant police station so requests.</p> <p>(3) The Magistrate before whom the suspect is produced, shall-</p> <p>(a) personally see the suspect, and look into his wellbeing and welfare through a private interview; and</p> <p>(b) record any comment the suspect may provide.</p> <p>(4) For the purpose of this section “private interview’ means proceedings, either in open court or in Magistrate’s chamber in the absence of any police officer who may have participated in the arrest, or who has investigated into the offence, alleged to have been committed by the suspect.</p>         | <p>officer who participate or investigated into the offence.</p>   |
| <p><b>Forensic medical examination</b></p> | <p>No equivalent provision in the PTA.</p>  | <p><b>Clause 28- Magistrate to direct the suspect to a forensic medical examination</b></p> <p>(1) Where the Magistrate is of the opinion, that the suspect may have been subjected to torture, after taking into account any complaint made by the suspect and any representation made by the arresting officer or officer in charge of the relevant police station, in defence thereto, the Magistrate may direct that the suspect be produced before a government forensic medical specialist, for medical examination, and a report be submitted by such medical specialist to the Magistrate</p> <p>(2) Where the report of the government forensic medical specialist reveals that there is a probability of the suspect have been subjected to</p> | <p>This is a welcome provision. It is in line with Article 11 of the Sri Lankan Constitution as well as Article 7 of the ICCPR. However, this provision does not give the Magistrate the discretion to direct the suspect to a medical specialist, if it appears to the Magistrates that there is a likelihood of torture.</p> |

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|                    |   | <p>torture, the Magistrate shall, after giving an opportunity to the suspect and the arresting officer or officer in charge of the police station to be heard,</p> <p>-</p> <p>(a) direct the suspect for necessary treatment; and</p> <p>(b) order that the suspect be placed in remand.</p> <p>(3) Where the Magistrate orders that the suspect be placed in remand, police officers who previously had access to the suspect shall not have access to the suspect.</p> <p>(4) The investigation in respect of such suspect shall be continued by such other police officers as directed by the Inspector General of Police.</p> <p>(5) The Magistrate shall also direct the Inspector General of Police to commence an investigation into the alleged torture to enable the Attorney General to institute criminal proceedings against the person who committed the alleged torture.</p> |   |
| <p><b>Bail</b></p> | <p><b>Section 19 -Provisions of any written law relating to the grant of bail not to apply to persons accused of any offence under this Act.</b></p> <p>Notwithstanding the provisions of any other written law"</p> <p>(a) every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence</p> | <p><b>Clause 29- Grant of bail by the High Court on exceptional grounds</b></p> <p>Subject to the provisions of section 30, no person in remand shall be released by a Magistrate on bail, except under the authority of an Order made by a Judge of the High Court, on exceptional grounds.</p>  | <p>Unlike the PTA, the proposed CTA provides for bail to be given to the suspect by the order made by a judge of the high court on exceptional grounds. The PTA provides for the Court of Appeal to play this role.</p> |

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|  | <p>imposed on him, be kept on remand until the determination of the appeal;</p> <p>(b) any order made under the provisions of subsection (4) of section 14 shall, notwithstanding any appeal made against such order, continue in force until the determination of such appeal:</p> <p>Provided, however, that the Court of Appeal may in exceptional circumstances release on bail any such person referred to in paragraph (a) subject to such conditions as the Court of Appeal may deem fit, or vary or suspend any order referred to in paragraph (6).</p> |   |  |
| <p><b>Maximum period of remand</b></p> | <p>No equivalent provision in the PTA.</p>  | <p><b>Clause 30 - Maximum period of remand</b></p> <p>(1) No person shall be held in remand for a period exceeding six months from the date of his arrest without instituting criminal proceedings:</p> <p>Provided, however, the period of remand may be extended on an order of a Judge of the High Court, on an application made by the Attorney General:</p> <p>Provided further, the maximum cumulative period of extension, shall not exceed six months.</p> <p>(2) If criminal proceedings are not instituted within the period referred to in subsection (1), the Magistrate shall release the suspect on bail, on conditions to be stipulated by the Magistrate.</p> | <p>This is a significant improvement from the PTA. The PTA permitted remand custody 'until the conclusion of the trial' which potentially allowed for the indefinite detention of a suspect. This has been mitigated under the proposed CTA by stipulating a maximum period of remand. Further, another shift from the PTA, is that under the proposed CTA the Magistrate is able to release the suspect on bail subject to certain conditions if criminal proceedings are not instituted within six months.</p> |

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| <p><b>Detention Orders</b></p> | <p><b>Section 09- Detention Orders</b></p> <p>(1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time: Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.</p> <p>(2)(a) At any time after an order has been made in respect of any person under subsection (1), the Minister may direct that the operation of such order be suspended and may make an order under subsection (1) of section 11.</p> <p>(b) The Minister may revoke any such direction if he is satisfied that the person in respect of whom the direction was made has failed to observe any condition imposed or that the operation of</p> | <p><b>Clause 31- Detention orders</b></p> <p>(1) (a) An officer in charge of a police station who seeks a detention order to detain a suspect for any purpose specified in subsection (2), may make an application to a Deputy Inspector General of Police, with the recommendation of the officer in charge of the relevant police division.</p> <p>(b) If such Deputy Inspector General of Police is satisfied of the existence of reasonable grounds to believe that the suspect has committed or has concerned in committing an offence under this Act, he may issue a Detention Order substantially in the format specified in the Fourth Schedule to this Act, authorizing the detention of the suspect in an approved place of detention under approved conditions of detention.</p> <p>(c) No detention order shall be issued for a period exceeding two weeks, at a time.</p> <p>(2) A Detention Order under subsection (1), shall include reasons for the issuance thereof, and shall be issued solely for following purposes, where it is necessary: –</p> <p>(a) facilitating the conduct of the investigations in respect of the suspect;</p> <p>(b) obtaining material for investigations and potential evidence relating to the commission of an offence under this Act;</p> <p>(c) questioning the suspect in detention; and</p> <p>(d) preserving evidence pertaining to the commission of an offence under this Act, for such reasons to be recorded in the Detention Order.</p> | <p>Under the CTA, the power to grant Detention Orders have been placed under the Deputy Inspector of Police which raises concerns. This is in contrast to the PTA where the Minister has broad powers in relation to Detention Orders.</p> <p>It is also notable that the period of detention has been brought down from three months to two weeks under the proposed CTA.</p> <p>It is also an improvement that the Detention Order issued under the CTA should include reasons. This clause also specifies that detention orders should be issues for the solely for the purposes specified in the clause and where necessary. Thereby minimizing the abuse when issuing Detention Orders .</p> <p>It is also a positive development that the CTA makes provisions for a copy of the Detention Order to be served on the following persons,</p> <ul style="list-style-type: none"> <li>• The suspect</li> <li>• The next of kin/adult family member of the suspect</li> </ul> |
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|  | <p>the order can no longer remain suspended without detriment to public safety.</p> | <p>(2) Where a Detention Order under this section has been issued at the time when the relevant suspect is produced before a Magistrate under section 27, a certified copy of such Detention Order shall be placed before the Magistrate for inspection.</p> <p>(3) A copy of every Detention Order under this section shall be served on the suspect being detained and the acknowledgement by the suspect shall be obtained and filed in the relevant Magistrate Court.</p> <p>(4) A copy of the Detention Order shall be served on the next of kin or an adult family member of the suspect and the provisions of section 25, shall mutatis mutandis, apply to the manner of serving such copy.</p> <p>(6) The Minister shall, on the recommendation of the Inspector General of Police, by Order published in the Gazette, specify such number of places as “approved places of detention” for the purpose of this section.</p> <p>(7) The Minister shall, in consultation with the Inspector General of Police and the Human rights Commission of Sri Lanka, specify by Order published in the Gazette, such conditions of detention as “approved conditions of detention” for the purpose of this section.</p> | <p>Also positive is the proposal to consult the Human Rights Commission in deciding the conditions of detentions.</p> <p>However, due measures should be taken so that juvenile persons should be detained separated from adults. And further women should be separately detained from men.</p> |
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| <p><b>Visit to place of detention by Magistrate</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 32- Visit to place of detention by Magistrate</b></p> <p>(1) A Magistrate before whom a suspect has been produced and detained under the authority of a Detention Order shall, without giving any advance notice to the authority in charge of such place of detention-</p> <p>(a) visit the place of detention of such suspect; and<br/>(b) interview the suspect and look into his well-being.</p> <p>(2) It shall be the duty of the authority in charge of any place of detention to provide prompt and unimpeded access to the Magistrate.</p> <p>(3) If the Magistrate observes that the suspect may have been subjected to torture or the suspect alleges that he was tortured, the Magistrate shall make order, for the suspect to be produced for examination by a government forensic medical specialist, and to submit the report to him.</p> <p>(4) After giving the suspect and the relevant police officer or officers an opportunity to be heard, if the Magistrate is satisfied that there is reasonable grounds to believe that the suspect may have been tortured, he shall act in terms of subsections (2), (3), (4) and (5) of section 28.</p> | <p>The proposed CTA provides for the addition of notable provisions which permits the Magistrates to be involved in monitoring the detention of the suspect</p> |
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| <p><b>Notification of detention to the Human Rights Commission.</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 33- Notification of detention to the Human Rights Commission</b><br/> (1) The officer in charge of the police station wherein a suspect is detained shall notify the Human Rights Commission of Sri Lanka of such detention, as soon as practicable but in any event not later than seventy-two hours from the commencement of detention.<br/><br/> (2) A copy of the Detention Order shall be served on the Human Rights Commission, as soon as practicable.</p>  | <p>The CTA makes provisions for the Human Rights Commission to be involved in monitoring the detention of the suspect in this clause and subsequent clauses which is an improvement from the PTA.</p>             |
| <p><b>Human Rights Commission to visit places of detention</b></p>      | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 34-Human Rights Commission to visit approved place of detention</b><br/> An authorized officer of the Human Rights Commission, shall be entitled, without giving any advance notice to-</p> <ul style="list-style-type: none"> <li>(a) enter and examine any approved place of detention;</li> <li>(b) call for and inspect detention registers, Detention Orders and other books and documents required to be maintained at such place; and</li> <li>(c) interview persons being detained at such place:</li> </ul> <p>Provided however, officer of the Human Rights Commission shall not be entitled to examine notes of investigations and recorded statements of witnesses or, of other persons.</p> | <p>In order to ensure the better access of the Human Rights Commission to the suspect it is vital that the interview process is permitted to be conducted in private without the presence of Police officers.</p> |

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| <p><b>Magistrates entitled to visit any place of detention</b></p> | <p>No equivalent provision in the PTA.</p>  | <p><b>Clause 35 – Magistrates entitled to visit any place of detention</b><br/> Any Magistrate shall be entitled, without advance notice, to enter an approved place of detention, inspect such place of detention, registers, Detention Orders and other books and documents required to be maintained at such place, and interview persons being detained at such place</p>   | <p>This provision is an improvement from the PTA and is in line with international law and best practices</p>  |
| <p><b>Maximum period of Detention</b></p>                          | <p><b>Section 9 – Detention orders.</b><br/> (1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time:</p> <p>Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.</p> | <p><b>Clause 36 – Detention beyond two weeks only with approval of a Magistrate</b><br/> (1) Where it is necessary to detain a suspect in terms of a Detention Order made under section 31 beyond a period of two weeks, the officer in charge of the relevant police station shall file a confidential report in the Magistrate Court citing-<br/> (a) the allegation against the suspect;<br/> (b) the findings of investigation; and<br/> (c) reasons which require further detention, and obtain the approval of the Magistrate for such continued detention.</p> <p>(2) The Magistrate shall ensure the confidentiality of the report so filed.</p> <p>(3) The suspect or his Attorney-at-Law shall be entitled to obtain such information that may be necessary to object to the extension of the period of detention.</p> <p>(4) The submissions of the police officer seeking extension of the period of detention and the objections raised by the suspect or his Attorney-at-</p> | <p>This provision is a significant improvement from the PTA .The requirement of the approval of the Magistrates to extend detention beyond two weeks under the proposed CTA reduces the risk of abuse as was seen under the PTA. The PTA permitted individuals to be detained further to a Detention Order issued by the Minister against any individual suspected of being ‘connected with or concerned in any unlawful activity’. Such an order is permitted to be renewed up to a total of 18 months and was expressly excluded from any judicial review of its legality under section 10 of the PTA. The proposed clause therefore is a positive improvement from the archaic PTA.</p> <p>The proposed CTA empowers the Magistrate to send a detainee to</p> |

