IN THE SUPREME COURT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application in terms of Article 121 read with Article 120 of the Constitution to determine whether the Bill titled "Anti – Terrorism" or any part thereof is inconsistent with the Constitution.

1. ***Centre for Policy Alternatives (Guarantee) Limited,***
   No. 6/5, Layards Road, Colombo 5

2. ***Dr. Paikiasothy Saravanamuttu,***
   No. 3, Ascot Avenue, Colombo 5

Petitioners

S.C. (S.D.) No: 04/ 2024 **- VS -**

The Attorney General,
Attorney General's Department,
Colombo 12

Respondent

TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Final Written Submissions on behalf of the Petitioners

Introduction

1. The Petitioners invoked the jurisdiction of Your Lordships' Court under article 121 of the Constitution in order to challenge the Constitutionality of the Bill titled 'Anti – Terrorism'.

2. The Petitioner submits that that the Anti – Terrorism Bill is inconsistent with Articles 3, 4, 11, 12(1) and 13(2), 13(4), 13(5), 14(1)(a) –(i), 30(1) and 76(3) Constitution of Sri Lanka and thus cannot be enacted into law, except if approved by the People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament.

3. These submissions will make the following arguments;

   The Legislative History of the Prevention of Terrorism Act

   The Jurisdiction of Your Lordships' Court

   The proposed Bill cannot be justified on the basis of any comparison to the PTA

   The proposed Bill cannot be justified on the basis of the Easter Sunday Attacks

   Prejudicial Impact on the Sovereignty of the People

   The Need of Additional checks and balances in the context of the PTA

   Police Powers and Institutional Failure of the Sri Lanka Police

   THE IMPUGNED CLAUSES OF THE BILL

   Clause 3 – Definition of Terrorism

   Overbroad offence of terrorism

   Clauses 31 Detention Orders

   The category of persons against whom detention orders can be issues is overbroad and vague

   Issuance of Detention by Secretary to the Ministry of Defense is a arrogation of the Judicial Power of the People by the Executive

   Clause 42 - Access to Counsel

   Clause 79 – Proscription Orders

   Clause 81 – Curfew Orders

   Clause 82 – Prohibited Places

   Clause 90 - Regulation making power

4. Previously, a Bill also titled the Anti – Terrorism Bill was published in the Gazette Extraordinary, dated 22nd March 2023.

5. Following widespread criticism of that Bill, it was announced that the Bill was withdrawn, and that it would be amended prior to the legislative process. Following the withdrawal of the Bill, the Government called for public input into the Bill, in order to make changes to the draft law. Many parties, including the 1st Petitioner, submitted their recommendations for changes to the draft law.

6. Thereafter, on the 15th of September 2023, the impugned Bill titled 'Anti-Terrorism' was published in the Gazette Extraordinary (**P3(a) – P3(c)**) (Also sometimes referred to as the impugned Bill). Despite calling for comment, many of the concerns raised with the March 2023 Bill remained in the Bill gazetted in September 2023.

7. The impugned Bill was then published in the agenda for Parliament, on the document titled 'Order Paper', but the first reading of the Bill did not take place, and thus Jurisdiction under Article 121 of the Constitution could not be invoked at the time.

8. Subsequently, when some parties attempted to invoke jurisdiction under Article 121 of the Constitution at the time, it was announced by the Speaker of Parliament that the first reading of the Bill would not take place. It was also announced that the Bill would be removed from the Order Paper (vide extract from the Hansard of 18th October 2023 marked **P4**).

9. Thereafter, on the 10th of January 2023, the Bill was placed on the Order Paper of Parliament, and also tabled in Parliament for the first reading.

The Legislative History of the Prevention of Terrorism Act

10. The Bill which enacted the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 [PTA] was referred to the Supreme Court by the President for a determination in terms of Article 122(1)(b) of the Constitution (Urgent Bill) and the Cabinet of Ministers certified that;
    i. The Bill was urgent in the national interest,
    ii. The Bill was to pass with the "special majority required by Article 84(2) of the Constitution" (i.e. with the vote of two thirds of the whole number of members).

11. The determination by three judges of Your Lordships' Court stated that;

> "*…. the only question which this Court has to decide is whether such Bill requires approval by the People at a Referendum….* ***We are of the opinion that this Bill does not require the approval of the People at a referendum, nor is it one within the contemplation of Article 83 of the Constitution***"
>
> [SC SD 7 of 1979 P/ Parl./13. Decisions of the Supreme Court on Parliamentary Bills 1978 – 1983 Volume 1, PP. 61 - 62] (emphasis added)

12. The legislative process of the PTA in 1979 can be summarized as follows;
    (a) The court was asked only to determine if the Bill required the approval of the people at a referendum and not if it required a special majority in Parliament;
    (b) Court heard the Hon. Attorney General on the 17th July 1979;
    (c) The determination of Your Lordships' Court was "conveyed to Parliament" on 19th July 1979;
    (d) The First, Second and Third reading of the Bill took place on the 19th July 1979. The Bill was passed by a two thirds majority.
    [Vide SC SD 7 of 1979 P/ Parl./13. Decisions of the Supreme Court on Parliamentary Bills 1978 – 1983 Volume 1 at pg 62]

13. Your Lordships' Court will also appreciate that in 1979, when Your Lordships' Court examined the provisions of the Bill as an Urgent Bill, it contained a section numbered 29, which was a sunset Clause, limiting the operation of the PTA to three years from the date of its commencement.

14. Thereafter, by Act No. 10 of 1982, section 29 of the PTA was repealed, thus giving the Act permanence in its operation.

15. Thus, what is noteworthy is that;

    a. The Supreme Court never had to consider if the PTA was Constitutional and required a 2/3 majority in Parliament – in fact, they did find that it did not meet this standard,

b. The Court had a very limited period of time to consider the constitutionality of the Bill as it was passed as an urgent Bill,
c. When the law was considered by the Court, it was in the context of a temporary provision, enacted to meet a temporary need that persisted at the time.

16. In ***Weerawansa v. the Attorney General and Others (SC/SD 730/96) at page. 391*** Your Lordships Court observed that,

"*When the PTA Bill was referred to this Court, the Court did not have to decide whether or not any of those provisions constituted reasonable restrictions on Articles 12(1), 13(1) and 13(2), permitted by Article 15(7) (in the interests of national security, etc), because the Court was informed that it had been decided to pass the Bill with a two-thirds majority (SC SD No. 7/79, 17.7.79).* ***The PTA was enacted with a two-thirds majority, and accordingly, in terms of Article 84, the PTA became law despite any inconsistency with the Constitutional provisions.*** **[emphasis added]"**

17. However, thereafter, the PTA has remained a part of our law for nearly four and a half decades. In determining if the present Bill is constitutional, it must be borne in mind that the regime created by the PTA was not 'normal', but rather an extraordinary piece of legislation, which deviated from the norms of our constitution and criminal justice system.

The Jurisdiction of Your Lordships' Court

18. When exercising Jurisdiction under Article 120 of the Constitution (with regard to ordinary Bills rather than Bills for the amendment of the Constitution), your Lordships' Court may;

I. Decide that the Bill is not inconsistent with the Constitution, and can be passed by a simple majority in Parliament, **or**

II. Decide that the **Bill**, or clauses therein are inconsistent with the Constitution, other than the provisions entrenched by way of Article 80(3), and thus must be passed with a 2/3 majority in Parliament, **or**

III. Decide that the Bill, or clauses therein are inconsistent with provisions of the Constitution entrenched by Article 80(3), i.e. Articles 1,2,3,6,7,8,9,10, 11 or Articles 80(3) itself, or Articles 30(2) or 62(2) if they are extending the terms therein, and thus must be passed by the people at a referendum, in addition to a 2/3 majority in Parliament.

19. Your Lordships' Court, after determining that provisions of a Bill are inconsistent with the provisions of the Constitution, may also make recommendations relating to how such clauses can be amended, or reworded, in order to bring them into compliance with the Constitution (*vide Article 123(2)(c)*).

20. It is thus respectfully submitted that Your Lordships' Court must first make a determination on the Bill as published in the Gazette, and having made a finding of inconsistency with the provisions of the Constitution, may thereafter consider whether any specified amendments would cause the inconsistency to cease.

The proposed Bill cannot be justified on the basis of any comparison to the PTA

21. Any justification of the impugned Bill based on a comparison to the PTA is **IRRELEVANT** for the question before Your Lordships Court. [See paragraph 18 to 20 of these Written Submissions].

22. Your Lordships' Court has extensively dealt with the question as to what impact existing legislation would have on Your Lordships' Court when determining the constitutional consistency of any Bill.

23. In ***Re: New Wine Harvest Ministries (Incorporation) Bill (SC/SD 2/2003) (Decisions of the Supreme Court on Parliamentary Bills, Vol VII, page 361 at 365)*** the Court determined -

"In exercising jurisdiction under Article 123 of the Constitution ***we cannot examine the validity of past legislation, nor can we take their content as a standard of consistency with the provisions of the Constitution.*** *Our task is to examine the provisions of the bill challenged by the Petitioner and to determine whether they are inconsistent or not with the provisions of the Constitution. In that context what Counsel for the Intervenient Petitioner has commended to us, is an exercise in futility, which we shall not engage in."* **(emphasis added)**

24. ***In Re Recovery of Loans by Banks (Special Provisions) (Amendment) Bill SC SD 22/2003 [Decisions of the Supreme Court on Parliamentary Bills 1991 - 2003 Volume VII at pages 427 – 432]*** the Hon. Attorney General took up the position that "the *provisions of the Bill now before Court only supplement the provisions of the Act presently in force and should be considered as being consistent with the Constitution in view of the previous Special Determination [in relation to the Act which was in force at the time*".

