

3. (1) Any person who, **intentionally or knowingly**, commits any act which causes a specified in subsection (2), with the purpose of provoking a state of terror in the public a group of persons, or unduly compelling a government to do or to abstain from doing, commits the offence of terrorism. (2)(d) serious damage to any place of public use, **likelihood of danger to life or substantial economic loss**; (4) The fact that a person in any protest, advocacy or dissent ~~is not by itself a sufficient basis for inferring~~ person commits the offence. 5. (1) Any person who **does any act preparatory** to the commission of an offence under section 3 commits an offence. 9. (2) Any person who, with the knowledge, **directly or indirectly inducing** the public or any section of the public, publishes a statement or speaks any word or words, commits an offence. 16. (c) fails to provide information to a question put to him by a police officer conducting an investigation under this Act where the armed forces are deployed in an area for the purpose of maintaining public order. 26. (3)(b) where no Detention Order is placed before the Magistrate, the Magistrate shall order that the suspect be remanded. 34. (1) access to an attorney-at-law shall be ~~under necessary supervision~~. 44. (9) Any statement obtained in violation of subsection (1) shall be subject to ~~heightened judicial scrutiny~~ as to its voluntariness and admissibility.

LEGAL BRIEF

INTERNATIONAL LAW STANDARDS APPLICABLE TO COUNTER-TERRORISM LEGISLATION IN SRI LANKA

An analysis of the Protection of the State from Terrorism (PSTA) Draft Bill

ABOUT THE OMCT

The OMCT works with around 200 member organisations which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide. Together, we make up the largest global group actively standing up against torture in more than 90 countries. Helping local voices be heard, we support our vital partners in the field and provide direct assistance to victims. Our International Secretariat is based in Geneva, with offices in Brussels and Tunis.

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A. INTRODUCTION

This brief analyses the bill titled “Protection of the State from Terrorism” (PSTA), placed on the Order Paper of the Parliament of Sri Lanka on 6 October 2026,¹ in the light of Sri Lanka’s obligations under international law. It sets out the standards that international law establishes for counter-terrorism legislation, and refers to provisions of the PSTA and to the observations of United Nations (UN) human rights mechanisms where these illustrate how those standards apply.

The World Organisation against Torture (OMCT) works with over 200 member organisations to end torture and ill-treatment, assist victims and protect human rights defenders at risk, wherever they are. Together they form the largest global network actively working against torture, in over 90 countries. The OMCT works to protect the most vulnerable members of society, including women, children, indigenous peoples, migrants and other marginalised communities. To that end, it advocates with governments to change or implement their laws and policies, helps victims seek justice, and works to hold perpetrators to account.

States have a duty to protect everyone within their jurisdiction from terrorism.² The UN General Assembly has affirmed that effective counter-terrorism measures and the protection of human rights are “not conflicting goals, but complementary and mutually reinforcing”.³

The OMCT welcomes the decision to repeal the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (PTA), whose application UN human rights mechanisms have repeatedly associated with limitations of fundamental freedoms including prolonged detention without charge and with torture and other forms of ill-treatment.⁴ It also welcomes several provisions of the PSTA that strengthen safeguards compared with the PTA. For instance, suspects must be brought before a magistrate in person and in private; the Human Rights Commission of Sri Lanka must be notified of arrests and may visit places of detention unannounced.⁵ These are important steps. The analysis that follows identifies where further changes are needed for the PSTA to comply fully with Sri Lanka’s international obligations.

¹ Gazette of the Democratic Socialist Republic of Sri Lanka, Part II of 18 September 2026, Supplement (issued 22 September 2026). References in the footnotes are to clauses of the PSTA as gazetted.

² International Covenant on Civil and Political Rights (ICCPR), art. 6(1).

³ UN General Assembly, The United Nations Global Counter-Terrorism Strategy, UN Doc. A/RES/60/288, 8 September 2006, annex, Pillar IV.

