



Questions & Answers

Proposed Counter Terrorism Act

Centre for Policy Alternatives

April 2019

The draft Counter-Terrorism Act (CTA) was approved by Cabinet on 11 September 2018 and tabled in Parliament on 9 October 2018. This short document prepared by the Centre for Policy Alternatives (CPA) attempts to address some frequently asked questions about the CTA and compliments previous documents on the same issue.¹

International Framework

1. What is the present legal framework on terrorism in Sri Lanka?

- At present, the key legislation in place to combat terrorism is the [Prevention of Terrorism Act \(PTA\)](#) and the [Public Security Ordinance \(PSO\)](#). However, there are number of other laws such as the [Prevention of Hostage Taking Act](#) and the [Computer Crimes Act](#) which contain specific offences connected to terrorism.
- Read with Article 155 of the Constitution, the PSO can be invoked where the country is faced with a sudden and immediate danger. The President is empowered to declare a state of emergency under section 5 of the Act “*in the interest of public security and the preservation of public order*”. This constitutional and statutory framework for the declaration of states of emergency, as well as the exercise of substantive emergency powers, is outdated. It licences Executive discretion and does not take into account many countervailing safeguards for the protection of liberty now established as standard in international human rights law and comparative constitutional law.
- The PTA was enacted in 1978 as a temporary measure but was made permanent in 1982. It introduced offences previously not present in the ordinary law which were and are being abused [with serious human rights implications](#) for the 40 year period

¹ Comparing the Proposed Counter Terrorism Bill to the Prevention of Terrorism Act (CPA, October 2018) https://www.cpalanka.org/wp-content/uploads/2018/10/CTAPTA_final-.pdf

it has been in operation.² Most noticeably, section 2(1)(h)³ has been severely misused to crush legitimate dissent and target human rights activists, journalists and politicians.

- The PTA was hurriedly passed by Parliament and included many provisions⁴ that were clearly in violation of many Fundamental Rights guaranteed by the Constitution with limited oversight and has led to a culture of impunity.⁵

2. What are Sri Lanka's international obligations on terrorism?

- The PTA has raised many human rights concerns and has been heavily criticised. Even after the end of the war, the PTA has been continuously used, and regulations issued under it in 2011 were challenged in the Supreme Court.⁶ In the past, there have been repeated calls to repeal the law from local as well as international rights groups.
- The Government's decision to co-sponsor the United Nations Human Rights Council (UNHRC) Resolution 30/1 in September 2015 further strengthened the case for new legislation to replace the PTA. Para 12 of the resolution notes that the UNHRC:

Welcomes the commitment of the Government of Sri Lanka to review the Public Security Ordinance Act and to review and repeal the Prevention of Terrorism Act, and to replace it with anti-terrorism legislation in accordance with contemporary international best practices

- On 21 March 2019 UNHRC Resolution 40/1 was adopted providing further time to fulfil the commitments contained in Resolution 30/1 including replacing the PTA with anti terror legislation in accordance with contemporary international best practices.
- Dr Rohan Perera, Permanent Representative of Sri Lanka to the UN made a statement before the Sixth Committee of the United Nations General Assembly (UNGA) 73rd

² Further for a detailed critique of the PTA see Asanga Welikala, 'A State of Permanent Crisis: Constitutional Government, Fundamental Rights and States of Emergency in Sri Lanka', Centre for Policy Alternatives, 2008 accessible at;<[https://www.cpalanka.org/wpcontent/uploads/2009/5/States%20of%20Emergency%20\(30%2010%202008\).pdf](https://www.cpalanka.org/wpcontent/uploads/2009/5/States%20of%20Emergency%20(30%2010%202008).pdf)>; See also Asanga Welikala, 'States of Emergency: Issues for Constitutional Design, CPA Working Papers on Constitutional Reform no. 5, August 2016, accessible at <<https://www.cpalanka.org/wpcontent/uploads/2016/08/States-of-Emergency-Working-Paper-5.pdf>>

³ Section 2 (1)(h)- any person who 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;

⁴ Welikala (n 2)

⁵ Ibid.