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|  |  | <p>Law for such extension, shall be recorded by the Magistrate.</p> <p>(5) The Magistrate may order the extension of the period of detention or refuse such extension, giving reasons therefor.</p> <p>(6) (a) Where the Magistrate refuses to grant the extension of the Detention Order he shall inquire whether there exists any justifiable reason to remand the suspect. that there exists any reasonable ground to believe that the suspect has committed an offence under this Act, the suspect shall be placed in remand custody.</p> <p>b) After the inquiry, if the Magistrate is of the opinion that there exists any reasonable ground to believe that the suspect has committed an offence under this Act, the suspect shall be placed in remand custody.</p> <p>(c) Where there is no reasons to believe that the suspect has committed an offence under this Act, he shall be released from detention.</p> <p>(7) The proceedings under this section shall be held <i>in-camera</i>.</p> | <p>regular remand custody or release him from detention.</p> <p>A notable provision under the propose CTA is that the proceedings under this clause will be held <i>in camera</i>. . 'in-camera' proceeding is either when the hearing is held before the judge in his private chambers or the public is excluded from the courtroom. It is of vital importance to remember that the right to a fair trial involves the right to a public hearing. Therefore, any restrictions on the public nature of a trial, including for the protection of national security must be both necessary and proportionate as assessed on a case-by-case basis.</p> <p>Further, necessary measures should be taken for compensation to be provided where there has been wrongful arrest and detention of a person.</p> |
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| <p><b>Maximum period of Detention</b></p>                                 | <p><b>Section 9 (1) – Detention Orders</b><br/> (1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time:<br/> Provided, however, that the aggregate period of such detention shall not <u>exceed a period of eighteen months</u></p> | <p><b>Clause 37- Maximum period of detention under Detention Order</b><br/> No suspect shall be detained for a period exceeding eight weeks under Detention Orders made under section 31.</p>  | <p>An improvement is the maximum period of detention of eighteen months under the existing PTA that has been reduced to eight weeks by the proposed CTA.</p>   |
| <p><b>Appeal against the extension or refusal to extend detention</b></p> | <p><b>Section 10 – Order under section 9 to be final.</b><br/> An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.</p>  | <p><b>Clause 38 – Appeal against the extension or refusal to extend detention</b><br/> (1) The police officer or the suspect may make an appeal against any grant or refusal of extension of a Detention Order under section 36, to the relevant Magistrate Court.<br/><br/> 2) The Magistrate shall immediately refer such appeal to the High Court having Jurisdiction over the area in which the relevant Magistrate Court is situated, in a confidential cover along with the confidential report filed by the police officer and the record of the proceedings.</p> | <p>This provision is an improvement from the PTA. Under the PTA a Detention Order made by the Minister was expressly excluded from any judicial review of its legality under section 10 of the Act. The proposed CTA makes provision for the suspect or police officer to appeal against any grant/refusal of extension of a Detention Order under clause 36 to the Magistrate Court. The Magistrate is then required to immediately refer the appeal to the High Court.</p> |

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|   |  | <p>(3) It shall be the duty of such High Court to dispose of any such appeal within three weeks from the date of filing such appeal, giving opportunities to the police, the Attorney General and the Attorney-at-Law representing the suspect, of being heard.</p> <p>(4) The High Court may -</p> <ul style="list-style-type: none"> <li>(a) affirm the order made by the Magistrate; or</li> <li>(b) revise the order of the Magistrate by- <ul style="list-style-type: none"> <li>(i) granting the extension of Detention Order;</li> <li>or</li> <li>(ii) placing the suspect in remand.</li> </ul> </li> </ul>  | <p>It is also welcome that the High Court has to decide the matter in a set period of three weeks after giving the opportunities to the relevant parties to be heard which will prevent delays.</p> |
| <p><b>Suspect to be produced before a Magistrates</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 39- Suspect to be produced before a Magistrates</b></p> <p>(1) During the pendency of a Detention Order, the suspect shall be produced before a Magistrate once in every fourteen days.</p> <p>(2) The Magistrate shall comply with the provisions of section 27 upon the suspect being produced before the Magistrate.</p> <p>(3) Upon completion of the period of detention under a Detention Order, the suspect shall be produced before a Magistrate.</p> <p>(4) Where upon such production the officer in charge of the relevant police station or any other police officer authorized by him informs the Magistrate that-</p> <ul style="list-style-type: none"> <li>(a) there exists a well-founded ground to believe that the suspect has committed an offence under this Act and that further investigations are being conducted; or</li> </ul> | <p>This provision is an improvement from the PTA and provides sufficient judicial oversight during the period of detention.</p>   |

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|   |  | <p>(b) the investigations have been completed and that the Attorney General has been, or is to be requested to consider the institution of criminal proceedings against the suspect, the Magistrate shall direct that the suspect be detained in remand custody.</p>   |  |
| <p><b>Police officers access to suspect</b></p> | <p>Section 7 (3) of the PTA, granted wife far-reaching powers to a police officer to accesses a suspect in remand. The Section states:</p> <p>3) A police officer conducting an investigation under this Act in respect of any person arrested under subsection (1) of section 6 or remanded under subsection (1) or subsection (2) of this section"</p> <p>(a) shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation; and</p> <p>(b) may obtain a specimen of the handwriting of such person and do all such acts as may reasonably be necessary for fingerprinting or otherwise identifying such person;</p> | <p><b>Clause 40- Police officer to have access to suspect in remand</b></p> <p>A police officer conducting an investigation under this Act, shall be entitled, unless the Magistrate otherwise orders to-</p> <p>(a) have access to a suspect placed in remand custody in terms of this Act, and interview the suspect;</p> <p>(b) record his statements, with the permission given by the Magistrate on an application made to such Magistrate in that behalf;</p> <p>(c) take the suspect out of the remand for the purpose of conducting further investigations under the authority of an order made by a Magistrate:</p> <p>Provided however, an officer of the Prisons Department shall be present at every instance referred to above.</p> | <p>Judicial oversight in the process of investigation of the suspect greatly reduces the risk of the suspect being tortured or subjected to cruel inhuman degrading treatment and punishment. This provision is an improvement from the PTA.</p> |

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| <p><b>Board to provide for administrative relief from Detention Orders</b></p> | <p><b>Section 13 – Advisory Board.</b><br/> (1) There shall, for the purposes of this Act, be established an Advisory Board consisting of not less than three persons appointed by the President.</p> <p>(2) Any person in respect of whom any detention order or restriction order has been made shall be informed of the unlawful activity in connection with which such order has been made and such person or any other person on his behalf may make representations to the Advisory Board.</p> <p>(3) Every meeting of the Advisory Board held to consider such representations shall be presided - over by a Chairman nominated from among the members by the Minister and it shall be the duty of the Chairman to advise the Minister in respect of such representations.</p> <p>(4) The Minister may make rules in relation to the hearing and disposal of any representations that may be made by any person in respect of any such order.</p> | <p><b>Clause 41 – Board of review for administrative relief from Detention Orders</b><br/> (1) There shall be established a Board of Review for granting administrative relief for appeals against Detention Orders made under section 31.</p> <p>(2) The Board of Review shall consist of-<br/> (a) the Secretary to the Ministry of the Minister who shall be the Chairperson of the Board; and<br/> (b) two other persons appointed by the Minister, off whom each person has gained professional eminence and experience in the fields of-<br/> (i) criminal investigation and criminal justice; and<br/> (ii) human rights.</p> <p>(3) Any suspect or an Attorney-at-Law on his behalf, who is aggrieved by the decision taken to arrest and detain him under a Detention Order made under section 31, may appeal to the Board of Review, to review such Order.</p> <p>(4) The Board of Review shall, consider the appeal, taking into account the grounds stated in the appeal and the reasons for requesting such Order based on the submissions made by the officer in charge of the relevant police station with the assistance of the officer who requested for the Detention Order, and the Deputy Inspector General of Police who issued the Detention Order and make a ruling on such Order.</p> <p>(5) Such ruling may contain directions-<br/> (a) to continuously detain the appellant suspect;</p> | <p>There is considerable improvement in stipulating the criteria of person to be appointed as members of the board of review under the CTA. It is also positive that two professionals are appointed to the board of review from the fields of criminal investigation and criminal justice and human rights. However, it is important to note that the language of clause42(b) is not clear and therefore could be construed in a number of different ways.</p> <p>Further, another improvement is the stipulation of the 2 weeks' time limit to communicate the decision of the board.</p> |
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|                                |                                     | <p>or<br/> (b) to terminate the detention of the suspect and to produce the suspect before a Magistrate and to request that the suspect be placed in remand; or<br/> (c) to produce the suspect before a Magistrate, so that bail be granted to the suspect.</p> <p>(6) Such ruling shall be made within two weeks of the appeal and shall contain reasons therefor, and be communicated to the appellant and to the Deputy Inspector General of Police who had issued the Detention Order and to the officer who had requested the Detention Order.</p>  |  |
| <b>Detention during remand</b> | No equivalent provision in the PTA. | <p><b>Clause 42- Detention during remand</b><br/> (1) Where the officer in charge of a police station receives information which he believes to be true, that a person remanded under this Act--<br/> (a) is committing an offence under this Act;<br/> (b) is making preparations or attempting to commit an offence under this Act;<br/> (c) is attempting to escape from remand custody; or<br/> (d) had committed an offence under this Act prior to being arrested and such officer in charge was unaware of such fact, he shall report such information to the relevant Magistrate.</p> <p>(2) The Magistrate shall immediately inquire into such information and at the conclusion of the inquiry, if the Magistrate is satisfied that, the officer in charge of the police station had acted in</p> | <p>The possibility of abuse of powers by the Police officer is mitigated by the oversight of the Magistrate and the Human Rights Commission in this process.<br/> This is an improvement in contrast to the PTA.</p> |



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|   |  | <p>good faith and the allegation against the suspect made by the police, appears to be well founded, and where the Magistrate deems it expedient to keep the suspect under detention, he may on the production of a Detention Order issued under this Act, permit the officer in charge of the police station to-</p> <ul style="list-style-type: none"> <li>(a) take custody of the suspect;</li> <li>(b) remove the suspect from remand; and</li> <li>(c) have such suspect detained in terms of such Detention Order.</li> </ul> <p>(3) The detention of a suspect under this section shall-</p> <ul style="list-style-type: none"> <li>(a) be for a period specified by the Magistrate;</li> <li>(b) be subject to the provisions of this Act applicable for a suspect detained under this Act; and</li> <li>(c) be reviewed by the Magistrate in every fourteen days.</li> </ul> <p>(4) The transfer of the suspect from remand custody to detention, shall be notified to the Human Rights Commission.</p> |  |
| <p><b>Release from remand custody and detention</b></p> | <p>Section 7 (1) and proviso to the section states the follows<br/> (1) Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced</p> | <p><b>Clause 43- Release from remand custody and detention</b><br/> (1) A suspect arrested under this Act, shall only be released from remand custody or detention, after production before a Magistrate and subject to any condition that the Magistrate may impose.<br/> (2) The release of the suspect shall be notified to the Human Rights Commission by the officer in</p>   | <p>A significant improvement under CTA is that it removes the requirement of having the Attorney General’s consent to release a detainee. Thus the Magistrate has the power to determine the release and any conditions therewith. It is also noteworthy that the clause makes provision for the Human</p> |

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|                                    | <p>before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person:</p> <p>Provided that, where the Attorney-General consents to the release, of such person from custody before the conclusion of the trial, the Magistrate shall release such person from custody.</p> | <p>charge of the relevant police station, giving adequate time as may be necessary for the Human Rights Commission to send an officer authorized in writing, to be present when the release takes place.</p>  | <p>Rights Commission to be notified and be present when the suspect is being released.</p>   |
| <p><b>Right to an attorney</b></p> | <p>No equivalent provision in the PTA.</p>  | <p><b>Clause 44 – Right of an attorney at law to represent a suspect</b><br/> An Attorney-at-Law representing a suspect under this Act, shall have the right to access to such person in police custody, and to make representations, as provided for in written law.</p> | <p>This provision is an improvement from the PTA and is in line with fundamental rights guaranteed under Article 13 of the Constitution and Sri Lanka’s international obligation under Article 9(3) and 9(4) of the ICCPR.<br/> However, in order to facilitate access to counsel, free legal aid should be provided to the suspect when necessary. It is also preferable that the clause is re worded as ‘Right of an attorney at law to represent a suspect or appointed to protect his interest by his next of kin or family’</p> |

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| <p><b>Suspect to be treated humanely</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 48 – Suspect to be treated humanely</b><br/> The place of detention or remand of the suspect, detained or remanded under the provisions of this Act, shall be provided with the requirements necessary for humane treatment, and such place of detention shall be accessible to the family members of the suspect, in detention or remand, and to his Attorney-at-Law with the prior permission obtained from the officer in charge of such place of detention or prison.</p> <p>(2) Where it appears to the Human Rights Commission or the Magistrate, at an inspection of the place of detention or remand under the provisions of this Act that the place of detention or remand, does not confirm to the requirements referred to in subsection (1), such fact shall be informed -</p> <p style="padding-left: 40px;">(a) to the Inspector General of Police in cases of detention; or (b) to the Superintendent of the Prisons in cases of remand.</p> <p>(3) It shall be the duty of the Inspector General of Police or the Superintendent of the Prisons, to take steps to the greatest extent possible, to provide whatever necessary for humane treatment.</p> <p>(4) The officer in charge of the police station or the place of detention wherein a suspect is kept in custody shall, where the suspect is –</p> <p style="padding-left: 40px;">(a) detained for a period exceeding one month; or</p> <p style="padding-left: 40px;">(b) placed in remand, pending commencement of the trial; or</p> | <p>This provision is an improvement from the PTA and is in line with international law and best practices including Article 10(1) of the ICCPR which requires that all persons deprived of their liberty “shall be treated with humanity and with respect for the inherent dignity of the human person”.</p> |
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|  |  | <p>(c) placed in remand, pending conclusion of the trial, issue a notification to the suspect and to the Human Rights Commission, containing following information: –</p> <ul style="list-style-type: none"><li>(i) the grounds on which, the extension of the period of detention or remand was ordered;</li><li>(ii) in situations where the suspect is being detained, without prejudice to the on-going investigations, information needed for the investigations to be conducted diligently and expeditiously; and</li><li>(iii) in situations where the suspect is being held in remand custody, reasons as to why institution of criminal proceedings cannot be taken place immediately, or the trial cannot be commenced immediately or the trial cannot be concluded expeditiously, as the case may be.</li></ul> |  |
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**PART III- POWERS AND DUTIES OF CERTAIN OFFICERS UNDER THIS ACT**