⁴ See, for example, UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Ben Emmerson), end-of-visit statement on Sri Lanka, 14 July 2017, available at: <https://www.ohchr.org/en/statements-and-speeches/2017/07/human-rights-and-counter-terrorism-un-special-rapporteur-promotion>; OHCHR, Situation of human rights in Sri Lanka, UN Doc. A/HRC/63/18 (advance unedited version), 3 September 2026, para. 19, available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session63/advance-versions/a-hrc-63-18-auv.pdf>.

⁵ See, for example, PSTA, cl. 26(4)–(5) (production before the Magistrate in camera, with “any police officer who may have participated in the arrest, or who has investigated the offence” excluded), cl. 25(3) and cl. 35 (notification to the Human Rights Commission of Sri Lanka), cl. 36 (visits by the Commission “without giving any advance notice”), and cl. 56–58 (statements to be recorded by a Magistrate, subject to medical examination). See also OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part I, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

B. INTERNATIONAL LAW STANDARDS FOR COUNTER-TERRORISM LEGISLATION

Sri Lanka is a party to the International Covenant on Civil and Political Rights (ICCPR, acceded 11 June 1980) and its First Optional Protocol; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, acceded 18 February 1982); the Convention against Torture (CAT, acceded 3 January 1994); the Convention on the Rights of the Child (CRC, ratified 12 July 1991); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED, ratified 25 May 2016).

The UN Security Council requires that “any measure taken to combat terrorism comply with all their obligations under international law”, in particular human rights law.⁶ In 2023, UN Special Procedures mandate-holders made five recommendations to Sri Lanka on counter-terrorism legislation, which this brief uses as benchmarks: a precise definition of terrorism (I.), legal certainty (II.), prevention of arbitrary detention (III.), prevention of torture and enforced disappearance (IV.), and due process (V.).⁷

I. Definition of Terrorism

No treaty defines terrorism comprehensively. The UN Special Rapporteur on Counter-terrorism developed a model definition according to which a terrorist offence is any serious criminal act, that “intentionally causes death, serious bodily injury, or hostage-taking, where: a) the purpose of the conduct, by its nature or context is i. to provoke a state or terror in the public or a group of persons or to unduly compel a government or an international organisation to do or to abstain from doing any act; b) the conduct is intended to advance a political or ideological purpose, which must be a substantial purpose; and c) the conduct, given its nature or context, intentionally causes serious damage to a country or an international organisation.”⁸ The definition also provides exclusions for protest, dissent, impartial humanitarian activity, as well as acts intended to establish or re-establish democracy, constitutional Government or the rule of law, or to exercise or safeguard human rights.⁹

A mental element of acting “intentionally or knowingly” falls below the specific intent recommended by the Special Rapporteur. Consequences such as serious damage to property, infrastructure, the environment or “any electronic or automated or computerised system or network”, where they cause merely “a likelihood of danger to life or substantial economic loss”, depart from the core of violence against persons. They could include disruptive but non-violent protest, strikes or online activity.¹⁰ The UN Office of the High Commissioner for Human Rights (OHCHR) has described such consequences as “going beyond harms that are genuinely terrorist in nature”.¹¹ In addition, a

⁶ UN Security Council, resolution 1456 (2003), UN Doc. S/RES/1456, 20 January 2003, annex, para. 6.

⁷ Communication of UN Special Procedures mandate-holders to the Government of Sri Lanka, OL LKA 4/2023, 28 April 2023, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=28057>; applied to an earlier draft of the PSTA in OL LKA 1/2026, 9 February 2026, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=30742>.

⁸ UN Special Rapporteur on counter-terrorism (Ben Saul), Defining terrorism to respect and protect human rights, UN Doc. A/HRC/61/52, 8 January 2026, para. 68.

⁹ Ibid.

