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Prevention or Creation of Terrorism?
The Sri Lankan Prevention of Terrorism Act
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Human Rights Law Review

I. Introduction

The tyrannical Sri Lankan Prevention of Terrorism Act (“PTA”) has been in effect for over forty years, allowing for continued abuse of power by the Sri Lankan government.¹ Created right before the outbreak of a twenty-six-year-long civil war in 1979, the PTA authorizes the Sri Lankan government to arbitrarily detain citizens without warrants for up to eighteen months; use torture to extract confessions; and target protesters, minority groups, and political opponents.² The PTA creates a breeding ground for numerous human rights violations with no accountability for the officials who commit human rights abuses.³ The international community has historically criticized the draconian law; the pressure has led to promises by the Sri Lankan government to repeal the PTA since the end of the Civil War in 2009.⁴ The promises of real change, however, have failed to materialize.⁵ Since the Easter Sunday terror attacks and the election of President Gotabaya Rajapaksa in 2019, meaningful reform seems almost impossible.⁶ As a result of international criticism, the Sri Lankan government amended the PTA in March of 2022; however, the amendment failed

¹ *In a Legal Black Hole: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act*, HUMAN RIGHTS WATCH (Feb. 7, 2022), <https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>.

² *Id.*

³ *Sri Lanka: Routine Police Torture Devastates Families: Victims Spend Years in Futile Efforts to Obtain Justice*, HUMAN RIGHTS WATCH (Oct. 23, 2015), <https://www.hrw.org/news/2015/10/23/sri-lanka-routine-police-torture-devastates-families>.

⁴ HUMAN RIGHTS WATCH, *supra* note 1.

⁵ *Id.*

⁶ *Id.*

to meet any of the UN reform criteria.⁷ Through these failures, coupled with the recent use of the PTA to arrest political opponents and protesters, it has become apparent that the Sri Lankan government has no interest in stopping the human rights violations allowed and encouraged by this law.⁸

Framing the PTA through the lens of a decades-long violent civil war, the continued fear of terrorism, and rampant discrimination from the civil war is essential to understanding how and why the law is still being used. This article will make it apparent that Sri Lanka must repeal this oppressive law to comply with international law, demonstrating that repealing the PTA is essential to the survival of Sri Lanka's democracy and the nation's continued success. This will be done by analyzing the origins of the Sri Lankan Civil War; how terrorism continues to affect the Sri Lankan government and public; recent abuses under the law; amendments to the PTA; the current economic and political strife; international pressures for reform; the PTA's violations of international law; and the different solutions that the international community can take to help protect the Sri Lankan people's rights.

II. Understanding the Prevention of Terrorism Act

The Prevention of Terrorism Act was enacted originally as a temporary measure in 1979 in response to a looming civil war that broke out three years later in 1983.⁹ The Sri Lankan Civil War lasted twenty-six years, making it one of the longest civil wars in modern Asian history.¹⁰ Despite the war ending in 2009, the conflict still haunts the economy, politics, and people of Sri Lanka. Lingering fears of terrorism from the war have allowed for discriminatory and

⁷ *Sri Lanka: End Use of Terrorism Law Against Protesters*, HUMAN RIGHTS WATCH (Aug. 31, 2022), <https://www.hrw.org/news/2022/08/31/sri-lanka-end-use-terrorism-law-against-protesters>.

⁸ HUMAN RIGHTS WATCH, *supra* note 1.

⁹ *Id.*

¹⁰ *The Sri Lankan Conflict*, COUNCIL ON FOREIGN RELATIONS (May 18, 2009), <https://www.cfr.org/background/sri-lankan-conflict>.

authoritative policies like the PTA to remain active, opening the door for the Sri Lankan government to commit grave human rights abuses in the name of preventing terrorism.¹¹ The failure to reform the PTA to UN standards and the recent use of the PTA against peaceful protesters make it apparent that the Sri Lankan government will not repeal the law anytime soon.¹²

A. *Origins of the Sri Lankan Civil War*

The Sri Lankan Civil War was a conflict between two groups: the Sinhalese majority that controlled the government, and the Liberation Tigers of Tamil Eelam insurgents, which sought a separate state for the Tamils.¹³ The Sinhalese people are an ethnic group of Sri Lanka and comprise around 74% of the population on the island.¹⁴ The Sinhalese people primarily speak Sinhala.¹⁵ It is estimated that the Sinhalese people arrived in Sri Lanka in the late sixth century, hailing from northern India.¹⁶

The Tamil minority only makes up around 15% of Sri Lanka's population.¹⁷ The Tamil people primarily speak Tamil.¹⁸ There are two groups of Tamils, the Ceylon Tamils, and the India Tamils.¹⁹ The Ceylon Tamils are descendants of Tamil who immigrated from south India around the same time as the Sinhalese

¹¹ Nithyani Anandakugan, *The Sri Lankan Civil War and Its History, Revisited in 2020*, HAR. IR. (Aug. 31, 2022), <https://hir.harvard.edu/sri-lankan-civil-war/>.

¹² HUMAN RIGHTS WATCH, *supra* note 1.

¹³ *Id.*

¹⁴ *Sinhalese People*, ENCYCLOPEDIA BRITANNICA (Apr. 19, 2016), <https://www.britannica.com/topic/Sinhalese>.

¹⁵ *Id.*

¹⁶ *Sri Lanka: Countries of South Asia*, UNIV. OF WIS. CTR. FOR SOUTH ASIAN OUTREACH (Jun. 2, 2016, 1:32 PM), <https://southasiaoutreach.wisc.edu/wp-content/uploads/sites/757/2016/06/Sri-Lanka.pdf>.

¹⁷ *Tamil People*, ENCYCLOPEDIA BRITANNICA (Dec. 13, 2017), <https://www.britannica.com/topic/Tamil>.

¹⁸ *Id.*

¹⁹ *Sri Lankan Tamils*, MINORITY RTS. GRP. INT'L (Mar. 2018), <https://minorityrights.org/minorities/tamils/>.

people.²⁰ The Indian Tamils are descendants of recent immigrants, with many being laborers brought during British occupation.²¹

Despite the cultural difference between the two groups, some origins of the conflict can be traced back to British occupation when Sri Lanka was known as Ceylon.²² Sri Lanka gained independence from the British in 1948 and began veering toward civil war soon after.²³ The Tamils were favored throughout British occupation, likely because Tamil communities also existed in other British colonies such as India, South Africa, and Singapore.²⁴ During British rule, Tamil communities benefited from more opportunities like broader commercial networks and English language schools, providing Tamils with more civil service and professional opportunities.²⁵ In a 1985 report on economic problems and communal conflict in Sri Lanka, the CIA suggested that British favoritism towards the Tamil communities caused the Sinhalese community to feel threatened by the Tamil people's prosperity during British rule.²⁶

After independence from the British in 1948, Sri Lanka was still known as Ceylon.²⁷ The Sinhalese population began to climb into the upper ranks of the Ceylon government, leading to the enactment of several controversial and discriminatory acts in the lead-up to the civil war.²⁸ Quickly after independence, the Ceylon government passed the Ceylon Citizenship Bill, which stipulated that anyone wishing to obtain citizenship had to prove that their

²⁰ *Id.*

²¹ *Id.*

²² *Sri Lanka*, ENCYCLOPEDIA BRITANNICA (Dec. 18, 2022), <https://www.britannica.com/place/Sri-Lanka>.