⁶ CPA Statement on the new Regulations under the Prevention of Terrorism Act, <<https://www.cpalanka.org/wp-content/uploads/2011/09/CPA-Statement-on-the-new-Regulations-under-the-Prevention-of-Terrorism-Act.pdf>>

session in October 2018 emphasising the need to adopt the Comprehensive Convention on International Terrorism (a proposed treaty which intends to criminalise all forms of international terrorism) and ensured Sri Lanka's fullest cooperation in the effort to counter terrorism.⁷

- The European Union and Sri Lanka releasing a joint statement after their 22nd Meeting of the Joint Commission in Brussels held recently observed that Sri Lanka continues its commitment to 27 international conventions. The EU in the statement reiterated the need to repeal and replace the PTA and to bring the counter-terrorism legislation in line with international standards.⁸

3. What are the United Nations (UN) standards on counter-terrorism?

The first ever Declaration on Measures to Eliminate International Terrorism was adopted by the UNGA in December 1994.⁹ The UNGA has since adopted a number of resolutions relating to combating terrorism, which are briefly set out below.

- In December 1996, an ad hoc Committee was established to elaborate on international Conventions for the suppression of terrorist bombing and for the suppression of acts of nuclear terrorism to supplement related existing international instruments.¹⁰
- In 1999, a Working Group was setup in the Sixth (Legal) Committee of the UNGA that would report to the ad hoc Committee set up in 1996.¹¹
- The Counter- Terrorism Committee (CTC) was established by Security Council Resolution 1373, which was adopted unanimously on 28 September 2001 in the wake of the 11 September terrorist attack in the United States which is binding commitment on all UN Member States to counter terrorism.¹²
- In September 2006, the UNGA adopted the Global Counter-Terrorism Strategy.¹³ One of the key components of the strategy is the conclusion of the

⁷ See: <https://www.un.int/srilanka/statements_speeches/statement-he-dr-rohan-perera-ambassador-and-permanent-representative-sixth>

⁸Daily FT, " Adhering to international conventions crucial to GSP +EU) (Daily FT, 16 February 2019) <http://www.ft.lk/top-story/Adhering-to-intl--conventions-crucial-to-GSP---EU/26-672988>

⁹ United Nations General Assembly Resolution 49/60 of 9 December 1994, see: <<http://legal.un.org/avl/ha/dot/dot.html>>

¹⁰ United Nations General Assembly Resolution 51/210 of 17 December 1996, see: <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/51/210>

¹¹ United Nations General Assembly Resolution 54/10

¹² United Nations Security Council Resolution 1373 (2001)

<[http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1373\(2001\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1373(2001))>

¹³ See for further information <<https://www.un.org/counterterrorism/ctif/en/un-global-counter-terrorism-strategy>> The United Nations Global Counter-Terrorism Strategy <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/504/88/PDF/N0550488.pdf?OpenElement>>

Comprehensive Convention on International Terrorism (CCIT) to criminalise all forms of international terrorism.¹⁴

- In June 2017, establishment of the UN Office of Counter-Terrorism (UNOCT).¹⁵
- In June 2018, the [United Nations Global Counter-Terrorism Strategy Review was adopted](#). The resolution underlines the importance of multilateral efforts in combating terrorism and refraining from any practices and measures which are inconsistent with international law and the principles of the Charter.¹⁶
- In December 2018, UN Secretary-General Antonio Guterres launched the [UN Global Counter-Terrorism Coordination Compact](#) (an agreement between UN Secretary-General and 36 UN entities plus the INTERPOL and the World Customs Organization) with the objective to enhance collective approaches to counter terrorism.¹⁷

4. Why does Sri Lanka need counter-terrorism legislation in line with the Constitution and international standards?

- Sri Lanka suffered a brutal civil war for a period close to 30 years that ended almost 10 years ago. Although nearly a decade has passed, the threat to national security still remains a vital concern. This concern is further exacerbated with the growth of international terrorism and terrorist organisations and reports of a number of Sri Lankans joining these organisations.¹⁸
- CPA notes that while Sri Lanka has a number of existing laws that deal with some aspects of terrorism related offences, a comprehensive counter terrorism framework in line with international standards and obligations is necessary to address new and unforeseen terrorist threats and national security concerns. CPA reiterates yet again that the CTA must have necessary safeguards and oversight.¹⁹
- While it goes without saying that any counter-terrorism law or any other law for that matter can be abused given Sri Lanka's history and its entrenched culture of impunity,

¹⁴ Ibid.