¹⁰ PSTA, cl. 3(2)(d) (“serious damage to any place of public use, any public property, any public or private transportation system or any infrastructure facility, which causes a likelihood of danger to life or substantial economic loss”) and cl. 3(2)(g) (“disablement, destruction of, extensive damage to, or interference with any electronic or automated or computerised system or network, including critical information infrastructure or cyber environment of domains assigned to, or websites registered with such domains assigned to Sri Lanka, which causes a likelihood of danger to life or substantial economic loss”).

¹¹ OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part II, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabil-14-10-26.pdf>.

clause stating only that protest or humanitarian work “is not by itself a sufficient basis for inferring” terrorist intent leaves protection to the discretion of arresting officers.¹² The OHCHR has recommended that terrorist acts be confined to “intentional violent acts with serious outcomes”.¹³

II. Legal Certainty

a. Preparatory Activities and Duties to Inform

Offences targeting conduct before a terrorist act are permissible, but the further they are from the actual harm, the more precisely they must be defined. UN experts recommend that such offences require a close link to a specific terrorist offence, an intention that it be committed, and penalties that reflect reduced culpability.¹⁴ Liability for “any act preparatory to the commission of” an offence, without further definition, is problematic.¹⁵

Moreover, criminal duties to inform the police must respect the journalistic privilege not to disclose information sources,¹⁶ lawyer–client confidentiality¹⁷ and the privilege against self-incrimination. That privilege requires the absence of “any direct or indirect physical or undue psychological pressure” on a suspect.¹⁸ A criminal sanction for a suspect’s failure to answer police questions could constitute a violation of these principles and privileges.¹⁹

b. Freedom of Expression

National security laws may not be used to suppress information of legitimate public interest, or to prosecute journalists, researchers or human rights defenders for disseminating it.²⁰ Anti-terrorism laws should contain an intent to incite a terrorist offence, and a resulting danger that such an offence may be committed.²¹ By analogy, the Rabat Plan of Action, which concerns incitement to hatred, identifies intent, context and likelihood of harm, including imminence, as essential to criminalising speech.²² From this it follows that offences such as “encouragement of terrorism” must be clearly defined in order not to lead to unnecessary or disproportionate interference with freedom of expression.²³

¹² See, for example, PSTA, cl. 3(4): “The fact that a person— (a) engages in any protest, advocacy or dissent or engages in any strike, lockout or other industrial action; or (b) engages in the provision of humanitarian and medical activities by humanitarian organisations in accordance with written law, is not by itself a sufficient basis for inferring that such person— (i) commits or attempts, abets, conspires, or prepares to commit any act with the intention or knowledge as specified in subsection (1); or (ii) intends to cause or knowingly causes an outcome specified in subsection (2).” OHCHR has described this as “an evidential caution, rather than an express exclusion clause of protected conduct”: OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part II, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

¹³ OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part V, recommendation 1, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

¹⁴ ICCPR, art. 15(1); Communication of UN Special Procedures mandate-holders to the Government of Sri Lanka, OL LKA 1/2026, 9 February 2026, p. 5 available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=30742>.

¹⁵ PSTA, cl. 5(1), which applies to any person who “does any act preparatory to the commission of an offence under section 3”, and cl. 14, which extends attempt, abetment, conspiracy and preparation to the ancillary offences.

¹⁶ UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 45.

¹⁷ Basic Principles on the Role of Lawyers (1990), principle 22.

¹⁸ ICCPR, art. 14(3)(g); UN Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 41.

¹⁹ See, for example, PSTA, cl. 16(c), which makes it an offence, punishable by up to two years’ imprisonment, to “fail [...] to provide information or provide [...] false or misleading information in response to a question put to him by a police officer conducting an investigation under this Act”, subject to a proviso that “such person shall not be compelled to make any self-incriminating statement”.

²⁰ UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 30.

²¹ Special Rapporteur on counter-terrorism (Martin Scheinin), Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, Practice 8, para. 32; see also UN Security Council, resolution 1624 (2005), paras. 1 and 4.

