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BAR ASSOCIATION OF SRI LANKA

21st October 2026

**STATEMENT ON THE PROTECTION OF THE STATE FROM TERRORISM BILL AND
THE PREVENTION OF ORGANISED CRIMES BILL**

The Bar Association of Sri Lanka (the “BASL”) notes that the Government of Sri Lanka Gazetted the **Protection of the State from Terrorism Bill** (the “PSTA”), followed by the **Prevention of Organised Crimes Bill** (“OCB”). Both Bills have since been placed on the Order Paper of Parliament.

Although both these Bills have been presented as legislative reforms, the BASL is concerned that, individually and collectively, they would confer extraordinary powers of arrest, detention and surveillance upon the Executive, curtail judicial oversight at the very stages when the protection of individual liberty is most critical, and create criminal liability with far-reaching implications for freedom of association, expression and movement.

For these reasons, the BASL raises serious concern in relation to the enactment of both Bills in their present form.

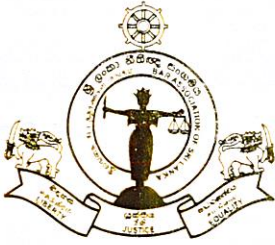
THE PREVENTION OF TERRORISM ACT AND THE RULE OF LAW

These Bills must be read against Sri Lanka’s own experience. The Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as amended (the “PTA”) was introduced as a temporary measure and has remained on the statute book for more than four decades. Under successive Governments it has been applied arbitrarily and has been used, not only against genuine threats to the State, but to detain persons for prolonged periods without trial and to silence dissent among political opponents, activists, journalists, students and members of the public. This has not been the conduct of one government. It has continued across governments of different political persuasions.

The case of Mr. Hejaaz Hizbullah, an Attorney-at-Law and a member of the BASL, illustrates how the PTA has been applied. He was arrested on 14th April 2020 and held under the PTA for 22 months (662 days) before being released on bail in February 2022. He was held for about

eighteen months before being indicted. His custody exceeded even the maximum of eighteen months that the PTA itself prescribes for detention orders, and the Court of Appeal, in ordering his release on bail, observed that the “draconian elements” of the law had been misused.¹ Powers of this kind, once granted, are used in this way, and their use has a chilling effect on lawyers, journalists, activists and ordinary citizens who might otherwise speak out.

¹ Section 9 of the PTA prescribes detention orders of up to three months at a time, to a maximum of eighteen months.



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It is in this context that the PSTA, which is intended to replace the PTA, and the OCB must be examined. A law that can be used reasonably can also be misused, and given Sri Lanka's experience the BASL cannot discount the likelihood that the same abuses will be repeated under new names. A democracy that equips its police and executive with such powers risks drifting towards a police state.

In a country governed by the rule of law, the primary object of the law is to protect the individual from the arbitrary action of the State. That is why our criminal justice system has developed the presumption of innocence and the general rule that a person accused of an offence is released on bail, unless exceptional circumstances call for otherwise.² These are not technicalities. They are what keep the power of the police and the executive under the supervision of an Independent Court. Both Bills, in different ways seek to displace them.

THE PROTECTION OF THE STATE FROM TERRORISM BILL

The BASL participated in good faith in the consultative process to prepare the PSTA, nominating Mr. Saliya Pieris, PC, and Mr. Chanaka de Silva, PC, to serve on the Committee appointed to review the PTA. However, the Bill as gazetted departs significantly from the draft approved by the Committee. The BASL's nominees have informed the BASL that these changes were not referred back to the Committee or brought to the attention of its Chairman or members before publication. The principal departures, each of which reduces judicial control at the point of arrest and detention or enlarges executive power, are:

- **Mandatory remand:** The Gazetted Bill requires a Magistrate to remand a suspect, thereby significantly restricting the Magistrate's discretion to assess the material against the suspect and determine whether remand is justified.
- **Restrictions on bail:** Bail is available only through the High Court and, in respect of offences punishable with life imprisonment, may be granted only in exceptional circumstances. When combined with mandatory remand, these provisions risk subjecting suspects to prolonged detention, even where the evidence against them is weak, while requiring them to pursue more costly and less accessible remedies before the High Court. This risks perpetuating the adverse consequences currently experienced under the Prevention of Terrorism Act.
- **Extension of detention without judicial approval:** The requirement envisaged in the Committee-approved draft for Magistrate approval of extensions of detention beyond the initial two-month period has been removed, diminishing judicial oversight over continued deprivation of liberty.