¹⁵ United Nations General Assembly Resolution 71/291 of 15 June 2017, see:

<<http://www.un.org/en/counterterrorism/>>

¹⁶ <<https://news.un.org/en/story/2018/06/1013132>, General Assembly Unanimously Adopts Resolution Calling for Strong Coordinated Action by Member States to Tackle Terrorism, Violent Extremism Worldwide <<https://www.un.org/press/en/2018/ga12035.doc.htm>>

¹⁷ Coordination and coherence of the counter-terrorism efforts of the United Nations

<https://www.un.org/counterterrorism/ctif/en/about-task-force>

¹⁸ Sri Lanka says 32 'elite' Muslims have joined Islamic State in Syria (*Reuters*, 18th November 2016) <<https://www.reuters.com/article/us-mideast-crisis-syria-sri-lanka-idUSKBN13D1EE>>

¹⁹ Comparing the Proposed Counter Terrorism Bill to the Prevention of Terrorism Act (*CPA, October 2018*) https://www.cpalanka.org/wp-content/uploads/2018/10/CTAPTA_final-.pdf, Initial Comments On The Proposed Counter Terrorism Bill <<https://www.cpalanka.org/Initial-Comment-On-The-Proposed-Counter-Terrorism-Bill/>>, CPA submissions to the Sectoral Oversight Committee on (International Relations)

there is at present an opportunity to engage with stakeholders to improve the draft CTA in line with international standards, especially given that the present government has been relatively more receptive to international and domestic pressure.

- However, strengthening the safeguards in the CTA and introducing further oversight mechanisms proposed by CPA are not sufficient to prevent abuse and ensure proper human rights standards. For this, broader reforms covering the whole of the criminal justice system is needed. Specifically, reforms must be undertaken in the Police, the Attorney-General's Department and the Judiciary including addressing issues of capacity and awareness.

5. What were the concerns regarding the drafting process of the CTA?

- In April 2016, a committee was set up by Prime Minister Ranil Wickremesinghe to draft a legal framework for counterterrorism legislation that would repeal and replace the PTA. For nearly three years, the proposed legislation was subject to deliberation behind closed doors. There was no public consultation during this period and therefore the process lacked transparency.
- While the Human Rights Commission (HRC) of Sri Lanka is mandated to advise and make recommendations to the Government in formulating legislation in accordance with international human rights norms and standards (see sections 10(c) and (d) of the [Human rights commission \(HRC\) Act No 21 of 1996](#)), it does not appear that the HRC was consulted in the drafting process.
- More recently, however, attempts have been made by the Government to engage with civil society organisations and various other stakeholders through the Sectoral Oversight Committee on International Relations and a meeting was held by the Minister of Foreign Affairs.

Key Provisions of the Proposed CTA

6. What are the offences provided for under the CTA?

Offences in the CTA span over several clauses, and can be categorised as follows:

Clause 3 & 4 – Offence of terrorism and penalty for the offence of terrorism

Clause 5 – Penalty for an attempt to commit the offence of terrorism

Clause 6 & 11 – Other offences associated with terrorism and penalty for such offences

Clause 12 – Penalty for attempting an offence under section 6

Clause 7 – Specified Terrorist acts

Clause 8 – Aggravated criminal acts associated with terrorism

Clause 9 – Terrorism associated acts

Clause 10 – Acts of abetting terrorism

Clause 13 – Failure to provide information to be an offence

Clause 14 – Disobeying lawful orders to be an offence

7. What is the scope of the offence of terrorism under clause 3 of the CTA?

The offence of terrorism provided for in **cl 3** of the CTA contains the *mens rea* (the intention or knowledge of wrongdoing that constitutes part of a crime) and the *actus reus* (action or conduct which is a constituent element of a crime) of the offences of terrorism specified separately, which has to be read in conjunction for it to be considered an offence under the proposed Act. As such **cl 3(1)** provides for four specific intentions:

- a) Intimidating the population
- b) Wrongfully or unlawfully compelling the government of Sri Lanka, or any other government, or an international organisation, to do or to abstain from doing any act,
- c) Preventing any such government from functioning, or
- d) Causing harm to the territorial integrity or sovereignty of Sri Lanka or any other sovereign country,

A suspect is said to have committed the ‘offence of terrorism’ under the proposed Act only when he has with one or more of the intentions mentioned above committed one or more acts contained in Clause 3(2)(a) to (j).

Example: A suspect with the intention of preventing a government from functioning (**cl 3(1)(b)**) murders, attempts to murder, or causes grievous hurt, takes hostage or abducts any person (**cl 3(2) (a)**). This offence would cover instances such as the murder of a Head of a State, abduction of an eminent personality and so on.