²² OHCHR, Rabat Plan of Action, UN Doc. A/HRC/22/17/Add.4, 11 January 2013, appendix, para. 29.

²³ UN Human Rights Committee, General Comment No. 34, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 46.

Offences framed around speech made with the mere “knowledge” of “directly or indirectly inducing” others, without any requirement of real danger, do not meet these standards.²⁴ So does the possession of material merely “useful” to terrorism.²⁵

c. Freedom of Association

Banning an organisation is among the most serious restrictions on freedom of association. It must be necessary and proportionate, and should be a last resort subject to independent judicial review.²⁶ There must be reasonable grounds to believe the entity knowingly participated in terrorist acts; prompt notice of the organization concerned and its factual grounds; de-listing, judicial review; and compensation for wrongful listing are other important elements that need to be respected.²⁷

Banning an organisation “engaged in any act amounting to an offence” under a law that contains overly broad definitions of terrorism and includes preparatory offences, does not reflect the above-mentioned elements.²⁸ Nor do prohibitions on being “associated with” an organisation or on “any other activity relating to such organisation”.²⁹

Moreover, blanket restrictions on peaceful assembly are per se disproportionate.³⁰ Preventive orders imposed without conviction must be necessary and proportionate in the individual case. An individualised risk assessment, a time limit, a hearing and judicial review are indispensable.³¹

III. Prevention of Arbitrary Detention

a. Judicial Control and Deprivation of Liberty

Anyone arrested on a criminal charge must be brought “promptly” before a judge.³² The UN Human Rights Committee interprets this as ordinarily 48 hours, with any longer delay “absolutely exceptional”, and 24 hours for juveniles. The lawfulness of detention must be reviewable by “a court” with power to order release, ordinarily a court within the judiciary.³³ Pretrial detention must be the exception, based on an individualised determination, and should not be mandatory for all defendants charged with a particular crime.³⁴ Security detention outside the criminal process is a severe risk of arbitrary deprivation of liberty and is permissible, if at all, only in the most exceptional

²⁴ PSTA, cl. 9(2): “Any person who, with the knowledge of directly or indirectly inducing the public or any section of the public, to commit, attempt, abet, conspire to commit or prepare to commit, an offence of terrorism, publishes or causes to be published any statement, or speaks any word or words, or makes any sign or visible representation, commits an offence under this Act.” OHCHR has noted that “inducing” is undefined and that no actual risk is required: OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026.

²⁵ PSTA, cl. 10(1)(f) (“keeps a terrorist publication in his possession”) and cl. 10(2)(b) (a publication “useful in the commission of, or attempt, abetment, conspiracy to commit or preparation to commit, the offence of terrorism”).

²⁶ Special Rapporteur on freedom of peaceful assembly and of association (Maina Kiai), UN Doc. A/HRC/20/27, 21 May 2012, paras. 75–76.

²⁷ Special Rapporteur on counter-terrorism (Martin Scheinin), Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, Practice 9, para. 35.

²⁸ PSTA, cl. 59(1) and (6). The OHCHR has noted that the PSTA does not require that the organisation be promptly informed, and that orders must state their factual grounds: OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill.

²⁹ PSTA, cl. 59(2)(a) (“any person from being a member of or associated with such organisation”) and (l) (“any other activity relating to such organisation, as may be necessary”). OHCHR has observed that the latter “could penalize the provision of humanitarian support”: OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part III, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

³⁰ ICCPR, art. 21; UN Human Rights Committee, General Comment No. 37, UN Doc. CCPR/C/GC/37, 17 September 2020, paras. 36–38.

³¹ ICCPR, arts. 12, 17, 19, 21 and 22; Communication of UN Special Procedures mandate-holders to the Government of Sri Lanka, OL LKA 1/2026, 9 February 2026, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=30742>.

³² ICCPR, art. 9(3).

