

The Politics of the Prevention of Terrorism Act (PTA) and PTA Reform

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Why does Sri Lanka's Prevention of Terrorism Act (PTA) matter? What do we know about how the current Sri Lankan government is using the PTA as a tool to maintain its hold on power? In this short article, I examine the political, rather than the legal, aspects of the PTA, and attempt to situate the struggle to repeal the PTA as an essential part of a broader defence – carried out by domestic and international actors alike – of democracy and inter-religious coexistence in Sri Lanka.

Current abuses

We know that the PTA is not just a threat to individual human rights, understood as a moral issue or as an obligation under international law. It has been and remains a threat both to democratic politics and to peaceful inter-ethnic and inter-religious coexistence.

On the one hand, the PTA is being actively used by the current government – as by virtually all governments over the past forty years – to weaken and politically marginalise Tamils and Muslims. It is thus a threat to inter-ethnic and inter-religious peace. The past two years have seen, for example, the PTA used to arrest Tamils commemorating the end of war in Batticaloa¹ as well as the Muslim poet Ahnaf Jazeem.² We saw thousands of Muslims rounded up on little or no evidence after the 2019 Easter bombings – hundreds of them remain in detention.³

On the other hand, the government is regularly deploying the PTA to repress dissent and weaken the political opposition. We have seen numerous arrests of social media activists⁴ and journalists who raise questions the government finds awkward,⁵ and even the arrest of the father of a Catholic activist on highly questionable grounds.⁶

Often these two agendas come together, as we have seen in the PTA arrests of the prominent Muslim lawyer Hejaaz Hisbullah⁷ and the Muslim parliamentarian Rishad Bathiudeen,⁸ both on what appear to be manufactured connections to the Easter bombings. Former MP Azath Salley has also been jailed under the PTA on two separate occasions.⁹

[For more information on the use of the PTA by the current government, read our latest report: [Jailing Activists and Pardoning Murderers: Monitoring Ten Issues of Concern in Sri Lanka in 2021](#)]

A new and improved PTA?

The amendments to the PTA, approved by cabinet on 24 January and trumpeted by the government at all available opportunities, will, unfortunately, do nothing to prevent these abuses.

We have already seen excellent legal analyses of the government's PTA amendments from legal scholars and human rights defenders in Sri Lanka, who make clear that the improvements are marginal and do not reduce the central harms and sources of abuse in the PTA. The over broad – and therefore politically useful — definition of terrorism; the ability to hold suspects for extended periods without charge or meaningful judicial oversight; and the admissibility of confessions extorted through torture – all these key features remain unchanged.

It has been encouraging to see recent statements from both the UN High Commissioner for Human Rights¹⁰ and the European Union¹¹ that make clear the proposed changes are not enough and that much more is needed for the Sri Lankan state to be in compliance with its human rights obligations.

What has attracted less attention, however, is that the proposed changes to the PTA will do nothing to stop the government from using the PTA to target its political critics, or to scapegoat Muslims and Tamils. The government's "new and improved" PTA will thus remain a central threat to democratic politics and to political stability in Sri Lanka.

The charm offensive

The proposed amendments to the PTA play a central role in the larger and concerted international charm offensive by the Sri Lankan government launched in the middle of 2021 and coinciding with the appointment of G.L. Peiris as foreign minister. The Sri Lankan government appears to have learned from their mistake at the Human Rights Council session of February-March 2021, when their aggressive and rejectionist approach contributed to a more critical resolution than most observers had expected.

Unfortunately, when one examines the whole range of policies and proposals the Sri Lankan Foreign Ministry and Ministry of Justice are presenting on the international stage, one sees that, like their PTA reforms, they are quite minimal, and do nothing to change the deeper dynamics that the Human Rights Council has repeatedly called on the government to address.

Some examples:

- The Office for Reparations has been provided a small amount of additional money to offer in the form of compensation for war-affected families and families of the disappeared,¹² but without addressing their clear and repeated calls to learn the truth of what happened to their loved ones.
- The Office of Missing Persons so far has provided no truth to the families of the forcibly disappeared and is certain to offer no acknowledgement of state responsibility for the large-scale disappearances and civilian deaths during the years of war.¹³
- The presidential commission tasked with reviewing the findings of previous commissions of inquiry with regard to alleged war crimes has presented two interim reports to President Rajapaksa.¹⁴ To date it has offered no concrete proposals for achieving even the minimal forms of accountability promised in past government commissions, such as the Lessons Learned and Reconciliation Commission or the Paranagama Commission.
- The Office for National Unity and Reconciliation was a weak and ineffective body even under the previous government; its schedule of workshops and inter-ethnic and inter-religious events and dialogues will have little effect in a context dominated by the government's aggressive celebration of Sri Lanka as a Sinhala and Buddhist nation.¹⁵

- Even after much private land, seized by the military during the war, was returned by previous governments, more is now being stolen,¹⁶ and local communities and their political representatives are largely helpless to stop it. Even raising their voices or documenting the land grabs can be dangerous.¹⁷ The threat of detention under PTA can be a powerful weapon to silence any protestors.
- Recent ‘access to justice’ initiatives by the Ministry of Justice facilitate better access for victims and survivors to some of these limited government offerings,¹⁸ but do nothing to challenge the politicisation of the police and judiciary and loss of independence of oversight commissions, such as the Human Rights Commission.