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| <p><b>Powers of Police officers to investigate</b></p>                                       | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 49 – Powers of Police officers under this Act.</b><br/>                 For the purpose of conducting investigations into offences under this Act and offences under any other written law that may have been committed in the course of the same transaction, or to prevent the commission of any such offence, police officers shall be vested with the powers specified in this Part in addition to any power conferred on them by the Police Ordinance or Code of Criminal Procedure Act or any other relevant written law, to the extent that may be necessary for investigating and preventing offences under this Act.</p>   |  |
| <p><b>Duty of certain officers to prevent the commission of offences under this Act.</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 50 – Duty of certain officers to prevent the commission of offences under this Act.</b><br/>                 (1) It shall be the duty of every police officer and any member of an armed force and a coast guard officer to take necessary measures subject to the provisions of this Act, to prevent the commission of an offence under this Act.<br/><br/>                 (2) For the purpose of subsection (1), any such officer may take such measures-</p> <ul style="list-style-type: none"> <li>(a) in good-faith;</li> <li>(b) proportionate to the harm that may be inflicted by the commission of the offence alleged to have been committed;</li> <li>(c) only where all other means of achieving the objectives of this Act have proved ineffective;</li> </ul> <p>and</p> | <p>The broad powers granted to the police, members of armed forces, and coast guards under subsection (1) of this clause is subjected to necessary conditions and control in subsections (2) and (3) of the clause. However, there are concerns with regards to the necessity of entrusting a wide range of powers to the armed forces under the proposed CTA.</p> |

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|  |  | <p>(d) only to the extent such measures may be necessary, to prevent the commission of an offence under this Act or for the purpose of apprehending persons who have committed offences under this Act.</p> <p>(3) Any such officer shall not use Lethal force except in the exercise of private defence within the meaning of the Penal Code.</p>   |   |
| <p><b>Specialized Counter Terrorism Agency of the Sri Lanka Police</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 51 - Specialized Counter Terrorism Agency of the Sri Lanka Police</b></p> <p>(1) The Inspector General of Police shall name and establish a Specialized Counter Terrorism Agency of the Sri Lanka Police, which shall be assigned with the responsibility of preventing and countering terrorism, and investigating the commission of any offence under this Act (hereinafter referred to as the “Specialized Agency”).</p> <p>(2) Notwithstanding the provisions of subsection (1), the Inspector General of Police shall be entitled to assign any investigation or any partly conducted investigation, into the commission of an offence under this Act, to any other division or unit or to any police station, of the Sri Lanka Police.</p> <p>(3) It shall be the duty of the Specialized Agency, inter-alia to-</p> <ul style="list-style-type: none"> <li>(a) maintain the central database;</li> <li>(b) maintain statistics relating to the commission of offences under this Act;</li> </ul> | <p>The Sri Lanka Police at present already has a counter-terrorist unit known as the Terrorist Investigation Division (TID). Numerous allegations have surfaced against the TID in relation to abductions, torture and extrajudicial killings of suspects. In such a context, there are concerns with regard to the need and necessity to establish yet again, a specialized agency for counter terrorism measures.</p> |

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|  |  | <p>(c) conduct investigations to arrest, prosecute, discharge and punish persons who commit offences under this Act;</p> <p>(d) assess threat situations posed by terrorism, and issue warnings to the general public; and</p> <p>(e) conduct research into terrorism, develop, investigation techniques</p>   |   |
| <p><b>Appointment of special teams of Investigators.</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 52 – Appointment of special teams of Investigators.</b></p> <p>(1) Where any offence under this Act is committed or upon receipt of an information of the commission of, or preparation to commit an offence under this Act, the Inspector General of Police may appoint a special team of investigators (hereinafter referred to as the “Investigation Team”) comprising of the following persons, to investigate into such offence, or to take necessary measures to prevent the same: –</p> <p>(a) a Police officer designated by name and rank who shall be the Head of the Investigation Team;</p> <p>(b) such number of other police officers designated by name and rank who shall be the criminal investigators;</p> <p>(c) such number of legal experts;</p> <p>(d) such number of crime inspection officers;</p> <p>(e) such number of forensic medical specialists;</p> <p>(f) such number of forensic psychologists;</p> <p>(g) such number of forensic scientists, including scientists in serology, genetics, ballistics, explosives and chemicals;</p> <p>(h) such number of finger print experts;</p> <p>(i) such number of experts in handwriting and suspected documents;</p> | <p>The appointment of a multidisciplinary investigation team is welcome and would ensure the effective and speedy conclusion of the investigation. This would also safeguard the interest of the suspects as the team consist of forensic psychologists, medical specialists and legal experts.</p> |

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|   |  | <p>(j) such number of computer and automated network experts;</p> <p>(k) such number of forensic auditors;</p> <p>(l) such number of experts in analogy, digital technology and mobile and satellite communication technology;</p> <p>(m) such number of photographers and videographers; And</p> <p>(n) such number of other experts that the Inspector General of Police may deem necessary.</p> <p>(2) (a)The Inspector General of Police shall designate a police station to the Investigation Team constituted under subsection (1).</p> <p>(b) The officer in charge of such police station shall, in addition to performing the general duties and functions assigned to such officer under this Act and other written law, assist the Investigation Team.</p> <p>(3) The members of the Investigation Team who are not police officers shall be deemed to be Peace Officers for the purpose of performing the functions assigned to such Investigation Team.</p> |  |
| <p><b>Constitution of support teams</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 53 – Constitution of support teams.</b></p> <p>(1) A police officer not below the rank of a Deputy Inspector General of Police who is a member of an Investigation Team may with the concurrence of relevant authorities constitute support teams comprising of members of any armed force, doctors and other health care workers, emergency relief service providers, public servants and other</p>  | <p>This ensures the speedy response to humanitarian and security requirements without the requirement to wait for the authorities and first responders in emergency situations</p> |



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|   |   | <p>necessary persons, to attend the following duties at any scene of crime where an offence under this Act has been committed–</p> <ul style="list-style-type: none"> <li>(a) to rescue and evacuate victims of any offence and other persons from the scene of crime;</li> <li>(b) to provide emergency medical treatments;</li> <li>(c) to recover dead bodies;</li> <li>(d) to douse fires;</li> <li>(e) to deactivate explosives and other lethal and dangerous substances;</li> <li>(f) to carryout controlled explosions, in order to deactivate lethal and dangerous substances;</li> <li>(g) to remove debris;</li> <li>(h) to create access routes; and</li> <li>(i) to provide other emergency, humanitarian and security requirements and services.</li> </ul> <p>(2) It shall be the duty of every person whose assistance has been sought under subsection (1), to provide such assistance, as may be required</p> <p>(3) The Inspector General of Police shall take necessary measures to make necessary payments to such persons for the services provided.</p> |  |
| <p><b>Powers to facilitate investigations</b></p> | <p><b>Section 08- Recording of statements by Magistrate</b><br/>Any police officer nay at any stage of an investigation or trial produce before any Magistrate any person conversant with any fact relating to the commission of any offence under this Act, and the Magistrate shall</p> | <p><b>Clause 54 – Powers to facilitate investigations</b><br/>(1) For the purposes of this Act, a police officer not below the rank of a Sub-Inspector of police who has been authorized by an officer in charge of a police station to conduct an investigation in terms of this Act, shall be empowered to require any person to–</p> <ul style="list-style-type: none"> <li>(a) be present for an interview;</li> <li>(b) answer questions put to him;</li> </ul>   | <p>The CTA introduces important safeguards during the stage of the investigation, by providing access to legal counselling and audio-visually recording the interview. This is a significant improvement from the PTA.</p> |

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|  | <p>thereupon record the statement of such person upon oath.</p> | <p>(c) provide information;<br/> (d) give statements;<br/> (e) give statements on affidavit or oath: Provided that, a statement on affidavit or oath shall only be obtained on an Order of Magistrate;<br/> (f) tender any document or thing that may be in the possession or control of such person;<br/> (g) assist in conducting of an investigation;<br/> (h) where the person is suspected for committing an offence under this Act, make himself available for a physical examination having due regard to gender sensitivity and privacy of the person;<br/> (i) make himself available for taking of photographs, video recording and taking finger, palm or foot prints where the person is suspected for committing an offence under this Act.</p> <p>(2) No person shall be bound to make a statement or produce an affidavit implicating or incriminating himself in the commission of an offence.</p> <p>(3) Any person who is to be interviewed and whose statement is to be recorded, shall-</p> <p>(a) if he so wishes, be entitled to have access to, or communicate with, an Attorney-at-Law of his choice and obtain legal advice prior to such interview; and</p> <p>(b) be interviewed and the statement be recorded in a language understood by such person, and the services of an interpreter be obtained where necessary:</p> | <p>The proposed CTA in a positive move takes the necessary safeguards to prevent the coercing of suspects in order to obtain statements implicating or incriminating himself in the commission of an offence. This clause specifies that a statement on affidavit or oath can only be obtained on order of Magistrate and that no person is bound to make a statement or produce an affidavit implicating or incriminating himself in the commission of an offence.</p> |
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|  |  | <p>Provided that, where the services of an interpreter is obtained, the interview shall be recorded with its translation, and be transcribed, and preserved, for future verification.</p> <p>(4) A police officer acting under the provisions of this section shall inform the person prior to being interviewed, of his rights under this Act</p> <p>(5) Wherever possible, the interview shall be audio-visually recorded.</p>   |   |
| <p><b>Use of Vessel or vehicle</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 55 – Use of Vessel or vehicle</b></p> <p>Where the person in charge of any vehicle, vessel, train or aircraft disobeys any order given by a police officer or any other person acting on his demand for halting any such vehicle, vessel, train or aircraft for the purposes of this Act, such police officer or the person may use such force as may be necessary to halt such vehicle:</p> <p>Provided however, any such force may be used only where all other means of halting the vehicle, vessel, train or aircraft have proved ineffective:</p> <p>Provided further, any such officer shall not use lethal force except in the exercise of private defence within the meaning of the Penal Code.</p> | <p>The force used should be proportionate and used only if strictly necessary and only to the extent required by the circumstances.</p> <p>Additionally, police officers should minimize damage and injury and respect and preserve human life; ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. And further promptly report the death or injury resulting in the use of force to the Magistrate and the superiors of the police.</p> |

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| <p><b>Taking over the control of any vehicle, vessel</b></p>                       | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 56 –Taking over the control of any vehicle, vessel etc</b><br/> (1) A police officer shall be entitled to take over the control of any vehicle, vessel, train, aircraft or unmanned aerial vehicle, for the purpose of conducting an investigation under this Act or for preventing the commission of an offence.<br/><br/> (2) Such taking of control shall be promptly reported to a Magistrate</p>   | <p>Measures should be taken to use this clause only in instances it is necessary and proportionate to the circumstances.</p> |
| <p><b>Suspension or delaying the taking off or sailing of vessel, aircraft</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 57- Suspension or delaying the taking off or sailing of vessel, aircraft, etc.</b><br/> For the purposes of this Act, a police officer not below the rank of a Senior Deputy Inspector General of Police may issue directions to–<br/> (a) suspend or delay, the taking off of any aircraft, or the sailing of any vessel; or<br/> (b) land any such aircraft at a designated airport or at any other appropriate location; or<br/> (c) bring any vessel to any port or harbour or any other appropriate location:<br/> Provided however, the Director General of Civil Aviation appointed under the Civil Aviation Authority Act No. 34 of 2002, and the Commander of the Sri Lanka Air Force shall be prior informed of any such direction issued in respect of any aircraft for the purpose of obtaining air-defence clearance:<br/><br/> Provided further, where the direction is issued in respect of a vessel of the Sri Lanka Navy, the Commander of the Sri Lanka Navy shall be given prior notice of such direction.</p> | <p>These actions should be taken only in instances it is necessary and proportionate to the circumstances</p>                |

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| <p><b>OIC to call for a forensic medical examination</b></p>             | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 58 – Causing clinical forensic medical examinations</b><br/> (1) An Officer in Charge of a Police Station shall be entitled to directly submit a suspect in custody or a victim of an offence to a government forensic medical specialist for examination.</p> <p>(2) The Report of the examination shall be directly submitted by the medical officer, to the relevant officer in charge of the police station, with a copy to the Magistrate before whom the suspect has been, or is to be produced.</p>  | <p>This is an improvement from the existing PTA. However, if the suspect raises concern regarding the outcome of the medical examination or the Magistrates has a reasonable suspicion with regards to the results of such medical examination, provision should be made to produce the suspect before an independent medical specialist for such examination.</p> |
| <p><b>OIC to submit items to the Government Analyst/other expert</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 59 – Directly submitting items to Government Analyst or other expert.</b><br/> (1) An officer in charge of a Police Station shall be entitled to directly, submit any document, thing or article, which he reasonably believes to be connected with the Commission of an offence under this Act, to the Government Analyst or to any other local or foreign expert for examination and analysis.</p> <p>(2) The Report of the examination shall be directly submitted by the Government Analyst or other expert, to the officer in charge of the relevant police station.</p> | <p>A copy of the Report of the examination should also be served to the Magistrate in order to ensure the impartiality of the process and prevent any tampering with evidence.</p>   |

