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இலங்கையின் பிரதம அமைச்சர்
Prime Minister of Sri Lanka

Confidential
PMO/06/03/CM/10/2017

Note to Cabinet

Policy and Legal Framework relating to the Proposed
Counter Terrorism Act of Sri Lanka

Reference is requested to the Cabinet decision no. CP/17/0640/702/003-I dated 28.03.2017 on the above.

02. The Policy and Legal Framework relating to the Proposed Counter Terrorism Act of Sri Lanka was deferred to enable the Members of the Cabinet to submit their observations on the same.

03. Accordingly, the draft Framework was further discussed with several Ministers along with the observations of the Hon. Minister of Defence.


04. The amended version of the Policy and Legal Framework relating to the Proposed Counter Terrorism Act of Sri Lanka is attached herewith as **Annex I**. Further amendments, if any, may be incorporated at the drafting stage.

05. In view of the above, the approval of the Cabinet of Ministers is sought;

a) for the attached Policy and Legal Framework relating to the Proposed Counter Terrorism Act of Sri Lanka;

and

b) to direct the Legal Draftsman to draft legislation based on the Policy and Legal Framework referred to above.


Ranil Wickremesinghe, MP
Prime Minister

24 April 2017

Policy and legal framework of the proposed Counter Terrorism Act of Sri Lanka

(Revised version of 23rd April 2017.)

To be submitted to the Cabinet of Ministers on 25th April 2017.

(I) Preamble

Whereas, terrorism has seriously threatened and injured the unity, sovereignty and territorial integrity of Sri Lanka, and has caused deaths of and serious injury to civilians, peoples representatives and public officials including members of the armed forces and the police, and has caused vast damage to Sri Lanka, including people of Sri Lanka and private property and has retarded development,

And whereas, terrorism in its various forms and manifestations is a major threat to the peace and security of the community of nations, And whereas, it is a foremost duty of the State to protect Sri Lanka and her people and property from possible future acts of terrorism and related crime,

And whereas, Sri Lanka is under obligation to enact laws to give domestic legal effect to international norms and standards relating to countering of terrorism,

And whereas, Sri Lanka is committed to and desirous of preventing, detecting, investigating and prosecuting instances of domestic and international terrorism, including acts of terrorism and acts preparatory to the committing of terrorism which may affect the security of other sovereign nations and the wellbeing of the people of such countries,

And whereas, the State is also desirous of enforcing effective criminal justice responses to terrorism, which are based on international norms and standards, and domestic needs,

And whereas, the State is committed to protecting Sri Lanka and her people as well as other sovereign nations and their people from the scourge of terrorism,

And whereas, the State is committed to the eradication of terrorism, through inter-alia timely and effective means of preventing terrorism,

and through timely detection, comprehensive investigation, fair prosecution and appropriate punishment of those concerned in the committing of acts of terrorism and other associated crimes, And whereas, the State is mindful of the need to ensure that, counter terrorism legislation is not abused in a manner that would impair the lawful exercise of Fundamental Rights, would be contrary to principles democracy and good governance and would defeat the purposes of justice, And whereas, due to the afore-stated reasons and to achieve the said objectives, the Parliament of the Democratic, Socialist Republic of Sri Lanka hereby enacts the following law.

An Act to make provision for (a) the protection of Sri Lanka's national security and the security of its' people from acts of terrorism and associated offences, (b) the protection of the unity, territorial integrity and sovereignty of Sri Lanka from acts of terrorism and associated offences, and (c) the prevention of terrorism and related offences on the national security and the security of the public, (d) the protection of other sovereign countries and territories from the scourge of terrorism, (e) the prevention of the use of Sri Lankan territory and its' people for the perpetration of terrorism overseas, (f) the prevention and detection of acts of terrorism and related offences, (g) the identification, apprehension, arrest, custody, detention, investigation, prosecution and punishment of persons who have committed acts of terrorism and other offences which would affect national security and the security of the people of Sri Lanka, and (h) matters connected therewith or incidental thereto.

(II) Introduction

- (a) This Act shall be cited as the Counter Terrorism Act, No. of 2017.*
- (b) All provisions of this Act shall come into operation upon the certification of this Act by the Speaker of Parliament.*

(c) Applicability of the Act - Provisions of this Act shall be applied and or enforced to prevent, detect, investigate and counter terrorism and associated offences, and protect the security of Sri Lanka and its' people, and the security and the people of other sovereign countries, from acts of terrorism and associated offences in the manner stated in this section. This Act shall not be used for any other purpose.

- a. Maintenance and protection of the unity, territorial integrity and sovereignty of Sri Lanka from acts of terrorism and associated offences contained herein.*
- b. Preventing, combating and responding to attacks and threats against Sri Lanka's national interests, including the security of Sri Lanka and its' people, from acts of terrorism and associated offences contained herein.*
- c. Prevention, combating and responding to attacks and threats against the security of other countries and their people from terrorism and other offences contained herein.*
- d. Preventing the use of Sri Lankan territory and its' people to perpetrate terrorism and other associated offences contained herein on other sovereign countries and territories.*
- e. Preventing the committing of offences contained in this Act.*
- f. Identification, detection, apprehension, arrest, custody, detention, investigation, prosecution and punishment of persons who are preparing to commit or have committed acts of terrorism and other offences contained in this Act.*

(d) Exclusion from criminal culpability - No action taken by any person, including any speech made or writing or other expression, in terms of the law, in good-faith and with due diligence, and (i) in the lawful exercise of a Fundamental or other Right, or (ii) in order to give effect to a statutory obligation, or (iii) in pursuance of or to give effect to a lawful order made on him, or (iv) in accordance with or to give effect to a judicial order or

any other lawful order, shall amount to an offence in terms of this Act.

(e) Provisions of this Act shall not be enforced to identify, detect, apprehend, arrest, take custody of, detain, investigate and prosecute persons who may have committed offences unrelated with acts of terrorism and other offences contained in this Act, notwithstanding the complexity, aggravated nature, seriousness of the consequences of such offences and the difficulties that may be associated with the conduct of investigations into such offences in terms of the Code of Criminal Procedure Act and other associated laws.

(f) Thematic jurisdiction of the Act Provisions of this Act shall apply in any of the following situations:

- a. Where an offence contained in this Act is committed by any person wholly or partly, in Sri Lanka.*
- b. Where an offence contained in this Act is committed by any person in or over the territorial waters of Sri Lanka.*
- c. Where an offence contained in this Act is committed by any person in the airspace of Sri Lanka.*
- d. Where an offence contained in this Act is committed on-board or in respect of an aircraft or vessel registered in Sri Lanka or belonging or used by the Government of Sri Lanka.*
- e. Where an offence contained in this Act is committed by any person wholly or partly within a diplomatic or consular mission of Sri Lanka, or the residence of the Head of the diplomatic or consular mission of Sri Lanka, or at the residence of any diplomatic or consular officer or any other employee of such mission.*
- f. Where an offence contained in this Act is committed wherever, in respect of a citizen of Sri Lanka deployed in an international peace-keeping or monitoring mission.*
- g. Where an offence contained in this Act is committed by any person wholly or partly within the office premises situated outside Sri Lanka of a statutory board of the government of Sri Lanka or the residence of an employee of such a statutory board.*

- h. Where an offence contained in this Act is committed wherever, in respect of property owned by the government of Sri Lanka.*
- i. Where an offence contained in this Act is committed wherever in respect of a citizen of Sri Lanka.*
- j. Where an offence contained in this Act is committed wherever by a citizen of Sri Lanka.*
- k. Where an offence contained in this Act is committed wherever by a person who has previously been a citizen of Sri Lanka. Provided however, provisions of this law shall be enforced in respect of such person, only if he continues to have his habitual residence in Sri Lanka, or if he does not have his habitual residence in Sri Lanka, with the concurrence of the foreign State of which he is a citizen.*
- l. Where an offence contained in this Act is committed wherever by a person who has his habitual residence in Sri Lanka.*

(III) Offences

(A) Offence of 'Terrorism'

- (a) Any person commits the offence of 'Terrorism', if that person, by any means, unlawfully or intentionally causes:*
- (i) any act of violence to any person, including his killing, attempted killing, grievous injury, or his abduction or hostage taking;*
 - (ii) endangering the life of any person, other than the person committing the offence;*
 - (iii) serious damage to the Sri Lanka, including public or private property, any place of public use, a State or governmental facility, a public or private transportation system, any infrastructure facility or to the environment;*
 - (iv) obstruction of essential services and supplies;*
 - (v) robbery, extortion or theft of or mischief to State or private property;*
 - (vi) an explosion or fire;*
 - (vii) a serious risk to the health and safety of the public or a section thereof;*

- (viii) *obstruction or damage to or interference with any electronic or automated or computerised system or network, or the cyber environment of domains assigned to or web-sites registered with such domains assigned to Sri Lanka;*
- (ix) *obstruction or damage or interference with any critical infrastructure or logistics facility associated with any essential service or supplies;*
- (x) *destruction or damage to historical, religious or cultural property or heritage;*
- (xi) *obstruction, damage or interference with any electronic, analog, digital or other wire-linked or wireless transmission system including signal transmissions and any other frequency based transmission systems;*

when the purpose of such conduct, by its nature or context, is to intimidate a population, or to wrongfully or unlawfully compel the Government of Sri Lanka or any other Government or an international organization to do or to abstain from doing any act or prevent the State from functioning, or to cause harm to the unity, territorial integrity or sovereignty of Sri Lanka or any other sovereign State.

(b) Exclusion from culpability: Any action taken by any person in good-faith in the lawful exercise of a Fundamental Right, or in pursuance of or to give effect to a lawful order made on him or in accordance with or to give effect to a judicial order, shall not tantamount to an act of terrorism. Exercise of a Fundamental Right with the intent to, or with the object of, or having the knowledge or reasonable grounds to believe that it would have the effect of, achieving any of the objectives contained in paragraph (i) above, shall not be deemed to be an instance of 'lawful exercise of a Fundamental Right'.

(c) Punishment for the offence of terrorism - Any person guilty of the offence of 'terrorism', shall upon conviction by the High Court, be liable to a term of imprisonment which may extend to imprisonment not exceeding 20 years, and to a fine, and may be subjected to the confiscation of his property. If however, as a result of the offence having been committed, any other person shall come by his death as a foreseeable consequence of his

conduct, the person convicted of having committed the offence of 'terrorism' shall be punished with imprisonment till his death.