³³ ICCPR, art. 9(4); UN Human Rights Committee, General Comment No. 35, UN Doc. CCPR/C/GC/35, 16 December 2014, paras. 45–47.

³⁴ ICCPR, art. 9(3); UN Human Rights Committee, General Comment No. 35, UN Doc. CCPR/C/GC/35, 16 December 2014, para. 38.

circumstances, meaning the threat must be present, direct and imperative, there must be no alternative, and there must be prompt and regular review by a court.³⁵

Mandatory detention where no order is produced does not reflect these standards.³⁶ Referring to the UN Human Rights Committee's concluding observations on Sri Lanka, the OHCHR has recommended production before a magistrate as soon as possible and ordinarily within 24 hours, with the power to assess the necessity of detention.³⁷

b. The Role of the Armed Forces

Counter-terrorism measures should, to the broadest possible extent, be taken by civilian authorities.³⁸ Arrest powers conferred on the armed forces wherever they are "deployed in an area for the purpose of maintaining public order", with custody of up to 24 hours before handover to the police, create a period outside judicial and civilian control.³⁹ The OHCHR considers that such a period creates "serious risks for potential abuse, including even of enforced disappearance", and has recommended removing the armed forces' broad arrest and detention powers.⁴⁰

IV. Prevention of Torture and Enforced Disappearance

States must take effective legislative, administrative, judicial or other measures to prevent acts of torture.⁴¹ The PSTA contains some important safeguards, including the obligation to produce the suspect before a Magistrate in-camera without the presence of the arresting officer;⁴² the obligation to notify the Human Rights Commission;⁴³ the monitoring and independent visits of places of detention by the Human Rights Commission;⁴⁴ and access to a lawyer. With regards to the latter, it is important that every person has the right to contact a lawyer of his or her choice from the moment of arrest or detention.⁴⁵ Consultations must be confidential, within sight but not hearing of officials.⁴⁶ Access to counsel "under necessary supervision" or "subject to the conditions established by written law", without further definition, may fall short of those guarantees.⁴⁷

It is moreover important to stress that, removing a detainee from the prison system into the custody of an unspecified authority, on grounds of what is "necessary or expedient" for "public order", is difficult to reconcile with article 9(3) of the ICCPR and may increase the risk of torture and other ill-treatment. Detainees must be held only in officially recognized places, registered, and able to

³⁵ Ibid, para. 15.

³⁶ PSTA, cl. 26(3)(b): "where no Detention Order is placed before the Magistrate, the Magistrate shall order that the suspect be remanded"; and cl. 29(1), under which bail for offences punishable with life imprisonment is available "only ... in exceptional circumstances".

³⁷ OHCHR, Comments on Sri Lanka's Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part V, recommendation 8, referring to CCPR/C/LKA/CO/6 (2023), para. 29(c), available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

³⁸ Special Rapporteur on counter-terrorism (Martin Scheinin), Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, Practice 3, para. 21.

³⁹ See, for example, PSTA, cl. 24(1)(c) and (2): a member of the armed forces or a coast guard officer may arrest where "the armed forces are deployed in an area for the purpose of maintaining public order or conducting counter-terrorism operations under lawful authority", and must hand the suspect to the police "forthwith and in any event within a period not exceeding twenty-four hours".

⁴⁰ OHCHR, Comments on Sri Lanka's Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part IV and Part V, recommendation 5, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

⁴¹ CAT, art. 2(1); see also art. 11.

⁴² PSTA, cl. 24(4) and (5).

⁴³ PSTA, cl. 25(3).

⁴⁴ PSTA, cl. 36.

⁴⁵ Special Rapporteur on counter-terrorism (Martin Scheinin), Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, Practice 10.

⁴⁶ UN Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 34; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN Doc. A/RES/43/173, 1988, principle 18; United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), UN Doc. A/RES/70/175, 17 December 2015, rule 61.