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| <p><b>Transfer of Material for Investigation.</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 60 – Transfer of Material for Investigation.</b><br/> (1) It shall be lawful for a police officer who conducts an investigation on an offence under this Act to submit material for investigation to any other law enforcement agency, if he is of the view that, there exists material, indicating that an offence falling under the purview of the investigation competency of such other law enforcement agency, have been committed.</p> <p>(2) The law enforcement agency referred to in subsection (1), may include an agency of any other sovereign country.</p>  | <p>Provisions should be made to submit a report to the Magistrate, containing the items/materials so transferred to other law enforcement agency.</p> <p>There should be a log/database in the police as well as the other law enforcement agency with regards to the materials which are in the process of being investigated to prevent the loss/tampering of evidence.</p> |
| <p><b>Investigations outside Sri Lanka</b></p>        | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 61- Investigations outside Sri Lanka</b><br/> (1) It shall be lawful for a police officer with the approval of the Inspector General of police, and with the prior approval obtained from the relevant foreign country to conduct an investigation in terms of this Act outside Sri Lanka.</p> <p>(2) It shall be lawful for a police officer authorized by the Inspector General of Police, with the prior approval obtained from the relevant foreign country and the Government of Sri Lanka, to undertake and carry out a joint investigation into the commission of an offence under this Act, with a criminal investigation agency of any other country.</p> |   |

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| <p><b>Police to issue directives for the protection of the public.</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 62. Police may issue directives for the protection of the public.</b><br/> <b>(1)</b> Where a police officer not below the rank of a Senior Superintendent of Police receives information that an offence under this Act is committed or likely to be committed, he may issue any one or more of the following directives to the public, for the purpose of protecting persons from harm or further harm, associated with such offence:</p> <p>-</p> <ul style="list-style-type: none"> <li>(a) not to enter any specified area or premises;</li> <li>(b) to leave a specified area or premises;</li> <li>(c) not to leave a specified area or premises and to remain within such area or premises;</li> <li>(d) not to travel on any road;</li> <li>(e) not to transport anything or to provide transport to anybody;</li> <li>(f) to suspend the operation of a specified public transport system;</li> <li>(g) to remove a particular object, vehicle, vessel or aircraft from any location;</li> <li>(h) to require that a vehicle, vessel, ship or aircraft to remain in its present position;</li> <li>i) not to sail a vessel or ship into a specified area until further notice is issued;</li> <li>(j) not to fly an aircraft out of, or into, a specified air space;</li> <li>(k) not to congregate at any particular location;</li> <li>(l) not to hold a particular meeting, rally or procession; and</li> <li>(m) not to engage in any specified activity</li> </ul> | <p>This clause contains broad and far-reaching powers granted to a police officer below the rank of Senior Superintendent of police that may result in the violation of fundamental rights guaranteed under the constitution if abused. While certain safeguards are placed upon subclauses (k), (l) and (m) by requiring the prior approval of the Magistrate, no such safeguards are placed in the exercise of powers in clauses 1(a) – (j)</p> <p>The power granted to the police officer under this clause encroaches on the fundamental right guaranteed under Article 14 (b), 14 (c) and 14 (h).</p> <p>Further, there is no judicial oversight in deciding the period of operation of the directives. There is no requirement for the police officer to obtain the approval of the Magistrate when extending the period of the directive under subclause (5).</p> <p>Moreover, subclause (6) also permits the armed forces to be involved in order to give effect to</p> |
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|  |  | <p>Provided however, no directive under paragraphs (k), (l) or (m), shall be issued, without the prior approval obtained from a Magistrate, who shall prior to the issuance of such directive satisfy himself of the necessity for issuing the same and may make an order to issue such directive subject to such conditions.</p> <p>(2) The Human Rights Commission shall forthwith be informed of any directive issued under this section by the relevant officer who issued such directive or the Magistrate who granted prior approval for any such directive under paragraphs (k), (l) or (m).</p> <p>(3) Any such directive, may include exceptions to such directive, in order to meet with emergency situations and humanitarian requirements of persons that may be affected by any such directive.</p> <p>(4) Any such directive, shall be published in the Gazette and be given a wide publicity in the relevant area through appropriate other means.</p> <p>(5) The period of operation of any such directive shall not exceed, continuously for more than twenty-four hours at a time, and for a total period of more than seventy-two hours Provided however, where the period of operation of any such directive is required to be extended for more than twenty-four hours, such extended period shall commence after an interval of not less than twenty-four hours,</p> | <p>the directives, which raises serious concerns with regards to the possibility of violation of fundamental rights guaranteed by the Constitution.</p> |
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|  |  | <p>after the expiration of the initial period of operation of the directive.</p> <p>(6) The assistance of the members of any armed force may be obtained by the Inspector General of Police, with the prior approval obtained from the Commander of the relevant armed force, to give effect to any directive under this section.</p> <p>(7) For the purpose of giving effect to such directive, it shall be lawful for police officers to cordon-off such area.</p> <p>(8) During the period of operation of such directive and during a twenty-four hours' interval between two periods of operation, it shall be lawful for any police officer or a member of any armed force authorized in that behalf -</p> <ul style="list-style-type: none"><li>(a) to stop, question and search any person found within the effective area of such directive;</li><li>(b) to enter and search any premises; or</li><li>(c) to stop any person who may attempt to enter into or, remain in the effective area of such directive and question and search such person or his belongings and property that may be taken in, or out of such area.</li></ul> <p>(9) Any search conducted in terms of this section shall be carried out in a gender sensitive manner, with due respect to the dignity and privacy of the person being searched, and while ensuring that the search of a female shall only be carried out by a female officer.</p> |  |
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|  |  | <p>(10) It shall also be lawful for a police officer or a member of the armed forces authorized in that behalf to restrain and search any person who may act contrary to the directive.</p> <p>11) Any person, who wilfully acts contrary to a directive issued under this section, shall be guilty of an offence, and shall upon conviction by a Magistrate be punished with imprisonment for a term not exceeding one year or to a fine not exceeding five thousand rupees or to both such imprisonment and fine.</p> <p>(12) An offence under this section shall be deemed to be a non-cognizable offence within the meaning of the Code of Criminal Procedure Act, if the commission of such offence does not endanger the life of any person other than the offender.</p> |  |
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## CHAPTER IV – MATERIAL FOR INVESTIGATION

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| <p><b>What is the procedure to obtain information from Banks and Financial Institutions etc. in the course of an investigation?</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 63 – Obtaining information from banks, financial institutions etc.</b></p> <p>(1) A police officer not below the rank of a Superintendent of Police shall be entitled to apply for an order from a Magistrate to require any bank, non-banking financial institution or designated non-finance business to provide following information and material to such officer, subject to the provisions of the Prevention of Money Laundering Act, No. 5 of 2006 and Financial Transactions Reporting Act, No. 6 of 2006: –</p> <p>(a) information relating to any financial service provided by such bank, institution or business, to any person;</p> <p>(b) details of any financial transaction carried out by any person;</p> <p>(c) details relating to bank accounts, deposits, remittances, and withdrawals and financial services provided by any such bank, institution or business;</p> <p>(d) details relating to securing of financial services by any person; and</p> <p>(e) a certified statement of any account or other information pertaining to any account or transaction.</p> <p>(2) Such Magistrate shall consider the application made by such police officer, and make an order in terms of subsection (1), where it appears reasonable and necessary for conducting investigation.</p> <p>(3) The Magistrate shall maintain confidentiality in respect of the application and the proceedings pertaining to the same shall be held <i>in-camera</i>, if requested by such police officer.</p> | <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 67, there are no guidelines upon which the Magistrate may consider if the information is necessary in the conducting of an investigation. This clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> <p>Regulations under the UN Act No. 45 of 1968 <i>Gazette</i> Extraordinary No. 1760/40 of May 31, 2012 (Amended by <i>Gazette</i> Extraordinary No. 1991/52 of November 4, 2016) Paragraph 12 of the said regulations creates certain duties to furnish information</p> |
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| <p><b>What is the procedure to obtain information service provides in the course of an investigation?</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 64 – Obtaining information from service providers</b></p> <p>(1) A police officer not below the rank of a Superintendent of Police shall be entitled to apply for an order from a Magistrate to require any telecommunication, satellite or digital service or data service provider, to provide –</p> <p>(a) information pertaining to services provided or being provided by such service provider to any person;</p> <p>(b) information pertaining to services enjoyed by any person to whom such services have been made available;</p> <p>(c) any information, data or document or record that may be stored, archived or otherwise kept, by such service provider; and</p> <p>(d) information pertaining to the uploading or downloading of data or information, to or from any instrument through the service provided by such service provider.</p> <p>(2) Such Magistrate shall consider the application made by such police officer, and make an order in terms of subsection (1), where it appears reasonable and necessary for conducting investigation.</p> <p>(3) The Magistrate shall maintain confidentiality in respect of the application and the proceedings pertaining to the same shall be held <i>in-camera</i> if requested by such police officer.</p> | <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 67, there are no guidelines upon which the Magistrate may consider if the information is necessary in the conducting of an investigation. This clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> |
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| <p><b>How can the police obtain information from govt or statutory authorities in the course of an investigation?</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 65- Obtaining information from government or statutory institutions</b></p> <p>(1) A police officer not below the rank of Superintendent of Police shall, be entitled to apply for an order from a Magistrate to require from the following officers any information or document for the purpose of conducting an investigation on an offence under this Act;</p> <ul style="list-style-type: none"> <li>(a) the Secretary to any Ministry;</li> <li>(b) Secretary General of the Parliament of Sri Lanka;</li> <li>(c) Commissioner General of Inland Revenue;</li> <li>(d) Governor of the Central Bank;</li> <li>(e) Head of the Department of Foreign Exchange;</li> <li>(f) Director of the Financial Intelligence Unit;</li> <li>(g) Director General of the Securities and Exchange Commission of Sri Lanka;</li> <li>(h) Director General of Customs;</li> <li>(i) Controller of Immigration and Emigration;</li> <li>(j) Commissioner General for the Registration of Persons;</li> <li>(k) Controller General of Imports and Exports;</li> <li>(l) Registrar of Companies;</li> <li>(m) Commissioner General of Land;</li> <li>(n) Director General of Intellectual Property of Sri Lanka;</li> <li>(o) Commissioner General of Motor Traffic;</li> <li>(p) Director General of Telecommunications;</li> <li>(q) a Head of any Government department, statutory body or other Government institution; or</li> <li>(r) Chairman of a Provincial Council or a Chairman or a Special Commissioner of a local authority.</li> </ul> <p>(2) Such Magistrate shall consider the application made by such police officer, and make an order in terms of</p> | <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 67 there are no guidelines upon which the Magistrate may consider if information is necessary in the conducting of an investigation. This clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> |
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|  |  | <p>subsection (1), where it appears reasonable and necessary for conducting investigation.</p> <p>(3) The Magistrate shall maintain confidentiality in respect of the application and the proceedings pertaining to the same shall be held <i>in-camera</i> if requested by such police officer.</p> |  |
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## CHAPTER V – MAGISTRATE TO MAKE ORDERS TO FACILITATE INVESTIGATIONS

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| <p><b>Magistrate making orders on the application of the Police for the facilitation of an investigation.</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 66 – Magistrates to make orders to application of a police officer in charge</b></p> <p>(1) For the purpose of conducting an investigation on an offence under this Act, an officer in charge of a police station may make an application to a Magistrate for making orders to facilitate such investigation-</p> <p>(a) restraining a suspect from travelling outside Sri Lanka:<br/>         Provided that, the officer in charge of the police station shall forthwith take steps to serve such order on the suspect;</p> <p>(b) taking of blood and hair samples and swab;</p> <p>(c) by conducting of identification parades;</p> <p>(d) forwarding productions to the government analyst, any other local or foreign expert or to a government forensic medical specialist;</p> <p>(e) conducting of examinations and tests by experts;</p> <p>(f) freezing of bank accounts or freezing of other financial deposits and accounts, subject to any condition that may be imposed:<br/>         Provided that, the Magistrate may on his own motion or on an application made in that behalf, vary such order, or permit the use in <i>good faith</i> of the funds in such accounts by the holder of any such account, for any legitimate purpose;</p> <p>(g) suspending or varying the provision of services being provided by any service provider:<br/>         Provided that, the Magistrate may either on his own motion or on an application made in that behalf, vary such order, enabling the use in <i>good faith</i> of such</p> | <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 67 there are no guidelines upon which the Magistrate may consider if the information is necessary in the conducting of an investigation. This clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> <p>Sub clauses (f) and (g) may be exploited to victimize citizens, organizations and media institutions.</p> <p>There is no requirement that such person should be heard before making such order, thus violating the liberties of such persons.</p> |
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|   |  | <p>services by the recipient of any such service, for any legitimate purpose; and<br/> <i>(h)</i> opening of safe boxes.</p> <p>(2) The Magistrate shall, upon being satisfied that the application is made in good faith and the assistance sought is reasonably necessary for the purpose of facilitating the conduct of investigations, make the order sought under subsection (1).</p>  |  |
| <p><b>Magistrates to authorize unlocking date and information</b></p> | <p>No equivalent provision in the PTA.</p> | <p><b>Clause 67 – Magistrates to authorize unlocking date and information</b></p> <p>(1) For the purposes referred to in subsection (2), a police officer not below the rank of a Superintendent of Police may make an application to a Magistrate seeking for an order authorizing such officer–</p> <p><i>(a)</i> to direct any person who provides locking or encryption services pertaining to any communication or storage services or equipment of, any data or information or other thing, to unlock or unencrypt the service or equipment and provide information contained therein to such police officer;</p> <p><i>(b)</i> to intercept, read, listen or record any postal message or electronic mail or any telephone, voice, internet, or video conversation, or conference or any communication through any other medium;</p> <p><i>(c)</i> to access any analogue or digital data or information; exchange or transfer system.</p> <p>(2) The purposes for which the Magistrate may make an Order under subsection (1) shall be –</p> <p><i>(a)</i> to determine the identity of a person who has committed;</p> | <p>This provision may be exploited to restrict the freedoms and liberties of citizens, organizations and media institutions.</p> <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>The limited circumstances in subclause (2) in which such orders can be made is a positive step, and the police should be required to demonstrate why information falls within these categories.</p> |