- (d) Any person who attempts, abets or conspires to commit the offence of 'terrorism', shall be guilty of an offence, and shall on conviction by the High Court be liable to imprisonment for a period not exceeding 15 years and to a fine. If in consequence of the said abetment or conspiracy, the substantive offence of terrorism has been committed, the offender shall be punished as if he committed the offence of terrorism.*

(B) Other Offences

If any of the following offences (specified terrorist offences, aggravated criminal offences associated with terrorism, offences associated with terrorism and terrorism related offences, and abetting terrorism and terrorist organizations) is committed for the purpose of or having the knowledge or reasonable grounds to believe that it would have the effect of adversely affecting the unity, territorial integrity, sovereignty of Sri Lanka, or the national security or defence of Sri Lanka, or the security of the people of Sri Lanka, or would intimidate or terrorise a civilian population, shall constitute an offence in terms of this Part of the Act.

Explanations:

- (i) These offences are generally associated with the committing of terrorism and related to the committing of such offences, and are generally committed by members of Proscribed Terrorist Organizations.*
- (ii) The afore-stated 'purposes' of committing of the following offences, will be constituent ingredients of the said offences. Thus, the offences contained in this Part, would become culpable, only if such offences are committed for one of the afore-stated purposes:*
- (iii) These offences may be committed by members of terrorist organizations, which have not been proscribed at the time of the committing of such offences.*
- (iv) These offences may also be committed by individuals or groups of persons acting alone for the afore-stated purpose,*

without any direct or indirect connection with any Proscribed or non-proscribed Terrorist Organization. (e.g. lone wolf attacks)

- (v) *Any action taken by any person in good-faith in the lawful exercise of a Fundamental Right, or in pursuance of or to give effect to a lawful order made on him or in accordance with or to give effect to a judicial order or in pursuance of a legal obligation to do so, shall not tantamount to an offence in terms of this Part. However, exercise of a Fundamental Right with the intent to, or with the object of, or having the knowledge or reasonable grounds to believe that it would have the effect of, achieving any of the purposes contained in this Part, shall not be deemed to be an instance of 'lawful exercise of a Fundamental Right'.*

(a) Specified terrorist offences:

- (i) *Committing and attempting to commit the death, abduction, wrongful confinement, hostage taking, extortion, or criminal intimidation of any person, or any other attack on any person, which offence under the Penal Code shall carry a term of imprisonment of seven years or more.*
- (ii) *Committing an offence contained in section 8 of the Assistance to and Protection of Victims of Crime and Witnesses Act, with regard to a victim of crime or witness to the committing of an offence contained in this Act.*
- (iii) *Committing robbery, extortion, theft or mischief of or other damage to property of the State including intellectual property and State owned, controlled or regulated critical infrastructure, automated system, digital data-bases, and logistical networks associated with any essential services.*
- (iv) *Without lawful authority, importing, exporting, manufacturing, collecting, obtaining, supplying, trafficking, possessing or using firearms, offensive weapons, ammunition, explosives or combustible or corrosive*

substances or any biological, chemical, electric or electronic or nuclear weapon.

(b) Aggravated criminal offences associated with terrorism:

- (i) Commits any offence punishable in terms of sections 114, 116 to 126 and 128 to 137 of the Penal Code.*
- (ii) Commits an offence in terms of the Hostage Taking Act.*
- (iii) Commits the offence of Human Trafficking.*
- (iv) Commits any offence in terms of the Computer Crimes Act.*
- (v) Commits any offence in terms of the Payment Systems and Devices Act.*
- (vi) Commits any offence in terms of the Exchange Control Act.*
- (vii) Commits any offence relating to the trading of listed securities.*
- (viii) Committing any offence in terms of the Poisons, Opium and Dangerous Drugs Ordinance.*
- (ix) Commits any offence in terms of the Immigrants and Emigrants Act.*

(c) Other offences associated with terrorism and specified terrorist offences:

- (i) Commits any act outside the territory of Sri Lanka, including on board any aircraft or vessel, in the high seas, international air space or on the territory of any other country, for the purpose of organizing or in preparation of or attempting to or give effect to any plan to commit any offence contained in this Act.*

- (ii) *Functions or serves as a leader, member or a cadre of a proscribed terrorist organization or recruits persons to be a member or cadre of a proscribed terrorist organization.*
- (iii) *Knowing or having reason to believe that, a person is conspiring, abetting or preparing or is attempting to commit the offence of 'terrorism' or a 'offence associated with terrorism' or any other offence contained in this Act, failure to provide information regarding such conspiracy, abetment, preparation, or attempt, to the officer-in-charge of the nearest police station or to any other police officer, shall be an offence, and such offender shall be liable following conviction, to a term of imprisonment not exceeding 3 years and to a fine.*
- (iv) *Knowing or having reasonable grounds to believe that a person has committed the offence of 'terrorism' or a 'offence associated with terrorism' or any other offence contained in this Act, failure to provide information of such committing, to the officer-in-charge of the nearest police station or failure to provide information relating to the whereabouts of such person, shall be an offence, and such offender shall following conviction be liable to a term of imprisonment not exceeding 3 years and to a fine.*
- (v) *Upon a police officer questioning a person regarding the whereabouts of a person who has committed the offence of 'terrorism' or a 'offence associated with terrorism' or any other offence contained in this Act, or has conspired, abetted, prepared or attempted to commit such offence contained in this Act, and knowing of the whereabouts of such offender, fails to provide such information or provides false or misleading information, shall be an offence, and shall be liable to a term of imprisonment not exceeding 3 years and to a fine.*
- (vi) *Any person who (a) violates or acts in contravention of a lawful directive or order made in terms of this Act, or (b) wilfully fails or neglects to comply with a direction issued in terms of this Act, or (c) fails to provide information or provides false or misleading information in response to a*

requirement to provide information to a police officer conducting an investigation in terms of this Act, (d) wilfully prevents or hinders the implementation of a lawful order or directive issued in terms of this Act, or (e) prevents or obstructs enforcement of provisions of this Act, thereby commits an offence, and shall be liable to a term of imprisonment not exceeding 2 years and to a fine.

(e) Abetting terrorism, terrorists and Proscribed Terrorist Organizations:

- (i) Recruits or entices or encourages persons to join a proscribed terrorist organization or movements of which an objective is to commit terrorism or other offence contained in this Act.*
- (ii) For the purpose of aiding and abetting the committing of an offence contained in this Act, joins a proscribed terrorist organization or participates as a member or as a supporter or representative of a proscribed terrorist organization.*
- (iii) By words either spoken or intended to be read or understood or by signs or by visible representations or otherwise, instigates the committing of acts of violence or ethnic, religious, racial or communal disharmony, or feelings of ill-will or hostility between different communities or other groups so as to affect the unity, territorial integrity or sovereignty of Sri Lanka or any other sovereign country.*

Explanation: Any action taken by any person in good-faith in the lawful exercise of the Fundamental Rights to free speech and freedom of expression, or in pursuance of or to give effect to a lawful order made on him or in accordance with or to give effect to a judicial order, shall not tantamount to an act of terrorism. Exercise of a Fundamental Right with the intent to, or with the object of, or having the knowledge or reasonable grounds to believe that it would have the effect of, achieving any of the purposes contained in Part, shall not be deemed to be an instance of 'lawful exercise of a Fundamental Right'.

- (iv) *Harbours, conceals, or in any other manner, wrongfully or illegally prevents, hinders or interferes with the identification, arrest, custody or detention of a person whom the offender knows or should have had reasonable grounds to believe had committed or is committing or is preparing or attempting to commit an offence contained in this Act.*
- (v) *Commits robbery, extortion or theft of property or otherwise obtains money or any property or other material for or on behalf of a proscribed terrorist organization or any person who is preparing to commit an offence contained in this Act, to aid himself or such other person to commit an offence contained in this Act.*
- (vi) *Recruits, selects, incites, induces, forces, preaches or trains, children to join a proscribed terrorist organisation, or to commit terrorism, or any other offence contained in this Act.*
- (vii) *Voluntarily contributes money, property or material on behalf of a proscribed terrorist organization or any person, knowing or having reasonable grounds to believe that such money, property or material or the value thereof may be used to commit an offence contained in this Act, or for the purpose of evading the course of justice following the committing of an offence contained in this Act.*
- (viii) *Intentionally and unlawfully distributes or otherwise makes available any information to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not expressly advocating terrorist offences, causes danger that one or more such offences may be committed.*
- (ix) *Voluntarily and wilfully and for the purpose of advancing the objectives (to commit offences contained in this Act) of such organization, provides services to a proscribed terrorist organization.*
- (x) *Voluntarily engaging in any illegal, unlawful or unauthorised act for the purpose of gathering any 'confidential*

information', for the purpose of supplying such information to a person who is conspiring, preparing, abetting, or attempting to commit terrorism or any terrorism related offence or any other offence contained in this Act.

- (xi) Voluntarily and illegally or unlawfully or in an unauthorised manner, gathering confidential information, for the purpose of supplying such information to a person who is conspiring, preparing, abetting, or attempting to commit terrorism or any terrorism related offence or any other offence contained in this Act.*
- (xii) Providing to another person any confidential information, knowing or having reasonable grounds to believe that such information will be used by such other person to conspire, abet, attempt or commit terrorism or terrorism related offence or any other offence contained in this Act.*

Explanation: Nothing published in good-faith with due diligence for the benefit of the public or in national interest in registered print and electronic media, or in any academic publication, shall amount to an offence in terms of this section.

- (xiii) Providing any 'gratification', inducement, threat, force or any other form of influence to any other person for the purpose of encouraging, compelling or enticing such other person to commit an offence in terms of paragraphs (viii), (ix) or (x) above, or provides a gratification in consideration of such other person having committed an offence in terms of paragraphs (viii), (ix) or (x) above.*

Punishment for offences contained in paragraphs (a), (b), (c), (d) and (e) above:

- (i) Any person guilty of any contained in paragraphs (a), (b), (c), (d) and (e), shall on conviction by the High Court, if death has ensued of any other person as a reasonable foreseeable consequence of the offence being committed, be punished with*

imprisonment till the death of the offender, and be liable to a fine and confiscation of his property. If not, be liable to imprisonment to a term not exceeding 15 years, and to a fine and to the confiscation of his property.