8. Who can arrest and detain under the CTA?

Under **cl 17**, any police officer, an officer or member of the armed forces, or a coast guard officer can arrest without a warrant, where:

- A person commits an offence in the presence of an officer or the officer has reasonable grounds to believe that a person has committed an offence under the Act,
- A person has committed an offence under the Act,
- When an officer receives information or a complaint (which he believes to be reliable) that a person has committed or is concerned in committing an offence under the Act,
- A person who is fleeing from Sri Lanka with the intention of evading arrest or is evading arrest after committing an offence under the Act,
- When a person suspected of having committed an offence under the Act is in violation of his bail conditions on which he has been released.

9. What are the powers and the duties of the Magistrate under the CTA?

- Give effect to a Detention Order (DO) when it is issued and placed before him. **(cl 27)**
- If a DO has not been placed before the Magistrate, he can on the request of the OIC, remand the suspect, release the suspect on bail, or discharge the suspect. **(cl 27)**
- Direct the suspect to a forensic medical examination, if there is suspicion of torture. **(cl 28)**
- After a suspect is produced before him, to visit the place of detention and interview the suspect and look into his wellbeing. **(cl 32)**
- Any Magistrate can without any advance notice enter places of detention, inspect such place of detention, and interview persons being detained. **(cl 35)**
- To question and record a statement from a suspect. **(cl 68)**.
- Prior to and after recording a statement from a suspect, cause the suspect to be examined by the government forensic medical specialist. **(cl 80)**
- To consider applications made by a police officer regarding the obtaining of information from telecommunications, satellite or digital service or data service providers and make orders where it appears reasonable and necessary for conducting investigations. **(cl 64)**
- To make certain orders to facilitate investigations, on the application of an OIC. **(cl 66)**
- To make an order authorising the unlocking of data and information on the application of a Superintendent of Police. **(cl 67)**

10. What are the powers and duties of the Human Rights Commission (HRC) provided for by the CTA?

- To give recommendations along with the IGP to the Minister regarding '*approved conditions for detention*'. **(cl 31(7))**
- To be notified of detention as soon as practicable and not later than 72 hours, and a copy of the detention order should be served on them as soon as practicable. **(cl 33)**
- To be present when a suspect is being released from detention or remand custody. **(cl 43)**
- The power to notify the IGP or the Superintendent of Prisons that a suspect is being kept in inhumane conditions in detention. **(cl 48(2))**
- To be informed if a suspect is detained for a period exceeding one month or placed in remand pending commencement or the conclusion of the trial. **(cl 48(4))**
- To be informed when a police officer issues directives for public order under section 62. **(cl 62(2))**

- To be immediately informed when a curfew order is made under section 83. (cl 83(7))
- To be informed when a completed investigation is resumed and further investigation is completed. (cl 69(3))

11. What are the powers and duties of the police under the CTA?

- An Officer-In-Charge (OIC) or any other police officer authorised by an OIC can commence and conduct investigations. (cl 16)
- Any police officer can arrest without a warrant. (cl 17)
- The OIC or a police officer authorised by such OIC has the power to examine a suspect for any visible injuries and direct the suspect to be examined by a Judicial Medical Officer (JMO). (cl 24)
- The OIC of the police station where the suspect is detained as soon as practicable and not later than 24 hours of the arrest to notify the HRC and IGP of such arrest and detention. (cl 25(4))
- The IGP is to establish and maintain a Central Data Base Register containing information with regard to arrest, detention, remanding, bail etc. (cl 26)
- An OIC is to make an application to a DIG who is to issue a DO if he is satisfied that the suspect has committed an offence. (cl 31)
- The OIC where the suspect is detained is to notify the HRC of such detention within 72 hours. (cl 33)
- Every police officer is required to take necessary measures to prevent the commission of an offence under the Act. (cl 50)
- A police officer not below the rank of a DIG may constitute support teams comprising of members of any armed forces/doctors/and other health care workers and other necessary persons. (cl 53)
- The IGP may appoint a special team of investigators. (cl 52)
- A police officer not below the rank of a Sub-Inspector of police who has been authorised by an OIC to conduct an investigation is empowered to require a person to be present for an interview, answer questions put to him, provide information, give statements etc. (cl 54)

12. What are the powers and duties of the Minister (the Minister of Law and Order) under the CTA?

- To specify such number of places as '*approved places of detention*' based on the recommendation of the IGP. (cl 31(6))
- To specify the conditions of '*approved places of detention*' in consultation with the IGP and HRC. (cl 31(7))