In dismissing this contention Your Lordships' Court held that;

"*This Court does not have jurisdiction to examine the constitutionality of the Act already in force. However, an amendment cannot be viewed in isolation.* ***It certainly cannot derive a stamp of constitutionality from the act that is in force***." (emphasis added)

25. ***In Re: Proscription of LTTE and Other Similar Organisations (Amendment) Bill (SC/SD 5/1979) (Decisions of the Supreme Court on Parliamentary Bills, Vol I, page 51)*** Your Lordships' Court considered the extension of the validity of an existing law by one more year. The Court, while declaring that certain provisions of the existing law were inconsistent with the Constitution, stated ***(at page 53)***:

"The Bill seeks to extend the period of operation of Law No. 16 of 1978 for the period of another year. It was therefore necessary for us to consider the provisions of the original Law, inasmuch as ***if the provisions of the original law is*** **[*sic*] *inconsistent with the Constitution, this Bill too would be inconsistent with the Constitution."*** **(**emphasis added**)**

26. *In "**Special Goods and Services Tax Bill**" **SC SD 1-9/2022*** Your Lordships' Court commenting on Your Lordships' jurisdiction held that;

"…this Court must consider the impugned clauses of the Bill and arrive at a finding regarding the constitutionality of the impugned clauses. This Court must and easily can perform that duty without infringing Article 80(3) of the Constitution. ***Once the jurisdiction of this Court has been invoked, refraining from determining the constitutionality of a clause in a Bill that is challenged, on the footing that there appears to be provisions in existing laws which are similar, if not identical to the impugned clauses, would be an abdication of the constitutional responsibility cast on the Supreme Court****. The purpose of the exercise of this constitutional duty by the Supreme Court is to determine the constitutionality of the impugned Bill and its clauses, and to also prescribe the manner in which such Bill should be enacted by Parliament." (emphasis added)*

"**It is the paramount and sacred duty of all organs of the State to uphold constitutionalism. Subject to the sovereignty of the People, it is the duty of the organs of the State to uphold the Constitution, and always act in accordance with it.** ….

… it is the considered view of this Court that when a Bill is impugned before this Court on the alleged footing that one or more clauses of such Bill are inconsistent with the Constitution, **this Court must consider the impugned clauses of the Bill and arrive at a finding regarding the constitutionality of the impugned clauses.**

….

The purpose of the exercise of this constitutional duty by the Supreme Court is to determine the constitutionality of the impugned Bill and its clauses, and to also prescribe the manner in which such Bill should be enacted by Parliament.

[**In Re Special Goods and Services Tax Bill SC SD 1- 9/ 2022, Determination placed before Parliament on 22nd February 2022** See pg 19 – 20) [emphasis added]

27. Thus, the existence of the PTA must not bar Your Lordships' Court from examining the constitutionality of a law.

28. Furthermore, the argument by the Hon. Attorney General that the provisions of this Bill are a "relaxation" of the strictures placed by the PTA and hence are an advancement of Fundamental Rights guaranteed by the Constitution [Vide Article 4(d)] is, respectfully misconceived.

29. It is respectfully submitted that Your Lordships' will appreciate that this argument by the Hon. Attorney General, presupposes a conceding that the PTA are inconsistent with the Constitution. A concession which the Hon. Attorney General was not prepared to make.

30. In any event, Your Lordships' Court would appreciate that when exercising Your Lordships' jurisdiction in terms of Article 120 of the Constitution, Your Lordship would only consider the provisions of the impugned Bill and the relevant Constitutional provisions.

31. It is respectfully submitted that this argument (advanced by the Hon. Attorney General) has no relevance to the constitutional jurisdiction of Your Lordships' Court. Just because the impugned Bill is less unconstitutional than an existing law, that would not satisfy the constitutional standards identified by Your Lordships Court.

32. Your Lordships' Court would only be concerned whether the provisions of the impugned Bill and whether or not they are consistent with the provisions of the Constitution [See paragraph 18 to 20 of these Written Submissions].

The proposed Bill cannot be justified on the basis of the Easter Sunday Attacks

33. The Hon. Attorney General sought to justify the need for the overbroad provisions of the Bill, constantly invoking the facts and circumstances surrounding the Easter Sunday Attacks.

34. Such a justification is misconceived in the facts surrounding the attacks of Easter Sunday 2019. The State had forewarning of the said attacks and either deliberately decided not to do anything about it or was reckless in discharging their responsibilities and ultimately it was a systematic failure of the State mechanism that led to failure in preventing the said attacks.

35. As your Lordships Court held in ***Janath S. Vidanage v. Pujitha Jayasundara and Others SCFR 163/2019, 165/19, 166/19,184/19,188/19, 191/19,193/19, 195/19, 196/19, 197/19, 198/19, 199/19 SCM 12th January 2023,*** the problem was not the lack of security and counter-terrorism laws in Sri Lanka inhibiting or stifling the State to take critical and prompt actions to prevent a mass atrocity such as the Easter Sunday Attacks that took place on the 21st of April 2019.

36. On the contrary, Your Lordship's court rightfully observed from **pages 72-89** the factual matrix of the inaction and breach of duty of care by the relevant authorities that led to the death and destruction that followed the bomb explosions on 21st April 2019. In this regard, Your Lordship's Court emphasized that,

> *"In December 2018, the President acting in terms of Article 44(1)(a) had allocated inter alia Sri Lanka Army, Sri Lanka Navy, Sri Lanka Air Force, State Intelligence Service and Police Department to the Minister of Defence.* ***It is also pertinent to observe that Public Security Ordinance, Prevention of Terrorism Act No 48 of 1979 and Suppression of Terrorist Bombings Act No 11 of 1999 are three laws among others that are to be implemented by the Ministry of Defence. (page 93) (emphasis added)***

37. Therefore, the occurrence of unfortunate and preventable mass atrocities such as the Easter attacks at the hand of the Executive's inaction and failure to give full effect to the principle of duty to protect is and cannot be grounds to channel in more stringent and draconian laws in the name of National Security. As your Lordships have rightfully held,

> *It follows as the crow flies that* ***if laws and structures are declared to the public as the benchmarks of safeguarding the security of the country and thus the protection of its people, it is no defensive argument that***

> ***subordinates who were delegated with the powers both by Constitution and statute failed the repository of the main powers. (page 113) (emphasis added).***

38. The State having failed to implement the existing laws cannot seek cover in the calamity it was responsible as a justification to enact laws that will permanently suspend the rights of citizens and erode the rule of law.

39. If at all the excesses seen in the aftermath of the Easter Sunday Attacks exhibited by the Police and other organs of the Executive, would require a stricter scrutiny of the provisions of this Bill as the excesses committed by these organs in implementing the PTA are well documented and recognised by Courts. In this regard Your Lordships' attention is drawn to the following judgements;

    - ***Mohamed Razik Mohamed Ramzy v B.M.A.S.K Senaratne and others*** (***SCFR 135/2020 S.C.M 14.11.2023)***
    - ***Hejaaz Omer Hizbullah v Attorney General*** (***CA/PHC/APN/10/2022 C.A.M 07.02.2022)***

40. Rather than taking caution from these abuses, the executive is now seeking to dismantle the safeguards read in by the judiciary in these cases, such Clause 43 of the impugned Bill which seeks to exclude the provisions of sections 115 and 116 of the Code of Criminal Procedure Act in relation to a suspect under this Bill.

41. The said sections 115 and 116 of the Code of Criminal Procedure Act provide important safeguards which enables the Magistrate to supervise the investigations. However, this impugned Bill seeks to remove these safeguards.

42. This not only undermines important safeguards read into the PTA by Superior Court's but also renders nugatory the so-called oversight of the Magistrate the impugned Bill seeks to introduce. This is because the Magistrate will have to exercise such supposed oversight without the benefit of the information provided by sections 115 and 116 of the Code of Criminal Procedure Act

Prejudicial Impact on the Sovereignty of the People

43. Article 3 specifically recognises fundamental rights as a component of sovereignty and provides that:

> *"In the Republic of Sri Lanka sovereignty is in the People and is inalienable.* ***Sovereignty includes*** *the powers of government,* ***fundamental rights*** *and the franchise"*

44. Article 83 provides:

> *"Notwithstanding anything to the contrary in the provisions of Article 82-*
>
> *(a)* ***a Bill*** *for the amendment or for the repeal and replacement of or* ***which is inconsistent with any of the provisions of Articles*** *1, 2,* ***3****, 6, 7, 8, 9,* ***10 and 11****, or of this Article, and*
>
> *…*
>
> *shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present), is approved by the People at a Referendum and a certificate is endorsed thereon by the President in accordance with Article 80."*

45. By virtue of the provisions of Article 83 any provision which is inconsistent with Article 10 or 11 of the Constitution (whether pro-rights or otherwise) would *ipso facto* require a referendum.