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|   |  | <p>(b) to determine the location of a person who has committed;</p> <p>(c) to facilitate the conduct of an investigation into;</p> <p>(d) to gather evidence against a person who has committed;</p> <p>(e) to determine whether one or more persons are conspiring, planning, preparing or attempting to commit;</p> <p>(f) to take measures to prevent the commission of, an offence under this Act.</p> <p>(3) Such Magistrate shall, if he is satisfied that the application is made in <i>good faith</i> and making of such order is reasonably necessary for conducting investigations, issue such order.</p>  |   |
| <p><b>Magistrate recording statements</b></p> | <p><b>Section 8 - Recording of Statement by Magistrate</b></p> <p>Any police-officer may at any stage of an investigation or trial produce before any Magistrate any person conversant with any fact relating to the commission of any offence under this Act, and the Magistrate shall thereupon record the statement of such person upon oath.</p> | <p><b>Clause 68 - Magistrates to Record Statements</b></p> <p>(1) On an application made by an officer in charge of a police station conducting an investigation into an offence under this Act, the Magistrate to whom such application is made, may question and record the statement of any suspect, who is produced by such officer before the Magistrate.</p> <p>(2) The recording of such statement, shall be in compliance with the following conditions: -</p> <p>(a) the person shall be informed of his rights under this Act;</p> <p>(b) the person shall have access to, or communicate with, an Attorney-at-Law, if he so wishes;</p> <p>(c) the person shall be inquired in order to ascertain whether such person wishes to voluntarily answer the questions put to him, and the Magistrate shall proceed</p> | <p>The PTA permits the Magistrate to record the statement of any person ‘conversant with any facts relating the commission of any offence under the Act’, while the proposed CTA deals with the statements of accused persons. (Clause 79 deals with the Magistrate recording the statements of other persons)</p> <p>There is no requirement in the proposed CTA that the statement should be made under oath, though as per Subclause (3) the statement may be admissible in court.</p> <p>However, there is a notable lacuna in the proposed CTA in that it does not</p> |

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|  |  | <p>to record a statement, only if he is satisfied that such person is voluntarily making such statement, without any promise, inducement or threat;</p> <p>(d) a questionnaire shall be obtained from the officer in charge of the police station for the purpose of questioning such person;</p> <p>(e) the person shall be informed that he has no obligation to answer the questions being put to him;</p> <p>(f) the person shall be warned that in the event of criminal proceedings being instituted against him, the contents of the statement that he will make, may be used as evidence against him;</p> <p>(g) whatever statement such person wishes to give shall be recorded, in addition to answers given to the questions put to him;</p> <p>(h) in situations where the person being interviewed, does not understand the language spoken by the Magistrate, the services of an interpreter shall be obtained, in order to translate the questions and the answers into the languages understood by such person and the Magistrate;</p> <p>(i) a transcript of the interview shall be prepared and retained for future verification.</p> <p>(3) Where the person who makes such statement is subsequently indicted for having committed an offence under this Act, such statement shall be admissible in evidence against such person at proceeding in respect of such offence.</p> <p>(4) Where the person who makes such statement is called by the Attorney General as a witness to testify against a person who is indicted for having committed an offence</p> | <p>specify that the police officer should not be present within hearing range when the statement is being recorded.</p> <p>Further, there is no specification that the statement should be made under oath.</p> <p>Subclause (5) may violate the right to silence of the suspect.</p> |
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|  |   | <p>under this Act, either the entirety of the statement or a part thereof, may be marked and produced in evidence, as part and parcel of the examination-in-chief of such person.</p> <p>(5) When the suspect declines to make a statement to the Magistrate, such fact shall be communicated by the Magistrate to the relevant police officer and the suspect shall be kept in remand custody.</p>   |   |
| <p><b>What happens on the completion of the investigation?</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 69 – Completion of Investigations</b></p> <p>(1) When the investigation is completed, the officer in charge of the relevant police station shall submit to the Magistrate, a report notifying the completion of investigations.</p> <p>(2) No Detention Order under this Act shall be issued or extended in respect of a suspect in respect of whom the investigation has been completed.</p> <p>(3) If at any time, an investigation in respect of any person arrested under this Act, is to resume, the Magistrate and the Human Rights Commission shall be informed of such resumption and the completion of further investigation.</p> | <p>This provision is an improvement from the PTA. The involvement of the Magistrate and the Human Rights Commission are important safeguards in the course of investigations. Subclause (2) ensures that there are no Detention Orders extended in respect of a person after the investigation has been completed, and Subclause (3) requires that if an investigation resumes, then the Magistrate and Human Rights Commission should be informed of this fact</p> |

**PART VI - INSTITUTION OF CRIMINAL PROCEEDINGS**

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| <p><b>Institution of criminal proceedings</b></p>    | <p>As per section 15 of the PTA criminal proceedings commences upon an indictment being received by the High Court</p> | <p><b>Clause 71- Attorney General to institute criminal proceedings</b><br/>                 The Attorney General shall institute criminal proceedings against any person who appears to have committed an offence under this Act or an offence under any other law which has been committed by such person in the course of committing an offence under this Act</p>   | <p>Similar to the PTA the power to institute proceedings under proposed CTA is vested with the Attorney General</p>  |
| <p><b>Suspension and deferment of indictment</b></p> | <p>No corresponding Section in the PTA.</p>  | <p><b>Clause 72 - Suspension and deferment of indictment</b><br/>                 (1) Notwithstanding anything to the contrary in any other written law, where -<br/>                 (a) death or grievous bodily injury has not been caused to any person; or<br/>                 (b) the security of the State and the people of Sri Lanka have not been seriously compromised or affected, the Attorney General may, having due regard to the facts specified in subsection (2), and subject to one or more conditions referred to in subsection (3), suspend and defer the institution of criminal proceedings against such person alleged to have committed an offence under this Act, for a period not less than five years and not exceeding ten years.<br/>                 (2) Where the Attorney General suspends or defers the institution of criminal proceedings under subsection (1), he shall pay due regard to-<br/>                 (a) the State policy,<br/>                 (b) the national interest and public interest;<br/>                 (c) views of the Inspector General of Police;<br/>                 (d) views of the victims of the offence; and</p> | <p>Proposed CTA introduces a clause that provides power to the Attorney General to suspend and defer the institution of criminal proceedings against a person alleged to have committed an offence under the CTA, this suspension and differing are subject to certain conditions specified in clause 72.</p> <p>This provision is an improvement. However, given the recent allegations that have come to light regarding the Attorney General's Department and it functioning both as the legal advisor to the State and the chief prosecuting officer, concerns remain if the decision of suspension and deferment would be independent and without undue influence. Therefore, measures should be taken to ensure that this provision is not abused and used cautiously.</p> |

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|  |  | <p>(e) the representations that may be made by the accused person or, on his behalf by his Attorney-at-Law.</p> <p>(3) Where the Attorney General decides in terms of subsection (1) to suspend and defer the institution of criminal proceedings against any person alleged to have committed an offence under this Act, he shall prefer an application to the High Court, to obtain the sanction of such Court to the imposition of one or more of the following conditions on such person as consideration for the suspension and deferment of the institution of criminal proceedings against such person –</p> <ul style="list-style-type: none"><li>(a) to publicly express remorse and apology before the High Court, using a text issued by the Attorney General;</li><li>(b) to provide reparation to victims of the offence, as specified by the Attorney General;</li><li>(c) to participate in a specified programme of rehabilitation;</li><li>(d) to publicly undertake that such person refrains from committing an offence under this Act;</li><li>(e) to engage in specified community or social service;</li></ul> <p>or</p> <ul style="list-style-type: none"><li>(f) to refrain from, committing any indictable offence or, breach of peace.</li></ul> <p>(4) The High Court shall upon consideration of the application made by the Attorney General under subsection (3), order the person alleged to have committed the offence to appear before the Court, and shall notify such person of the conditions imposed by the Court.</p> |  |
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|  |  | <p>(5) If such person fulfils the conditions imposed under subsection (3) during the period stipulated for fulfilling such conditions, the Attorney General shall not institute criminal proceedings against such person in respect of the offence alleged to have been committed.</p> <p>(6) If the person fails without valid excuse to comply with such conditions, the Attorney General may institute criminal proceedings against such person after the lapse of the period given to the suspect to fulfil such conditions</p> |  |
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**PART VII- TRIAL**

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| <p><b>Trial in the High Court</b></p> | <p><b>Section 15</b><br/>                 (1) Every person who commits an offence under this Act shall be triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury or before the High Court at Bar by three Judges without a jury, as may be decided by the Chief Justice. The provisions of sections 450 and 451 of the Code of Criminal Procedure Act, No. 15 of 1979, shall, mutatis mutandis, apply to the trial of offences under this Act by the High Court at Bar and to appeals from judgments, sentences and orders pronounced at any such trial held by the High Court at Bar.</p> <p>(2) Upon the indictment being received in the High Court against any person in respect of any offence under this Act or any offence to which the provisions of section 23 shall apply, the court shall, in every case, order the remand of such person until the conclusion of the trial</p> | <p><b>Clause 73 -Trial in the High Court.</b><br/>                 Every person who commits an offence under this Act shall be triable without a preliminary inquiry, on indictment by the Attorney General, before a Judge of the High Court, sitting without a jury:</p> <p>Provided however, the Chief Justice may direct that the trial shall be held before the High Court at Bar, in terms of the provisions of section 450 of the Code of Criminal Procedure Act, where-</p> <p>(a) the Attorney General so requests the Chief Justice; or<br/>                 (b) the Chief Justice is of the opinion that the interests of Justice so demands; or<br/>                 (c) the accused or an Attorney-at-Law on his behalf so applies.</p> | <p>Similar to the PTA a person who commits an offence under proposed CTA can be prosecuted without a preliminary inquiry, on indictment by the Attorney General, before a Judge of the High Court.</p> |
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| <b>Priority for Trials</b>        | <b>Section 21</b><br>Every court shall give priority to the trial of any person charged with, or indicted for, any offence under this Act and to the hearing of any appeal from the conviction of any such offence and sentence imposed on such conviction. | <b>Clauses 74 – Priority for trials under this Act.</b><br>Notwithstanding anything to the contrary in any other law, the High Court shall give priority to the trials against any person indicted for, any offence under this Act   | This provision is a significant improvement from the PTA. This ensures the conclusion of the trial without unnecessary delays.  |
| <b>trials on day-to-day basis</b> | . No corresponding Section in the PTA.  | <b>Clause 75 – Conduct of trials on day-to-day basis.</b><br>Unless exceptional circumstances so warrant a trial under this Act shall be held from day-to-day, other than during weekends, public holidays and days fixed by the Chief Justice to be days on which the court shall be on vacation.   | This provision is a significant improvement from the PTA This ensures the speedy delivery of justice without delay.   |
| <b>Withdrawing indictment</b>     | No corresponding Section in the PTA.  | <b>Clause 77 – Withdrawal of Indictment Trial in the High Court.</b><br>(1) If at any time before the judgement is given by the High Court against a person who has been indicted for having committed one or more offences under this Act, where any charge in the indictment does not relate to-<br><i>a)</i> causing death or grievous bodily injury to any person;<br><i>b)</i> endangering the security of the State and the people of Sri Lanka; or<br><i>c)</i> causing serious harm to property, the Attorney General may, having due regard to the facts specified in subsection (2) and subject to one or more conditions referred to in subsection (3), with the permission of the High Court, withdraw the indictment against the accused. | Proposed CTA introduces a clause that provides power to the Attorney General to withdraw the indictment against the accused subject to certain conditions stipulated under this clause.<br><br>This provision is an improvement. However, given the recent allegations that have come to light regarding the Attorney General’s Department and it functioning both as the legal advisor to the State and the chief prosecuting officer, concerns remain if the decision of withdrawal would be independent and without undue influence. Therefore, measures should be taken to ensure that this provision is not abused and used cautiously |