- To appoint two persons with the necessary qualifications to the Board of Review²⁰, under cl 31. **(cl 41)**
- To proscribe an organisation when the Minister has reasonable ground to believe that that organisation is engaged in an offence under the Act or is acting in a manner prejudicial to the national interest of Sri Lanka or another country **(cl 81)**
- To review or cancel the proscription of an organisation upon application of an aggrieved party. **(cl 81(6))**
- To issue a 'Restriction Order' with the sanction of the High Court when on the recommendation of the IGP the Minister has grounds to believe that any person has committed or is making preparation to commit an offence under the Act. **(cl 82)**
- To declare any public place or any other location to be a 'Prohibited Place' on the recommendation made by the IGP or Commander of Army, Navy or Air Force, or DG of the Coast Guard. **(cl 84)**
- To make recommendations to the President to issue directions to apply to police officers and officers of armed forces regarding the manner in which the provisions of the Act are to be enforced. **(cl 93)**
- To make recommendations to the President regarding the implementation of Rehabilitation Programmes. **(cl 94)**

13. What are the powers and the duties of the military and the coast guards under the CTA?

- To arrest a suspect who commits an offence under this Act without a warrant. **(cl 17)**
- To assist a police officer to carry out an arrest. **(cl 19)**
- To restrain and search any person who may act contrary to the directive issued under the section. **(cl 62)**
- The members of the armed forces who are called out for the purpose of maintaining public order have the powers 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 CCP. However, powers of seizure and removal of offensive weapons and offensive substances from persons in a public place can be exercised only by officers of a certain rank. **(cl 85 (4))**

²⁰ Clause 41 of the proposed CTA establishes a Board of Review for granting administrative relief appeals against Detention Orders made under Clause 31.

14. What safeguards are in place to prevent abuse, torture, ill-treatment, disappearances etc. in the proposed CTA?

- The OIC of the police station in which the suspect is detained or a police officer authorised by the OIC can examine the suspect for any injury that may be visible. **(cl 24)**
- A Magistrate before whom a suspect is produced can look into his wellbeing through a private interview and record any comment the suspect makes. **(cl 27(2))**
- When the Magistrate is of the opinion that the suspect may have been subjected to torture, he can direct the suspect to a government forensic medical specialist. And where the report of the medical specialist reveals that the suspect has been subjected to torture, the Magistrate after giving the opportunity for the suspect and the police officer to be heard can direct the suspect for necessary treatment and order the suspect to be placed in remand. Police officers who previously had access to the suspect will cease to have access to him. The Magistrate is to then direct the IGP to commence investigations of the alleged torture and to enable the Attorney General to institute criminal proceedings. **(cl 28)**
- A Magistrate before whom a suspect is produced and detained is empowered to, without giving any advance notice, visit such place of detention and interview the suspect and look into his wellbeing. **(cl 32)**
- An officer of the HRC can without giving any advance notice, enter and examine places of detention, call for and inspect detention registers, DOs and other documents maintained at such places and interview persons detained. **(cl 34)**
- Any Magistrate is entitled without advance notice to enter a place of detention and inspect such places and interview the detainees. **(cl 35)**
- Detention beyond two weeks is permitted only with the approval of a Magistrate. **(cl 36)**
- The maximum period of detention is eight weeks. **(cl 37)**
- A suspect is to be produced before a Magistrate once every 14 days during the period of a DO. **(cl 39)**
- The suspect is to be treated humanely. **(cl 48)**
- Only confessions made to the Magistrate are admissible as evidence. Further, the Magistrate is to cause the suspect to be examined by the government forensic medical specialist prior to and after recording a statement from a suspect. **(cl 80)**

15. Does the CTA provide a suspect with access to an Attorney-at-Law?

Yes. The proposed CTA has several clauses providing for the right of a suspect to be represented by an Attorney-at-Law. However, there are several concerns with regard to some of these clauses (see Question 16 below).