- (ii) *Any person who attempts, abets, conspires or exhorts the commission of an offence contained in paragraphs (a), (b), (c), (d) and (e), shall be guilty of an offence, and shall on conviction by the High Court be liable to imprisonment to a term not exceeding 10 years and to a fine.*

(IV) Powers of Arrest, Custody, Detention and Investigation

- (i) *Offences to be cognizable - Unless otherwise provided, offences in terms of this Act shall in terms of the Code of Criminal Procedure Act be considered as cognizable offences.*
- (ii) *Investigation, prosecution and punishment - The committing, attempt, preparation, conspiracy and abetment to commit offences contained in this act, shall be forthwith lawfully, impartially and comprehensively investigated in good-faith, diligently and fairly prosecuted and punished in an appropriate manner, terms of this Act and other applicable laws.*
- (iii) *Who may conduct investigations - Following the receipt of information pertaining to the committing of an offence contained in this Act, or of the preparation to commit such an offence, any police officer who is an Officer-in-Charge of a Police Station or any other police officer authorised by an Officer-in-Charge of a Police Station, shall be entitled to commence and conduct an investigation into the committing of an offence or preparation to commit an offence contained in this Act.*

Provided however, where an offence or preparation to commit an offence has been committed in the presence of a police officer, or a person suspected of having committed an

offence is arrested in the immediate aftermath of the committing of an offence, it shall be lawful for the officer who arrested such person to question the person so arrested, and commence the investigation.

Provided however, such police officer shall forthwith inform the officer-in-charge of his police station, of the commencement of such investigation, and thereafter act in terms of his instructions.

- (iv) Arrest - Any police officer or any member of the armed forces or a coast guard officer, may arrest without a warrant, any person who commits, or whom he has reasonable grounds to believe has committed or has been concerned in committing an offence in terms of this Act.*
- (v) Any police officer or any member of the armed forces or a coast guard officer, may arrest any person who is reasonably believed by him to be evading arrest or fleeing from Sri Lanka following the committing of an offence in terms of this Act, or following the arrest for having committed an offence in terms of this Act, has been enlarged on bail and had thereafter violated a condition of bail.*
- (vi) Information to be provided at the time of arrest - At the time of the arrest of a person, the police officer or the member of the armed forces or the coast guard officer causing the arrest, shall inform the person being arrested, the following:*
 - a. The identity of the police officer, member of the armed forces or the coast guard officer, as the case may be.*
 - b. The substance for the reason for the arrest (allegation / offence alleged to have been committed).*
 - c. The right of the person to prompt and effective access to an Attorney-at-Law as provided in this Act.*

Every reasonable measure shall be taken to convey this information in a language understood by the arrested person. If it was not possible to convey this information to the arrested person at the time of arrest in a language understood

by him, as soon as possible, the information shall be conveyed in a language understood by him.

- (vii) *Handing over of the suspect, following arrest by a member of the armed forces or coast guard officer - Any person arrested by a member of the armed forces or by a coast guard officer, shall be handed over to the officer-in-charge of the nearest police station or to the custody of a police officer designated from time to time in that regard by the Inspector General of Police, without unnecessary delay, and in any event within a period not exceeding 24 hours.*

If the handing over of the person arrested to the officer-in-charge of the nearest police station or to the police officer designated by the Inspector General of Police referred to above, within 24 hours is not practicable due to reasons beyond the control of the person who carried out the arrest, the person arrested (suspect) shall be handed over to the officer-in-charge of any police station as soon as possible.

Provided however, if such person had been arrested outside the territorial waters of Sri Lanka or on board any aircraft or vessel, the period of time taken without avoidable delay to bring such arrested person to the nearest police station or to the police officer designated by the Inspector General of Police or to any other police station of Sri Lanka, shall be excluded from the afore-stated 24 hours.

Provided further, the member of the armed force or the coast guard officer as the case may be who carried out the arrest, shall as soon as possible notify the arrest (of the suspect) to an officer of the armed forces or to a senior officer of the coast guard (as the case may be), who has been authorised to receive such information. Such officer shall following the receipt of information regarding the arrest, forthwith inform such arrest to the officer-in-charge of the nearest police station or to the police officer designated by the Inspector General of Police to receive such information.

At the time of handing over of the person arrested (suspect) to the officer-in-charge of the nearest police station or to such other police station as provided by this section, the member of the armed force or officer of the coast guard (as the case may be) who carried out the arrest, shall make a statement to such officer-in-charge of the police station, setting out the circumstances relating to the arrest of the suspect. He shall also handover to the officer-in-charge of the police station all items that may have been recovered from the person arrested or found in his possession or in the surroundings of the arrest.

(viii) Stopping the movement of a person - For the purpose of ascertaining whether or not a person is (a) taking steps preparatory to the committing of an offence contained in this Act or (b) has committed an offence contained in this Act, or (c) to determine whether he is fleeing Sri Lanka or evading arrest with respect to the commission of an offence contained in this Act, or (d) has violated a condition of bail imposed with respect to an allegation that an offence in terms of this Act has been committed, any police officer or a member of the armed forces or a coast guard officer (as the case may be), shall be entitled to briefly stop the movement of any person and question him, if there are reasonable grounds to believe that one or more of the situations described in (a), (b), (c) or (d) exist. He shall also be entitled to search such person and any thing that may be in his surrounding. For the purpose of carrying out such search, he shall be entitled to enter any premises or land, or stop and enter any vehicle, or any means of sea or air transport. The exercise of this power shall, as soon as possible to notified to the Human Rights Commission of Sri Lanka.

(ix) Questioning and searching by a member of the armed forces or coast guard officer - A person who has been arrested by a member of the armed forces or by a coast guard officer, may be questioned and further searched by a commissioned officer of an armed force or by a coast guard officer.

- (x) *Arrest by a police officer - Any police officer who has (a) reasonable grounds to believe that any person has committed or has been concerned in committing an offence contained in Act, or (b) received information or a complaint which he believes to be reliable that a person has committed or been concerned in committing an offence contained in this Act, may arrest such person, without a warrant.*
- (xi) *It shall be lawful for a police officer to obtain the assistance of a member of the armed forces or a coast guard officer to carryout an arrest in terms of this Act, or to secure such assistance to take the arrested suspect to a police station.*
- (xii) *Duty to arrest - Following the committing of any offence contained in this Act, it shall be the duty of a police officer to, as soon as possible carry out the arrest of the person who committed such offence.*
- (xiii) *Temporary stopping, questioning and searching - For the purpose of determining whether reasonable grounds exist to arrest a person in terms of this Act, a police officer may temporarily stop, question and search any person and may search his immediate surroundings. For such purpose, it shall be lawful to enter any premises or land, or stop, enter and search any vehicle or any other means of land, water or air transport. The exercise of this power shall, as soon as possible be notified to the Human Rights Commission of Sri Lanka.*
- (xiv) *Forensic medical examination of the arrestee - Following the arrest of a person by a police officer or handing over of an arrested person by a member of the armed forces or by a coast guard officer to a police officer, the officer-in-charge of the relevant police station or a police officer authorised by such officer-in-charge, shall examine the suspect to see whether he has any injuries that may be visible. If the arrested person has any injuries that may be visible, he shall make a note of it, and inform the officer-in-charge of the police station. The officer-in-charge of the police station shall cause the suspect to be examined by a Judicial Medical Officer*

or by a government forensic medical specialist and obtain a report. Unless there is a reason for medical treatment, the Judicial Medical Officer or the government forensic medical specialist shall return the suspect to police custody, without any delay. The period of time taken for the forensic medical clinical examination and providing of treatment if any, shall not be taken into account, when computing the time period in police custody.

- (xv) **Custody following arrest** - Following the arrest of a person in terms of this Act, he shall be taken into the custody of the person who carried out his arrest.
- (xvi) **Duty to protect from harm** - Every practicable measure shall be taken to protect such person from any physical harm.
- (xvii) **Arrest of females** - Every possible measure shall be taken to carryout the arrest of a female suspect by a female police officer or by a female member of the armed forces or female coast guard officer, or in the presence of such female officer. The arrest shall be carried out, with due regard to the privacy of the person being arrested.
- (xviii) **Searching and questioning of females** - Every possible measure shall be taken to question a female suspect, by a female police officer or by a female member of the armed forces or coast guard officer or in the presence of a female officer, as the case may be, and the search of a female suspect shall necessarily be conducted by a female police officer, female member of the armed forces or by a female coast guard officer.
- (xix) **Notification of the arrest** - A police officer or a member of the armed forces or a coast guard officer who arrests a person in terms of this Act, shall, if an adult member of the family is present on such occasion, issue to such person as soon as practicable and not later than 24 hours from the arrest, in the format contained in the 1st schedule of this Act, 'an acknowledgement of the arrest and custody' pertaining to such arrested person. Such information shall include, (a) date,

time and place of arrest, (b) reasons for the arrest, (c) the location of custody or detention, as the case may be, and (d) any other information as may be necessary for the next of kin to have reasonable access to the person in custody or detention, without prejudice to the conduct of investigations. If such a person (adult member of the family of the arrested person) is not present, the person who carried out the arrest shall inquire from the person arrested, the identity and whereabouts of a person to whom the acknowledgement referred to herein should be served, and if the arrested person provide such information, every possible endeavour shall be taken to serve the acknowledgement on such person. A copy of the said acknowledgement shall be served on the person arrested.

(xx) Production of the arrested person before an OIC - Any person arrested by a police officer, or arrested by a member of the armed force or a coast guard officer and handed-over to a police officer, shall without unnecessary delay, be produced before the Officer-in-Charge of the Police Station to which such police officer is attached to. If doing so is not practicable, the suspect shall be produced before the officer-in-charge of the nearest police station.

(xxi) Notification to the Human Rights Commission of Sri Lanka - As soon as possible and not later than 24 hours of the suspect being brought to a police station, the arrest and custody of the suspect shall be notified to the Human Rights Commission of Sri Lanka in accordance with the format contained in the 2nd schedule of this Act, and to the Inspector General of Police or his authorised representative in accordance with the format contained in the 3rd schedule of this Act. Such information shall include (a) date, time and place of arrest, (b) reasons for the arrest, (c) the location at which the person arrested is being held in custody or detention, as the case may be, (d) any other information that would enable the Human Rights Commission to have prompt access to the person in custody / detention, and (e) any other information the Human Rights Commission may call for the determine whether the arrest

and custody / detention of the suspect has infringed upon his Fundamental Rights.

(xxii) Central Data-base and Register - The Inspector General of Police shall through the Counter Terrorism Division establish and maintain a central Register and data-base, with regard to the arrest, custody, detention, remand, grant of bail, discharge, prosecution, conviction or acquittal and punishment of persons arrested in terms of this Act. The Register shall also include information that would enable the determination of the (a) legitimacy of and justification for the arrest, custody and detention, (b) lawfulness of and the need to deprive the liberty of the person arrested, and (c) the need for continued detention or remand. The Inspector General of Police shall when requested by the Human Rights Commission of Sri Lanka, provide information contained in such Register and data-base to the said Commission. The information received by the Commission shall be used only for the purposes of giving effect to the objectives for which the Commission has been established. The Commission shall ensure that, the information received is not used by any person in a manner that would prejudice an on-going investigation.