² Article 13(5) of the Constitution of Sri Lanka and the Bail Act, No. 30 of 1997, as amended.



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- **Restriction Orders:** The Gazetted Bill provides for Restriction Orders reviewable by way of revision or judicial review in the High Court or the Court of Appeal, and for a person whose movement and association are restricted for up to three (03) months at a time, the said person is left with a logistically and practically more difficult remedy;
- **Proscription of organisations:** The Gazetted Bill concentrates proscription powers in the President, departing from the Committee-approved framework, which required the Minister to have reasonable grounds for the relevant belief while reserving the making of the order to the President, with reconsideration resting with the Minister.
- **Expansion of offences, immunities and executive powers:** The Bill significantly broadens the scope of offences and immunities and permits criminal liability to be created through subordinate legislation and executive directives. The definition of a “specified person” has also been expanded to include members of Provincial Councils, thereby broadening the category of persons whose information may be treated as confidential and further extending the reach of the offences under the Bill.
- **Restriction of the safeguard for legal advice:** The protection afforded to legal advice has been narrowed, potentially excluding advisory work undertaken by members of the Bar from the intended safeguard.

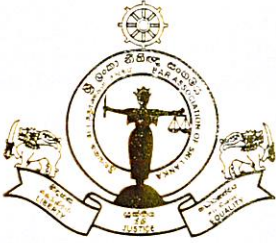
Furthermore, one of the BASL's nominees dissented during the consultation process on matters relating to the definition of terrorism, administrative detention and the proscription of organisations.

In light of these significant departures from the Committee-approved draft, and given that neither the Committee's report nor the dissent expressed by the BASL's nominee has been made public, the BASL wrote to the Hon. Minister of Justice and National Integration, Mr. Harshana Nanayakkara, on 08th October 2026, setting out its concerns and requesting that the departures be rectified, including through amendments at the Committee Stage. The BASL specifically highlighted the implications of these changes for personal liberty, judicial oversight and fundamental rights. No response has been received from the Ministry of Justice and National Integration to date.

As such the BASL considers that several provisions of the Gazetted Bill are vague and overbroad, are excessive and disproportionate to any legitimate aim.

It is in this context that the BASL filed a Special Determination Application before the Supreme Court under Article 121 of the Constitution, complaining that the aforesaid provisions adversely affect fundamental rights of the people and are inconsistent with Article 4(d), read with Article 3 of the Constitution, and the constitutional guarantees contained in Articles 10, 11, 12, 13, 14 and 14A, including the freedoms of thought, speech, assembly, association and movement; the

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protection against torture and cruel treatment; equality before the law; safeguards against arbitrary arrest and detention; and the right of access to information. The BASL has also raised the issue that in its view, that the restrictions contemplated by the Bill fail to satisfy the permissible limitations on the exercise of fundamental rights under Article 15 of the Constitution.

The jurisdiction of the Supreme Court in this procedure is confined to determining whether a Bill, or any of its provisions, is inconsistent with the Constitution, and it does not extend to whether a Bill is wise, necessary or fair as a matter of policy.

Therefore, the policy decision whether the Bill and its many draconian provisions are in fact required is one which continues to remain with the Government.

THE PREVENTION OF ORGANISED CRIMES BILL

The OCB is stated to give effect to the United Nations Convention against Transnational Organised Crime and to protect society from organised criminal groups. Whilst the BASL recognises the need to address organised crime, the BASL also notes that there was no public consultation in the preparation of the said Bill, and the BASL in particular was neither consulted nor informed of the drafting of such a law. The composition of the body that prepared it has not been made public.