- Any person who is to be interviewed and whose statement is to be recorded has the right to have access or to communicate with an Attorney-at-Law and obtain legal advice prior to such interview. (cl 79(2)(b))
- An Attorney-at-Law representing a suspect has the right to access the suspect in police custody. (cl 44)
- The place of detention or remand of the suspect should be accessible to the family members of the suspect, and to his Attorney-at-Law with the prior permission obtained from the OIC (cl 48)
- Any person who is to be interviewed and whose statement is to be recorded is entitled to have access to or communicate with an Attorney-at-Law of his choice and obtain legal advice prior to such an interview. (cl 54(3)(a))

Areas of Concern

16. What clauses are of concern in the proposed CTA?

Offences

- The number of offences in the Act is vast in number and is worded very broadly, which can give rise to many human rights concerns. Though a safeguard is provided for in cl 3(3) stipulating that any action taken by a person in “*good faith in the lawful exercise of fundamental rights shall not amount to an offence*”, some of the offences are vaguely worded and can in the context of Sri Lanka be ripe for abuse.

Arrest and Detention powers of the military and coast guard officers

- The CTA allows the military and the coast guard to make arrests without a warrant (cl 17). When the arrest is made by a military officer or a coast guard, they are afforded a period of 24 hours – a worryingly long period – to present a suspect before the nearest police station (cl 18).
- A Magistrate is empowered to release or grant bail to the suspect under cl 27(2) only when the OIC requests or has no objection.
- There is no judicial oversight during the first two weeks of the Detention Order (cl 27(2)).
- Once the maximum period of detention is over, cl 39(4) provides that the Magistrate is to place the suspect in remand custody. However, it does not explicitly empower the Magistrate to release or grant bail to such suspect.

- The Board of Review established to grant administrative relief from DOs under **cl 41** is composed of a majority of Ministry representatives, who are part of the executive. Therefore, concerns arise about whether they are independent and impartial, and are further able to or should exercise judicial power.

Access to counsel and fair trial rights

- While **cl 44** provides for the Attorney-at-Law to have right of access to the suspect this right is limited by **cl 48(1)** stipulating that the Attorney-at-Law can access the suspect only after prior permission is obtained from the officer in charge of the place of detention.
- Further, **cl 54(3)(a)** and **cl 79(2)(b)** refer to obtaining legal advice only “*prior*” to such interview, thereby restricting the access to a counsel during and after the interview. Article 14(3)(d) of the ICCPR requires an accused to have access to lawyers at all stages of criminal proceedings, including the initial period of police detention, questioning and investigations.
- **cl 36** states that an OIC is to file a confidential report before the Magistrate’s court citing the allegations against the suspect, findings of the investigations and the reasons for which further detention is required, in order to extend the period of detention. The Magistrate is required to keep the report confidential and the counsel of the suspect can only have access to “*such information that may be necessary to object to the extension of the period of detention*”.
- Failure to ensure that all information relevant to a suspect’s detention is not made available to the counsel representing the suspect can severely restrict a suspect’s right to defend himself. This is contrary to Sri Lanka’s obligations under Articles 9 and 14 of the ICCPR.

Detention orders (DOs)

- The power to issue DOs under the proposed CTA lies with the Deputy Inspector of Police. It is further concerning that the initial DO is valid for a period of two weeks without any judicial oversight.
- An appeal against a DO lies to a non-judicial body: the ‘Board of Review’, established under **cl 41**. As stated above in Question 16, the Board of Review consists mainly of members from the Ministry and therefore raises concerns regarding its independence and impartiality, as well as the ability and propriety of its members to exercise judicial power.

Powers granted to police officers to issue directives for the protection of the public

- **cl 62(1)(a) to (h)** empower a police officer, not below the rank of Senior Superintendent of Police, to issue directives to the public. Only a few directions under this clause require the prior approval of the Magistrate. Directives such as “*not to enter any specific area or premise, not to travel on any road, to suspend the operation of the specified public transport system*” and so on can be done on the sole discretion of the police officer. This can have a sweeping effect on fundamental rights such as

freedom of movement, freedom of assembly and association. It can, for example, significantly curtail protests, demonstrations and public gatherings.