²³ COUNCIL ON FOREIGN RELATIONS, *supra* note 10.

²⁴ Anandakugan, *supra* note 11.

²⁵ *Id.*

²⁶ *Id.*; *Economic Problems and Communal Conflict in Sri Lanka*, CIA (Feb. 1, 1986) <https://www.cia.gov/readingroom/document/ciاردp06t00412r000505150001-4>.

²⁷ ENCYCLOPEDIA BRITANNICA, *supra* note 22.

²⁸ COUNCIL ON FOREIGN RELATIONS, *supra* note 10.

father was born in Ceylon.²⁹ On its face, the bill seemed to provide a means of obtaining citizenship; however, its true purpose was to deny Tamils citizenship.³⁰ Since many of the Tamils immigrated to Ceylon to work, many would return to India to give birth per custom, thus making it almost impossible for them to obtain citizenship.³¹ The Tamils who did qualify rarely had the documents necessary to prove citizenship.³² This Act left many Tamils stateless over the next three decades.³³ In 1956, the government passed the Sinhala Only Act, which made Sinhala the only official language of Ceylon.³⁴ The Act made it difficult for Tamils to access government services or public employment because most spoke Tamil or English.³⁵ In 1971, the government implemented the policy of standardization which created barriers for Tamil students, such as requiring them to achieve higher exam scores than Sinhalese students to attend Ceylon Universities.³⁶ In 1972 the government officially changed the country's name from Ceylon to Sri Lanka.³⁷ Throughout this period, the Sinhalese government implemented many controversial and discriminatory acts toward the Tamil community, leading to growing ethnic tension.³⁸

In 1976 Velupillai Prabhakaran formed the Liberation Tigers of Tamil Eelam ("LTTE"), intending to create a separate Tamil state

²⁹ Roshan De Silva Wijeyeratne, *Citizenship Law, Nationalism and the Theft of Enjoyment: A Postcolonial Narrative*, 4 TEXT LAW CULTURE 37 (1998) <https://ro.uow.edu.au/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1234&context=ltc> [https://perma.cc/GC23-CJ6D].

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Sinhala Only Bill 1956*, ENCYCLOPEDIA BRITANNICA (Jul. 20, 1998), <https://www.britannica.com/event/Sinhala-Only-Bill>.

³⁵ *Id.*

³⁶ Anandakugan, *supra* note 11

³⁷ *Id.*

³⁸ COUNCIL ON FOREIGN RELATIONS, *supra* note 10; Anandakugan, *supra* note 11; De Silva Wijeyeratne, *supra* note 29.

in the northern and eastern parts of the island.³⁹ The LTTE began a campaign of violence against the Sri Lankan state by targeting law enforcement and politicians.⁴⁰ In 1983, the LTTE killed thirteen soldiers in an army convoy ambush, triggering the civil war.⁴¹ The attack resulted in riots that caused the death of 2,500 Tamils.⁴²

The Sri Lankan Civil War was long and violent.⁴³ It is estimated that around 100,000 people were killed during the war.⁴⁴ Both sides heavily relied on terrorism and violence throughout the war, leading to the LTTE earning the designation as a terrorist organization by numerous countries, including the United States.⁴⁵ The LTTE remains the only terrorist group to assassinate two heads of state. At one point during the war, the LTTE was a leader in suicide terrorism worldwide.⁴⁶ Both sides' significant use of terrorism throughout the war has left lasting effects on Sri Lanka, contributing to the continued use of the PTA.⁴⁷

At first, both the Sinhalese and the Tamils were against the enactment of the PTA.⁴⁸ However, with the violence of the war and increasing terrorism, many Sinhalese began supporting the PTA, seeing it as key to preventing LTTE terrorism.⁴⁹ The Sri Lankan government relied on the PTA during the war to detain those suspected or accused of involvement with the LTTE or other

³⁹ COUNCIL ON FOREIGN RELATIONS, *supra* note 10.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Lyse Doucet, *UN 'Failed Sri Lanka Civilians', Says Internal Probe*, BBC (Nov. 13, 2012) <https://www.bbc.com/news/world-asia-20308610>.

⁴⁴ *Id.*

⁴⁵ COUNCIL ON FOREIGN RELATIONS, *supra* note 10.

⁴⁶ Robert A. Pape, *The Strategic Logic of Suicide Terrorism*, 5 AM. POL. SCI. REV. 343 (2003).

⁴⁷ Thevarajah, Mayooraan, *Terrorism Redefined: The Place of the Prevention of Terrorism Act of 1979 in Post-War Sri Lanka*, UNIVERSITY OF SUSSEX, 1, 15 (May 23, 2019) <http://dx.doi.org/10.2139/ssrn.3595720>.

⁴⁸ *Id.*

⁴⁹ *Id.*

militant or terrorist groups.⁵⁰ The majority of these detainees were of the Tamil minority and many were subjected to the PTA's abusive provisions, such as being arbitrarily detained for long periods of time, being subjected to torture, and numerous other abuses.⁵¹ The exact details of these detentions are hard to determine due to the nature of the civil war.

B. The Development of the Prevention of Terrorism Act From 1979 to 2019

The Prevention of Terrorism Act was passed in 1979 as a wartime prevention measure, just three years shy of the outbreak of the Sri Lankan Civil War.⁵² The PTA was presented to Parliament, debated, and enacted in one day.⁵³ The PTA was only meant to be a temporary law when it was passed; however, these provisions became permanent in 1982, right at the outbreak of the War.⁵⁴

At the time of enactment and to this day, the PTA gives law enforcement unparalleled powers to search, arrest, and detain suspects with little to no constitutional protection.⁵⁵ Under the PTA, authorities may conduct arrests, searches and seizures, and detain any person whom they suspect has committed "unlawful activities" without a warrant.⁵⁶ A person may be detained for up to eighteen months without the due process that other Sri Lankan laws require.⁵⁷ These periods of detention are renewed by order by the Minister of Justice every three months.⁵⁸ Many of these detainees have been held on remand for years awaiting trial.⁵⁹ Due to the nature of the

⁵⁰ *Id.*; HUMAN RIGHTS WATCH, *supra* note 1.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Prevention of Terrorism Act (Temporary Provisions) 24 §6 (July 1979).