(xxiii) Production before a Magistrate - A suspect who has been arrested and taken into the custody by a police officer, a member of the armed forces or by a coast guard officer, shall be produced before any Magistrate not later than 48 hours following his arrest. Provided however, when calculating this period, the time taken to bring a suspect arrested at sea or inside an aircraft not within Sri Lanka to a police station in Sri Lanka shall be excluded.

(xxiv) Suspect to be handed over to be detained - If by the time the suspect is produced before any Magistrate, an ex-facie valid Detention Order has been issued in terms of this Act, and is produced to the Magistrate for his inspection, the Magistrate shall direct the handing over of the suspect to be detained in terms of the said Detention Order.

(xxv) *Remand of, grant of bail to, and discharge of the suspect - If by the time the suspect is produced before a Magistrate, a Detention Order has not been issued or such a Detention Order is not presented to the Magistrate, the Magistrate shall (a) if the officer-in-charge of the relevant police station makes an application for the remand of such suspect, citing grounds which the magistrate concludes are reasonable in the circumstances, direct that the suspect be placed in remand custody, or (b) if the officer-in-charge of the relevant police station requests that bail be granted or has no objection to bail being granted, release the suspect on bail, upon conditions to be stipulated by such Magistrate, excluding personal bail, or (c) if the officer-in-charge of the relevant police station so requests, discharge the suspect.*

(xxvi) *Magistrate to see and inquire into the wellbeing and welfare of the suspect - The Magistrate before whom the suspect is produced, shall personally see the suspect, and inquire into his wellbeing and welfare, record any responses the suspect may provide. Such interview shall be held in private (in the absence of any police officer who may have participated in and or investigated into the alleged committing of an offence by the suspect).*

(xxvii) *Magistrate to direct forensic medical examination - If on a consideration of the response if any given by the suspect, the Magistrate's observations and representations if any made in that regard by the police (following the Magistrate revealing to the police any allegation the suspect may have made), if the Magistrate forms the opinion, that the suspect may have been subjected to torture, the Magistrate shall direct that the suspect be produced before a government forensic medical specialist, and be examined by such specialist, and a report be submitted by him to the Magistrate.*

(xxviii) *If the report of the government forensic medical specialist reveals the possibility of the suspect having been subjected to torture, the Magistrate shall on a consideration of answers if any that may be given in response to questions the Magistrate may put to the person in detention and representations if any*

made by the police in that regard, direct that necessary treatment be provided to the suspect, and may direct the Inspector General of Police to cause the detention of the suspect in an alternate place of detention. If the Magistrate directs that the suspect be placed in such alternate place of detention, police officers who previously had access to the suspect shall not have access to the suspect. Nevertheless, the investigation into the suspect having committed an offence contained in this Act, may continue at the discretion of the Inspector General of Police. The Magistrate shall also direct the Inspector General of Police to cause the conduct of an investigation into the alleged instance of perpetration of torture and forward the investigational material to the Attorney General for the consideration of the institution of criminal proceedings against the alleged perpetrators of torture.

(xxix) **Grant of bail by the High Court on exceptional grounds** - No person placed in remand custody by a Magistrate, shall be enlarged on bail, unless on an order made by a judge of the High Court, on exceptional grounds.

(xxx) **Maximum period of remand** - No person shall be held in remand custody, unless criminal proceedings have been instituted against such person within 6 months following his arrest. However, the period of remand custody may be extended beyond 6 months, on the order of a High Court judge, made on an application by the Attorney General. The maximum period of the extension of the remand, shall not exceed 6 months. If criminal proceedings have not been instituted within 1 year of such remand custody, the Magistrate shall enlarge the suspect on bail, on conditions to be stipulated by the Magistrate.

(xxxi) **Grant of bail during High Court trial** - If the trial against a person remanded in terms of this Act cannot be concluded within 1 year following the preferring of indictment, the High Court judge before whom the trial is pending or is taking place, shall favourably consider enlarging such accused on bail, unless the delay in the completion of the trial can be

attributed to the conduct of the accused or his Attorney-at-Law.

(xxxii) Detention Orders - A Deputy Inspector General of Police, on an application made by the officer-in-charge of the relevant police station and recommended by the officer-in-charge of the relevant police division, may, in situations where based on information presented to him by the officer-in-charge of the relevant police station, is satisfied that there exists reasonable grounds to believe that the suspect has committed or has been concerned in the committing of an offence contained in this Act, for the purpose of facilitating the conduct of investigations, including (a) obtaining of investigative material and potential evidence relating to the committing of an offence in terms of this Act, or (b) questioning the suspect while in detention, or (c) preserving evidence pertaining to the committing of an offence contained in this Act, for such reasons to be recorded in the Detention Order, issue a Detention Order in accordance with the format contained in the 4th schedule of this Act, and thereby direct and authorise the detention of the suspect, for a period not exceeding 2 weeks at a time, at an approved place of detention determined and stipulated by him, in terms of approved conditions of detention. Detention of suspects in terms of such Detention Order shall only be for purposes of facilitating the conduct of the investigations in respect of such person.

(xxxiii) Notification of detention to the Human Rights Commission - Following the detention of a person in terms of a Detention Order, the Human Rights Commission of Sri Lanka shall be notified of such detention as soon as possible and not later than 72 hours from the commencement of detention. A copy of the Detention Order shall be transmitted to the Human Rights Commission as soon as possible.

(xxxiv) Visit to a specified place of detention by a Magistrate and Human Rights Commission - Any Magistrate or an authorized officer of the Human Rights Commission shall be entitled to, without advance notice, enter and examine any specified place of detention, call for and inspect detention

registers, Detention Orders and other books and documents required to be maintained at such place, and interview persons being detained at such location. Provided however, a Magistrate or officer of the Human Rights Commission shall not be entitled to examine notes of investigations and statements recorded of witnesses and of persons arrested or detained.

(xxxv) *Maximum number of Detention Orders* - Following the arrest of a person, not more than 8 such Detention Orders (of 2 weeks duration) may be issued in respect of one person. (i.e. total period of executive detention - 4 months)

Provided however, in order to (a) investigate the committing of terrorist offences by the detainee, committed in or affecting other sovereign countries, or (b) facilitate the gathering of investigational material through mutual legal assistance in criminal matters, and (c) provide cooperation to foreign law enforcement agencies to interview and record the statement of a detainee, the maximum period of detention may be extended to 12 weeks (6 months).

(xxxvi) *Serving of copies of Detention Orders* - Copies of Detention Orders issued in terms of this Act, shall be served on the person being detained and an acknowledgement obtained and filed before the relevant Magistrate. A copy of the Detention Order shall be served in the manner stated in paragraph (viii) on the person referred to in the said paragraph.

(xxxvii) *Visit to place of detention by Magistrate* - A Magistrate before whom a suspect has been produced and detained under the authority of a Detention Order, shall be empowered to visit the place of detention of such suspect, interview the suspect and inquire into his welfare and wellbeing. He may visit such place of detention without giving any advance notice to the authorities in-charge of such place of detention. It shall be the duty of the authorities in-charge of places of detention to provide prompt and unimpeded access to Magistrates. If the Magistrate observes that the suspect may

have been subjected to torture or the suspect alleges that he was tortured, the Magistrate shall make order for the suspect to be produced for examination by a government forensic medical specialist and for the report to be submitted to him. Following a consideration of such report, answers the suspect may give in response to questions that the Magistrate may put to him and representations if any of the police, if the Magistrate forms the view that the suspect may have been tortured, he shall order the transfer of the suspect to any other specified place of detention, and direct the exclusion of any person whom the Magistrate determines may have been involved in the possible perpetration of torture from participation in further interview and recording of the statement of such suspect.

(xxxviii) Detention beyond 8 weeks only with approval of Magistrate - Provided however, if a suspect is to be detained in terms of Detention Orders issued in terms of this Act, beyond a period of 8 weeks (4 detention orders of 2 weeks each), the officer-in-charge of the relevant police station shall file a 'Confidential Report' in the Magistrates Court citing (a) the allegation against the suspect, (b) nature of investigational findings and (c) reasons which require further detention for the purposes stated in this Act, and obtain the approval of the relevant magistrate for such continued detention. The Report so tendered to the Magistrates Court, shall be treated as being 'confidential' by the relevant Magistrate. No one other than the Magistrate shall have access to the said Report other than in terms of this Act. However, the officer-in-charge of the police station shall disclose to the suspect or to his Attorney-at-Law, information that may be necessary for the suspect or his Attorney-at-Law to respond to the grounds upon which the police seek to apply for extension of the detention of the suspect. The suspect or his Attorney-at-Law shall be entitled to make representations to the Magistrate citing reasons as to why the period of detention should not be extended beyond 8 weeks. The police shall be entitled to respond to such submissions. The submissions shall be recorded by the Magistrate. The Magistrate shall give reasons for approving continued detention or refusal to grant approval, as the case

may be. These proceedings shall be held in-camera. If the Magistrate refuses to grant approval, he shall place the suspect in remand custody.

(xxxix) *The order granting or refusing to grant approval, shall be an appealable order, and the High Court shall exercise appellate jurisdiction in that regard. An appeal against such grant or refusal may be filed in the relevant Magistrates Court. Following the filing of the appeal, the relevant Magistrate shall immediately under confidential cover transmit the Report filed by the police and the record of the proceedings along with the Petition of Appeal to the relevant High Court. It shall be the duty of such High Court to dispose of the appeal within 3 weeks from the filing of the appeal, having heard the police, the Attorney General and the Attorney-at-Law representing the suspect. Following the hearing of the appeal, the High Court shall either affirm the order made by the Magistrate, or order the re-transfer of the suspect from remand custody to detention in terms of the Detention Order or direct the placement of the suspect in remand custody, as the case may be.*

(xl) *Production of detainee before a Magistrate once in 30 days - During the pendency of the detention of a suspect in terms of a Detention Order, the suspect shall be produced before a Magistrate once in every 30 days. When such suspect is produced before a Magistrate, such Magistrate shall inquire into the welfare and wellbeing of the suspect, and act as provided herein before.*

(xli) *Production of the detainee before a Magistrate following completion of detention - Following the completion of the period of detention in terms of a Detention Order, the suspect shall be produced before a Magistrate, who shall personally see the suspect and inquire into the wellbeing and welfare of the suspect, and act as provided herein before. Upon the Magistrate being informed by the police that (a) there exists a well-founded basis to conclude that the suspect has committed an offence in terms of this Act and that further investigations are being committed, or (b) the investigations*

have been concluded and that the Attorney General has been or is to be requested to consider the institution of criminal proceedings against the suspect, the Magistrate shall direct that the suspect be detained in remand custody.