⁴⁷ PSTA, cl. 34(1) and cl. 40.

communicate with family and lawyers.⁴⁸ Secret or unacknowledged detention is prohibited and may amount to incommunicado detention or enforced disappearance.⁴⁹

V. Due Process and Fair Trial

No guilt may be presumed until a charge has been proved beyond reasonable doubt.⁵⁰ Statements or confessions made in detention require close scrutiny. It is the State that has to prove that statements made by the accused have been given by free will.⁵¹ Subjecting such statements to “heightened judicial scrutiny” is too low of a standard.⁵²

Moreover, everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law, and no guilt may be presumed until the charge has been proved beyond reasonable doubt.⁵³ Consequently, conditions of a punitive character may not be imposed without a judicial finding of guilty. Any confinement for “rehabilitation” is a deprivation of liberty under article 9 of the ICCPR and needs to comply with the standards proscribed under the ICCPR.

VI. Cross-cutting Requirements

a. Non-discrimination and the Protection of Minorities

Counter-terrorism laws must not discriminate on grounds of race, ethnicity, religion, language or political opinion.⁵⁴ Persons belonging to ethnic, religious or linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language.⁵⁵ Even in a public emergency, measures may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.⁵⁶ The UN Security Council has repeatedly affirmed that terrorism “cannot and should not be associated with any religion, nationality or civilization”.⁵⁷

The Committee on the Elimination of Racial Discrimination has called on States to ensure that counter-terrorism measures do not discriminate, on the grounds of race, colour, descent, or national or ethnic origin, and that non-citizens are not subjected to racial or ethnic profiling or stereotyping.⁵⁸ It has also called on States to prevent profiling by law enforcement on grounds of ethnicity or religion.⁵⁹ The Special Rapporteur on counter-terrorism has found that profiling based on ethnicity, national origin or religion is incompatible with human rights and ineffective as a counter-terrorism tool.⁶⁰

⁴⁸ ICCPED, arts. 17–18.

⁴⁹ Special Rapporteur on counter-terrorism (Martin Scheinin), Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, Practice 10, para. 38.

⁵⁰ ICCPR, art. 14(2); UN Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 30.

⁵¹ Ibid, para. 41; Special Rapporteur on counter-terrorism (Martin Scheinin), Ten areas of best practices in countering terrorism, UN Doc. A/HRC/16/51, 22 December 2010, para. 37.

⁵² PSTA, cl. 44(9): “Any statement obtained in violation of the requirements of subsection (6) [audio-visual recording], without reasonable justification accepted by the Court, shall be subject to heightened judicial scrutiny as to its voluntariness and admissibility.”

⁵³ ICCPR, art. 14(2); UN Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 30.

⁵⁴ ICCPR, arts. 2(1) and 26; ICERD, arts. 2 and 5(a)–(b). Discrimination includes any distinction that has the “purpose or effect” of impairing equal enjoyment of rights: UN Human Rights Committee, General Comment No. 18, U.N. Doc. HRI/GEN/1/Rev.1 at 26, 10 November 1989, para. 7.

⁵⁵ ICCPR, arts. 18 and 27.

⁵⁶ ICCPR, art. 4(1).

⁵⁷ See, for example, UN Security Council, resolution 2178 (2014), UN Doc. S/RES/2178 (2014), 24 September 2014, preamble.

⁵⁸ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 30 on discrimination against non-citizens, 2004, para. 10.

⁵⁹ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 36 on preventing and combating racial profiling by law enforcement officials, UN Doc. CERD/C/GC/36, 2020.

⁶⁰ Special Rapporteur on counter-terrorism (Martin Scheinin), UN Doc. A/HRC/4/26, 2007.