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|  |  | <p>(2) When the Attorney General withdraws the indictment under subsection (1), he shall pay due regard to –</p> <ul style="list-style-type: none"><li>(a) the State policy;</li><li>(b) the national interest and public interest;</li><li>(c) the views of the Inspector General of Police;</li><li>(d) views of the victims of the offence; and</li><li>(e) representations that may be made by the accused person or on his behalf by his Attorney-at-Law.</li></ul> <p>(3) The Attorney General may impose one or more of the following conditions under subsection (1) :-</p> <ul style="list-style-type: none"><li>(a) to publicly express remorse and apology before the High Court, using a text issued by the Attorney General;</li><li>(b) to provide reparation to victims of the offence, as specified by the Attorney General;</li><li>(c) to voluntarily participate in a specified programme of rehabilitation;</li><li>(d) to publicly undertake that he refrains from committing an offence under this Act or under other law;</li><li>(e) to engage in specified community or social service; and</li><li>(f) to refrain from committing, any indictable offence, or, breach of peace.</li></ul> <p>(4) If such person fulfils the conditions imposed under subsection (3), during the period stipulated for fulfilling such conditions, the Attorney General shall not present a fresh indictment against the accused thereafter on the same charges in the original indictment.</p> |  |
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|                             |   | (5) If the accused fails without valid excuse to comply with the said conditions, the Attorney General may file a fresh indictment against the accused on the same charges in the original indictment and proceed to prosecute the accused after the lapse of the period given for the accused to fulfil such conditions.   |  |
| <b>Remand pending trial</b> | <p><b>Section 15 and 15A</b> – accused to be remanded, and remanded at such place as the Defence Secretary orders.</p> <p>Remanded until conclusion of trial, unless Attorney General consents to release before conclusion of trial.</p> | <p><b>Clause 78 -Grant of bail during High Court trial.</b></p> <p>If the trial against a person remanded under this Act has not been concluded after the expiration of one year, from the date of filing the indictment, the Judge of the High Court before whom the trial is pending, or is held shall release such person on bail, unless the delay in the completion of the trial can be attributed to the conduct of the accused or his Attorney-at-Law.</p> | <p>This provision is a significant improvement from the PTA. However, prolonged periods of detention/remand amount to violations of human rights – such as torture. Therefore, it is necessary that bail should be granted depending on the nature of the facts and circumstance of each case without providing for blanket provision.</p> |

**PART VIII – ADMISSIBILITY OF STATEMENTS**

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| <p><b>Admissibility of Statements</b></p> | <p><b>Section 16</b> – Statements including confessions admissible, as long as not made to anyone below the rank of ASP.</p> <p><b>Section 17</b> – Sections 25, 26 and 30 of Evidence Ordinance does not apply</p> <p><b>Section 18(1)(a)</b> – statement made to Magistrate admissible</p> <p><b>Section 18(1)(b)</b> – document found in possession etc, admissible; maker of document does not have to be called; contents are proof of facts stated therein</p> | <p><b>Clause 79 – Statements made to a Magistrate.</b></p> <p>(1) A statement made by any person to a Magistrate under this Act, shall be admissible against such person, subject to the provisions specified in subsection (2) and to the provisions of section 24 of the Evidence Ordinance.</p> <p>(2) (a) No person shall be legally bound to make a statement or produce an affidavit implicating or incriminating himself in the commission of an offence.</p> <p>b) Any person who is to be interviewed and his statement is to be recorded, shall have the right, if he so wishes, to have access to, or communicate with, an Attorney-at-Law and obtain legal advice prior to such interview.</p> <p>(c) A Magistrate seeking to record a statement, shall inform the person being interviewed of his rights under this Act prior to such interview.</p> <p>(d) If the person whose statement being recorded at the interview does not understand the language being spoken, the services of an interpreter shall be obtained and the interview shall be conducted in a language that could be understood by such person.</p> <p>(e) A translation of the statement shall be transcribed together with the corresponding questions, and kept for future verifications.</p> <p>(f) The interview shall wherever possible be audio visually recorded.</p> | <p>This is a significant improvement from the PTA. Under the proposed CTA only confessions given before a Magistrate will be admissible as evidence in court. The statement made to the Magistrate is also subjected to section 24 of the Evidence Ordinance which stipulates that confession caused by inducement, threat or promise is irrelevant.</p> <p>This clause also provides for positive provisions such as access and communication with the Attorney-at-Law, Magistrate required to inform the accused of his rights and audio-visually recording the interview.</p> |
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| <p><b>Admissibility of Confession made to a Magistrate</b></p> | <p><b>Section 16(2)</b> – burden on person asserting that a statement is irrelevant due to inducement etc, to prove that it was so.</p> | <p><b>Clause 80 – Pre-condition to be satisfied for admissibility of a Confession made to a Magistrate</b></p> <p>(1) Notwithstanding anything to the contrary in any other written law a confession made to a Magistrate by a person accused of having committed an offence under this Act, shall not be admissible in evidence against such person, unless-</p> <p>(a) the Magistrate who recorded such confession had immediately prior to and soon after recording the statement, cause the person who made the statement to be examined by a government forensic medical specialist; and</p> <p>(b) the report of the forensic medical specialist is produced by the prosecuting authority, during the <i>vioire-dire</i> inquiry, that may be conducted for verifying the admissibility of the confessional statement.</p> <p>(2) The burden of proving the fact that any confession was voluntarily made, shall lie with the prosecuting authority.</p> | <p>This is a significant improvement from the PTA. This provision ensure that there is no room for confessions to be extracted by means of torture. A further improvement under the proposed CTA is that the burden of proving that a confession was voluntarily made is with the prosecuting authority.</p> |
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## Part IX – MISCELLANEOUS ORDERS

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| <p><b>Proscription Orders</b></p> | <p><b>PTA Regulations</b></p> <p><b>Gazette Extraordinary No. 1721/2 of August 29, 2011</b><br/>Declares that the LTTE is a proscribed organization and restrictions are imposed in this regard.</p> <p><b>Regulations under the UN Act No. 45 of 1968</b><br/><b>Gazette Extraordinary No. 1758/19 of May 15, 2012 (Amended by Gazette Extraordinary No. 1892/40 of December 11, 2014)</b></p> <p><b>Gazette Extraordinary No. 1760/40 of May 31, 2012 (Amended by Gazette Extraordinary No. 1991/52 of November 4, 2016)</b></p> <p>Provided for certain Financial restrictions or designated organizations.</p> | <p><b>Clause 81 – Proscription Orders</b></p> <p>81. (1) Notwithstanding anything in any other written law where the Minister has reasonable grounds to believe that any organization is engaged in any act amounting to an offence under this Act, or is acting in a manner prejudicial to the national security of Sri Lanka or any other country, he may by order published in the Gazette, (hereinafter referred to as “Proscription Order”) proscribe such organization in terms of the provisions of this Act.</p> <p>(2) A Proscription Order may be made by the Minister, for giving effect to-</p> <p style="margin-left: 20px;">(a) a recommendation made by the Inspector General of Police; or</p> <p style="margin-left: 20px;">(b) a request made by the Government of any foreign country to the Government of Sri Lanka.</p> <p>(3) A Proscription Order, may include one or more of the following prohibitions:-</p> <p style="margin-left: 20px;">(a) prohibition on conducting meetings, activities and programmes by such organization;</p> <p style="margin-left: 20px;">(b) prohibition on the use or mobilization of bank accounts and other financial depositories of such organization;</p> <p style="margin-left: 20px;">(c) prohibition to entering into contracts;</p> <p style="margin-left: 20px;">(d) prohibition on raising of funds and receiving grants and bequests;</p> <p style="margin-left: 20px;">(e) prohibition to transferring funds and assets of the organization; or</p> <p style="margin-left: 20px;">(f) prohibition for lobbying and canvassing on behalf of such organization.</p> | <p>The proposed CTA creates a new regime of Proscription Orders (POs) which apply to organizations.</p> <p>A PO can be issued at the discretion of the Minister – the Minister needs to have “reasonable grounds” to believe any organization meets the substantive grounds for a PO.</p> <p>POs can be issued against organizations engaging in any activities that are offences under the proposed CTA or on the grounds of national security. The PO regime thus goes beyond the proposed CTA’s specified offences. The request of other countries can also be grounds for issuing POs.</p> <p>These PO’s could have the impact of impairing the Constitutionally granted Fundamental Rights of persons, as well as other liberties. The wording of subclause (1) which states “<i>acting in a manner prejudicial to the national security of Sri Lanka</i>’ is over broad and can be abused. This provision can be misused in a manner to curtail dissent and proscribe organizations that advocate for legitimate human rights</p> |
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|  |  | <p>(4) Any prohibition, restriction, suspension or sanction, issued under any other written law in respect of an organization in respect of which a Proscription Order has been issued under subsection (1), shall continue to be in operation, without prejudice to any such Proscription Order issued under subsection (1).</p> <p>(5) Immediately after publication of a Proscription Order in the Gazette, it shall be communicated to the organization in respect of which such Proscription Order has been issued, and be immediately informed to the members and employees of such organization together with reasons therefor, by way of direct communication, whenever such communication is possible. A public announcement of such Order shall also be made.</p> <p>(6) The Minister may, on an application made by a person or an organization aggrieved by a Proscription Order issued under subsection (1), review or cancel such Order after considering the representations of such person or organization.</p> <p>(7) (a) A Proscription Order made under this section shall be initially issued for a period of one year.</p> <p>(b) On the lapse of the period of one year, the Minister may taking into account, the contemporary and reliable information and security needs, extend any such Order for further periods not exceeding one year at a time.</p> <p>(8) Any person or organization aggrieved by a Proscription Order or any extension thereof, shall be</p> | <p>concerns. This can be addressed to a certain extent by inserting the word 'wrongful' before the word 'manner' in the provision.</p> <p>POs can effectively be extended indefinitely. They are initially issued for one year, after which the Minister can extend them for one year at a time. These grounds for extension are vague and broad.</p> <p>As per PTA Regulation in <i>Gazette Extraordinary</i> No. 1721/2 of August 29, 2011, the LTTE is proscribed and certain restrictions are imposed. Sub clause (d) of Clause 98 provides for the regulations made under the PTA to remain valid, and the said PTA regulation is specifically mentioned in this regard.</p> |
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|                           |  | entitled to appeal to the Court of Appeal seeking revision or revocation of such Order.   |  |
| <b>Restriction Orders</b> | <p><b>Section 11 - Power of Minister to order Restriction of Movement in certain cases</b></p> <p>(1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in the commission of -any unlawful activity referred to in subsection (1) of section 9, he may make an order in writing imposing on such person such prohibitions or restrictions as may be specified in such order in respect of</p> <p>(a) his movement outside such place of residence as may be specified ; or</p> <p>(b) the places of residence and of employment of such person; or</p> <p>(c) his travel within or outside Sri Lanka; or</p> <p>(d) his activities whether in relation to any organization, association or body of persons of which such person is a member, or otherwise; or</p> <p>(e) such person addressing public meetings or from</p> | <p><b>Clause 82 - Minister to make restriction orders</b></p> <p>82. (1) Where on a recommendation made by the Inspector General of Police, the Minister has reasonable grounds to believe, that any person has committed, or is making preparation, to commit an offence under this Act, and the conduct of such person can be investigated without him being arrested, and if the Minister is of the opinion that it is necessary to do so, the Minister may, on application made to the High Court and upon obtaining the sanction of such Court, make an order in writing (hereinafter referred to as "Restriction Order") imposing such restrictions, as shall be specified in that order, for a period not exceeding one month.</p> <p>(2) A Restriction Order under subsection (1) may include restrictions on -</p> <p>(a) the movement outside the place of residence;</p> <p>(b) travelling overseas;</p> <p>(c) travelling within Sri Lanka;</p> <p>(d) travelling outside the normal route between the place of residence and place of employment;</p> <p>(e) the communication or association, or both, with particular persons as shall be specified in the order; or</p> <p>(f) engaging in certain specified activities that may facilitate the commission of an offence under this Act.</p> <p>(3) Any such Restriction Order may require the suspect to report to any police station on a specified date, or at specified periodic intervals.</p> | <p>The restrictions under the proposed CTA are similar to the PTA's restriction order (RO) regime with certain improvements;</p> <p>➤ A RO under the proposed CTA cannot be issued unilaterally by the Minister, and now requires initial recommendation by the IGP.</p> <p>➤ The proposed CTA requires the Minister to have "reasonable grounds" to believe a person has or is making preparation to commit an offence under the Act.</p> <ul style="list-style-type: none"> <li>• A RO under the proposed CTA requires the conduct of a suspected person to be able to be "investigated without him being arrested".</li> <li>• A RO requires final application by the Minister to the High Court.</li> <li>• A RO under the proposed CTA may not exceed one month and can only be extended one month at a time for an aggregate of six months. The PTA has a limit of three months and</li> </ul> |