(xlii) Police officer to have access to suspect in remand - A police officer conducting an investigation in terms of this Act, shall be entitled to on an application made to a Magistrate, have access to a suspect placed in remand custody in terms of this Act, and interview and record his statement. He shall also be entitled to on an order made by a Magistrate, take the suspect out of the remand facility for the purpose of conducting further investigations. Provided however, at all such times, an officer of the Prisons Department shall be present.

(xliii) Administrative relief in respect of detention under Detention Orders - There shall be a 'Board of Review' established in terms of this Act. The Board of Review shall comprise of the Secretary to the Ministry to which the Police Department has been assigned, and two other persons appointed by the Minister. The said persons shall be persons with professional eminence and experience in the fields of (a) criminal investigations and criminal justice and (b) human rights. The Secretary shall serve as the chairperson of the Board of Review. Any person aggrieved by the decision taken to arrest and or detain him in terms of a Detention Order issued in terms of this Act, may, acting directly or through his Attorney-at-Law, appeal to the Board of Review, to review the said decision to arrest and or detain him. The Board of Review shall consider the appeal having taken into consideration the grounds stated in the appeal and the reasons expressed by the officer-in-charge of the relevant police station and the officer who issued the detention order and the officer who requested that a Detention Order be issued, and make a ruling on the matter. The ruling may contain a direction pertaining to the continued detention of the appellant. The said direction may include terminating the detention of the suspect, producing the suspect before a Magistrate and requesting that he be placed in remand or that bail be granted to the suspect. The ruling shall be made within

2 weeks of the application having been presented, and shall contain reasons, and shall be communicated to the appellant and to the officer who had issued the Detention Order and to the officer who had requested that a Detention Order be issued.

(xliv) *Judicial review of detention in terms of Detention Orders and Remand orders* – Notwithstanding the above, any suspect being detained in terms of a detention order issued in terms of this Act or in terms of a remand order, may, either in the alternative to or in addition to seeking administrative relief in terms of the preceding section, seek judicial review of such detention or remand, in terms of the law.

(xlv) *Detention during remand* - If the officer-in-charge of a police station receives information which he believes to be true, that (i) a person placed in remand custody in terms of this Act is preparing, attempting, abetting the committing of an offence or is committing an offence contained in this Act, or (ii) is attempting to escape from remand custody, or (iii) preparations are underway to unlawfully have him freed, or (iv) had committed an offence contained in this Act prior to the arrest, and such officer-in-charge was unaware of such fact, he shall report such matter to the attention of the relevant Magistrate. Following inquiry into the matter, if the Magistrate is satisfied that, the report submitted by the officer-in-charge of the police station had been submitted in good faith, and that notwithstanding the suspect being in remand custody, the allegation against the suspect made by the police seems to be well founded, following the production of a Detention Order issued in terms of this Act, he shall permit the officer-in-charge of the police station to take custody of the suspect, remove the suspect from remand, and have such suspect detained in terms of the Detention Order. Such detention shall be in force only for such time the Magistrate authorises such detention. Provided however, the Magistrate shall review the need for such detention once in every 30 days. The transfer of the suspect from remand custody to detention, shall be notified to the Human Rights Commission.

(xlvi) **Release from custody and detention** - No person arrested in terms of this Act, shall be released from custody or detention unless he is first produced before a Magistrate and released following notification to the Magistrate and subject to any condition the Magistrate may impose. The impending release of the suspect shall be notified to the Human Rights Commission of Sri Lanka by the officer-in-charge of the relevant police station, providing such time as may be necessary for the Human Rights Commission to send an authorised officer to be present when the release takes place.

(xlvii) **Right of access to an Attorney-at-Law and the Right to representation by an Attorney-at-Law** - A person arrested in terms of this Act, shall have the right of access to an Attorney-at-Law in the manner provided for in the Code of Criminal Procedure Act / Criminal Procedure (Special Provisions) Act with regard to persons arrested in terms of the Code of Criminal Procedure Act. An Attorney-at-Law representing a person arrested in terms of this Act, shall have the right of access to a police station, the right to obtain information, right of access to the person in police custody, provide legal advice, and the right to make representations to the officer-in-charge of the police station, as provided for in the Code of Criminal Procedure Act / Criminal Procedure (Special Provisions) Act.

(xlviii) **Right of an Attorney-at-Law to give legal advice and be present during the interview and recording of the statement** - An Attorney-at-Law representing a suspect in police custody, shall have the right to give legal advice to such person and be present at an interview and recording of the statement of a suspect in police custody, if such interview and recording of the statement is carried out by a Superintendent of Police and if the said statement is to be subsequently used as evidence by the prosecution at future judicial proceedings against such suspect. Following the completion of the recording of the Statement, such Attorney-at-Law shall make an entry in the relevant register, indicating his having given legal advice to the suspect, his presence during the interview and recording

of the statement, and the conditions under which the interview and recording of the statement took place.

(xlix) Entitlement of an Attorney-at-Law - An Attorney-at-Law retained by a suspect arrested in terms of this Act or an Attorney-at-Law retained by the Legal Aid Commission (in instances where the person arrested does not have the capacity to retain an Attorney-at-Law of his choice or requests that an Attorney-at-Law be retained by the Legal Aid Commission), shall at any reasonable time of the day, having given advance notice of his arrival to the officer-in-charge of the relevant police station, have the right of access to the officer-in-charge of a police station referred to herein, and to make representations on behalf of the suspect.

(l) Certain sections of the Code of Criminal Procedure Act not to apply - Provisions of sections 115, 116 and 120 of the Code of Criminal Procedure Act shall have no application in relation to persons arrested in terms of this Act.

(li) Application of the Code of Criminal Procedure Act - Subject to the provisions contained in this Act, other provisions of the Code of Criminal Procedure Act shall apply mutatis-mutandis to proceedings in terms of this Act.

(lii) Proceedings before Magistrates Court - Following a suspect arrested in terms of this Act having been produced before a particular Magistrate, all further pre-trial proceedings relating to such suspect and proceedings relating to investigations into the offence the suspect is alleged to have committed, shall be held in the Magistrate's Court in which the relevant Magistrate presided at the time the suspect was originally produced before such Magistrate. It shall not be necessary for the relevant Magistrate's Court to be conferred with territorial jurisdiction in respect of the location of the committing of the offence.

(liii) All locations of detention of suspects in terms of detention orders issued in terms of this Act and places of remand custody in terms of remand orders made in terms of this Act,

shall be places compatible with the requirements of humane treatment, and such places of detention shall be accessible following the obtaining of permission by family members of the suspect in detention or remand and to his Attorney-at-Law.

(liv) *If following an inspection of the place of detention or remand, the Human Rights Commission or the Magistrate forms the view that the place of detention or remand is incompatible with requirements of humane treatment, such view and reasons therefor shall be communicated to the Inspector General of Police (in cases of detention) or to the Superintendent of the Remand Prison (in cases of remand), as the case may be, and the Inspector General of Police or the Superintendent of Police as the case may be, shall take necessary action to remedy the situation, and provide conditions of detention that are compatible with humane treatment.*

(lv) *In situations where a suspect is kept in (i) detention in terms of a detention order for a period exceeding 1 month, (ii) remand custody pending the commencement of the trial, or (iii) remand custody pending the completion of trial, the officer-in-charge of the police station shall issue a notification to the suspect and to the Human Rights Commission of Sri Lanka, containing the following information:*

- a. The grounds / reasons which warrant continued detention / remand.*
- b. In situations where the suspect is being detained in terms of detention orders, without prejudice to the on-going investigation, information to the conduct of investigations diligently and expeditiously.*
- c. In situations where the suspect is being held in remand custody, reasons as to why institution of criminal proceedings cannot take place immediately, or the trial cannot commence immediately or the trial cannot be concluded expeditiously, as the case may be.*

(V) Powers conferred on police officers to prevent and counter terrorism and committing of other offences contained in this Act, mitigate harm, and conduct investigations into the committing of offences:

(i) Police powers - For the purpose of conducting investigations into offences contained in this Act and other offences that may have been committed in the course of the same transaction, or to prevent the committing of an offence contained in this Act, police officers shall possess powers and entitlements conferred on police officers by the Police Ordinance, Code of Criminal Procedure Act and such other and further laws which confer powers to conduct investigations and prevent the committing of offences, to the extent such powers may be relevant and necessary to the conduct of investigations into and the prevention of offences contained in this Act. The following powers shall be additional to the said routine powers of investigation.

(ii) Prevention of terrorism and the committing of other offences contained in this Act and use of force - It shall be the duty of every police officer and member of the armed forces and coast guard officers, to take necessary measures in terms of the law, to prevent terrorism and other offences contained in this Act.

Such measures shall where necessary include the use of force. The use of force shall be (a) exercised in good-faith, (b) proportionate to the harm that may be inflicted by perpetrators of offences, (c) exercised only where all other means have proved ineffective, and (d) only to the extent such force may be necessary to prevent the committing of terrorism and other offences contained in this Act or protecting the unity, national security, territorial integrity and sovereignty of Sri Lanka, or maintaining public order, or for the purpose of apprehending in terms of this Act persons who have committed offences contained in this Act.

Lethal force shall be used only where it is in the exercise of private defence as provided for in the Penal Code.

(iii) *Specialised counter terrorism agency of the Sri Lanka Police – The Inspector General of Police shall establish a specialized the counter terrorism agency, which shall be the primary institution of the Sri Lanka Police, tasked with the responsibility of preventing and countering terrorism, and investigating the committing of offences contained in this Act. Provided however, the Inspector General of Police shall be entitled to assign any investigation or handover any partly conducted investigation, into the committing of any offence contained in this Act, to any other division or unit or to a police station of the Sri Lanka Police. It shall be the duty of the specialised counter terrorism agency referred to in this paragraph to, inter-alia (a) maintain the central data-base referred to in this Act, (b) maintain statistics relating to the committing of offences contained in this Act, investigations conducted, arrest, prosecution, discharge, conviction and punishment of persons for having committed offences contained in this Act, (c) assess threat situations posed by terrorism, and issue warnings to the general public, and (d) conduct research into terrorism, develop investigation techniques and strategies, best practices and standards.*

(iv) *Constitution of special teams of Investigators - Following the committing of an offence contained in this Act or the receipt of information or intelligence that, preparations may be underway to commit an offence contained in this Act, the Inspector General of Police may constitute a special team of Investigators comprising of the following, to investigate such committing of offence, or to take necessary measures to prevent the committing of an offence contained in this Act.*

- (a) Head of the team of Investigators (who shall be a police officer designated by name and rank)*
- (b) Criminal investigators, who shall be police officers designated by name and rank.*
- (c) Legal experts.*
- (d) Scene of crime inspection officers*
- (e) Forensic medical specialists*
- (f) Forensic Psychologists*
- (g) Forensic scientists, including serology, genetics, ballistics, explosives, and chemical scientists.*
- (h) Finger, palm and foot-print experts.*

- (i) *Handwriting and suspect document experts.*
- (j) *Computer and automated network experts.*
- (k) *Forensic Auditors.*
- (l) *Analog, digital, mobile and satellite communication experts.*
- (m) *Photographers and Videographers.*
- (n) *Such other and further Experts, the Inspector General of Police may deem necessary.*

Following the constitution of a team of Investigators in terms of this section, the Inspector General of Police shall designate a police station to the team of Investigators. The officer-in-charge of such police station shall perform the duties and functions assigned to an officer-in-charge of a police station terms of this Act.