Minister's powers

- The proposed CTA provides several clauses empowering the Minister (the Minister of Law and Order) with a wide range of powers. Some of the powers raises serious human rights concerns, as these are powers that can be exercised unilaterally by the Minister. These powers include:
 - Issue **Proscription Orders** to proscribe an organisation under **cl 81**, where the Minister has reasonable grounds to believe that any organisation is engaged in any act amounting to an offence under the Act or is acting in a manner prejudicial to national security of Sri Lanka or any other country. Proscription Orders, and their extensions, can be reviewed by the Minister on application of the affected organisation, or be reviewed by the Court of Appeal, after they have been issued. This is one of the most regressive and concerning aspects of the current draft of the CTA.
 - Issue **Restriction Orders** under **cl 82**, on the recommendation of the IGP and after obtaining the sanction of the High Courts. Restriction Orders can be applied to any person the Minister suspects of having committed or planning to commit an offence under the Act. Restriction Orders place significant restrictions on a person's ability to travel within or outside of Sri Lanka.
 - Declare any public place or any other location as a **Prohibited Place** under **cl 84**, on the recommendation of the IGP or any of the armed forces Commanders or Director-General of the Coast Guard. Prohibited Places give any officer in charge or an officer authorised by the Minister to specify who is allowed to enter it.

Curfew orders

- The proposed CTA empowers the President to exercise powers similar to that contained in Section 16 of the Public Security Ordinance (PSO). **Cl 83** will permit the President on his own motion or on the recommendation of the Minister to declare a curfew for a specific period either in the entirety or a part of Sri Lanka.
- The existing powers of the President under the PSO are not constrained and structured by the procedural and substantive limits and human rights protections that are now standard in modern constitutional democracies. Extending presidential powers similar to those under the PSO therefore is inadvisable, without also ensuring robust safeguards against abuse. Moreover, any powers conferred under a future CTA are general, permanent, and available to the executive at any time, whereas the PSO has to be brought into force through a Proclamation for a specified period only, and is thereafter subject to parliamentary approval for any extension and at least notionally to parliamentary oversight in the exercise of substantive emergency

powers. In other words, recourse to CTA powers would not be subject to even the modest safeguards that access to PSO powers are subject to, and therefore the safeguards within the CTA against the misuse of normal counter-terrorism powers must arguably be stronger than the exceptional emergency powers under the PSO.

Attorney General's power to suspend, defer and withdraw indictments

- The proposed CTA under **cl 72(1)** and **77(1)** empowers the Attorney General to suspend, defer, or withdraw an indictment at any time during the trial at the High Court before it reaches its judgment. The Attorney General can suspend or defer the institution of criminal proceedings under this section for a period not less than five years and not exceeding ten years.
- These clauses are problematic for several reasons. One being that a High Court is able to impose rehabilitation programme on the suspect without establishing proof of guilt or holding a fair trial. (**cl 94 (2) (e)**). On the other hand, a suspect can be kept in a state of suspense for a period of ten years with the possibility that fresh charges are filed against him/her.

Areas for Reforms

17. What safeguards can be introduced to ensure abuse is prevented?

A number of safeguards and oversight provisions can be introduced in order to strengthen the existing draft CTA which are briefly listed below:

- CPA has suggested a number of language edits to strengthen the proposed Act, and further submitted these to the Sectoral Oversight Committee (SOC) on International Relations. These suggestions are cumulatively concerned with three aims: (a) to ensure the statutory language consistently articulates power-conferring provisions in a manner that promotes objective, legal, rational, reasonable, and proportionate exercise of Executive discretion under the Act; (b) to ensure that the interpretative orientation of the statutory language is strongly in favour of the objectives set out in (a); and finally (c) to improve both judicial and parliamentary oversight of the exercise of powers under the Act.
- CPA recommends that a clause should be introduced requiring an annual mandatory comprehensive review of the implementation of the Act. Such review could be undertaken by the relevant SOC, and subsequently for the report to be laid before Parliament for debate and made public. The review should take into consideration how fundamental rights have been protected in the implementation of the Act, and recommend improvements, including any necessary amendments to the Act.
- CPA further proposes that the Minister is required periodically to lay before the relevant SOC and Parliament any regulation or other decisions made in the exercise of executive discretion under the Act, together with a statement of their compatibility with fundamental rights guaranteed by the Constitution. The Act may specify the

periods in which the Minister is required to report to the SOC and Parliament, without prejudice to the general powers of the SOC to summon the Minister (or any other official) at any time to account for any action taken pursuant to the Act.

18. Should a mechanism for independent review be included in the CTA and in what form?

- Yes. CPA proposes an establishment of a three-member independent review panel appointed by the Constitutional Council and reporting to Parliament. The review body could comprise of independent actors with expertise in criminal justice, law and order, and human rights who work independently to monitor the implementation of the Act. The review body should ordinarily report publicly to Parliament at least once a year, and more frequently where necessary (e.g., during and following a period when the Act has been heavily used). Further, provision should be made for Parliament to debate the reports of the independent review body.