⁵⁷ Prevention of Terrorism Act (Temporary Provisions) 24 §9 (July 1979). *See* Amendment Bill, detention now reduced to twelve months.

⁵⁸ *Id.*

⁵⁹ HUMAN RIGHTS WATCH, *supra* note 1.

PTA, it allows for little accountability towards law enforcement acting under the PTA, thus promoting ongoing abuses such as torture, sexual abuse, forced confessions, police violence, and systematic discrimination.⁶⁰

The PTA allows for criminal charges for speech-related offenses, meaning that authorities can arrest anyone deemed to be causing or intending to cause "racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups."⁶¹ Confessions given to law enforcement under the PTA are almost always admissible, leading to law enforcement using various methods, such as torture, that are illegal under other Sri Lankan laws to extract a confession.⁶² Additionally, interrogations under the PTA can occur in "any place for the purpose of interrogation."⁶³ Notably, government officials are considered immune from prosecution if they were acting in good faith or fulfilling an order under the PTA.⁶⁴ This provision allows for an open path for officials to commit grave human rights abuses such as torture, sexual abuse, and physical and mental abuse.

The Sri Lankan government used the draconian and savage provisions outlined in the PTA to detain hundreds of people throughout the war.⁶⁵ While many other wartime emergency regulations have either lapsed or been repealed after the war ended in 2009, the PTA is still in effect.⁶⁶ In 2015 progress in repealing the law seemed to be making headway with the election of former

⁶⁰ HUMAN RIGHTS WATCH, *supra* note 7.

⁶¹ HUMAN RIGHTS WATCH, *supra* note 1; *supra* note 56.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Sri Lanka: Repeal Draconian Security Law: Failure to Meet Pledges on Accountability, Counterterrorism Reforms*, HUMAN RIGHTS WATCH (Jan. 29, 2018), <https://www.hrw.org/news/2018/01/29/sri-lanka-repeal-draconian-security-law>.

⁶⁵ HUMAN RIGHTS WATCH, *supra* note 1.

⁶⁶ *Id.*

President Maithripala Sirisena.⁶⁷ President Sirisena pledged to repeal the law during his administration from 2015 to 2019 and investigated human rights violations committed by law enforcement in the name of the Act.⁶⁸ In that same vein, in 2015, the Sirisena administration agreed to a resolution at the UN Human Right Council to take steps to protect rights in Sri Lanka.⁶⁹ One of the steps was to repeal the PTA.⁷⁰ The Sirisena administration drafted a new Counter Terrorism Act to replace the PTA, but this was never adopted, and the PTA was never repealed.⁷¹

The year 2019 caused a renewed spark in the use of the PTA. In 2019, former President Maithripala Sirisena's successor, Gotabaya Rajapaksa, was elected.⁷² Rajapaksa was previously the Defense Secretary under former President Mahinda Rajapaksa, his brother's leadership from 2005 to 2015.⁷³ During this time, Gotabaya Rajapaksa was directly responsible for the Sri Lankan military.⁷⁴ He used this power to commit numerous war crimes, such as indiscriminate attacks, summary executions, and rape.⁷⁵ President Rajapaksa rejected the pledge to repeal the PTA and instead ramped up its use, primarily targeting religious and ethnic minorities, political opponents, and protesters since his election.⁷⁶ Another factor in the uptick in using the PTA was the Easter Sunday Bombings on April 21, 2019.⁷⁷ These bombings killed more than 260 people and injured several hundred others throughout Sri

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Bharatha Mallowarachi, *Sri Lankans Demand Justice Three Years After Easter Massacre*, PBS NEWS (Apr. 17, 2021), <https://www.pbs.org/newshour/world/sri-lankans-demand-justice-three-years-after-easter-massacre>.

Lanka.⁷⁸ The bombers targeted churches and hotels celebrating Easter throughout the island.⁷⁹ The bombings have been accredited to Islamic terrorists, creating the perfect platform to begin reusing the PTA.⁸⁰

C. The Rajapaksa Regime's Ongoing Human Rights Violations Under the Prevention of Terrorism Act and New Amendments to the Act

Since 2019 the PTA has been used particularly against Muslims, protesters, and free speech.⁸¹ Notably, in April 2020, a prominent Muslim lawyer, Hejaaz Hizbullah, was arrested under the PTA.⁸² He was initially accused of assisting in the Easter Sunday Bombings; however, when those charges were proven false, he was charged with causing "communal disharm."⁸³ Hizbullah's lawyers told Human Rights Watch that some students alleged they were forced to testify that Hizbullah incited violence at an event hosted at their school.⁸⁴ These testimonies led to the arrest of at least five other men.⁸⁵ The lawyers for these men have alleged that they were tortured into giving false confessions.⁸⁶ All the men have been denied private access to their lawyers and are all still in custody awaiting trial.⁸⁷

In May 2020, Ahnaf Jazeem, a twenty-six-year-old Muslim poet, was arrested under the PTA for a speech-related offense.⁸⁸ The poet was accused of promoting religious extremism in his 2017

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Sri Lanka: Free Rights Activist*, HUMAN RIGHTS WATCH (July 28, 2021), <https://www.hrw.org/news/2021/07/28/sri-lanka-free-rights-activist>.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ HUMAN RIGHTS WATCH, *supra* note 1.

book.⁸⁹ Jazeem alleged in a newspaper interview when he was released on bail after two years in prison that the police “kept [him] handcuffed and isolated for 14 days. They forced [him] during this time to deliver a confession.” Jazeem said they threatened to keep him in prison for 15 or 20 years and to arrest his fiancé.⁹⁰ He stated, “that is how they threatened a confession out of me.”⁹¹

In 2019, a Tamil doctor was arrested after serving as a medical witness in human rights cases.⁹² Dozens of journalists and protesters have also been arrested.⁹³ In November 2020, a Tamil journalist Murugupillai Kokulathasan was arrested after creating social media posts commemorating events related to the civil war.⁹⁴ Another journalist Keerthi Ratnayake was arrested in August 2021 and remains in custody without a charge.⁹⁵ Ten Tamils were arrested at a memorial event after being accused of commemorating the LTTE.⁹⁶ Per the Human Rights Commission of Sri Lanka’s data, 212 PTA arrests were carried out in 2020, and 109 arrests were carried out in 2021.⁹⁷

The Rajapaksa regime has also made changes to presidential power and the PTA, such as a 2020 amendment to the Constitution that eliminated critical checks on presidential power (“2020 Amendment”), the 2021 Prevention of Terrorism Regulation No. 1

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ HUMAN RIGHTS WATCH, *Supra*, note 1; Vimukthi Vidarshana and Shree Haran, *Sri Lankan Poet Ahnaf Jazeem Jailed Under Anti-terror Laws Speaks with the WWSWS*, WORLD SOCIALIST WEB (Feb. 20, 2022), <https://www.wsws.org/en/articles/2022/02/21/slja-f21.html>.