(v) *Conferment of police powers - The Inspector General of Police may for the purpose of facilitating the conduct of investigations or to take necessary measures to prevent the committing of offences contained in this Act, confer on members of the team of investigators referred to above who are not police officers, powers conferred on police officers in terms of this Act, the Code of Criminal Procedure Act and the Police Ordinance.*

(vi) *Constitution of teams of first responders - Following the committing of an offence contained in this Act, it shall be lawful for a police officer not below the rank of a Deputy Inspector General of Police to constitute teams of first responders and support teams comprising of members of the armed forces (with the concurrence of the Commanders of the relevant armed forces), doctors and other health care workers, emergency relief service providers, public servants and other necessary persons, for the following purposes:*

- (a) *Rescue and evacuation of victims of crime and other persons from the scene of the crime.*
- (b) *Providing emergency medical treatment.*
- (c) *Recovery of dead bodies.*
- (d) *Douse fires*
- (e) *De-activate explosives and other lethal and dangerous substances*

- (f) Carry-out controlled explosions, and de-activate lethal and dangerous substances
- (g) Remove debris
- (h) Create access routes.
- (i) Provide other emergency, humanitarian and security requirements and services.

It shall be the duty of those whose assistance have been sought, to provide such assistance as may be solicited.

The Inspector General of Police shall take necessary measures where necessary to compensate such persons for the services provided.

- (vii) *Powers to facilitate investigations - For the purpose of (a) facilitating the conduct of an investigation into the committing of an offence contained in this Act or (b) preventing the committing of an offence contained in this Act, a police officer not below the rank of the Sub Inspector of Police who has been authorised by an officer-in-charge of a police station to conduct an investigation in terms of this Act, shall be empowered to require any person to adhere to the following :*

- (a) *Be present for an interview.*
- (b) *Answer questions put to him.*
- (c) *Provide information.*
- (d) *Make a statement.*
- (e) *Answer questions and provide the answers contained in an affidavit.*
- (f) *Tender any document or thing or information that may be in the possession or control of such person.*
- (g) *Assist in the conduct of an investigation.*
- (h) *With due regard to gender sensitivity and the privacy of the person, make himself available for a physical examination.*
- (i) *Make himself available for the taking of photographs, video recording, finger, palm and foot prints.*

- (viii) *The following provisions shall apply to the exercise of powers in terms of the preceding paragraph :*

- (a) *No person shall be legally bound to make a statement or produce an affidavit implicating /*

incriminating himself in the committing of an offence.

(b) Any person who is to be interviewed and his statement is to be recorded, shall have the right if he so wishes to first have access or communication with an Attorneys-at-Law and obtain legal advice.

(c) A police officer conducting the interview and seeking to record a statement, shall first inform the person being interviewed of his rights in terms of this Act.

(d) If the person who is being interviewed and his statement is being recorded cannot understand the language being spoken, the services of an interpreter shall be obtained and the interview shall be conducted in a language that could be understood. A translation of the statement shall be transcribed together with the corresponding questions, and kept for future verification.

(e) Wherever possible, the interview shall be video recorded.

(ix) Search of persons - A police officer (a) conducting an investigation in terms of this Act, (b) for the purpose of preventing the committing of an offence, or (c) for the purpose of ascertaining whether an offence in terms of this Act is being committed, may search any person, whom he believes has committed or has been concerned in committing an offence in terms of this Act or is preparing to commit an offence. The search of a female suspect shall necessarily be by a female officer, and with due regard to privacy.

(x) Search of premises, vehicles, vessels, etc. - A police officer acting in terms of authorization received from an officer-in-charge of a police station, may (a) for the purpose of conducting an investigation into the committing of an offence contained in this Act, (b) to ascertain whether an offence in terms of this Act is being committed, or (c) to take necessary measures to prevent the committing of an offence, enter and search any premises or other location, or any vehicle, vessel or aircraft or other means of transport, for the purpose of conducting an investigation into the committing of an offence in terms of this Act or for the purpose of preventing the committing of an offence.

- (xi) *Halting of vehicles, vessels, etc.* - A police officer may for the purpose of (a) conducting a search, or (b) arresting any person, or (c) for the purpose of preventing the committing of an offence, or (d) ascertaining whether an offence is being committed, direct the halting of a motor vehicle, cycle or any other means of land transport or any vessel.

The authority contained herein shall only apply with respect to committing a search or to facilitate the arrest of a person suspected of or concerned in having committed an offence contained in this Act.

- (xii) *Use of force to halt a vehicle* - If the driver of any such vehicle or means of transport wilfully disobeys such direction, the police officer concerned or any other officer acting on his request may use force as may be necessary to halt such vehicle.

The recourse to the use of force may be made only where all other means have proved ineffective, and provided lethal use of force may only be used in private-defence as provided for in the Penal Code.

- (xiii) *Taking into custody any vehicle, vessel, etc.* - A police officer shall be entitled to take into custody any motor vehicle or cycle or other means of land transport or any vessel, for the purpose of conducting an investigation in terms of this Act or for the preventing of the committing of an offence.

- (xiv) *Suspension, delay of taking-off, sailing of vessel, aircraft, etc.* - A police officer not below the rank of a Deputy Inspector General of Police may, (a) for the purpose of questioning or arresting any person on board any aircraft or vessel or (b) for the purpose of conducting a search, or (c) to take necessary measures to prevent the committing of an offence, direct that the taking-off of any aircraft, or the sailing of any vessel be suspended or delayed, or the landing of any aircraft at a designated airport or at any other appropriate location or that any vessel be brought to any port or harbour or any other appropriate location. Provided however, advance notice of such direction to suspend, delay or landing of any aircraft shall be given to the Director

General of Civil Aviation, and advance notice of the direction shall be given to the Commander of the Sri Lanka Air Force for the purpose of obtaining air-defence clearance and his concurrence obtained. If the vessel is a non-military vessel, the Director General of Merchant Shipping, shall be promptly informed and his concurrence obtained. Further, if the vessel is of the Sri Lanka Navy, the Commander of the Sri Lanka Navy shall be provided with advance notice of the direction and his concurrence obtained.

- (xv) Taking custody of an aircraft, vessel, etc. - A police officer not below the rank of an Deputy Inspector General of Police shall be entitled to take into custody any ship or aircraft or unmanned aerial vehicle, for the purpose of conducting an investigation in terms of this Act or to prevent the committing of an offence. Any police officer shall be entitled to take into his custody any other vessel.*
- (xvi) Notification to a Magistrate: The exercise of the powers conferred in terms of paragraphs (ix) to (xv) above, shall be reported to a Magistrate, and the reasons for the exercise of such powers and the outcome shall not notified.*
- (xvii) Seizure, taking custody of items - A police officer conducting a search in terms of this Act, shall be entitled to seize and take into his custody, anything, which he believes to have been (a) used, (b) derived out of, or (c) connected with, the committing of an offence contained in this Act, or would be used to commit an offence.*

Following such thing having been taken into custody, he shall as soon as possible produce such thing before the officer-in-charge of the police station to which he is attached, and thereafter act as per his instructions. If that is not practicable, the said item shall be produced before the officer-in-charge of the nearest police station. Thereafter, the officer-in-charge of the police station referred to herein shall produce a report in that regard to a Magistrate. The Magistrate shall make an appropriate order with regard to the possession or release of such item.

- (xviii) *Causing clinical forensic medical examinations - An Officer-in-Charge of a Police Station shall be entitled to directly submit a suspect in custody or a victim of an offence to a government forensic medical specialist for examination and report. Following the examination, the Report shall be directly submitted by the medical officer, to the relevant Officer-in-Charge of the police station.*
- (xix) *Directly submitting items to Government Analyst or other Expert - An officer-in-charge of a Police Station shall be entitled to directly submit any thing including a document to the Government Analyst or to any other local or foreign Expert for examination, analysis and report. Following the examination, the Report shall be directly submitted by the Government Analyst or other expert, to the relevant officer-in-charge of a police station.*
- (xx) *Transfer of investigative material: It shall be lawful for the police to submit investigative material to any other law enforcement agency, if it is of the view that, there exists material indicative of an offence having been committed in terms of such other law enforcement agency's investigative competence. Such law enforcement agency shall include those of other sovereign countries.*
- (xxi) *Investigations outside Sri Lanka - With the approval of the Inspector General of Police, it shall be lawful for a police officer to conduct an investigation in terms of this Act outside Sri Lanka, with the approval obtained in advance from the relevant foreign State.*
- (xxii) *Joint investigations - It shall be lawful for a police officer authorised by the Inspector General of Police to undertake and carryout a joint investigation into the committing of an offence contained in this Act with a criminal investigation agency of any other country, with the approval obtained in advance from the relevant foreign State and the Government of Sri Lanka.*

(xxiii) Protection Directives

(a) Following (a) the committing of an offence contained in this Act or (b) the receipt of reliable information that an offence contained in this Act may be committed, a police officer not below the rank of a Senior Superintendent of Police may issue any one or more of the following directives for the purpose of protecting persons from harm or further harm associated with the committing of an offence contained in this Act:

- a. Not to enter any specified area or premises.*
- b. To leave a specified area or premises.*
- c. Not to leave a specified area or premises and to remain in-doors.*
- d. Not to travel on any road.*
- e. Not to provide transport to anybody or not to transport anything.*
- f. To suspend the operation of a specified public transport system.*
- g. To remove a particular object, vehicle, vessel or aircraft from any location*
- h. To maintain the present position of a vehicle, vessel, ship or aircraft.*
- i. Not to sail a vessel or ship till further notice or into a specified area.*
- j. Not to fly an aircraft out of or into a particular area.*
- k. Not to congregate at any particular location.*
- l. Not to hold a particular meeting, rally or procession.*
- m. Not to engage in any specified activity.*

Provided however, no directive pertaining to sub-paragraphs 'k', 'l' or 'm' above, shall be issued, without the prior sanction obtained from a Magistrate, who shall prior to the issue of such sanction satisfy himself of the actual need for such a directive and may impose conditions to be satisfied by the police officer seeking to issue such directive. The Magistrate called upon to issue such Protection Directive, shall have due regard to the need and proportionality of such restrictions on the enjoyment of Fundamental Rights guaranteed by the Constitution.