46. Any provision which enhances the scope of other fundamental rights (other than Article 10 and 11) would not require a referendum.

47. However, any provision which is inconsistent with the other fundamental rights would require a referendum, not merely because of such inconsistency, but if it also prejudicially affects, and is thus inconsistent with, Article 3 of the Constitution, which specifically recognises fundamental rights as a component of sovereignty.

48. ***In Re the Thirteenth Amendment to the Constitution and the Provincial Councils Bill (1987) 2 Sri L.R. 312, 325*** **the majority determination (of a Full Bench of Your Lordships' Court) stated that:**

> *"...However,* ***to the extent that a principle contained in Article 4 is contained or is a necessary corollary or concomitant of Article 3, a constitutional amendment inconsistent with such principle will require a Referendum in terms of Article 83, not because Article 4 is entrenched, but because it may impinge on Article 3****... So long as the sovereignty of the People is preserved as required by Article 3, the precise manner of the exercise of the sovereignty and the institutions for such exercise are not fundamental." (emphasis added)*

49. Further authority for this proposition could be found in the recent determinations of Your Lordships' Court in ***Twenty First Amendment to the Constitution Bill (2022) [SC (SD) Nos. 31, 32, 34, 36 and 37/2022***; and ***Twenty Second Amendment to the Constitution Bill (2022) [SC (SD) Nos. 40 - 49 /2022***, which impliedly entrenched the Executive Presidency.

50. The Executive Presidency (unlike fundamental rights) is not listed out as a component of sovereignty in Article 3, but merely referred to in Article 4 (which is not an entrenched clause).

51. Your Lordships' Court in ***Twenty Second Amendment to the Constitution Bill (2022) [SC (SD) Nos. 40 - 49 /2022*** (at pg 11) stated that;

> *"Although Article 4 is not expressly included in the list of entrenched provisions in Article 83, an amendment to it could still affect entrenched provisions;* ***although the list of entrenched provisions is a limited one, amendments made to other Articles of the Constitution may still have a bearing on the scope, operation and effectiveness of entrenched provisions. If this were to happen, then such amendments would require approval by the People at a Referendum****."*

52. In ***Special Goods and Service Tax Bill SC SD 01-09/2022*****,** (page 25), Your Lordships' Court held that;

> *As recognized by Article 4(d), fundamental rights form a component of the sovereignty of the People. It is to be noted that, fundamental rights is a critical component of sovereignty, as it is fundamental rights that enable People to (a) reap the full benefits of being born human, (b) enables the exercise of liberty, (c) provides for protection of life and freedom from harm, (d) provides for the exercise of sovereignty, (e) facilitates human development, (f) ensures equality including parity status among human beings and non-discrimination, and (g) creates a conducive environment for peaceful coexistence among the different communities of the People of Sri Lanka. Thus, a Bill that is violative of fundamental rights, would amount to an infringement of the sovereignty of the people, and therefore infringes Article 3 read with Article 4 of the Constitution.*"

53. Therefore, it is respectfully submitted that a finding of inconsistency with any of the Articles of the fundamental rights chapter, in the circumstances of the instant Application (and the serious nature of the inconsistencies and violations of the fundamental rights identified hereinafter), would necessarily entail a finding that there is a prejudicial impact on the sovereignty of the People, with the necessary conclusion that the instant Bill requires the approval of the People at a Referendum.

The Need of Additional checks and balances in the context of the PTA

54. During its 45 years of operation, there have been numerous abuses under the PTA, especially involving prolonged detention, instances of torture and inhumane treatment, and forced confessions.

55. The PTA in itself has been used as a tool of suppression, with activists, journalists and even ordinary civilians being harassed under this law.

56. The ***International Commission of Jurists Report titled "Authority without Accountability: The Crisis of Impunity in Sri Lanka"*** **(2012)** lists out in pages 133-136, several case studies including *Nallaratnam Singarasa v. The Attorney-*

General S.C. Spl. (LA) No. 182/99, decided on 15 September 2006; *Edward Sivalingam v. Jayasekara* S.C. (F.R.) Application No. 326/2008, decided on 10 November 2010; with regard to the misuse of the PTA to obtain information through torture. The Report states in **page 141**, "**Immunity clauses have fostered a culture of impunity by shielding the President and State officials from liability for their conduct under the emergency regime**, notably under the Public Security Ordinance No. 25 of 1947 (PSO) and **the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (as amended) (PTA)**." **[emphasis added]**

57. Therefore, in light of the manner in which authorities have used this law as a tool of suppression, it is respectfully submitted that it is safe to expect that given the same or similar powers, authorities will continue to abuse the law in the same manner as the PTA.

58. Thus, it must be required that any anti – terrorism law goes over and beyond in terms of the checks and balances that they contain, so as to prevent a situation of the law being abused in this manner.

59. In fact, even where there is potential for abuse, the Supreme Court has recognized the need to Act accordingly. As Your Lordships' Court observed in ***In Re The Sri Lanka Broadcasting Authority Bill*** (SC/SD 1/1997 - 15/1997) (Decisions of the Supreme Court on Parliamentary Bills, Vol VII, page 79 at 101) - ***"These things may not happen, but they might happen because they are permitted. The evils to be prevented are those that might happen.***" (emphasis added) and as such where there is visible room for abuse, Your Lordships' Court would seek to prevent same.

60. Thus, Your Lordships' Court, when assessing this law, has the responsibility to assess it in terms of what might happen if the law is to be passed, and when deciding what 'might' happen, Your Lordships' must examine what has happened in 45 years of the PTA.

61. It is also respectfully submitted Your Lordships' should be concerned with the APPLICATION OF THE LAW, to given situations and that is NOT conjecture or

surmise. In assessing the impact of a Bill, Your Lordships' Court would necessarily have to consider the application of that law.

Police Powers and Institutional Failure of the Sri Lanka Police

62. Your Lordships' Court will also appreciate that the impugned Bill provides vast powers and responsibilities to the Sri Lanka Police. A summary of some of these powers is annexed to these Written Submissions as **Annex 1 - PROPOSED ANTI – TERRORISM BILL CLAUSES ON POLICE POWERS AND DUTIES**.

63. The overall structure and powers granted by this impugned Bill was sought to be justified on the basis of international experience and laws of other countries.

64. Your Lordships' Court would appreciate that the institutional context in other countries are significantly different to Sri Lanka. And there is a serious danger in granting such vast powers to these institutions in Sri Lanka without such safeguards.

65. In this regard Your Lordships' Court has over several decades made serious observations about the institutional failure of the Sri Lanka Police.

Amal Sudath Silva V. Kodituwakku Inspector Of Police And Others[1987] 2 S.L.R 119 at p. 127

Per Atukorale, J.

"The facts of this case have revealed disturbing features regarding third degree methods adopted by certain police officers on suspects held in police custody. ***Such methods can, only be described as barbaric, savage and inhuman. They are most revolting to one's sense of human decency and dignity particularly at the present time when every endeavour is being made to promote and protect human rights****. Nothing shocks the conscience of a man so much as the cowardly act of a delinquent police officer who subjects a helpless suspect in his charge to depraved and barbarous methods of treatment within the confines of the very premises in which he is held in custody. Such action on the part of the police will only breed contempt for the law and will tend to make the public lose confidence in the ability of the police to maintain law and order****. The petitioner may be a hard core criminal whose tribe deserve no sympathy. But if constitutional guarantees are to have any meaning***

or value in our democratic set up, it is essential that he be riot denied the protection guaranteed by our Constitution.*"*

RATNASIRI AND ANOTHER v. DEVASURENDRAN, INSPECTOR OF POLICE, SLAVE ISLAND AND OTHERS **1994 3 SLR 127**

At pg 136 – 137 Per Kulatunga J.

"The inclination of police officers to assault suspects in police custody is both unlawful and cowardly. By means of such assault they seek to inflict punishment on a suspect before his trial for the alleged offence, which conduct is a blatant abuse of power. Such conduct has been repeatedly condemned by this Court in the following decisions. 1. Amal Sudath Silva v. Kodituwakku . 2. Geekiyanage Premalal Silva v. Rodrigo. 3. Jayaratne v. Tennakoon. 4. Gamalath v. Neville Silva. 5. Wimal Vidyamuni v. Lt. Col. Jayatilleke.

The incidence of torture evidenced in the above cases and in the instant case tends to create the impression that superior offers in Police Stations turn a blind eye to what goes on there whenever individual officers torture suspects in police custody. *If in cases where personal responsibility for such conduct is not established no further action is taken to avoid a recurrence of such conduct, it may give rise to the inference of acquiescence of such conduct on the part of the superior officers in charge of a Police Station….. If the Inspector General of Police fails to give his mind to these issues, acquiescence in such conduct may be attributed to the State itself, which would be an unhappy development, especially in view of the fact that Sri Lanka is a party to International Covenants on Human Rights."*

Nalika Kumudini, AAL (on behalf of Malsa Kumari) v. N. Mahinda, OIC, Hungama Police & Others, [1997] 3 S.L.R, 331. At p. 42

Per Fernando A.C.J.
"In many cases in the past this Court has observed that there was a need for the Inspector-General of Police to take action to prevent infringements of fundamental rights by Police Officers, and where such infringements nevertheless occur, this Court has sometimes directed that disciplinary proceedings be taken. The response has not inspired confidence in the efficacy of such observations and directions, and persuades me that in this case compensation is the appropriate redress."