⁹² HUMAN RIGHTS WATCH, *supra* note 1.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

of 2021 (“Regulation No. 1”), and the Prevention of Terrorism Act of 1979 Amendment Bill January of 2022 (“2022 Amendment”).⁹⁸

The 2020 Amendment was passed under a “Rajapaksa-dominated parliament.”⁹⁹ It authorizes the president to control appointments of senior judges and members of previously independent institutions.¹⁰⁰ One of these institutions was the Human Rights Commission of Sri Lanka, which was known for reporting abuses and the number of detainments authorized under the PTA. The reorganization makes it extremely difficult for human rights advocates to track the actual number of abuses under the PTA.¹⁰¹

Regulation No. 1 fanaticized the PTA.¹⁰² The Regulation is based on the idea of deradicalizing those who hold violent extremist religious beliefs.¹⁰³ This deradicalization program expanded the PTA’s power.¹⁰⁴ It allows authorities “to detain and ‘rehabilitate’ anyone who ‘by words either spoken or intended to be read or by signs or by visible representations’ causes the commission of violence or ‘religious, racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups.’”¹⁰⁵ These individuals would not be tried in court but instead be detained at a reintegration center for up to one year without due process; the defense minister, currently the President, can extend detention for a second year without a written report.¹⁰⁶

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² HUMAN RIGHTS WATCH, *supra* note 1; Gazette of the Democratic Socialist Republic of Sri Lanka No. 2218/68 (March 12, 2021), http://www.documents.gov.lk/files/egz/2021/3/2218-68_E.pdf [<https://perma.cc/XRQ7-S2WT>].

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Sri Lanka has faced mounting pressure from the international community to repeal the PTA.¹⁰⁷ In 2017 Sri Lanka committed to being a part of the European Union's ("EU") Generalised Scheme of Preferences Plus ("GSP+") program.¹⁰⁸ The GSP+ program is a one-way trade preference program consisting of the full removal of duties on 66% of tariff lines on a variety of products.¹⁰⁹ It is contingent on the country's commitment to ratify and implement several international conventions on human rights, labor conditions, the environment, and good governance.¹¹⁰ In compliance with these conditions, the Sri Lankan government announced its commitment to reforming the PTA.¹¹¹ In an effort to comply with the standards, the Sri Lankan Parliament amended the PTA on March 22, 2022.¹¹² The 2022 Amendment reduced the maximum pretrial detention without the opportunity to apply for bail from eighteen months to twelve months and provided methods that may expedite trials.¹¹³ The amendment also replicated the requirement to inform the now president-controlled Human Rights Commission of Sri Lanka of new detention and allowed for monthly inspection of prisoner welfare.¹¹⁴

While the reforms in the 2022 Amendment are a step in the right direction, the 2022 Amendment failed to rise to international standards. In particular, these changes failed to meet five "necessary prerequisites" set out by seven UN special rapporteurs in December of 2021 to bring Sri Lanka's counter-terrorism legislation into compliance with Sri Lanka's international human rights

¹⁰⁷ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁰⁸ *Joint statement of the 23rd meeting of the EU-Sri Lanka Joint Commission*, (Jan. 25, 2021) <https://mfa.gov.lk/23rd-meeting-of-the-eu-sri-lanka-joint-commission/>.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² HUMAN RIGHTS WATCH, *supra* note 1.

¹¹³ *Id.*

¹¹⁴ *Id.*

obligations.¹¹⁵ The necessary prerequisites and the failure to meet these standards will be detailed later in this article. With the failure to meet UN guidelines and the Rajapaksa regime's changes to presidential power and the PTA, it is apparent that the Sri Lankan government has no desire to repeal the abusive provisions of the PTA.¹¹⁶ This has become ever more apparent considering the growing arrests of protesters in recent months.¹¹⁷

D. The Economic Crisis and 2022 Protests

Sri Lanka's economic crisis has also contributed to the use of the PTA.¹¹⁸ In 2019 Rajapaksa enacted massive tax cuts shortly after his election.¹¹⁹ Government and economic corruption have been rampant throughout his regime.¹²⁰ This coupled with the pandemic in 2019, high inflation, an agricultural crisis, and the Russian-Ukraine war crippled the Sri Lankan economy.¹²¹ The subsequent economic crisis drastically impacted Sri Lankan citizens. Massive daily blackouts have occurred to save power, there have been extreme shortages of fuel, medical supplies, and essential commodities, as well as catastrophic inflation.¹²²

Despite plummeting into further crisis, the Sri Lankan government repeatedly refused help from the International Monetary Fund ("IMF") until March of 2022, likely as a result of

¹¹⁵ *Communication by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and Six Others*, UN OHCHR, LKA7/2021, (Dec. 9, 2021) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26863> [<https://perma.cc/2SAP-VFED>].

¹¹⁶ HUMAN RIGHTS WATCH, *supra* note 1.

¹¹⁷ *Id.*

¹¹⁸ Kai Schultz, *How a Powerful Dynasty Bankrupted Sri Lanka in 30 Months*, AL JAZEERA (Apr. 28, 2022), <https://www.aljazeera.com/economy/2022/4/28/how-a-powerful-dynasty-bankrupted-sri-lanka-in-30-months>.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

civil unrest throughout the island.¹²³ Organized and spontaneous protests ignited throughout the country, most with the same central message, attributing the economic crisis to the government and calling for the removal of President Rajapaksa.¹²⁴ The Sri Lankan government and the Rajapaksa administration responded in an authoritarian way to the protests, arbitrarily detaining hundreds of protestors for "terrorism" under the PTA.¹²⁵

Protests started on March 15, 2022, throughout the island.¹²⁶ Tens of thousands of protesters gathered outside President Rajapaksa's house, demanding his resignation.¹²⁷ Protests outside the President's home occurred again on March 31 through April 1; the demonstrations were responded to violently by police who used tear gas and water cannons to disperse the crowd.¹²⁸ Nearly fifty people were injured, and forty-five people were arrested.¹²⁹ After this protest President Rajapaksa declared a state of emergency, instituting a curfew and a social media block.¹³⁰ Despite the crackdown, protests continued and are continuing to occur as of December 2022.¹³¹

On May 9, 2022, protests eventually forced then-Prime Minister Mahinda Rajapaksa, former president from 2005 to 2015

¹²³ Uditha Jayasinghe & Devjyot Ghoshal, *Sri Lanka Says it Won't Rush to IMF Despite Rising Economic Risks*, REUTERS (Feb. 11, 2022), <https://www.reuters.com/markets/rates-bonds/sri-lanka-says-it-wont-rush-imf-despite-rising-economic-risks-2022-02-11/>; (On September 1, 2022, Sri Lanka and the IMF reached a preliminary agreement.)