Responding to the charm offensive

How should the UN and UNHRC states and other foreign governments understand and respond to these policies and programming by the Sri Lankan government?

States would do well to be guided by the High Commissioner’s recent finding that the government has yet to present “any credible new roadmap on transitional justice towards accountability and reconciliation” and that “reconciliation will only be achieved when supported by comprehensive transitional justice measures”.¹⁹

The European Union has recently welcomed the Ministry of Justice’s limited ‘access to justice’ programs, and is in fact providing some 18 million euros to fund reforms in the justice sector.²⁰ It is understandable that the EU, like other foreign governments concerned with stability and improved governance in Sri Lanka, is eager to support anything that promises to improve lives and strengthen democratic governance – and the Sri Lankan justice system is notoriously in need of improvement.

But it is crucial that when supporting government programs, donors and influential states be careful not to treat marginal improvements – promised by a government that has repeatedly shown its contempt for the rule of law – as if they are reforms that address the central concerns raised year after year by the High Commissioner, and by the council as a whole.

Unfortunately, there is nothing in the ‘access to justice’ initiative, or in any of the other policies currently being publicised by the Sri Lankan foreign ministry, that will affect the fundamental dynamics that have plagued Sri Lanka for decades.

Indeed, the past two and a half years of Rajapaksa governance, especially when seen in light of the ruling family’s previous ten years in office from 2005-15, make clear that the current government will never address the country’s central political challenges:

- a) to restructure the state in ways that recognise the country’s ethnic and religious pluralism, meet Tamil aspirations for an equitable share of power, and ensure the security and equal status of Muslims;
- b) to strengthen rule of law institutions and begin to reverse institutionalized impunity for the crimes of security forces, state officials, and the politically connected; and
- c) for the state to acknowledge its role in wartime atrocities, and for all communities to acknowledge the depth of suffering experienced by others.

When pressured, the Sri Lankan government will offer marginal changes and present them as major. The international community should not let themselves be an unwitting party to this strategy.

What the government is actually interested in is gathering enough international credit for its marginal reforms as to reduce international criticism and end all oversight by the Human Rights Council.

All states must be careful not to engage with the Sri Lankan government in ways that can be seen as lending international endorsement to its claims that it is genuinely working to fulfil Human Rights Council demands.

A modest preventative agenda

International engagement in Sri Lanka should work from the assumption that, under the current government, Sri Lanka's fundamental governance challenges will remain unaddressed and in need of continued long-term engagement.

Taking the lead from the High Commissioner's warning of the political dangers that come with Sri Lanka's deteriorating respect for human rights, international efforts should focus on preventing a further deterioration in the country's governance, whether through further – and possibly long-term – closure of democratic space or in the form of renewed inter-communal violence.

The aim should be to keep the peace and support policies that preserve the possibility of future governments addressing the deeper challenges.

More specifically, this will require UNHRC members and other influential states and multilateral institutions to use all available tools to:

1. Support human rights defenders, social activists, and journalists at risk, and press the government to keep democratic space open, abandon its proposed NGO law,²¹ and protect electoral integrity;
2. Press for an immediate moratorium on the use of the PTA along with the PTA's ultimate replacement by legislation that is fully compliant with international human rights norms, and highlight the increased risks of political instability that come from politicized courts and police;
3. Work against the demonisation and humiliation of Muslims and the increased risks of violent reaction this could bring. Apply the strictest possible vetting of individuals and agencies involved in any counterterrorism cooperation and avoid supporting programmes on 'preventing violent extremism' that directly or indirectly support government narratives that only Muslims – never Buddhists – can be religious extremists;
4. Keep alive the continued importance of addressing legitimate Tamil political concerns via the preservation of the 13th Amendment and elections for provincial councils at the earliest possible date; and
5. Keep alive the continued importance of accountability for wartime crimes and for the acknowledgment by the state of its own responsibility for civilian deaths and suffering. This will depend principally on action at the international level via universal jurisdiction and support for UNHCR's evidence-gathering initiative.

Endnotes

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- ¹⁶ <https://www.devdiscourse.com/article/headlines/1935960-sri-lankas-tamil-legislators-protest-governments-land-grabbing-in-northern-province>
- ¹⁷ <https://www.tamilguardian.com/content/sri-lankan-police-interrogate-tamil-journalist-reporting-sinhala-settlements-tamil-cattle>
- ¹⁸ http://www.colombopage.com/archive_22A/Feb08_1644344622CH.php
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