SARJUN v KAMALDEEN AND TWO OTHERS [2007] 2 SLR 67 at pg 73

"The fact of the case reflect the hapless of an innocent citizen who takes every precaution to comply with the law of the land. The concern of national security resulting from the threat of terrorism has made it necessary to impose safeguards and check points on our public roads. The case typifies the vicious link between abuse of authority ,pursuit of graft and the infliction of torture on a citizen who insists on his right not to cave into illegal demands of gratification and abuse of authority. Whilst security concerns have to be addressed such action should be taken with the highest concern and respect for human dignity.

SIRIWARDENA AND ANOTHER Vs. INSPECTOR, POLICE STATION, AMBALANGODA AND OTHERS 2021 3 SLR 418 at pg 434.

it is indeed for the sake of upholding the integrity of the entire body of police officers that we must condone incidents of misconduct….

*"**Violation of rules, laws and standards have been noticed since a considerable period of time by the authorities and are informed to the Police Department and the Government**.*

***This Court has observed that in many cases some of the violations are recurring, which directs towards a conclusion that the relevant authorities in the Police Department are not taking adequate preventive measures.** In order to prevent such incidents from recurring and to protect the necessary parties, it is insufficient to take action in isolated events against the specified officers. There must be awareness raised through all ranks of officers throughout the country, given that blaming officers following violations is not a deterrent to unfavorable practices and it does not build a sustainable method of maintaining proper conduct among officers.*

66. The culmination of this jurisprudence (thus far) was in ***Ranjith Sumangala vs. Bandara, Police Officer,Police Station, Mirihana SC (FR) Application No.107/2011 SC. Minutes of 14th December 2023.***

At Page 50 of 60

"This Court has time and time again made pronouncements setting out guiding principles as to how law enforcement officers must act. But all such attempts continue to fall on deaf ears. ***Violations of the kind we have observed in this case are, unfortunately, all too common. These are by no means isolated one-off events but are symptoms of longstanding institutional failures. When the Evidence***

Ordinance was first enacted in 1895, police officers were deemed too unreliable to make confessions made before them admissible. Lamentably, after well over a dozen decades, nought has changed*."*

67. Your Lordships' would appreciate the wide powers granted to the Police, would be administered in such a context. In this context the concerns raised by the Petitioners are not mere surmise or conjecture, but very real dangers that are very likely to occur.

THE IMPUGNED CLAUSES OF THE BILL

Clause 3 – Definition of Terrorism

Overbroad offence of terrorism

68. Clause 3 of the Bill defines the offence of terrorism in terms of the Bill. In order to commit an offence of terrorism, a person must do any of the acts in sub clause 3(2) with the intentions described in sub clause 3(1).

69. However, the intentions defined in sub clause 3(1) are vague and overbroad, and contain terms and phrases that create ambiguity in the clause. Clause 3(1) provides that;

> *"3(1) Any person, who commits any act or illegal omission specified in subsection (2), with the intention of–*
>
> *(a)* ***Intimidating*** *the public or a section of the public;*
>
> *(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;*
>
> *(c) Propagating war or, violating territorial integrity or infringement of sovereignty of Sri Lanka or any other sovereign country,*
>
> *Commits the offence of terrorism."*
>
> *(2) An act or an illegal omission referred to in subsection (1) shall be -*

*(g) causing **serious risk** to the health and safety of the public or a section thereof; "*

(emphasis added)

70. This Clause as a whole provides a broad and sweeping definition. The Hon. Attorney General sought to justify the clause on the basis that such was needed to effectively deal with terrorism and acts which constitute a threat to the nation.

71. Several examples were provided to Your Lordships' Court of how these provisions could be used to even equate illegal strikes to terrorism.

72. The following **examples illustrate how Clause 3(1) and 3(2) would be read conjunctively to apply to situations which are NOT terrorism:**

Trade Union Action/Strikes

a. In terms of Clause 3 (2)(g) which reads as "causing serious risk to the health and safety of the public or a section thereof;" if there is a trade union strike in the health sector, such as a nurses' strike, where these health workers go on strike with the intention to influence the actions of the State to increase their salaries. Under the proposed Bill, such a strike by the health workers can be brought under the definition of terrorism in the Bill if one interprets Clause 3 (2) (g) coupled with Clause 3(1)(b).
    - Moreover, in the context of such a strike, if the provision of health services is declared an essential service by the government, then the continuation of the strike would be a terrorism offense under Clauses 3(2)(g) and 3(1)(a) of 3 (1)(b).
    - Even if the health services are not made an essential service, if an entity in the public claims that the trade union action prejudiced them, the health care workers who are on strike can be arrested under a terrorism offense, under Clauses 3(2)(g) and 3(1)(a).

b. The terminology in Clause 3 (1) (b) is "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". What is interpreted as "wrongfully" remains ambiguous.

- For instance during a strike carried out by Railway workers, and the said workers wants to sabotage the functioning of the railway by stopping a particular train from running by removing certain mechanisms or instruments vital for the smooth functioning of a specific train, that would amount to terrorism under Section 3(2)(e) or 3(2)(j) coupled with 3(1)(b).

Demonstrations

If there is a demonstration in front of the Embassy of Israeli or the United States on the issue of the war in Gaza, where a demonstrator/s are:

a. Not wearing a face mask, when wearing face masks have been mandated by the law of the day, the said demonstrator can be arrested under terrorism offenses pursuant to Clauses 3(2)(g) and 3(1)(a).
b. Have dipped their feet in white paint and have walked on the public road in front of the embassy in a way where white paint appears on the tarred road with the intention of utilizing art as a way of demonstrating dissent, this act can be interpreted as a terrorist offense under Clause 3(2)(e) referring to "causing serious damage to any place of public use, a State or Governmental facility, any public or private transportation system or any infrastructure facility or environment;" coupled with Clause 3(1)(b) or 3(1)(c).

Disputes/Hostage taking

a. If there is a dispute between two student factions at Sri Lanka Law College, and one faction takes a member of the administration of the Law College as a hostage, that can be constituted as a terrorism offense under the proposed law under Clause 3(2)(c) read together with Clause 3(1)(a).

Disruption of signal transmission

a. If there is a strike at the Sri Lanka Broadcasting Corporation (SLBC) against the taxation, and engineering staff out of the premises which results in disruption of the SLBC radio transmissions to disseminate messages on reducing taxes during the period of the strike. Under Clause Clause 3(2)(j), "causing serious obstruction or damage to, or interference with any electronic, analog, digital or other wire-linked or wireless transmission system including signal transmission and any other frequency-based transmission system;" is a terrorist activity, when it is interpreted together with 3(1)(a) and/or 3(1)(b). If even an act of simple hurt compelling lawfully or unlawfully the government of Sri Lanka is an act of terrorism

73. Your Lordships' Court would appreciate that danger in this definition is that it would easily apply to situations;

(a) Which arise in the legitimate exercise of fundamental rights,

(b) Which arise in situations which do NOT rise to the level of terrorism but perhaps other lesser offenses which can be punished by the ordinary law.

(c) Where citizens engage in any protest, advocacy, or to express dissent, which might by unlawful or wrongful but which are nonetheless not related to terrorism.

74. Your Lordships' would appreciate that dissent is important in a democratic society. As Your Lordships' Court have observed in several cases;

Amaratunga v Sirimal (Jana Gosha Case) [1993] 1 SLR 264 at pg 271-

"I am therefore of the view that the fundamental right of the petitioner under Article 14(1)(a) has been violated. The right to support or to criticize Governments and political parties, policies and programmes, is fundamental to the democratic way of life, and the freedom of speech and expression is one 'which cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions (De Jonge v Oregon)"

Senasignhe v Karunathilake and others [2003] 1 Sri LR 172 at 191 – 193

*As I observed ten years ago, "stifling the peaceful expression of legitimate dissent today can only result, inexorably, in the catastrophic explosion of violence some other day" (Amaratunga v Sirimal). Democracy requires not merely that dissent be tolerated, but that it be encouraged, and that obligation of the Executive is expressly recognized by Article 4(d), so that the Police too must respect, secure and advance the right to dissent (Wijeratne v Perera) for as cautioned in West Virginia State Board of Education v Barnette, "**those who begin coercive elimination of dissent soon find themselves exterminating dissenters**".*

Channa Pieris v The Attorney General (Ratawesi Peramuna Case) [1994] 1 SLR 1

"As we shall see later on, it is of fundamental importance that there should be freedom of thought and expression in a democracy. What I should like to emphasize here is the fact that attempts to achieve conformity by compulsion must be effectively discouraged, for "those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. It seems trite but necessary to say that [the Constitutional guarantee of freedom of expression] was designed to avoid these ends by avoiding beginnings. (West Virginia State Board of Education v. Barnette, supra, cited with approval by Fernando, J. in Wijeratne v. Vijitha Perera and Others)"

75. Therefore, it is respectfully submitted that dissent, however unpalatable to the government, cannot be curtailed and moreover cannot be criminalized under a law which purports to deal with terrorism.