¹²⁴ HUMAN RIGHTS WATCH, *supra* note 7.

¹²⁵ *Id.*

¹²⁶ *Sri Lankan Protesters Demand President Quit Over Economic Crisis*, AL JAZEERA (March 16, 2022), <https://www.aljazeera.com/news/2022/3/16/sri-lankan-protesters-demand-president-quit-over-economic-crisis>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Ayeshea Perera, *Sri Lanka: Protest at President Rajapaksa's Home Turns Violent*, BBC (Apr. 1, 2022), <https://www.bbc.com/news/world-asia-60950266>.

¹³⁰ *Id.*

¹³¹ HUMAN RIGHTS WATCH, *supra* note 7.

and brother to the then-President Gotabaya Rajapaksa, to resign.¹³² After mass demonstrations on July 9, 2022, thousands of protesters stormed and occupied the office and the residence of then-President Rajapaksa who fled the country shortly thereafter.¹³³ On July 14, 2022, Rajapaksa resigned from office.¹³⁴

Prime Minister Ranil Wickremesinghe, who was appointed after Mahinda Rajapaksa resigned in May, was made the acting President after Gotabaya Rajapaksa resigned as President.¹³⁵ Per constitutional processes, Wickremesinghe was elected by Parliament as the new President on July 20, 2022, and will serve until 2024.¹³⁶ Since then, President Wickremesinghe has used authoritarian tactics to attempt to stop the protests about the economic crisis.¹³⁷ He declared a state of emergency and extended it when it lapsed on August 18, 2022.¹³⁸ Protest zones and camps have been violently cleared out, and many people involved in the protests have been detained under the PTA.¹³⁹

One of the most notable cases of recent detentions under the PTA has been the arrests of three student protesters.¹⁴⁰ Wasantha Mudalige, convener of the Inter-University Students Federation

¹³² Lauren Frayer, *The Prime Minister of Sri Lanka Resigns After Weeks of Protests*, NPR (May 9, 2022), <https://www.npr.org/2022/05/09/1097562723/the-prime-minister-of-sri-lanka-resigns-after-weeks-of-protests>.

¹³³ *Sri Lanka's Ousted President Returns Home After Fleeing*, NPR (Sept. 3, 2022), <https://www.npr.org/2022/09/03/1120916957/sri-lanka-ousted-president-returns>.

¹³⁴ *Id.*

¹³⁵ Simon Fraser, Robert Plummer, & George Wright, *Ranil Wickremesinghe: The Six-time Sri Lankan PM Who Became President*, BBC (July 20, 2022), <https://www.bbc.com/news/world-asia-61429791>.

¹³⁶ *Id.*

¹³⁷ UNHRC, *Annual Report of the United Nations High Commissioner for Human Rights: Situation of Human Rights in Sri Lanka*, Human Rights Council, 51st sess. UN DOC A/HRC/51/5 (2022).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

(“IUSF”); Hashantha Jeewantha Gunathilake, a member of the Kelaniya University Students' Union; and Galwewa Siridhamma Thero, the convener of Inter-University Bhikku Monks' Federation were all arrested following a protest on August 18, 2022.¹⁴¹ With President Wickremesinghe's direction, the three students are currently being held under the PTA.¹⁴² Per the order, the men can be held for up to ninety days in jail without evidence or bail being set.¹⁴³

The arrests of these men have sparked outrage throughout the nation and the international community, with many calling for the repeal of the PTA once again.¹⁴⁴ The Human Rights Commission of Sri Lanka stated that "no suspect exercising their fundamental rights under the Constitution should be wrongly treated as a terrorist."¹⁴⁵ The Sri Lanka Bar Association and some politicians have also condemned the detentions.¹⁴⁶ U.S. Ambassador to Sri Lanka, Julie Chung, tweeted, "Using laws that don't conform with international human rights standards – like the PTA – erodes democracy in Sri Lanka."¹⁴⁷ The EU has repeatedly emphasized Sri Lanka's obligations under GSP+ and stated that it was "[c]oncerned about reports on the use of the Prevention of Terrorism Act in recent arrests as we refer to information given [by the government of Sri Lanka] to the International Community about the de-facto moratorium of the use of PTA."¹⁴⁸

III. Violations of International Law

Despite some efforts to reform the PTA, the PTA is still being used in a way that violates international law. Thus, repealing

¹⁴¹ HUMAN RIGHTS WATCH, *supra* note 7.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

the Prevention of Terrorism Act is essential. The PTA violates numerous international laws and is detrimental to human rights in Sri Lanka, the democratic processes, the economy, and international success.¹⁴⁹ The PTA is in violation of customary international law, international human rights treaties, and several UN directives.¹⁵⁰

The PTA violates several aspects of the International Bill of Human Rights.¹⁵¹ The International Bill of Human Rights consists of the Universal Declaration of Human Rights (“UDHR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), the International Covenant on Civil and Political Rights (“ICCPR”), and its two protocols aimed at the abolition of the death penalty, the Optional Protocol to the ICCPR and the Second Optional Protocol to the ICCPR.¹⁵² Sri Lanka has signed and ratified the ICESCR, the ICCPR, and the Optional Protocol to the ICCPR.¹⁵³ The PTA also violates several other international treaties that Sri Lanka has signed, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the Optional Protocol to the CAT, and the International Convention for the Protection of all Persons from Enforced Disappearance.¹⁵⁴

The PTA also violates UN directives.¹⁵⁵ The UN first began documenting human rights abuses under the PTA in 2011.¹⁵⁶ In 2015 the Human Rights Council passed a resolution detailing steps for Sri Lanka to review and repeal the PTA to prevent further

¹⁴⁹ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁵⁰ *Id.*

¹⁵¹ *Fact Sheet No.2 Rev.1: The International Bill of Human Rights*, United Nations (1996), <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>.

¹⁵² *Id.*

¹⁵³ UNITED NATIONS, *Status of Ratification Interactive Dashboard* (2012), <https://indicators.ohchr.org>.

¹⁵⁴ *Id.*

¹⁵⁵ UN OHCHR, *supra* note 115.