- (b) *The issuance of a Protective Directive in terms of the preceding paragraph shall be forthwith communicated to the Human Rights Commission of Sri Lanka by the officer or Magistrate who issued such directive.*
- (c) *Such officer shall in the directive, provide exceptions to such directive, to meet emergencies and humanitarian requirements of persons who may be affected by such directive.*
- (d) *Following the issue of such directive, it shall be given wide publicity in the relevant area, and subsequently published in the Gazette.*
- (e) *Provided however, such directive shall not be in force for a period more than it may be necessary, and continuously for not more than 24 hours at a time, and for a total time of more than 72 hours. If the operational period is to be extended for more than 24 hours at a time, an interval of not less than 24 hours shall be prescribed in such directive.*
- (f) *For the purpose of giving effect to such directive, it shall be lawful for police officers to cordon-off such area, and obtain the assistance of the armed forces to enforce the directive.*
- (g) *It shall also be lawful for a police officer or member of the armed forces, to restrain and search any person who may act contrary to the directive. Provided however, the search of a female shall only be carried out by a female police officer or member of the armed forces and with due regard to privacy.*
- (h) *It shall be lawful for the Inspector General of Police to obtain the assistance of the armed forces (with the concurrence of the Commander of the relevant Armed Force) to give effect to the directive issued in terms of this section.*
- (i) *Any person, who wilfully acts contrary to a directive issued in terms of this section, shall be*

guilty of an offence, and shall following conviction in this Magistrates Court be punished with a fine not exceeding five thousand rupees. If such offence amounted only to or had the effect of only placing the offender's life in danger, such offence shall be treated as a non-cognizable offence.

(VI) Investigational material that may be obtained by investigators either on their own motion or on application to a Magistrate and magisterial orders to facilitate the adoption of measures to prevent the committing of offences and the conduct of investigations into offences:

(i) Obtaining information from Banks, financial institutions, etc. - A police officer not below the rank of an Superintendent of Police shall be empowered to issue a Notice on any bank, non-banking financial institution or other designated finance or non-finance business (as provided for in the Prevention of Money Laundering Act) to provide the following information and material to such Superintendent of Police:

- a. Information relating to any financial service provided by such institution to any person.*
- b. Any financial transaction carried out by any person.*
- c. Details relating to bank accounts, deposits, remittances, and withdrawals and financial services being provided by such institution.*
- d. Details relating to securing of financial services by any person.*
- e. Certified statement of any account or other information pertaining to any account or transaction that may be called for.*

If there is any refusal to comply with such Notice or delay in the submission of such material, such police officer shall be entitled to make an application to a Magistrate, seeking an order on such institution, to directly submit such material, as may be stated in such order.

Unless a Magistrate to whom such application is made is of the view that, the application is being made mala-fide, it shall be the duty of such Magistrate to make order as applied for. Proceedings with regard to the application shall be held in-camera. It shall be the duty of such Magistrate to maintain confidentiality regarding the application made.

(ii) Obtaining information from service providers - *A police officer not below the rank of a Superintendent of Police shall be entitled to issue a Notice to any institution and obtain any of the following material from any telecommunication, satellite, or digital services or data service provider, the following:*

- (a) Information pertaining to services provided or being provided by such service provider to any person.*
- (b) Information pertaining to services used by any person to whom such services have been made available.*
- (c) Any information or data or document or records that may be stored, archived or otherwise kept by such service provider organization.*
- (d) Information pertaining to the uploading or downloading of data or information to or from any instrument through services provided by such institution.*

If there is any refusal to comply with such Notice or delay in the submission of such material, such police officer shall be entitled to make an application to a Magistrate, seeking an order on such institution, to directly submit such material, as may be stated in such order.

Unless a Magistrate to whom such application is made is of the view that, the application is being made mala-fide, it shall be the duty of such Magistrate to make order as applied for. Proceedings with regard to the application shall be held in-camera. It shall be the duty of such Magistrate to maintain confidentiality regarding the application made.

(iii) Obtaining information from government, statutory institutions - *A police officer not below the rank of a Superintendent of Police shall be entitled to issue a Notice on*

any of the following persons, and obtain any information and documents, for the purpose of conducting an investigation:

- (a) Secretary to a Ministry.
- (b) Secretary General, Parliament
- (c) Commissioner General, Department of Inland Revenue
- (d) Governor, Central Bank of Sri Lanka
- (e) Controller of Exchange
- (f) Director, Financial Intelligence Unit
- (g) Director General, Securities and Exchange Commission
- (h) Director General, Department of Customs
- (i) Controller General, Department of Immigration and Emigration
- (j) Commissioner General of Registration of Persons
- (k) Controller General of Imports and Exports
- (l) Registrar of Companies
- (m) Director General of Intellectual Property
- (n) Commissioner General of Lands
- (o) Commissioner General, Department of Motor Traffic
- (p) Director General, Telecommunication Regulatory Commission
- (q) Any other Head of a government department, statutory body, or other government institution
- (r) Chairman of a Provincial Council or a Chairman or Special Commissioner of a local government authority.

If there is any refusal to comply with such Notice or delay in the submission of such material, such police officer shall be entitled to make an application to a Magistrate, seeking an order on such institution, to directly submit such material, as may be stated in such order.

Unless a Magistrate to whom such application is made is of the view that, the application is being made mala-fide, it shall be the duty of such Magistrate to make order as applied for. Proceedings with regard to the application shall be held in-camera. It shall be the duty of such Magistrate to maintain confidentiality regarding the application made.

- (iv) On application by the officer-in-charge of a police station conducting an investigation into an offence contained in this

Act, a Magistrate shall, if upon examination of an application made in that regard and any other material he may call for and examine, if he is satisfied that the application is being made in good-faith and the information or services sought is necessary, for the purpose of facilitating the conduct of the investigations into the committing of an offence or to take measures to prevent the committing of an offence contained in this Act, make order regarding the following:

- (a) Taking of blood and hair samples and swabs.*
- (b) Conduct of Identification Parades.*
- (c) Forwarding productions to the Government Analyst, any other local or foreign expert and to a government forensic medical specialist.*
- (d) Conduct of examinations and tests by experts.*
- (e) Freezing of bank and other accounts or the use or freezing of other financial deposits and accounts, subject to any condition that may be imposed. Provided however, the Magistrate may on his own or on an application made in that regard, vary such order, enabling the use of the funds in such account in good-faith for any legitimate purpose.*
- (f) Freezing or variation of provision of services, which is being provided by any service provider. Provided however, the Magistrate may either on his own motion or on application made in that regard, vary such order, enabling the use of such services, in good faith for any legitimate purpose.*
- (g) Opening of safe boxes.*
- (h) Cancellation or the temporary suspension or delay in the commencement of any meeting or other gathering or activity.*

- 2. For any of the purposes enumerated below, on application by a police officer not below the rank of a Superintendent of Police, a Magistrate shall, if upon examination of an application made in that regard and any other material he may call for and examine, is satisfied that the application is being made in good-faith, and the service sought is necessary, direct and or authorise –*

- (i) *Any person who has provided locking or encryption services pertaining to any communication or storage services or equipment of any data or information or other thing, to unlock or unencrypt the service or equipment and provide information contained therein to a police officer.*
- (ii) *The interception, reading, listening, and or recording of any conventional or electronic mail, telephone, voice over internet protocol, video conversation or conference or any communication through any other medium.*
- (iii) *The access to any police officer to any exchange of analogue or digital data or information exchange or transfer system.*

Purposes :

- *To determine the identity of a person who has committed an offence contained in this Act.*
 - *To determine the location where a person who has committed an offence contained in this Act, is present.*
 - *To facilitate the conduct of an investigation into an offence contained in this Act.*
 - *To gather evidence against a person who has committed an offence contained in this Act.*
 - *To determine whether one or more persons are conspiring, planning, preparing or attempting to commit an offence contained in this Act.*
 - *To take measures to prevent the committing of an offence contained in this Act.*
3. *Magistrates to assist in the conduct of investigations - It shall be the duty of a Magistrate to assist any police officer in the conduct of an investigation in terms of this Act, by making other orders. Upon an application being made by an officer-in-charge of a police station or by any other police officer not below the rank of an Inspector of Police, a Magistrate may make any appropriate order to facilitate the said officer to conduct the investigation.*
4. *Magistrates to record statements - Upon an application being made by an officer-in-charge of a police station conducting an*

investigation into the committing of an offence contained in this Act, the Magistrate to whom such application is made, may question and record the statement of any person, who is produced by such officer before the Magistrate.

When recording such statement, the Magistrate shall comply with the following conditions and comply with the procedure contained herein:

- (a) Inform the person of his rights as contained in this Act.*
- (b) Require that if the person so wishes, he first has access to or communication with an Attorney-at-Law.*
- (c) Inquire and ascertain whether such person wishes to answer questions being put to him voluntarily, and proceed to record such statement only if he is satisfied that, such person is voluntarily making such statement in the absence of any promise, inducement or threat.*
- (d) For the purpose of questioning such person, the Magistrate shall obtain from the officer-in-charge of the police station a questionnaire.*
- (e) The Magistrate shall inform the person who has been produced before him, that he is under no obligation to answer either all or some of the questions being put to him.*
- (f) The Magistrate shall also warn such person, that in the event of criminal proceedings being instituted against such person, the contents of the statement that he may make, may be used as evidence against him.*
- (g) In addition to putting questions to such person and recording his answers, the Magistrate shall record whatever such person wishes to say.*
- (h) In situations where the person being interviewed does not understand the language spoken by the Magistrate, obtain the services of an Interpreter, and cause the translation of the questions into the language understood by the person being*

interviewed and the answers given to the language spoken by the Magistrate. The Magistrate shall cause a transcript of the interview to be prepared and retained for future verification.

Where the maker of such statement is subsequently indicted for having committed an offence in terms of this Act, such statement shall be admissible against him.

Where the maker of the statement is called by the Attorney General as a witness to testify against a person who is indicted for having committed an offence in terms of this Act, either the entirety of the statement or a part thereof, may be marked and produced in evidence as part and parcel of the examination-in-chief of such person.

Following the recording of the statement or when produced before a Magistrate or following the Magistrate having spoken to the suspect, if the suspect declines to make a statement to the Magistrate, such fact shall be communicated by the Magistrate to the Police and the suspect shall be placed in remand custody.