76. Your Lordships' Court has, on numerous occasions, reiterated the importance of protecting citizens' rights to freedom of speech and expression (which includes the right to peaceful protest) and freedom of peaceful assembly, guaranteed under Articles 14(1)(a) and (b) of the Constitution.

77. In ***Joseph Perera alias Bruten Perera v. The Attorney General and Others [1992] 1 Sri LR 199***, Your Lordships' Court has held (at pages 223-226) that:

"*Freedom of speech and expression means the right to express one's convictions and opinions freely by word of mouth, writing, printing, pictures or any other mode. It includes the expression of one's ideas through banners, posters, signs etc. It includes the freedom of discussion and dissemination of knowledge. It includes freedom of the Press and propagation of ideas; this freedom is ensured by the freedom of circulation.* ***"The right of freedom of speech and press includes not only the right to distribute, the right to receive, the right to read and freedom of inquiry and the right to teach ... These are proper peripheral rights"*** *per Douglas, J., in Griswald v. Connecticut.(5)*

The freedom of speech and expression is not only a valuable freedom in itself but is basic to a democratic form of Government which proceeds on the theory that problems of government can be solved by the free exchange of ideas and by public discussion - Servai, Indian Constitution, 3rd Ed. Vol. I at 491. Free discussion of governmental affairs is basic to our constitutional system. ***Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association, the People are the sovereign, not those who sit in the seats of power. It is the voice of the People which ultimately prevails. Free political discussion is thus necessary to the end that government may be responsive to the will of the people and changes may be obtained by peaceful means. The Constitutional protection for speech and expression was fashioned to bring about political and social changes desired by the people.***

Freedom of speech and expression consists primarily not only in the liberty of the citizen to speak and write what- he chooses but in the liberty of the public to hear and read, what it needs. No one can doubt if a democracy is to work satisfactorily that the ordinary man and woman should feel that they have some share in Government. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. The consent of the governed implies not only that consent shall be free but also that it shall be grounded on adequate

information and discussion aided by the widest possible dissemination of information from diverse and antagonistic sources. ***The crucial point to note is that freedom of expression is not only politically useful but that it is indispensable to the operations of a democratic system.***

"Public opinion plays a crucial role in modern democracy. Freedom to form public opinion is of great importance. Public opinion, in order to meet such responsibilities, demands the condition of virtually unobstructed access to and diffusion of ideas. The fundamental principle involved here is the people's right to know. *The freedom of speech guaranteed by the Constitution embraces at the least the liberty to discuss publicly all matters of public concern without previous restraint or fear of subsequent punishments." Thornhill v. State of Alabama, (6) - Without free political discussion, no public education, so essential for the proper functioning of the process of popular government, is possible. The welfare of the community requires that those who decide shall understand them. The right of the people to hear is within the concept of freedom of speech.*

Freedom of discussion must embrace all issues about which information is needed to enable the members of a society to cope with the exigencies of their period. It is essential to enlighten public opinion in a democratic state; it cannot be curtailed without affecting the right of the people to be informed through sources, independent of the government, concerning matters of public interest. There must be untrammelled publication of news and views and of the opinions of political parties which are critical of the actions of government and expose its weakness. ***Government must be prevented from assuming the guardianship of the public mind. Truth can be sifted out from falsehood only if the Government is vigorously and constantly cross examined****.*

"Authority ... is to be controlled by public opinion, not public opinion by authority" West Virginia State Board v. Barnette.[7] *"The ultimate good desired is better reached by free trade in ideas - the best test of truth is the power of thought to get itself accepted in the competition of the market." Per Justice Holmes in Abrams v. U.S.*[8]

One of the basic values of a free society to which we are pledged under our Constitution is founded on the conviction that there must be freedom not only for the thought that we cherish, but also for the thought that we hate. All ideas having even the slightest social importance, unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion have the protection of the constitutional guarantee of free speech and expression. Hence criticism of government, however unpalatable it be, cannot be restricted or penalised unless it is intended or has a tendency to undermine the security of the State or public order or to incite the commission of an offence. Debate on public issues should be uninhibited, robust and wide open and that may well include vehement, caustic and sometimes unpleasantly sharp attacks on Government. Such debate is not calculated and does not bring the Government into hatred and contempt.

"Criticism of public measures or comment on Government action however strongly worded is within reasonable limits and is consistent with the fundamental right of freedom of speech and expression. This right is not confined to informed and responsible criticism but includes the freedom to speak foolishly and without moderation. So long as the means are peaceful, the communication need not meet "standards of common acceptability." *Austin v. Keele.*

78. Thus, protecting these rights is even more so important where public opinion expresses dissent against and criticises the government, for that is inherently necessary for the democratic system. In ***Amaratunga v Sirimal (Jana Ghosha case) [1993] 1 Sri LR 264***, His Lordship Fernando J held (at page 271):

"*The right to support or to criticize Governments and political parties, policies and programmes is fundamental to the democratic way of life, and the freedom of speech and expression is one which cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions …*

Criticism of the Government, and of political parties and policies, is per se, a permissible exercise of the freedom of speech and expression under Article 14 (1)(a)."

79. **Additionally**, Your Lordships' Court has continually recognized that in order to conform to Article 12(1) of the Constitution, it is vital that a law is not vague, as vagueness leads to arbitrariness.

80. It was held ***In Re The Bureau of Rehabilitation Bill SCSD 54/2022 – 61/2022*** at pages 9 -10 that;

> *Vague provisions prevent persons from understanding the ambit of the law. Citizens will not have the knowledge of what is permissible and what is not. Governmental authorities cloaked with powers under vague provisions will not know the ambit of their powers and as such the implementation of such powers would become necessarily arbitrary. As was held by this Court in the* ***Prevention of Terrorism (Temporary Provisions) Amendment Bill [SC (SD) Application Nos. 13-18/2022****]:*
>
> *"When a provision of law is vague, it would only benefit the wrongdoer. Such a provision would not uphold the Rule of Law" [at page 22).*
>
> *"This Court has stated time and again that vagueness must be avoided in the bills in order to make such provisions consistent with Article 12(1) of the Constitution" [at page 23]*
>
> *In assessing whether the provisions of a bill are vague or lack clarity, the question before this Court would be whether the bill has been drawn up with the amount of clarity and precision as would enable a reasonable person to discern which actions are forbidden, or which actions are required. If the operation and boundaries of the bill in question cannot be identified without resorting to guesswork, then the provisions of the bill would be vague, and therefore arbitrary. Even if the provisions of the impugned Bill are unambiguous, if it fails to provide adequate safeguards in the exercise of such*

power, that too will be arbitrary. Thus, provisions that are vague and those that do not have adequate safeguards violate Article 12(1) of the Constitution.

In considering the application of a bill or its provisions, it is only plausible and real-world possibilities that would be entertained by this Court. The threat of potential abuse should not be based on fanciful hypotheses, and should always be guided by the perspective of the proverbial reasonable person. There should be a realistic possibility that the provisions of the Constitution would be abused through the provisions of the law. In such a situation, this Court undoubtedly possesses the jurisdiction to consider such possibilities, and would not have to wait for any actual or imminent infringement. The need for this Court to be proactive and vigilant is underscored by the absence of post- enactment review.

81. In describing the impact of vague regulations on Article 12, it was held in ***Joseph Perera v Attorney General (1992) 1 Sri L.R. 199 (at page 230)*** -

> *"Regulation 28 violates Article 12 of the Constitution. The Article ensures equality before the law and strikes at discriminatory State action.* ***Where the State exercises any power, statutory or otherwise it must not discriminate unfairly between one person and another. If the power conferred by any regulation on any authority of the State is vague and unconfined and no standard or principles are laid down by the regulations to guide and control the exercise of such power, the regulation would be violative of the equality provision because it would permit arbitrary and capricious exercise of power which is the antithesis of equality before law. No regulation should clothe an official with unguided and arbitrary powers enabling him to discriminate…*** *There is no mention in the regulation of the reasons for which an application for permission may be refused. The conferment of this arbitrary power is in violation of the constitutional mandate of equality before the law and is void. The exercise of the basic freedom of expression cannot be made dependent upon the subjective whim of the Police, without offering any standard of guidance.* ***Where power is entrusted to a State official to grant or withhold permit or licence in his uncontrolled***

discretion, the law ex facie impinges the fundamental rights under Article 12."