¹⁵⁶ HUMAN RIGHTS WATCH, *supra* note 1.

abuses.¹⁵⁷ In September of 2021, at the forty-eighth session of the Human Rights Council, the Core Group on Sri Lanka urged the Sri Lankan government “to bring its counter-terrorism legislation in line with its international human rights obligations” and called on the Sri Lanka government to “reconsider [its] intention to introduce a rehabilitation process under the Prevention of Terrorism Act that lacks judicial oversight.”¹⁵⁸

In spite of amendments to the PTA, Sri Lanka's counter-terrorism legislation remains noncompliant with the five "necessary prerequisites" outlined in December 2021, by seven UN special rapporteurs to ensure Sri Lanka meets international human rights obligations.¹⁵⁹ These prerequisites are to: “employ definitions of terrorism that comply with international norms; ensure precision and legal certainty, especially when this legislation may impact the rights to freedom of expression, opinion, association and religion or belief; ensure preventive measures are in place to prevent and halt arbitrary detention and deprivation of liberty; ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition; and enable overarching due process and fair trial guarantees, including judicial oversight and access to legal counsel.”¹⁶⁰ Violations of these prerequisites are detailed below.

A. Defining Terrorism

Regarding the first prerequisite, the PTA nor the 2022 Amendment bill contains an adequate definition of terrorism.¹⁶¹ This blank check definition allows for people to be arrested for causing or intending to cause “racial or communal disharmony or feelings of ill-will” or interfering with “any board or other fixture

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ UN OHCHR, *supra* note 115.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*; Prevention of Terrorism Act (Temporary Provisions) 24 (July 1979).

on, upon or adjacent to, any highway, street, road or any other public place.”¹⁶²

While there is no multilateral treaty definition of terrorism in international law, the special rapporteurs stated when issuing guidance on the PTA that “counterterrorism legislation should be in compliance with human rights obligations, protection of due process, and in line with the international prohibition against arbitrary detention.”¹⁶³ Sri Lanka’s blank check definition and the PTA allow for the recent arrests of protesters, political opponents, and human rights advocates.¹⁶⁴ The PTA violates the first prerequisite to adequately define terrorism.¹⁶⁵

B. Freedom of Expression, Opinion, Association, and Religion

The freedoms of association and assembly are protected under article 20 of the UDHR, article 21 of the ICCPR, and article 22 of the ICCPR.¹⁶⁶ Article 20 of the UDHR states that “everyone has the right to freedom of peaceful assembly and association.”¹⁶⁷ Articles 21 and 22 of the ICCPR mandate that there is a right to peaceful assembly and no restriction may be placed on the exercise of this right other than what is necessary in a democratic society, like national security, public safety, public order, or the protection of the rights and freedoms of others.¹⁶⁸ The articles also mandate the right to freely associate with others.¹⁶⁹

¹⁶² Prevention of Terrorism Act (Temporary Provisions) §2 24 (July 1979).

¹⁶³ UN OHCHR, *supra* note 115

¹⁶⁴ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁶⁵ *Id.*; UN OHCHR, *supra* note 115.

¹⁶⁶ *Universal Declaration of Human Rights*, Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at Art. 20 (1948) [hereinafter *Universal Declaration of Human Rights*]; *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter *International Covenant on Civil and Political Rights*]; S. Exec. Doc. E, 95-2 (1978); S. Treaty Doc. 95-20; 6 I.L.M. 368 at Art. 21 and 22 (1967).

¹⁶⁷ *Universal Declaration of Human Rights*, Art. 20.

¹⁶⁸ *International Covenant on Civil and Political Rights*, at Art. 21 and 22.

¹⁶⁹ *Id.*

The PTA nor the Amendment Bill addresses the PTA’s criminalization of speech-related offenses.¹⁷⁰ Under section 2 of the PTA anyone deemed to be causing or intending to cause "racial or communal disharmony or feelings of ill will or hostility between different communities or racial or religious groups" can be charged with a speech-related offense.¹⁷¹ This provision of the PTA is used for the limitation of expression, opinion, association, and religion or belief. People may be arrested for anything that the government decides is considered “communal disharm.”¹⁷² This has allowed for several significant arrests that have been made under the PTA speech limitation, such as the lawyer Hijaaz Hizbullah and the poet Ahnaf Jazeem, who were mentioned earlier.¹⁷³ This same provision has allowed for the arrests of recent protesters, like the three students arrested in August 2022.¹⁷⁴ The PTA fails to “ensure precision and legal certainty, especially when this legislation may impact the rights to freedom of expression, opinion, association and religion or belief.”¹⁷⁵

C. Arbitrary Detention and Deprivation of Liberty

The Sri Lankan government has made little progress in placing measures to prevent and halt arbitrary detention and deprivation of liberty as outlined in prerequisite three.¹⁷⁶ The only significant change that has been made is reducing the period of arbitrary detention from eighteen to twelve months via the Amendment Bill.¹⁷⁷ This reduction is still a violation of international law.

¹⁷⁰ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁷¹ UNHRC, *supra* note 162.

¹⁷² *Id.*

¹⁷³ HUMAN RIGHTS WATCH, *supra* note 82.

¹⁷⁴ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁷⁵ *Id.*; UN OHCHR, *supra* note 115.

¹⁷⁶ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁷⁷ *Id.*

A large part of the PTA’s power comes from its ability to allow arbitrary arrests and detentions.¹⁷⁸ The UDHR articles 8 to 12 and ICCPR article 9 all govern the prohibition of arbitrary arrests and detentions.¹⁷⁹ The UDHR article 9 has a general prohibition against arbitrary detentions; it states that “[n]o one shall be subjected to arbitrary arrest, detention or exile.”¹⁸⁰ Further elaborating, the ICCPR article 9 states that everyone has a right to liberty and security of person.¹⁸¹ ICCPR article 9 emphasizes that anyone who is arrested shall be informed of the reason for arrest and the charges against them.¹⁸² They should be brought promptly before a judge and should “be entitled to trial within a reasonable time or to be released.”¹⁸³

Sections 6 and 9 of the PTA most notably violate these principles.¹⁸⁴ Section 6 allows authorities to conduct arrests, searches and seizures, and detain any person who they suspect has committed “unlawful activities” without an arrest warrant.¹⁸⁵ During this time, there is no judicial oversight of the detention orders, no criteria for their use, and no evidence requirement for the detention order.¹⁸⁶ Clause 4 under the 2022 Amendment states that detention orders “shall not be called into question in any proceedings or in any court of law.”¹⁸⁷ In other words, there is no opportunity for those held under the PTA to seek bail during those twelve months of detention.¹⁸⁸

¹⁷⁸ *Id.*; Prevention of Terrorism Act (Temporary Provisions) 24 §6 (July 1979).

¹⁷⁹ *Universal Declaration of Human Rights*, at art. 8-12.

¹⁸⁰ *Universal Declaration of Human Rights*, at art. 9.