THE OCB ENVISAGES A PARALLEL REGULATORY REGIME

The OCB classifies as “serious crimes” all offences punishable by imprisonment of four years or more, together with approximately fifty offences listed in the First Schedule, including copyright and trademark infringement, excise and forest offences, and gambling licensing offences.³

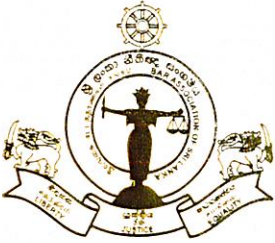
Where such an offence is committed by a member of an “organised criminal group”, the Bill’s extraordinary powers apply. That term means a structured group of three or more persons acting in concert to obtain a financial or other material benefit, and the group need not have formal roles, continuity of membership or a developed structure.⁴ These provisions would appear to be far broader than anything required to combat organised crime.

Accordingly, a person alleged to have committed such an offence may be prosecuted under the general law, where he or she is protected by the presumption of innocence and would ordinarily obtain bail. Or the same person may be arrested and held on a Detention Order issued by the Secretary to the Ministry of the Minister to whom the subject of the Sri Lanka Police Force is assigned, which the Magistrate is bound to give effect to, for periods of up to two months at a time and up to one year in all, with bail available only from the High Court.⁵ At no stage before the order

³ Section 3 and the First Schedule of the OCB (which includes the Excise Ordinance; the Forest Conservation Ordinance; the Gambling Regulatory Authority Act; and the Intellectual Property Act).

⁴ Section 66 of the OCB

⁵ Section s 17(1)(d), 20(3), 21, 22 and 23 of the OCB. Please also see Section s 25 and 27 of the OCB, under which a person on remand, or indicted, may be taken into detention on the Secretary’s order.



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is issued does a court decide whether detention is necessary. In effect, the OCB seeks to bypass the judicial process in arresting and detaining persons for any offence of this breadth.

AN ILLUSTRATION OF THE APPLICATION OCB

An illustration of the breadth of the OCB is seen in its treatment of intellectual-property offences. Copyright infringement is already fully addressed under the Intellectual Property Act, No. 36 of 2003.⁶ Yet under the OCB, even a minor copyright infringement is classified as a “serious crime” and may be prosecuted as organised crime⁷.

For example, consider an amateur band of five performing popular songs in a restaurant without permission from the songwriter or label owner. On a literal reading of the Bill, the band is a

structured group of three or more persons acting in concert for a financial benefit, and the unlicensed performance is a copyright offence listed in the First Schedule. Its members may be arrested and detained under a Detention Order issued by the Secretary for up to one year, and their instruments and equipment may be seized and subjected to forfeiture⁸. Few would regard such a band as an organised criminal group, yet nothing in the Bill prevents that result.

LIABILITY BY ASSOCIATION AND APPEARANCE

The OCB also invites courts to decide whether a person is a “member” of an organised criminal group by looking at matters unrelated to conduct, including the style of dress, hand signs, language or tattoos adopted, association with known members, attendance at physical or virtual meetings, and visits to particular premises.⁹ Because the list is open-ended, a young person with tattoos or long hair, who spends time with friends who look and dress alike, could find those features used to identify him as a member of an organised criminal group. Evidence of earlier offences committed with group members is also made admissible for this purpose.¹⁰ The risk falls most heavily on youth and marginalised communities.

PROTEST, TRADE UNIONS AND CIVIL SOCIETY

Moreover, based on how its definitions are interpreted, the Bill could encompass peaceful protests, trade union activity and civil society organisations. The First Schedule includes Penal Code offences of obstructing a public servant in the discharge of his functions and using criminal force to deter a public servant,¹¹ offences that may arise in the policing of public protest. A group that

⁶ Sections 178 to 186 of the Intellectual Property Act).