82. Similarly, in ***Palihawadana v The Attorney General (1978-80) 1 Sri L.R. 65***, Sharvananda J (as he then was) held ***(at page 71)*** -

> *"It is not a reasonable classification but an* ***arbitrary selection where selection is left to the absolute and unfettered discretion of the executive Government "with nothing to guide or control its action"*** *(State of West Bengal v. Anwar Ali (1). For in such a case, the difference in treatment rests solely on the arbitrary selection by the Executive.* ***If the statute does not disclose any government policy or object and confers on the Executive authority to make selection at pleasure, the statute would be held, on the face of it, to be discriminatory.*** *If, however, the legislative policy is clear and definite and, as an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such a case, the power given to the executive body would impose a duty on it to classify the subject matter of the legislation in accordance with the objectives indicated in the statute. The discretion that is conferred in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy to effectuate which the discretion is given.*
>
> *A discriminatory purpose is not presumed. It must be shown, unless it is apparent on the face of the Act. The possibility of abuse of a statute otherwise valid does not impart to it any element of invalidity. The converse must also follow, and* ***a statute which is otherwise invalid as being unreasonable cannot be saved by it being administered in a reasonable manner.****"* **(emphasis added)**

83. The vague wording of Clause 3 of the Bill does not meet this standard. It is subject to interpretations which could easily be used to abuse the law, and crackdown on any kind of dissent. For instance;
    - A person who protests outside the embassy of Israel demanding a two-state solution to the presently ongoing crisis may be said to be 'infringing on the sovereignty' of another country. In the process, if the person lights firecrackers, spray paints a wall or even joins the protest while infected with Covid – 19 but fails to wear a mask, that person can fall within the definitions of terrorism.
    - A person who protests against a corrupt or inept regime, and demands the resignation of the executive president may be said to be intimidating part of the population or 'infringing on the sovereignty' of Sri Lanka, in as much as the executive president is seen as a repository of the peoples sovereign power. In such instance, if during protest property is damaged or even an act of theft is committed, then that person can fall within the definition of terrorism.

84. This is not to condone the destruction of property or any of the other acts that fall within sub clause (2) of clause 3. It is however important to recognize that all destructive behaviors are not terrorism and should not be treated as such. This would only allow the State to enforce the draconian regime of anti – terror law and procedure on persons of their choosing.

85. It is respectfully submitted that these examples;

    a. Are not improbable, considering the manner in which the PTA and laws like the ICCPR Act have been used in the past.
    b. Even if the courts may acquit a person after trial in such extreme cases, it does not prevent the law being used to intimidate, detain and otherwise harass person prior to the trial stage,
    c. Even the fear of getting caught up in this regime can have a chilling effect, resulting in the suppression of the freedom of expression and the right to protest.

86. Thus, due to the vague and overbroad nature of these sections, it is likely that this law would be used to stifle the freedoms of expression, movement and peaceful assembly.

87. Therefore, the Petitioners state that this clause violates Articles 12(1), and 14(1)(a), (b) (c) and (h) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

Clauses 31 Detention Orders

The category of persons against whom detention orders can be issues is overbroad and vague

88. Your Lordships' Court would appreciate that a detention order can be issued where the Secretary to the Ministry of Defense 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." [Clause 31(1)(b)]

89. It is respectfully submitted that the phrase "suspect... has concerned in committing an offence" is overbroad. Your Lordships' Court would appreciate that the following are also offences identified in the Bill;

Clause 5 – Person who attempts, abets or conspires to commit an offence under section 3, or does any act preparatory to the commission of an offence under section 3.

Clause 6 - supports or directs, at any level, the activities of or recruits, entices or encourages any person to be a member of or a cadre of a proscribed terrorist organization or movement.

Clause 7(b)- possesses an article for the purpose of commission, preparation, or instigation of the offence of terrorism referred to in section.

Clause 8 - who harbours, conceals, or in any other manner, wrongfully or illegally prevents, hinders or interferes with the identification, arrest, custody or detention of a person

90. As such all of the foregoing (Clause 5 to 8) would come within "suspect has committed... an offence under this Act" of Clause 31(1)(b)].

91. In these circumstances it is respectfully submitted that the phrase "suspect **has concerned in committing an offence"** is so overbroad that it would include a wide variety of persons who have no tangential connection to the offences.

92. Your Lordships' Court however has the benefit of seeing how the use of executive detention under the PTA was for decades used and abused. As was determined in the case of **In Re The Sri Lanka Broadcasting Authority Bill** (SC/SD 1/1997 - 15/1997) (Decisions of the Supreme Court on Parliamentary Bills, Vol VII, page 79 at 101) cited "***These things may not happen, but they might happen because they are permitted. The evils to be prevented are those that might happen.***"

93. Having seen evidence of the abuse of executive detention orders in the past, the abuse of the same is and evil that very likely will happen, and thus one to be prevented.

Issuance of Detention by Secretary to the Ministry of Defense is a arrogation of the Judicial Power of the People by the Executive

94. According to this Clause, the Inspector General of Police (**IGP**) or an officer not below Deputy Inspector General of Police (**DIG**) who has been authorized to do so by the IGP, can make an application to the Secretary to the Ministry of Defense, and based on the grounds in sub clause 31(2), the Secretary to the Ministry of Defense can issue such detention order for a period of up to two months.

95. This initial detention order FOR UPTO 2 MONTHS is made without the requirement of judicial approval for the same, meaning that it is an executive detention.

96. The question before Your Lordships' is whether a functionary of the executive has the power under the constitution to place an individual in administrative detention for a period of two months, based on a request by another functionary of the executive without having to satisfy a member of the judiciary that reasonable grounds exist for the deprivation of such liberty.

97. In doing so Your Lordships' Court will have to decide if making that decision is part of judicial power or executive power.

98. It is respectfully submitted that a long line of decisions of Your Lordships' Court has held that detention and deprivation of liberty is to be pursuant to a judicial determination.

99. ***In re MARK ANTONY LYSTER BRACEGIRDLE 39 NLR 193*** at pg 209 Per Abrahams C.J

"There can be no doubt that in British territory there is the fundamental principle of law enshrined in Magna Carta that ***no person can be deprived of his liberty except by judicial process****."* ***(emphasis added)***

100. In ***Tilakaratne v Wickramasinghe (1999) 1 S.L.R. 372****,* ***(at pages 382-383)*** -

"Issuing a warrant is a judicial act involving the liberty of an individual and no warrant of arrest should be lightly issued by a Magistrate simply because a prosecutor or an investigator thinks it is necessary. It must be issued as the law requires, when a Magistrate is satisfied that he should do so, on the evidence taken before him on oath*. It must not be issued by a Magistrate to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor."* **(emphasis added)**

101. In ***Danny v Sirimal (2001) 1 S.L.R. 29***, it was held ***(at page 35)*** -

"I must express my concern over Magistrates issuing orders of remand, mechanically, simply because the police want such orders made. *I cannot do better than to quote the words of my brother, Dheeraratne, J., said in connection with Magistrates issuing warrants of arrest (in the case of Mahanama Tillakaratne v. Bandula Wickramasinghe). Magistrates should not issue remand orders "to satisfy the sardonic pleasure of an opinionated investigator or a prosecutor" (at pg. 382).* ***Remanding a person is a judicial act and as such a Magistrate should bring his judicial mind to bear on that matter before depriving a person of his liberty****.."* **(emphasis added)**

102. In ***In Re Poisons, Opium and Dangerous Drugs (Amendment) Bill SC SD 1/1984 [Decisions of the Supreme Court on Parliamentary Bills 1984-1986 Volume II at page 8]*** Your Lordships' Court held that;

We have examined the provisions of the Bill "An Act to Amend the Poisons, Opium and Dangerous Drugs Ordinance". We are of opinion that the provisions of Clause 13 of the Bill amending Section 83 (1) of the Act are inconsistent with the provisions of Article 3 read with Article 4 (c) of the Constitution in that it provides that bail cannot be granted "except with the sanction of the Attorney-General". This is a fetter on, and in effect a power of control over, Judicial Power of the Court. ***The granting of bail is an exercise of judicial power which can only be controlled or reviewed by a higher court.*** *Such power cannot be given to the Attorney-General or a non-judicial body. We are therefore of opinion that the said provisions require to be passed by a two-third majority referred to in Article 83 of the Constitution and approved by the People at a Referendum. Or else section 83 (1) of the Bill should be deleted entirely.*

103.The Hon. Attorney General cited the judgement of ***Kumaranatunga V. Samarasinghe, Additional Secretary, Ministry Of Defence And Others 1983 2 SLR 63*** *t*o advance the argument that the decision to detain an individual is NOT a judicial act.

104. With regard to this submission of the Hon. Attorney General it is respectfully submitted that;

(a) The said judgement was in 1983, and Your Lordships' Court has developed over a period of time as seen in the judgements / determinations of Your Lordships' Court cited above (paragraph 85 - 88) in these written submissions.

(b) In the said case, Your Lordships' Court was considering the validity of a detention order issued in terms of Emergency Regulations promulgated in terms of the Public Security Ordinance.

(c) Such Regulations are only in operation for a limited period of time whereas the impugned Bill would put in place a permanent scheme which will operate until the provision is repealed.

105. The power and discretion to make orders restricting a person of their liberty is a judicial power. Allowing the executive to unilaterally make detention orders is a usurpation of such judicial power.

106. It must be borne in mind that it is in the interest of the people, who are sovereign, that this power has been vested in the judiciary. The restricting of a person's liberty has serious consequences on the life of a person, and to do so wrongfully would be an immense injustice. It is thus assumed that a judicial mind would be applied when deciding that liberty should be deprived in that manner.

107. The Hon. Attorney General also sought to argue that Article 13(4) of the Constitution supports his argument that the power of detention is NOT a judicial Act.

108. Article 13(4) of the Constitution states that;

> "that no person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law. The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial, shall not constitute *punishment*.