¹⁸¹ *International Covenant on Civil and Political Rights*, at art. 9.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Prevention of Terrorism Act (Temporary Provisions) §6 and 9, 24 (July 1979).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*; HUMAN RIGHTS WATCH, *supra* note 1.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

A 2020 report by the Human Rights Commission of Sri Lanka found that as of September 2018, more than twenty-nine prisoners held under the PTA spent five years in pretrial detention, and eleven spent ten to fifteen years.¹⁸⁹ The Commission found that 84% of prisoners under the PTA were tortured, and over 90% were forced to sign documents in Sinhala, a language that most prisoners did not understand.¹⁹⁰ These deprivations of liberty are severe violations of the prohibition of arbitrary detention in UDHR article 9 and ICCPR article 9.¹⁹¹ The PTA fails to “ensure preventive measures are in place to prevent and halt arbitrary detention and deprivation of liberty.”¹⁹²

D. Prevention of Torture

The government has taken few steps to ensure measures are in place to prevent torture and enforced disappearance as required by prerequisite four.¹⁹³ The PTA provisions breed opportunities for torture, enforced disappearances, and violations of numerous international laws.

Torture is prohibited under article 5 of the UDHR, which states, “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”¹⁹⁴ Article 7 of the ICCPR reiterates the sentiment that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”¹⁹⁵ As mentioned earlier, the PTA also violated the CAT, the Optional Protocol to the CAT, and the International Convention for the

¹⁸⁹ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁹⁰ *Id.*

¹⁹¹ UDHR, *supra* note 180; ICCPR, *supra* note 181.

¹⁹² HUMAN RIGHTS WATCH, *supra* note 1; UN OHCHR, *supra* note 115.

¹⁹³ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁹⁴ *Universal Declaration of Human Rights*, at art. 5.

¹⁹⁵ *International Covenant on Civil and Political Rights*, at art. 7.

Protection of all Persons from Enforced Disappearance; all of which Sri Lanka is a signatory.¹⁹⁶

As previously mentioned, confessions given to law enforcement under the PTA are almost always admissible under Section 16 of the PTA, which states that "any statement made by the accused in any circumstances, and recorded in any manner, is admissible as evidence."¹⁹⁷ This has led to law enforcement using various methods, such as torture, that are illegal under other Sri Lankan laws to extract a confession.¹⁹⁸

Section 7(3) of the PTA allows law enforcement to take any person held under the Act "to any place for the purposes of interrogation."¹⁹⁹ Section 15(a) states that a detainee may "be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests [of national security or public order]."²⁰⁰ These provisions allow law enforcement officials to use inhumane means while interrogating and detaining someone.

Under Section 26, the PTA grants immunity to government officials "for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act."²⁰¹ This is in direct violation of the Convention against Torture which states that "each State Party shall ensure in its legal system that the victim of an act of torture obtains

¹⁹⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984
1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988); 23 I.L.M. 1027 (1984)

¹⁹⁷ Prevention of Terrorism Act (Temporary Provisions) §16, 24 (July 1979).

¹⁹⁸ HUMAN RIGHTS WATCH, *supra* note 1.

¹⁹⁹ Prevention of Terrorism Act (Temporary Provisions) §7(3), 24 (July 1979).

²⁰⁰ Prevention of Terrorism Act (Temporary Provisions) §15(a), 24 (July 1979).

²⁰¹ Prevention of Terrorism Act (Temporary Provisions) §26, 24 (July 1979).

redress and has an enforceable right to fair and adequate compensation."²⁰²

These dangerous provisions foster human rights abuses such as torture and forced disappearances. A Human Rights Watch report in 2013 reported instances of beatings and torture, rape, sexual abuse, genital mutilation, and electric shock torture.²⁰³ Many accounts of abuses under the PTA have been reported throughout the decades.²⁰⁴ One notable account of abuse is from the case of Barmasiri Chandraiyaer Ragupathi Sharma, a Tamil Hindu priest who was arrested in 2000 for suspected involvement in an LTTE attack.²⁰⁵ He was held under the PTA for fifteen years before being convicted and sentenced to 300 years in prison based on a confession obtained through torture.²⁰⁶ The confession was also recorded in a language that the priest did not know or understand.²⁰⁷ He is still waiting on an appeal.²⁰⁸ The PTA violates the prerequisite to “ensure preventive measures are in place to prevent torture and enforced disappearance and adhere to their absolute prohibition”.²⁰⁹

E. Due Process, Fair Trials, Judicial Oversight, and Access to Legal Counsel

The basic principles of the PTA violate due process by allowing for detention for up to twelve months before being brought to court.²¹⁰ This violates the ICCPR, which mandates that anyone arrested or detained on a criminal charge shall be brought promptly

²⁰² UN General Assembly, *supra* note 196.

²⁰³ HUMAN RIGHTS WATCH, *supra* note 1.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ HUMAN RIGHTS WATCH, *supra* note 1; UN OHCHR, *supra* note 115.

²¹⁰ Prevention of Terrorism Act, *supra* note 57.

before a judge.²¹¹ They are entitled to trial within a reasonable time or to release.²¹²

The PTA allows for no mandatory judicial oversight during these twelve months, and evidence is not needed for someone to be arrested and detained for that period.²¹³ The 2022 Amendment 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 regulations made under this Act or as provided for in other written law.”²¹⁴ The 2022 Amendment is not specific on how often a detainee can access their lawyer.²¹⁵ There is a history of lawyers who have been unable to access their clients held under the PTA, and when they do, confidentiality is rarely met due to law enforcement being present.²¹⁶ The recent student protesters' lawyers, however, were not told of their arrest until three days after and have been unable to meet privately with their clients.²¹⁷

IV. Solutions

A. Sri Lanka Action

The violations of the five prerequisites make it clear that the Sri Lankan government must issue an immediate moratorium on the use of the PTA and repeal the law.²¹⁸ The Sri Lankan government must also immediately begin reviewing all cases of current detainees

²¹¹ UN General Assembly, *supra* note 196.

²¹² *Id.*

²¹³ Fact Sheet, *supra* note 151.

²¹⁴ HUMAN RIGHTS WATCH, *supra* note 1.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Sri Lanka: Release Student Activists Arbitrarily Detained under Anti-Terror Law*, INT’L FEDERATION FOR HUMAN RIGHTS (Oct. 18, 2022), <https://www.fidh.org/en/region/asia/sri-lanka/sri-lanka-release-student-activists-arbitrarily-detained-under-anti>.