The risk of discrimination often arises from the combination of overly broad definitions and wide discretion. UN mechanisms have documented that the PTA was applied “disproportionately against members of the Tamil community”,⁶¹ The OHCHR has reported that individuals, “mainly from Tamil and Muslim communities”, were arrested and detained in connection with memorialisation activities and protests, and that a young Muslim man was detained under the PTA for a non-violent act of political expression.⁶² Against that background, precise definitions, judicial control and independent oversight are important safeguards against discrimination. The same applies to provisions that continue earlier bans of ethnic or religious organisations automatically, without fresh individual assessments.⁶³

b. Children

Detention of a child must be a last resort and for the shortest appropriate time.⁶⁴ The Committee on the Rights of the Child has stated that counter-terrorism laws must not lead to the unintended punishment of children. It has also stated that a child should be brought before a competent authority within 24 hours, and should have legal assistance from the outset, including during questioning, supported by a parent or appropriate adult.⁶⁵ Child justice protections that apply only after a child has been “found guilty of, and convicted for” an offence do not meet these standards.⁶⁶

⁶¹ UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (Ben Emmerson), end-of-visit statement on Sri Lanka, 14 July 2017, available at: <https://www.ohchr.org/en/statements-and-speeches/2017/07/human-rights-and-counter-terrorism-un-special-rapporteur-promotion>.

⁶² OHCHR, Situation of human rights in Sri Lanka, UN Doc. A/HRC/60/21, 28 August 2025, para. 21.

⁶³ PSTA, cl. 73(d), which continues in force, among others, the “Prevention of Terrorism (Proscription of Extremist Organizations) Regulations No. 1 of 2019” and “No. 2 of 2021”, and cl. 74, under which “proscribed organisation” includes “any organisation proscribed under the regulations relating to the proscription of organisations made under the repealed Act”. OHCHR has recommended an individualised review of all such proscriptions: OHCHR, Comments on Sri Lanka’s Protection of the State from Terrorism (PSTA) Bill, as gazetted on 22 September 2026, 13 October 2026, Part V, recommendation 14, available at: <https://www.ohchr.org/sites/default/files/documents/countries/sri-lanka/ohchr-comments-pstabill-14-10-26.pdf>.

⁶⁴ Convention on the Rights of the Child, arts. 37(b)–(d) and 40.

⁶⁵ UN Committee on the Rights of the Child, General Comment No. 24, UN Doc. CRC/C/GC/24, 18 September 2019, paras. 42, 49, 56–57, 60 and 90.

⁶⁶ PSTA, cl. 65: “The provisions of the Children’s Ordinance (Chapter 23) shall apply to any child who is found guilty of, and convicted for, an offence committed under this Act.”

C. CONCLUSION AND RECOMMENDATIONS

International law does not require a choice between security and human rights. But legislation consistent with international law obligations would:

KEY RECOMMENDATIONS

1. confine terrorism to intentional serious violence against persons, with express exclusions for protest and humanitarian action in line with international applicable standards;
2. restrict expression only through an offence of intentional incitement creating a real danger;
3. guard against discriminatory application against ethnic and religious minorities;
4. ensure prompt judicial control (ordinarily within 48 hours, and 24 hours for children) by a court able to order release, with any detention outside the criminal process confined to the most exceptional circumstances;
5. guarantee the fundamental safeguards against torture from the outset of custody, with the burden on the State to prove voluntariness;
6. impose no punitive condition, compelled statement or confinement without a finding of guilt.

3. (1) Any person who, **intentionally or knowingly**, commits any act which causes specified in subsection (2), with the purpose of provoking a state of terror in the public, or unduly compelling a government to do or to abstain from doing, or committing the offence of terrorism. (2)(d) serious damage to any place of public use **likelihood of danger to life or substantial economic loss**; (4) The fact that a person



**International law does not
require a choice between
security and human rights.**

ABOUT THE OMCT

The World Organisation Against Torture (OMCT) works with over 200 member organisations, which constitute its SOS-Torture Network, to end torture and ill-treatment, assist victims and protect human rights defenders at risk, wherever they are. Together, we form the largest global network actively working against torture in over 90 countries.

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