109. As such it is respectfully submitted that Article 13(4) of the Constitution **ONLY** states that the arrest, holding in custody, detention or other deprivation of personal

liberty of a person, pending investigation or trial, shall not constitute *punishment* . it makes no declaration as to the nature of such detention (i.e. whether it is a judicial act or not).

110. Just because specific acts are not a punishment for the purposes of Article 13(4) it DOES NOT automatically follow that such acts are NOT judicial acts / judicial powers. Judicial powers/ actions are much broader than only imposing punishments. As such something which does NOT amount to a punishment can still come within the rubric of judicial power.

111. Your Lordships' Court would also appreciate that, Article 13(4) is couched in language that confers a right on a person. Whereas the Petitioner's argument relates to the powers granted by the Constitution to each arm of government.

112. As such it is respectfully submitted that the scheme of administrative detention contemplated by Clause 31 of the Bill is inconsistent with Article 3 and Article 4 of the Constitution and thus can only be enacted with a special majority of the Members of Parliament voting in favour of the said Bill in addition to such being approved by the people at a referendum.

113. While the Bill provides grounds for which the detention orders can be made, these grounds are vague and overbroad, and do not really provide real guidance for the issuance of these executive orders.

114. As has been cited above, Your Lordships' Court has clearly held that any vague or overbroad provision would violate Article 12(1) of the Constitution.

115. It is thus submitted that this clause amounts to a violation of Article 12(1) of the Constitution.

Clause 42 - Access to Counsel

116.Sub clause 42(1) of the Bill deals with a person's access to an Attorney – at – Law when they have been detained or remanded in terms of the Bill. This sub clause provides that;

> *An Attorney-at-Law representing a person remanded or detained under this Act, shall have the right of access to such person and to make representations on behalf of such person,* ***subject to such conditions as may be prescribed by a regulation made under this Act*** *or as provided for in other written law.*

117.The Sinhala version of the Bill reads as follows;

> 42. (1) මේ පනත යටතේ රිමාන්ඩ් භාරයේ තබාඇති හේරඳවාතබාඇති සැකකරුවකු නියෝජනය කරන යම් නීතිඥවරයකුට මේ පනත යටතේ සාදන ලද නියෝග මගින් නියම කෙරී ඇති කෙන්දේසි හේවෙනත් යම් ලිඛිත නීතියක විධිවිධාන සලසාඇති ආකාරයට එවැනි තනත්තකු වෙත ප්‍රවේශ වීමට සැළැම තනත්තානියෝජනය කිරීමට අයිතිවාසිකම තිබිය යුතු ය.

118.The wording of this clause opens up to the possibility that access to a lawyer in situations of detention or remand under the Bill will be based on enabling regulations made under this Act.

119.Access to an Attorney – at – Law is integral to ensuring the safety of a detained person, and also to ensure a fair trial. Subjecting this right to regulations that may be prescribed under the Act is concerning, and no scope should be permitted for the restricting of such a right.

120.Further, this clause only provides protection to persons ‘remanded’ or ‘detained’ under the Act. However, there may be instances where a person is deprived of their liberty, in circumstances that do not fall within the definition of remand or detention. For instance, prior to making a remand order in terms of clause 28 of the Bill, a person may be in the custody of an officer. In such instances, to be deprived of access

to an Attorney - at - Law, would amount to a serious breach of the Fundamental Rights guaranteed to a person.

121.The right to access a counsel, and the converse, a counsel's right to access their client, while not directly recognized in our Constitution, is a right that the Courts have placed value on.

122.In the case of ***Hondamuni Chandima Samanmalee de Zoysa Siriwardena and other v Inspector Malaweera Police Station and others SCFR 242/2010 SCM 30th April 2021*** (page 30-31), it was held that;

Although the present case was anterior to the publication of the 'Police (Appearance of Attorneys-at-Law at Police Stations) Rules, 2012' in Gazette Extraordinary No. 1758/36 of 18. 05. 2012 which provided guidelines to the Police regarding interacting with Attorneys-at-Law within the precincts of police stations, the rules agreed upon in the Mohotti case (supra) would be applicable to the present case. In my view the Rules referred to have only restated the Fundamental Rights enshrined in the Constitution and referred to them expansively with the objective of enlightening the police officers of the need to respect Fundamental Rights. The effect of the said rules is that every person who enters a police station or similar premises should be treated with dignity and politeness by the police. Attorneys-at-Law who represents the interests of their clients and are in the exercise of their professional duties too are entitled to courteous and proactive treatment. Needless to say, even in the absence of any binding rules, these are basic human decencies any public servant owes a fellow citizen, in their interactions.

123.Further, in an order made in the case of ***Malka Denethi v K.S.K Rupasinghe SCFR 411/2021 S.C.M 22.11.2022 at page 7-8*** Their Lordships' made several directions, including requiring the Inspector General of Police to establish a regulatory framework , *inter alia*, '*Permitting a suspect who is under investigation by the Police for having committed an offence and in the custody of the Police, to have access to an Attorney-at-Law while such suspect is in Police custody.'*

124.The right to access a lawyer is recognized as a valuable right for multiple reasons, and for the benefits of this right to be enjoyed, this right must be facilitated from the earliest stage, and not just from the point of a trial. Integrally, an Attorney - at - Law is able to ensure that a client in remand or detention is not abused or treated in an inhumane manner, and in fact, a diligent Attorney - at - Law may even be a deterrent on police officers who may otherwise mistreat a detainee.

125.Therefore, the Petitioners state that this clause is inconsistent with Articles 11, 12(1), and 13(3) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

Clause 79 – Proscription Orders

126.Clause 79 of the Bill makes provision for the making of 'Proscription Orders'.

127.This clause permits the President to make Proscription Orders, on the recommendation of the Inspector General of Police, or on a request of a foreign country.

128.When an organization has been subject to a proscription order, there are severe restrictions that it would be subject to, including prohibitions on membership, conducting of meetings and discussions, and on the utilization of funds.

129.An order can be made for a period of one year, and extended indefinitely thereafter, provided that each extension is made for one year at a time.

130.However, no grounds are provided to indicate the basis on which a proscription order may be made.

131.Clause 79(1) provides that this power given to the President is *'notwithstanding anything in any other law*'. This would allow the President to override protections provided for in other laws.

132.Further, the same sub-clause 79(1) allows the President to make such order when he or she 'has reasonable grounds to believe that any organization is engaged in any act amounting to an offence under this Act, *or is acting in an unlawful manner prejudicial to the national security of Sri Lanka or any other country*'.

133.However, Clause 3 of the Act which defines the offence of terrorism provides for a situation where an act listed in subclause 3(2) is done with the intention of '*propagating war or, violating territorial integrity or infringement of sovereignty of Sri Lanka or any other sovereign country*'. The inclusion of the phrase acting in an unlawful manner prejudicial to the national security of Sri Lanka or any other country' in Clause 79(1) suggests that this goes above and beyond similar actions which would amount to the offence of terrorism.

134.This would give the President wide discretion in making "Proscription orders" against organisations.

135.Clause 79(6) allows the President to cancel or review a Proscription Order on the basis of representations made by an aggrieved organisation or person. This suggests that at the time of making the initial order, the President is not required to give a hearing to the person or organisation prior to subjecting them to such an order.

136.Additionally, Clause 79(6) allows representations being made by a person or organisation subject to such order, but does not specify that such representations can be made by an Attorney - at - Law or other representative.

137.It is vital for such additions to be made, especially in light of the fact that there are prohibitions on;

(a) "lobbying and canvassing on behalf of such organisation" [Clause 79(3)(i)]

(b) The mobilisation of bank accounts and other financial depositories of such organisations [Clause 79(3)(e)] and

(c) Working with such organisations. [Clause 79(3)(f)]

138. Such orders may result in the violation of rights guaranteed under Article 14(1)(a), (b), (c), (d), (e) or (f) of the Constitution.

139. Therefore, the Petitioners state that this clause is inconsistent with Articles 12(1), 14(1)(a), (b), (c), (d), (e) and (f) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

Clause 81 – Curfew Orders

140. Clause 81 of the Bill makes provision for the making of 'Curfew Orders'.

141. This Clause permits the President to make Curfew Orders for an indefinite period of time, provided that they are made for no longer than 24 hours at a time and have a period of three hours between curfew periods.

142. However, the grounds on which such orders can be made are broad, and vague, allowing the President wide discretion when making such orders.

143. The freedom of movement, guaranteed under Article 14(1)(h) of the Constitution, and the basis on which such right can be restricted is limited to the circumstances described in Articles 15(6) and 15(7) of the Constitution.

144. Restrictions on the freedom of movement issued in such situations can amount to a society that has lost the taste of freedom, in the jaws of abuse of authority. This must be considered in light of how illegal curfew orders have been abused in recent times,

with Presidents declaring curfew in their own interest, and not in the interest of the public at large.

145. Furthermore, Sri Lanka also has international human rights obligations, under Article 12 of the International Covenant on Civil and Political Rights, which recognizes that freedom of movement can be restricted only on the basis of law to attain specific goals which includes the protection of public order. Such restrictions must be consonant with all other rights. The General Comment on Article 12 adopted at the sixty-seventh session of the United Nations Human Rights Committee on the 2nd of November 1999 stipulates:

> *To be permissible, restrictions must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized in the Covenant* (Clause 11 of General Comment No.27).