²¹⁸ HUMAN RIGHTS WATCH, *supra* note 1.

held under the PTA.²¹⁹ This review must be timely and comply with international legal standards. When crafting new counterterrorism legislation, the Sri Lankan government must ensure that the legislation enacted meets Sri Lanka's obligations under international human rights law, meaning that the Sri Lankan government must adopt the five prerequisites by the UN Special Rapporteurs.²²⁰ The Sri Lankan government must adequately investigate all allegations of torture and abuse that occurred under the PTA.²²¹ If found true, these claims must be adequately tried and compensation must be given to victims in accordance with international law and customs.²²² The Sri Lankan government must also restore the independence of the Human Rights Commission of Sri Lanka and remove those who have been credibly accused of war crimes from government service.²²³

A contributing factor to why and how the PTA was able to continue in Sri Lankan society is lingering traumas and fears from the civil war and its aftermath. This fear allowed the Sri Lankan government to violate international human rights law in the name of preventing terrorism.²²⁴ To help begin to rectify these traumas, the Sri Lankan government should investigate implementing transitional justice into its society and laws.²²⁵ This implementation would consist of upholding the four pillars of transitional justice; truth-seeking, prosecution, reparations, and institutional reforms.²²⁶ Not only should these pillars be applied to the harm that the civil war created but also to the harm that the PTA has caused.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ American Friends Service Committee, *Transitional Justice Mechanisms: Lessons Learned from Truth and Reconciliation Commissions* (Aug. 26, 2011)

²²⁶ *Id.*

Overall, it is imperative that the Sri Lankan government comply with international law and immediately repeal the Prevention of Terrorism Act. While domestic pressures are helpful; however, the main use of the PTA now is to crack down on dissent, making it extremely dangerous and difficult for Sri Lankan citizens to properly advocate for change.²²⁷ This coupled with the government and political corruption makes it seem unlikely that the PTA will be repealed without international pressure.

B. International Community Action

The international community must step up and help ensure the protection of human rights in Sri Lanka. While the Sri Lankan government should follow UN guidelines and heed the calls of the international community and their citizens to repeal the law, the lack of change despite the pressure demonstrates that the Sri Lankan government might need a substantial push to reform from the international community.²²⁸ The international community must band together to help ensure the protection of human rights.

Perhaps one of the most effective ways to force change is through conditions attached to IMF funding and to enforce the conditions that were agreed upon by Sri Lanka when signing on to the GSP+ program. Sri Lanka and the International Monetary Fund reached a preliminary agreement on September 1, 2022, to help relieve some of the financial burdens that Sri Lanka is experiencing after its economic crisis.²²⁹ The preliminary agreement will give Sri Lanka \$2.9 billion over four years.²³⁰ The IMF stated that it was focused on stabilizing the Sri Lankan economy, protecting the livelihoods of citizens, and helping spur growth.²³¹ To accomplish this, the IMF package will include major tax and energy pricing reforms, raising social spending, replenishing foreign exchange

²²⁷ *Id.*

²²⁸ HUMAN RIGHTS WATCH, *supra* note 1.

²²⁹ Jayasinghe and Ghoshal, *supra* note 123.

²³⁰ *Id.*

²³¹ *Id.*

reserves, and introducing a stronger anti-corruption legal framework.²³² While these conditions will be helpful to the Sri Lankan economy and curb some corruption in the government, without a basis of free speech and accountability, like the PTA prohibits, it is unlikely that real reforms will be achieved.²³³ Without political accountability through freedom of expression and assembly, corruption will continue to run rampant.²³⁴ To help stop political corruption and hopefully lead to a more stable economic status the IMF should include reforms or even a requirement to repeal the PTA as a condition in the IMF package.

The European Union has the perfect leverage to attempt to force Sri Lanka to comply with its human rights obligations as a member of the GSP+ program.²³⁵ The GSP+ program is designed to give developing countries a special incentive to pursue sustainable development and good governance through EU cuts on its import duties.²³⁶ The EU could use the leverage to ensure that an immediate moratorium on the use of the PTA is implemented. To help achieve this, the EU should set clear guidelines for Sri Lanka to meet its human rights commitments by repealing the PTA. This will ensure that Sri Lanka does not just superficially reform the PTA but actually implements changes to the law.

Sanctions may also help ensure that Sri Lanka does not just superficially reform the PTA. In January of 2021, UN High Commissioner for Human Rights Michelle Bachelet stated in her

²³² *Id.*

²³³ Prevention of Terrorism Act (Temporary Provisions) §2, 6, 9; HUMAN RIGHTS WATCH, *supra* note 64.

²³⁴ Daniel Lederman, Norman Loayza, and Rodrigo Reis Soares, *Accountability and Corruption: Political Institutions Matter*, THE WORLD BANK, (Nov. 2001) <https://web.worldbank.org/archive/website01241/WEB/IMAGES/11251232.PDF>.

²³⁵ Generalised Scheme of Preferences, EUROPEAN COMMISSION, https://policy.trade.ec.europa.eu/development-and-sustainability/generalised-scheme-preferences_en

²³⁶ *Id.*

report that UN member states should consider imposing targeted sanctions “against State officials and other actors credibly alleged to have committed or be responsible for grave human rights violations or abuses” in Sri Lanka.²³⁷ The sanctioning of top officials in the Sri Lankan government could help force them to push for the repeal of the PTA. Sanctions on individuals in the government would be less detrimental to the Sri Lankan economy and its everyday citizens than sanctioning Sri Lanka as a whole.²³⁸

Importantly, the international community should publicly demand compliance with international law and human rights obligations and encourage the repeal of the PTA.²³⁹

V. Conclusion

A combination of factors would be necessary for the PTA to be legitimately reformed in compliance with international standards. A powerful factor would be the continued downturn of the Sri Lankan economy and its reliance on international help from international organizations like the IMF or international trading partners like the EU; these organizations can pressure and incentivize Sri Lanka to comply with international law and reform the PTA. Continued domestic pressure will also help push the Sri Lankan government toward reform. While superficial reforms like those seen in 2020 may occur, without domestic and international pressure, particularly economic pressures, the PTA is unlikely to be seriously reformed or repealed.

The draconian Sri Lankan Prevention of Terrorism Act must be repealed to ensure the continuation of the Sri Lankan democracy. The PTA threatens the economy, political stability, and human rights of Sri Lanka. It allows for numerous human rights abuses and

²³⁷ HUMAN RIGHTS WATCH, *supra* note 1.

²³⁸ *Targeted Human Rights and Anti-Corruption Sanctions*, HUMAN RIGHTS FIRST (Sept. 19, 2022) <https://humanrightsfirst.org/library/targeted-human-rights-and-anti-corruption-sanctions-global-magnitsky/>

²³⁹ *Id.*

poses an extreme threat to Sri Lankan citizens. Freedom of speech, expression, and religion are essential to democracy. Without the ability to express dissent, corruption breeds. The PTA is used against those expressing some of their most basic rights in a democratic society. Not only does the PTA quell speech and dissent, but it is also used to target ethnic and religious minorities. Arbitrary detentions and torture under the law are colossal violations of human rights. The PTA has been in effect for over 40 years, leading to over 40 years of human rights abuses under this law, and over 40 years of fear of a law that was supposed to prevent terror. The PTA must be repealed.