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|  | <p>holding office in, or taking part in the activities of or acting as adviser to, any organization, association or body of persons, or from taking part in any political activities, and he may require such person to notify his movements to such authority, in such manner and at such times as may be specified in the order.</p> <p>(2) Where the Minister makes a restriction order in respect of any person while an order of detention in respect of such person is in force, such restriction order shall, unless otherwise specified, take effect upon the expiry of the detention order.</p> <p>(3) Every order made under subsection (1) shall be in force for such period, not exceeding three months, as may be specified therein:<br/>Provided, that the Minister may, by or der in writing, extend such period from time to time for periods not exceeding</p> | <p>(4) No Restriction Order made under subsection (1) shall be made, unless such Order-</p> <ul style="list-style-type: none"> <li>(a) is necessary for the prevention of the commission of an offence under this Act;</li> <li>(b) is necessary to conduct investigations into the commission of an offence under this Act;</li> <li>(c) is proportionate to the offence alleged to have committed or likely to be committed under this Act;</li> <li>(d) does not amount to an arbitrary deprivation of liberty or restriction on the exercise of Fundamental Rights, in terms of the provisions of the Constitution.</li> </ul> <p>(5) The Minister shall cause any such Restriction Order to be served on the person in respect of whom such order was made, and require the Inspector General of police to take necessary steps to enforce any such Order and ensure compliance therewith.</p> <p>(6) (a) The Inspector General of Police shall cause, the statements of the person in respect of whom the Restriction Order was made, to be recorded, within one week of making thereof and submit it to the Minister, enabling the Minister to determine whether the said Order shall be revoked or varied.</p> <ul style="list-style-type: none"> <li>(b) Prior to recording the statement, the relevant person shall be informed of his rights under this Act, and be informed of the grounds for making the Restriction Order.</li> <li>(c) Prior to recording the statement, the relevant person shall be permitted if he so requests, to have access to, or confidential communication with, an Attorney-at-Law.</li> </ul> | <p>can be extended three months at a time for an aggregate of 18 months.</p> <ul style="list-style-type: none"> <li>• Under the proposed CTA ROs can be appealed to the Court of Appeal and the Court is obliged to dispose of the appeal within a month. Under the PTA, ROs are non-reviewable by the judiciary</li> <li>• Under the proposed CTA ROs have necessity and proportionality requirements, ROs must be necessary to prevent offences under the Act and to conduct investigations, proportionate to the offence concerned and does not arbitrarily deprive liberty or restrict Fundamental Rights.</li> <li>• The penalty for breaching a RO has reduced.</li> </ul> <p>ROs require persons against whom they are issued to provide a statement to the Police, which must be submitted to the Minister within a week of its issue for purposes of review/revocation. the clause makes additional provision for the presence of an attorney and language and transcription facilities.</p> |
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|  | <p>three months at a time so however that the aggregate of such periods does not exceed eighteen months.</p> <p>(4) Where an order is made under subsection (1), the Minister may by notice in writing served on the person to whom such order relates, vary, cancel or add to any prohibitions or restrictions imposed by such order on such person and the prohibitions or restrictions so varied or added to shall, unless earlier cancelled, continue in force for the unexpired portion of the period specified in such order or the period as extended under subsection (3).</p> <p>(5) An order made by the Minister under subsection (1) shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.</p> | <p>(d) The interview shall be conducted and the statement shall be recorded in a language understood by the person being interviewed, with the services of an interpreter obtained where necessary: Provided that, where the services of an interpreter is obtained, the interview shall be recorded with its translation, and be transcribed, and preserved, for future verification.</p> <p>(e) Wherever possible, the interview shall be audio-visually recorded.</p> <p>(7) Any person who willfully acts in contravention of a Restriction Order made under this Act, shall commit an offence, and shall upon conviction by a Judge of the High Court be liable to imprisonment which may extend to three years and to a fine not exceeding rupees three hundred thousand.</p> <p>(8) The Minister shall review a Restriction Order made under this section in every month and extend the period thereof, if necessary.</p> <p>(9) The aggregate period of any Restriction Order, shall not exceed six months.</p> <p>(10) The person in respect of whom a Restriction Order or an extension thereof has been made, or an Attorney-at-Law on his behalf, may appeal against such Order to the Court of Appeal, seeking revision or revocation of such Order.</p> <p>(11) The Court of Appeal shall dispose of any such appeal within one month of the date of preferring such appeal,</p> | <p>Under the proposed CTA ROs can require persons issued with them to report to police stations on specified dates or intervals of time. There is no corresponding provision under the PTA.</p> <p>Exploitation of the powers under this section could result in the restriction of liberties and freedoms of the people.</p> |
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|                      |                                      | considering the grounds of appeal and the reasons assigned by the Minister and the Inspector General of Police, for making such Order.   |   |
| <b>Curfew Orders</b> | No corresponding Section in the PTA. | <p><b>Clause 83 – Curfew Orders</b></p> <p>(1) Notwithstanding the provisions of the Public Security Ordinance (Chapter 140) the President may on his own motion or on the request of the Minister upon being satisfied of the information provided by the Minister, by Order published in the Gazette declare curfew for a period specified in such Order (hereinafter referred to as the “Curfew Order”) under this Act, either to the entirety or part of Sri Lanka including its territorial waters and air space for the purposes referred to in subsection (2) and subject to the provisions of subsection (3).</p> <p>(2) The President may make a Curfew Order, for the purposes of –</p> <p>(a) controlling, detecting or investigating the occurrence of systematic and widespread committing of terrorism and other offences under this Act;</p> <p>(b) for the protection of national or public security from terrorism and other offences under this Act; or</p> <p>(c) to prevent the systematic and widespread committing of offences under this Act.</p> <p>(3) (a) The maximum period of any Curfew Order shall not exceed twenty four hours at a time.</p> <p>(b) There shall be an interval of a minimum period of three hours between two periods of Curfew.</p> | <p>No equivalent provision in the PTA.</p> <p>The proposed CTA creates an entirely new regime of Curfew Orders (COs) whose parameters go considerably beyond those specified in the Public Security Ordinance (PSO).</p> <p>Under the proposed CTA, COs can be issued by the President. on the request of the Minister as well as his own motion. Under the PSO, only the President has the initiative in declaring a curfew</p> <p>Curfews under COs provided for in the proposed CTA can cover a greater territory than ordinary curfews under the PSO, as it includes the “entirety or part of Sri Lanka including its territorial waters and airspace”. Under the PSO curfews can only be declared for “any public road, railway, public park, public recreation ground or other public ground or the seashore” “throughout Sri Lanka” or specified parts of it, but does not</p> |

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|  |  | <p>(4) A Curfew Order may be made subject to such exemptions that may be imposed to provide for humanitarian needs.</p> <p>(5) Any such Curfew Order, shall-</p> <p>(a) specify categories of persons who are exempted therefrom;</p> <p>(b) specify any person who may be authorized to issue permits-</p> <p>(i) exempting any person or persons from adhering to the Curfew Order; and</p> <p>(ii) authorizing such person or persons to travel from one place to another, due to the need to maintain essential services and supplies, emergency requirements and humanitarian needs, as may be specified in such permit.</p> <p>(6) Any person who needs to be fully or partly exempted from a Curfew Order, shall be entitled to make an application to the authority referred to in subsection (5) in the prescribed form.</p> <p>(7) The Inspector General of Police shall immediately notify the Human Rights Commission in respect of a Curfew Order made under subsection (1).</p> <p>(8) A person who willfully violates a Curfew Order, shall commit an offence, and upon conviction by a Magistrates Court, be liable to a fine not exceeding rupees three hundred thousand.</p> <p>(9) It shall be lawful for any arresting officer to use reasonable force, as may be necessary to ensure</p> | <p>extend to territorial waters or airspace</p> <p>Under the proposed CTA, Curfews can be declared for purposes additional to those for curfews under the PSO/ can be declared to control, detect, investigate, protect national/public security from and prevent the spread of offences under the Act. These additional purposes give far broader space for the President to declare curfew than the PSO which specifies that curfews can only be declared for the “maintenance of public order in any area”. This leaves the CO regime open for potential abuse.</p> <p>COs under the proposed CTA explicitly permits Police to use “reasonable force” under certain circumstances.</p> <p>The proposed CTA does not provide for judicial oversight of COs, at both the issuance or extension stages within this Clause. Judicial review of all orders under the Bill are however allowed by the provisions of Clause 96.</p> <p>This Clause should thus be applied carefully so as to prevent the restrictions of persons liberties, as it</p> |
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|                          |                                      | compliance with a Curfew Order, where all other means of ensuring compliance have proved ineffective: Provided however, any such officer shall not use lethal force unless in the exercise of private defence within the meaning of the Penal Code.   | could possibly be exploited by authorities.   |
| <b>Prohibited Places</b> | No corresponding Section in the PTA. | <p><b>Clause 84 – Prohibited Places</b></p> <p>(1) For the purposes of this Act, the Minister may on a recommendation made by the Inspector General of Police or the Commander, respectively of, Army, Navy or Air Force or the Director General of Coast Guard, from time to time, by Order published in the Gazette, stipulate any public place or any other location to be a prohibited place (hereinafter referred to as the “Prohibited Place”).</p> <p>(2) The Order under subsection (1) shall include prohibitions on the entry, and where necessary, may include prohibitions on taking photographs, video recording and making sketches of the Prohibited Place.</p> <p>(3) In addition to the publication of the order in respect of a Prohibited Place in the Gazette, sufficient publicity through other means shall be given.</p> <p>(4) The Inspector General of Police shall immediately notify the Human Rights Commission in respect of an Order made under subsection (1).</p> <p>(5) Upon being declared a place as a Prohibited Place, notices shall be placed at entry points to such place where possible, indicating that such place has been declared as a Prohibited Place.</p> | <p>The proposed CTA creates an entirely new regime of Prohibited Places Orders which can prohibit entry into a prohibited place and the photography, video recording and sketch making of such a place.</p> <p>Under the proposed CTA, these orders are made by the Minister on the recommendation of the IGP, Commanders of the Armed Forces, or Director General of the Coast Guard.</p> <p>The reasons for which these orders may be issued, i.e. “for the purposes of this Act” are broad and may be subject to abuse.</p> <p>The proposed CTA does not provide for judicial oversight within this Clause. Judicial review of all orders under the Bill are however allowed by the provisions of Clause 96.</p> |

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|  |   | <p>(6) After making an order under subsection (1), the officer in charge or any other person having lawful authority and control over the Prohibited Place as authorized by the Minister, shall specify the categories of persons who shall be authorized to enter and remain in such place, and he is also entitled to authorize any other person to enter such place on conditions he may specify.</p> <p>(7) Any person willfully contravenes an Order made under subsection (1) by entering or remaining in a prohibited place without lawful authority, shall commit an offence, and be liable to imprisonment for a term not exceeding three years and to a fine not exceeding rupees three hundred thousand or to both such fine and imprisonment.</p> <p>(8) Any person willfully contravenes an Order made under subsection (2) by taking photographs, video recording and making sketches of a prohibited place shall commit an offence, and shall be liable to imprisonment for a term not extending three years or to a fine not exceeding rupees three hundred thousand.</p> |  |
| <p><b>Calling out armed forces</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 85 – Calling out Armed forces</b></p> <p>(1) Where the President receives reliable information of widespread attacks of terrorism and commission of offences under this Act, and the President on advice of the Inspector General of Police forms the opinion that the police is inadequate to effectively deal with such situation and maintain law and order, the President may, by Proclamation, direct any Commander of any armed force or every Commander of every armed force to assist in</p>   | <p>The CTA creates a new regime for the Armed Forces to be given Police powers.</p> <p>This is done by a proclamation of the president, either on his own motion or on the request of the Minister of the IGP, if the president receives ‘reliable information of widespread attacks of terrorism and commission of offences under this Act...’.</p> |