146. The grounds for issuance of curfew orders in the impugned Bill go beyond the permitted restrictions described in the Constitution.

147. Therefore, the Petitioners state that this clause is inconsistent with Articles 12(1) and 14(1)(h) of the Constitution, and therefore cannot be enacted into law, except if approved by a two-thirds vote of the whole number of the Members of Parliament in favour as required by the Constitution.

Clause 82 – Prohibited Places

148. Clause 82 of the Bill provides for the power to declare 'Prohibited Places'.

> "82 (1) For the **purposes of this Act**, the President 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 place of public use or any other location to be a prohibited place** (hereinafter referred to as the "Prohibited Place").

149.This Clause allows the President, on the recommendation of the Inspector General of Police or the Commander, respectively of, Army, Navy or Air Force or the Director General of Coast Guard, to declare a place to be a 'Prohibited Place'.

150.This order would apply to public places or "**or any other location**" which can include a private premises as well.

151.When a place is declared a prohibited place, restrictions are not limited to entry into the place but can also **prohibit photographing, videoing or making sketches of the place**.

152.This provision enables broad powers to be exercised over both public and private places. However, the only conditions imposed on the exercise of such power are;

(a) the requirement of 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;

(b) Such order be for the "purposes" of the impugned Bill.

153.It is respectfully submitted that the term "purposes" of the impugned Bill is broad and vague. There is no provision of the impugned Bill which specifies what the purposes of the Bill are.

154.In the absence of such a specific provision, these orders can be made for a wide variety of reasons and would result in broad and arbitrary powers vested with the executive. It is respectfully submitted that such broad powers would be inconsistent with **Article 12 of the Constitution**.

155.Your Lordships' would also appreciate that the said clause does NOT require the President to be satisfied that a reasonable basis exists to promulgate such an order, independent of the recommendation from Inspector General of Police or the

Commander, respectively of, Army, Navy or Air Force or the Director General of Coast Guard.

156.It is respectfully submitted that the justification for the President in promulgating such an order cannot simply be that "the Inspector General of Police or the Commander, respectively of, Army, Navy or Air Force or the Director General of Coast Guard recommended I do so"

157.The President has to independently make up his own mind that such a recommendation is justifiable and a reasonable basis exists to give effect to such a recommendation.

158.In the absence of a specific provision which specifies the need for such independent forming of an objective opinion by the President, it is respectfully submitted that clause 82 of the Bill would be inconsistent with **Article 12(1) and 30(1) of the Constitution**.

159.Furthermore, for the reasons set out above, the said Clause is vague and overbroad and can be used to arbitrarily restrict the freedom of movement, and may also restrict any or all of the other rights **guaranteed under Article 14(1) of the Constitution**.

160.Therefore, the Petitioners state that this clause is inconsistent with Articles 12(1), 14(1)(a), (b), (c), (d), (e), (f), (g), (h) and (i) and 30(1) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

Clause 90 - Regulation making power

161.Clause 90(1) provides that;

"The President may make regulations, for the purpose of carrying out or giving effect to the purposes,principles and provisions of this Act".

162.It is respectfully submitted that nowhere in the provisions of the impugned Bill are the purposes and principles of the Bill specified and/or prescribed.

163.Your Lordships' attention is drawn to Article 76 (3) of the Constitution which provides that;

(3) It shall not be a contravention of the provisions of paragraph (1) of this Article for Parliament to make any law containing any provision empowering any person or body to make subordinate legislation **for prescribed purposes**, including the power (**emphasis added**)

164.It is respectfully submitted, that the phrase "purposes, principles… of this Act" DO NOT amount to a prescribed purpose. In this respect Your Lordships' attention is drawn to **In re COLOMBO PORT CITY ECONOMIC COMMISSION Bill SC SD 4, 5, 7, 23 of 2021** wherein Your Lordships determined at page 39;

> *"Clauses 52(3) and 52(5) of the Bill reads:*
>
> *"(3) Upon a business being so identified as a Business of Strategic Importance, exemptions or incentives as provided in this Part may be granted thereto, in so far as it relates to its operations in and from the Area ofAuthority of the Colombo Port City. In the case o f tax related exemptions, such exemptions may be granted, either in full or part, and from all or any of the enactments set out in Schedule II hereto. "*
>
> *"(5) Regulations may be made prescribing any further guidelines as may be necessary on the grant of exemptions or incentives, as provided for in this Part of this Act. "*
>
> ***The Bill as it stands now does not provide for any guidelines in the granting of exemptions or incentives. Neither the individual exemptions***

> ***nor incentives go before Parliament for approval****. Clauses 52(5) and 71(2) (p) as it stands now presupposes that there are guidelines in the Bill for the grant of such exemptions or incentives when there is none.* ***Accordingly, Clause 52(3) read with Clauses 52(5) and 71(2)(p) of the Bill are inconsistent with Articles 148 of the Constitution read with Articles 3, 4 and 76 of the Constitution***. (emphasis added)

165. It is respectfully submitted that the provisions of Clauses 52(3) and 52(5) of the Port City Bill are far more specific than Clause 90 of the impugned Bill. Yet your Lordships' Court was pleased to determine that it would be inconsistent with, i*nter alia, Article* 76 of the Constitution.

166. It is respectfully submitted that a prescribed purpose means a specific purpose. There can be no doubt about what its contents are. There is no specificity as to the "purposes, principles" of this Bill.

167. The Hon. Attorney General, predictably sought to justify the said Clause stating that the "purposes, principles" of this Bill can be identified based on the long title of the Bill.

168. To this end emphasis was placed on the Judgement of Your Lordships' Court in ***Ravindra Kahanda Kumara Weragama vs. M.A.S. Weerasinghe S.C. Appeal No. 55/2017 reported in SCM 07.12.2021.*** It is respectfully submitted that in the said case Your Lordships' Court;

(a) recognised that the long title was an **aid to construction** (see pg 4). In anyevent the determination of the said case ;

(b) Disposed of the said cased based on an interpretation of S. 28 and S. 29 of the Agrarian Development Act No. 46 of 2000.

The question to be determined in the said case was "Has the Commissioner General of Agrarian Development (Respondent-Respondent) the legal authority to impose conditions when he declares a land not to be a paddy land under section 28(1) of the Agrarian Development Act No. 46 of 2000"

Your Lordships' Court held that "Upon a careful examination of sections 28 and 29 of the Act, it is clear that they deal with determining whether a land is a paddy land and the identification of paddy lands which can be cultivated with paddy and other crops."..... "Accordingly, I hold that sections 28 and 29 of the Act does not empower the Commissioner-General of Agrarian Development to impose conditions on owner cultivators or occupier of any agricultural land as to its use.

169. In ***Maersk (Pvt) Ltd vs. Minister of Port & Aviation 2012 1 SLR 9*** and ***Officer in Charge of CID vs. Soris 2006 3 SLR 375*** Your Lordships' Court affirmed the view that the long title should be resorted to as an aid to interpretation when there is ambiguity in the Act.

170. As such it is respectfully submitted, that the Argument of the Hon. Attorney General that the long title should be referred to is a concession / admission that Clause 90 of the Bill is ambiguous and is in violation of Article 12(1) and Article 76(3) of the Constitution.

171. Therefore, the Petitioners state that this clause is inconsistent with Article 12(1) and Article 76(3) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

Conclusion

172. For the foregoing reasons, the Petitioners respectfully submit that the impugned clauses of the Bill cannot be passed with a simple majority, and must be passed with a two-thirds vote of the whole number of the Members of Parliament and in some instances, approved by People at a Referendum, as required by Article 83(a) of the Constitution. Morefully, it is submitted that;

(a) Clause 3 of the Bill is inconsistent with Articles 12(1), and 14(1)(a), (b) (c) and (h) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution

(b) Clause 31 of the Bill is inconsistent with Article 3 and Articles 4 and 12(1) of the Constitution and thus can only be enacted with a special majority of the Members of Parliament voting in favour of the said Bill in addition to such being approved by the people at a referendum.

(c) Clause 42(1) of the Bill is inconsistent with Articles 11, 12(1), and 13(3) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

(d) Clause 79 of the Bill is inconsistent with Articles 12(1), 14(1)(a), (b), (c), (d), (e) and (f) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

(e) Clause 81 of the Bill is inconsistent with Articles 12(1) and 14(1)(h) of the Constitution, and therefore cannot be enacted into law, except if approved by a two-thirds vote of the whole number of the Members of Parliament in favour as required by the Constitution.

(f) Clause 82 of the Bill is inconsistent with Articles 12(1), 14(1)(a), (b), (c), (d), (e), (f), (g), (h) and (i) and 30(1) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

(g) Clause 90 of the Bill is inconsistent with Articles Article 12(1) and Article 76(3) of the Constitution, and prejudicially impacts Articles 3 and 4 of the Constitution and

therefore cannot be enacted into law, except if approved by People at a Referendum in addition to a two-thirds vote of the whole number of the Members of Parliament in favour as required by Article 83(a) of the Constitution.

On this 3rd day of February 2024

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