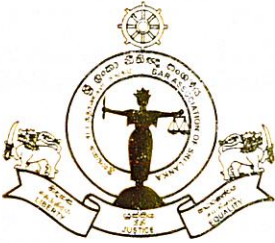
⁷ Items 33-41 of the First Schedule of the OCB

⁸ Section 17(1)(d) and (e) of the OCB read together with section 21 and 57 of the OCB.

⁹ Section 4(2)(a) to (d), (f) and (l) of the OCB.

¹⁰ Section 50 of the OCB.

¹¹ Items 49 and 52 of the First Schedule of the OCB and Sections 183 and 344 of the Penal Code.



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organises a protest, meets, including virtually, and acts in concert could be exposed to the Bill's powers.

PRESUMPTION OF INNOCENCE AND FAIR TRIAL

The Bill sets aside the rules that make confessions to police officers inadmissible and allows statements signed by an accused in police custody to be proved against him.¹² It requires a director to prove, on a balance of probabilities, that an offence by the company was committed without his knowledge or that he exercised due diligence,¹³ and denies persons sentenced under it eligibility for any early release scheme.¹⁴

These provisions erode the principle that a person is presumed innocent until proven guilty and, together with the detention regime, amount to an overreach by the Government that threatens the freedoms of association and movement and the liberty of the citizen.

Sri Lanka's experience with the PTA shows the risks of granting wide powers of arrest and detention without effective judicial oversight. These concerns must be assessed not provision by provision, but by the cumulative effect of the powers conferred and the inadequacy of the protections against their misuse. It cannot be discounted that the OCB is likely to be used as a tool to suppress public dissent and fair protest, particularly in the light of the way the PTA has been applied.

Granting such arbitrary power can be expected to produce the same abuses and the same chilling effect on dissent, association and legitimate livelihoods as the PTA has. A law presented as a measure against organised crime must not become an instrument of the police state, and its introduction risks undermining the principles of legality, due process, judicial independence and the rule of law essential to a democratic society.

THE BASL'S POSITION

The BASL recognises the State's duty to protect the public from terrorism and serious organised crime. However, the pursuit of these legitimate objectives cannot justify the erosion of constitutional safeguards or the concentration of powers that may deprive individuals of their liberty without effective and timely judicial oversight.

The power of the State to arrest, detain, investigate and prosecute must remain subject to the Constitution, the rule of law and the safeguards of due process. The courts must remain central to decisions affecting personal liberty, rather than being reduced to giving effect to decisions made by the Executive. Judicial oversight, procedural fairness and the principles of natural justice are

¹² Section s 46 and 47 of the OCB.

¹³ Section 15 of the OCB.

¹⁴ Section 58(b) of the OCB.



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indispensable safeguards against arbitrary State action, the consequences of which Sri Lanka has experienced all too often.

The BASL therefore calls on the Government to:

1. Withdraw the Protection of the State from Terrorism Bill in its present form and restore the safeguards contained in the draft approved by the Committee, including through amendments at the Committee Stage should the Bill proceed further.
2. Publish the Committee's report and the recorded dissent and explain on what basis, and on whose instructions, the gazetted Bill departed from the draft approved by the Committee.
3. Withdraw the Prevention of Organised Crimes Bill and subject any proposed replacement to full and meaningful public consultation, including with the BASL, ensuring that its scope is confined to addressing organised crime consistently with the Convention, and that arrest, remand, detention and surveillance powers remain subject to effective judicial authorisation and oversight.
4. Repeal the Prevention of Terrorism (Temporary Provisions) Act without delay, consistent with the need to safeguard fundamental rights and ensure that the criminal justice system operates in accordance with constitutional principles and the rule of law.

The BASL will continue to advance its position before the Government, Parliament and the Supreme Court, and reserves its rights in respect of the OCB, including under Article 121 of the Constitution, in furtherance of its commitment to upholding the Rule of Law, protecting fundamental rights and safeguarding constitutional democracy in Sri Lanka.

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