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|  |  | <p>maintaining public order and to perform specified functions assigned to police officers under this Act.</p> <p>(2) The President may, make a proclamation under subsection (1), on his own motion or on a request made by the Minister or the Inspector General of Police.</p> <p>(3) Such Proclamation shall –<br/> (a) specify whether such Proclamation is operative for the entirety of the territory of Sri Lanka or to certain specified areas of Sri Lanka;<br/> (b) specify the ranks of officers of the armed forces who are empowered to exercise the powers on par with the police officers of designated ranks.</p> <p>(4) The members of any armed force who are called out for the purpose of maintaining public order in any area shall for such purpose have the powers, including the power of search and arrest, conferred on police officers by any provision of this Act or of any other written law, other than the powers specified in Chapter XI of the Code of Criminal Procedure Act: Provided however, the power of seizure and removal of offensive weapons and offensive substances from persons in a public place conferred on police officers shall not be exercised by any member of an armed force called out as aforesaid who is of a rank below that of, a Sergeant of Sri Lanka Army or Sri Lanka Air Force or of a Petty Officer of the Sri Lanka Navy.</p> <p>(5) In any area in respect of which a proclamation is operative under subsection (1), section 95 of the Code of Criminal Procedure Act, shall have effect as if the expression “police officer” occurring therein includes any</p> | <p>The Armed Forces may be called out and given Police powers for the entirety of Sri Lanka’s territory or for specified areas. Subclause (4) further grants them extensive powers.</p> <p>Members of the armed forces may be called out and given police powers indefinitely as this Clause does not require the Proclamation to specify a time period, and there are no review/revocation provisions specified.</p> <p>The President already has powers under the Army, Navy and Air Force Act to call out the Forces for non-military purposes ‘as he may consider necessary in the National Interest’.</p> |
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|  |  | <p>member of the armed forces who is called out by such proclamation and who is of a rank not below that of Sergeant of Sri Lanka Army or Sri Lanka Air Force or of Petty Officer of the Sri Lanka Navy.</p> <p>(6) Where any member of the Sri Lanka Army who is not an officer or a soldier of the Regular Force is called out by a proclamation under subsection (1), he shall, within the meaning and for the purposes of the Army Act, be deemed to be on active service and to be a person subject to military law.</p> <p>(7) Where any member of Sri Lanka Navy who is not an officer or a seaman of the Regular Naval Force, is called out by a proclamation under subsection (1), he shall, within the meaning and for the purposes of the Navy Act, be deemed to be on active service and to be a person subject to naval law.</p> <p>(8) Where any member of the Sri Lanka Air Force who is not an officer or airman of the Regular Air Force is called out by a proclamation under subsection (1), he shall, within the meaning and for the purposes of the Air Force Act, be deemed to be on active service and to be a person subject to that Act.</p> <p>(9) Any member of the armed forces who is called out by a proclamation under subsection (1) shall remain so-called out until the expiry or rescission of that proclamation.</p> |  |
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| <p><b>Seizure, Confiscation and Forfeiture of Property</b></p> | <p><b>Section 4 - Forfeiture of Property</b><br/>Where any person is convicted by any court of any offence under section 2 or section 3, then, in addition to any other penalty that the court shall impose for such offence"</p> <p>(a) all property movable and immovable, of that person shall, by virtue of such conviction, be deemed to be forfeited to the Republic ; and</p> <p>(b) any alienation or other disposal of such property effected by such person after the 24th day of July, 1979, shall be deemed to have been, and to be, null and void.</p> | <p><b>Clause 86 - Seizure, confiscation and forfeiture of property</b></p> <p>(1) Any police officer may seize any movable or immovable property used for committing or concerned in committing an offence, or derived out of committing an offence under this Act.</p> <p>(2) Any such seizure shall be valid for a period not exceeding three days of such seizure unless such seizure is affirmed and extended by a Magistrate on a request made by an officer in charge of a police station.</p> <p>(3) Any seizure of property not so affirmed and extended as aforesaid shall cease to have effect after the expiry of the said period of three days.</p> <p>(4) Any seizure of property affirmed and extended under subsection (2) shall cease to be in force upon the expiry of ninety days of such affirmation unless authorized by a Magistrate, who may authorize the extension of the seizure till the conclusion of the trial, relating to the relevant offence, upon a request made by the officer in charge of the police station.</p> <p>(5) Where any person establishes his claim in respect of the property so seized, the Magistrate may release such property to the person who establishes the claim, on conditions that may be imposed, if he is satisfied that-</p> <p>(a) such person is the bona-fide owner, who has no knowledge of the commission of the offence; or</p> <p>(b) such person had exercised due diligence to prevent the commission of such offence.</p> | <p>The proposed CTA allows the seizure, confiscation and forfeiture of property beyond what is allowed under the PTA. Whereas the PTA in Section 4 allows only the forfeiture of the property of convicted persons, the CTA permits seizure and confiscation of property used for, concerned in, or derived out of, committing an offence under the Act, with no conviction necessary of the property owner.</p> <p>Seizures are valid for up to three days unless affirmed and extended for up to 90 days by a Magistrate on the request of an OIC, or until the conclusion of the trial</p> <p>For property to be released to its owner the person must establish before a Magistrate that they are the bonafide owner, has no knowledge of the offense's commission or exercised due diligence to prevent it.</p> <p>Subclause (7) allows the Court to order the forfeiture and confiscation of property even where a person has been acquitted of having committed the offence. There are no grounds given under which such order may be made, and this may be a serious</p> |
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|  |  | <p>(6) Where any person is convicted for an offence under this Act, the court may make order subject to the determination of an appeal against such conviction that any property movable or immovable used in the commission of such offence or derived out of such offence, be forfeited and confiscated to the State.</p> <p>(7) Where any person has been acquitted of having committed an offence under this Act, the Court may make order that any property used for or derived out of the commission of such offence be forfeited and confiscated to the State.</p> <p>(8) Notwithstanding the provisions of subsection (6) and (7), any property so forfeited and confiscated to the State which may have been used by any person to commit an offence under this Act without the knowledge or consent of the owner of such property, shall be discharged from such forfeiture and confiscation.</p> <p>(9) Any person aggrieved by an order made under this section, may appeal to the Court of Appeal.</p> <p>(10) The provisions of subsections (5), (6), (7) and (8) shall not apply to any instrument, weapon, ammunition or utensil used to commit an offence under this Act.</p> | <p>infringement on the rights of innocent persons.</p> |
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**PART XI – GENERAL**

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| <p><b>Can there be suspended sentences or conditional release under the CTA?</b></p> | <p><b>Section 20 – Certain provisions of the Code of Criminal Procedure Act not to apply to persons convicted or found guilty of an offence under this Act.</b></p> <p>Notwithstanding anything in the Code of Criminal Procedure Act;</p> <p>(a) the provisions of section 303 of that Act shall not apply in the case of any person who is convicted;</p> <p>(b) the provisions of section 306 of that Act shall not apply in the case of any person who pleads or is found guilty,</p> <p>by or before any court of any offence under this Act.</p> | <p><b>Clause 89 – Certain provisions of the code of criminal procedure not to apply</b></p> <p>Notwithstanding anything to the contrary in the Code of Criminal Procedure Act-</p> <p>(a) the provisions of section 303 of that Act shall not apply in the case of any person who is convicted by or before any court for any offence under this Act unless the accused at the time of conviction, is less than eighteen years of age, or has reached the age of seventy years or more; or</p> <p>(b) the provisions of section 306 of that Act shall not apply in the case of any person who pleads or is found guilty, by or before any court for any offence under this Act.</p> | <p>The provision in the proposed CTA is similar to that in the PTA except for certain improvements seen in Subsection (a).</p> <p>This creates a restriction on the exercise of judicial discretion. It limits the nature of the orders which a judge may give as Section 303 of the Code of Criminal Procedure Act deals with Suspended sentences and section 306 deals with Conditional Release,</p> |
| <p><b>Applicability of the Children and Young Persons Ordinance</b></p>              |  | <p><b>Clause 90 – Children and Young Persons Ordinance to apply</b></p> <p>The provisions of Children and Young Persons Ordinance (Chapter 23) shall apply to any child who is found guilty and convicted for having committed an offence under this Act.</p>   | <p>Improvement from the PTA which has no corresponding section.</p>  |

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| <p><b>What happens when the offence is committed by a body of persons?</b></p> | <p><b>Section 25 – Offences by bodies of persons</b></p> <p>Where an offence under this Act is committed by a body of persons, then if that bodies of body of persons is"</p> <p>(a) a body corporate, every director and officer of that body corporate; or</p> <p>(b) a firm, every partner of that firm; or</p> <p>(c) a body unincorporate other than a firm, every officer of hat body responsible for its management and control, shall be deemed to be guilty of such offence:</p> <p>Provided that no such person shall be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p> | <p><b>Clause 91 – Offences by bodies of persons</b></p> <p>Where an offence under this Act is committed by a body of persons, if that body of persons is-</p> <p>(a) a body corporate, every director and principal executive officer of that body corporate; or</p> <p>(b) a firm, every partner of that firm; or</p> <p>(c) a body unincorporated other than a firm, every officer of that body responsible for its management and control, shall be deemed to be guilty of such offence:</p> <p>Provided that, no such person shall be deemed to be guilty of such offence, if he proves that such offence has committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p> | <p>Similar to the corresponding provision in the PTA.</p> <p>The burden has been placed on the individuals to prove that they did not have knowledge of certain acts.</p> |
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| <p><b>Regulations</b></p> | <p><b>Section 27 – Regulations</b></p> <p>(1) The Minister may make regulations under this Act for the purpose of carrying out or giving effect to the principles and provisions of this Act.</p> <p>(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.</p> <p>(3) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for its approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder. Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette.</p> | <p><b>Clause 92 – Regulations</b></p> <p>(1) The President may make regulations either on his own motion or on the recommendation of the Minister under this Act, for the purpose of carrying out or giving effect to the purposes, principles and provisions of this Act.</p> <p>(2) Every regulation made by the President shall be published in the <i>Gazette</i> and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.</p> <p>(3) Every regulation made by the president shall within thirty days of its publication in the <i>Gazette</i> be brought before Parliament for its approval.</p> <p>(4) Any regulation not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything duly done thereunder .</p> <p>(5) Notification of the date on which a regulation is deemed to be rescinded shall be published in the <i>Gazette</i>.</p> | <p>Under the PTA it was the Minister who made regulations whilst under the proposed CTA the President makes regulations, either on his own motion or on the recommendation of the Minister.</p> <p>The proposed CTA puts a time limit for the regulation to be placed before Parliament while the PTA only states that this must be done as soon as convenient. Therefore, this is a significant improvement from the PTA.</p> |
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| <p><b>Directions</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 93 – Directions</b></p> <p>(1) The President may from time to time on the recommendation of the Minister, issue directions subject to the provisions of this Act, which shall apply to police officers and the officers of Armed Forces pertaining to the manner in which the provisions of this Act shall be enforced.</p> <p>(2) The directions issued under subsection (1), shall be solely for the purpose of giving effect to the provisions of this Act, in an efficacious manner and, be in compliance with the Human Rights norms and standards recognized by law.</p> <p>(3) For the purposes of this section the expression “law” includes international instruments which recognize human rights and to which Sri Lanka is a signatory.</p> <p>(4) Every such direction shall be published in the <i>Gazette</i></p> | <p>There is no corresponding section in the PTA and is an improvement as the President can direct that the provisions of the Act are carried out in a manner that satisfies recognized standards.</p> |
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| <p><b>Rehabilitation Programmes</b></p> | <p><b>PTA Regulations; Gazette Extraordinary No. 1721/5 of August 29, 2011</b></p> <p>Provides for protective accommodation and rehabilitation centres approved by the Secretary to the Ministry of Defense for the purpose of keeping and receiving surrendeeds.</p> | <p><b>Clause 94 – Rehabilitation Programmes</b></p> <p>(1) The President on the recommendation of the Minister may make Regulations to implement rehabilitation programmes for the persons in respect of whom the Attorney General has recommended suspension and deferment of criminal proceedings under section 72, or the Attorney General has withdrawn indictments under section 77.</p> <p>(2) Regulations under subsection (1) shall include-</p> <ul style="list-style-type: none"> <li>(a) objectives to be achieved by the conduct of the programme;</li> <li>(b) nature of rehabilitation activities;</li> <li>(c) nature of the training to be provided;</li> <li>(d) the authority or authorities who conduct the rehabilitation or training;</li> <li>(e) the location of the programme; and</li> <li>(f) the duration of the programme.</li> </ul> | <p>The proposed CTA provides these programmes for a different category of persons than the PTA Regulations.</p> <p>Subclause (d) of Clause 98 provides for the regulations made under the PTA to remain valid.</p>                            |
| <p><b>Review of orders</b></p>          | <p><b>Section 10 – Order under Section 9 to be Final</b></p> <p>An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.</p>  | <p><b>Clause 96 – Judicial Review</b></p> <p>Nothing contained in this Act, shall be read and construed as preventing any person aggrieved by any decision, determination, order or direction, made by any relevant authority under this Act, seeking relief through judicial review, in terms of the provisions of the Constitution.</p>   | <p>The proposed CTA provision is an improvement from the PTA provision which refers to Detention Orders. Under the proposed CTA there is no ambiguity as to the availability of Judicial review, and this would include Detention Orders.</p> |

## XII – REPEAL AND TRANSITIONAL PROVISIONS

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| <p><b>Transitional provisions</b></p> | <p>No corresponding Section in the PTA.</p> | <p><b>Clause 98 – Transitional Provisions</b></p> <p>Notwithstanding the repeal of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (hereinafter referred to as the “repealed Act”) -</p> <p>(a) any trial, appeal or application held, preferred or made under the repealed Act and pending decision, in any court or with other authority, on the day immediately preceding the date of commencement of this Act shall be disposed of, continued, held or entertained, as nearly as may be practicable, under the provisions of the repealed Act including provisions pertaining to procedure and evidence;</p> <p>(b) any person suspected of having committed or concerned in committing an offence under the repealed Act prior to the day immediately preceding the date of commencement of this Act, in respect of whom the proceedings have not been instituted as at the date of commencement of this Act, shall be prosecuted against, under the provisions of the repealed Act and the legal proceedings into any such offence shall be held by the relevant authority, as nearly as may be practicable, under the provisions of this Act:</p> <p>Provided however, prior to filing the indictment for any such offence the Attorney General shall consider the possibility to suspend or defer criminal proceedings under section 72 of this Act;</p> | <p>Sub clause (a) is an improvement to the PTA as it requires that trials, appeals or applications pending under the PTA are carried out ‘as nearly as may be practicable’.</p> |
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|                                       |  | <p>(c) all sentences passed and any decree or order entered or made in any criminal proceeding under the repealed Act, immediately prior to the date of commencement of this Act, shall be deemed, respectively to have been passed or made under the corresponding provisions of this Act and be enforced and given effect accordingly;</p> <p>(d) all regulations and orders made under the provisions of the repealed Act, prior to the date of commencement of this Act, including but not limited to regulations proscribing any organization and including the Regulations published in <i>Gazette</i> Extraordinary No. 1721/2 of August 29, 2011, shall be deemed, to have been made under the corresponding provisions of this Act and be enforced and given effect accordingly.</p> |  |
| <b>Who is the Minister under Act?</b> |  | <p><b>Clause 99 – Interpretation</b><br/> <i>“Minister” means the Minister assigned the subject of Law and Order;”</i></p>  | <p>As per the Interpretation section of the proposed CTA, the Minister under this Bill is the Minister of Law and Order.</p> |