(VII) Completion of investigations

- (i) Magistrate to be notified - Following the completion of investigations, the officer-in-charge of the relevant police station shall submit to the Magistrate a report notifying the completion of investigations.*
- (ii) Suspect not to be detained following completion of the investigation - A suspect in respect of whom the investigation has been concluded, shall not be detained under the authorization of a Detention Order issued in terms of this Act.*
- (iii) Magistrate and the Human Rights Commission to be notified of resumption of Investigation - If at any time,*

an investigation in respect of any person arrested in terms of this Act, is to resume, the Magistrate and the Human Rights Commission shall be kept informed, and the completion of such further investigation shall also be informed.

- (iv) Notes of Investigation to be submitted to the Attorney General - Following the completion of the investigation, the officer-in-charge of the police station shall through any officer authorised in that regard by the Inspector General of Police, submit to the Attorney General the notes of investigations, including the observations at the scene of the committing of the offence and any other place examined or searched, all statements recorded during the investigations including the statements of the person alleged to have committed the offence, reports of experts, photographs, sketches, plans etc., and any other material the Attorney General may specify from time to time, along with a report relating to the investigation conducted, and request the Attorney General to consider the institution of criminal proceedings against the suspect.*

(VIII) Institution of Criminal Proceedings and Trials:

- (i) Trial on indictment by the Attorney General - A trial against a person alleged to have committed an offence in terms of this Act, shall only be held on indictment by the Attorney General.*
- (ii) Criminal proceedings to be instituted for offences in terms of the Act and associated offences - The Attorney General shall be entitled to institute criminal proceedings by presenting an indictment against any person, for having committed an offence contained in this Act and any other offence (contained in any other law) which may have been committed by such person in the course of the same transaction.*

(iii) Suspension and deferment of Indictment -

If -

(a) death or grievous bodily injury has not been caused to any person, or

(b) the security of the State and the people of Sri Lanka have not been seriously compromised or affected,

the Attorney General may, with due regard to -

(i) State policy,

(ii) best interests of Sri Lanka and the people of Sri Lanka,

(iii) the views of the Inspector General of Police,

(iv) views of the victims of crime, and

(v) representations that may be made by the accused person or on his behalf by his Attorney-at-Law,

suspend and defer the institution of criminal proceedings against such person alleged to have committed an offence contained in this Act for a period not less than 5 years and not exceeding 10 years,

provided such person undertakes to fulfil the following conditions (one or more) that may be imposed by the Attorney General in respect of such person.

If such person fulfils the relevant conditions during the period stipulated for fulfilling of conditions, the Attorney General shall not be entitled to thereafter institute criminal proceedings against such person in respect of the offence he is alleged to have committed.

If the person fails without valid excuse to comply fully with the said conditions, the Attorney General shall be entitled to institute criminal proceedings against such person.

Conditions that may be imposed by the Attorney General -

a. Public expression of remorse and apology (before a Magistrates Court), in terms of a text issued by the Attorney General.

b. Provision of reparation to victims of crime, as specified by the Attorney General.

c. Voluntary participation in a 'specified programme of rehabilitation'.

- d. *Public undertaking not to commit an offence contained in this Act.*
 - e. *Engagement in specified community or social service.*
 - f. *Undertake not to commit any offence contained in this Act.*
 - g. *Refrain from committing any offence contained in this Act and any other indictable offence or committing a breach of the peace.*
- (iv) *Trial in the High Court - A trial against a person who has committed an offence contained in this Act, shall be conducted by the High Court to which the Attorney General has preferred the indictment.*
- (v) *Trial by a judge without a jury or by a trial-at-bar - A trial against a person indicted by the Attorney General for having committed an offence contained in this Act, shall be held before a single judge of the High Court, sitting without a jury. Provided however, should the Attorney General request the Chief Justice that a trial-at-bar comprising of three judges of the High Court be empaneled to hear such case, the trial shall be held before three judges of the High Court. The Chief Justice may also on his own motion or on an application made on behalf of the Accused, if he is of the opinion that interests of justice demands, direct that the trial-at-bar be conducted.*
- (vi) *Priority for trials - The High Court shall give preference to the commencement and completion of a trial, against any person who has been indicted by the Attorney General for having committed an offence contained in this Act.*
- (vii) *Conduct of trials on day-to-day basis - Following the commencement of the trial and its' adjournment, further trial shall necessarily be held on consecutive days, other than during weekends, public holidays and days fixed by the Chief Justice to be days on which the court shall be on vacation.*
- (viii) *Trial procedure - Subject to the above, a trial against any person indicted by the Attorney General for having committed an offence in terms of this Act, shall be held in terms of the*

applicable provisions of the Code of Criminal Procedure Act and in terms of any other principle which the judge may consider necessary for adoption for the purpose of conducting a fair trial.

(ix) *Withdrawal of Indictment*

During the course of a trial in the High Court against a person who has been indicted for having committed one or more offences contained in this Act, if any of the charges on the Indictment does not relate to -

- (a) causing death or grievous bodily injury to any person,*
- (b) compromising the security of the State and the people of Sri Lanka, or*

(c) causing serious harm to property,

the Attorney General may, with due regard to -

- (vi) State policy,*
- (vii) best interests of Sri Lanka and the people of Sri Lanka,*
- (viii) the views of the Inspector General of Police,*
- (ix) views of the victims of crime, and*
- (x) representations that may be made by the accused person or on his behalf by his Attorney-at-Law,*

with the permission of the High Court, withdraw the Indictment against the accused,

provided, the accused undertakes to fulfil the following conditions (one or more) that may be imposed by the Attorney General in respect of such person, with the sanction of the High Court.

If such person fulfils the relevant conditions during the period stipulated for fulfilling of conditions, the Attorney General shall not be entitled to present a fresh Indictment against the Accused at a future point of time, relating to the committing of offences contained in the original Indictment.

If the accused fails without valid excuse to comply fully with the said conditions, the Attorney General shall be entitled to prefer a fresh indictment against the accused containing the charges in the original Indictment and proceed to prosecute him again.

Conditions that may be imposed by the Attorney General with the sanction of the High Court -

- a. Public expression of remorse and apology (before the High Court), in terms of a text issued by the Attorney General.*
- b. Provision of reparation to victims of crime, as specified by the Attorney General.*
- c. Voluntary participation in a 'specified programme of rehabilitation'.*
- d. Public undertaking not to commit an offence contained in this Act.*
- e. Engagement in specified community or social service.*
- f. Undertake not to commit any offence contained in this Act.*
- g. Refrain from committing any offence contained in this Act and any other indictable offence or committing a breach of the peace.*

(IX) Evidence – Admissibility

(i) Confessional Statement made to a Police Officer - Notwithstanding anything to the contrary in the Evidence Ordinance, a statement made by any persons to a police officer holding a rank not below the rank of a Superintendent of Police, either by himself or in response to questions put, shall be admissible against such person (accused), at a trial against such person for having committed an offence contained in this Act and any other offence that may have been committed in the course of the same transaction.

(ii) Pre-condition to be satisfied for admissibility of a Confession made to a Police Officer – For a confession made to a Superintendent of Police to be considered for admissibility against a person accused of having committed an offence contained in this Act, the following conditions should be satisfied:

- a. The Superintendent of Police who recorded such confessional statement should have both immediately prior to and soon after the recording of the statement, caused the person who made the statement to be examined by a government forensic medical specialist, and the*

ensuing report shall be produced by the prosecution during the voire-dire inquiry into the admissibility of the confessional statement.

- b. Prior to the recording of the statement, the suspect should have if he so wished had access to an Attorney-at-Law representing him and had the occasion to receive confidential legal advice.*
- c. The Superintendent of Police interviewing the suspect and seeking to record his statement, should have explained to the suspect, that he is not bound to make a statement, that if he wishes to make a statement he is obliged to reveal the truth, and that, anything he says would be admissible against him at future judicial proceedings against him.*
- d. At the time of the interview and recording of the statement, the Attorney-at-Law representing the suspect should have been present.*
- e. Following the completion of the recording of the statement, the Attorney-at-Law should have made an entry in the relevant record maintained by the Superintendent of Police, affirming that the statement was made by the suspect voluntarily, and there existed no threat, inducement or promise.*

- (iii) Statement made to a Magistrate – A statement made by any person to a Magistrate in terms of the provisions of this Act, shall be admissible against such person, if the making of such statement is held by the High Court to have been made in compliance with section 24 of the Evidence Ordinance.*

The following provisions shall apply to the exercise of powers in terms of the preceding paragraph :

- i. No person shall be legally bound to make a statement or produce an affidavit implicating / incriminating himself in the committing of an offence.*
- ii. Any person who is to be interviewed and his statement is to be recorded, shall have the right if he so wishes to first have access or communication with an Attorneys-at-Law and obtain legal advice.*
- iii. A Magistrate seeking to record a statement, shall first inform the person being interviewed of his rights in terms of this Act.*

- iv. *If the person who is being interviewed and his statement is being recorded cannot understand the language being spoken, the services of an interpreter shall be obtained and the interview shall be conducted in a language that could be understood. A translation of the statement shall be transcribed together with the corresponding questions, and kept for future verification.*
- v. *The interview shall wherever possible be audio-video recorded.*

(iv) ***Pre-condition to be satisfied for admissibility of a Confession made to a Magistrate*** – For a confession made to a Magistrate to be considered for admissibility against a person accused of having committed an offence contained in this Act, Magistrate who recorded such confessional statement should have both immediately prior to and soon after the recording of the statement, caused the person who made the statement to be examined by a government forensic medical specialist, and the ensuing report shall be produced by the prosecution during the *vioire-daire* inquiry into the admissibility of the confessional statement.

(v) ***Burden of proof*** - It shall be the burden of the prosecution to establish to the satisfaction of court, that such statement made to a Magistrate or to a Superintendent of Police was made voluntarily.

(vi) ***Confession against co-accused*** - Notwithstanding anything to the contrary in the Evidence Ordinance, a statement voluntarily made by an accused to a Magistrate or to a police officer not below the rank of a Superintendent of Police, shall be admissible against a co-accused, if the contents of such statement are corroborated in material particulars.

(X) Transitional Provision

(a) ***Certain provisions of the PTA to remain in operation*** – Sections 2(1)(a), 2(1)(b), 2(1)(d), 2(1)(e), 2(1)(f), and 2(1) of the Prevention of Terrorism Act,

and the provision relating to conspiracy to commit such offences and abetment to commit such offences, shall remain in operation, in so far as offences contained in that Act have been committed prior to the coming into operation of this Act.

Thus, it shall be possible to indict a person for having committed an offence, even after this Act having come into operation, for having committed an offence contained in the Prevention of Terrorism Act as contained in this section.

(b) However, the procedure to be followed with regard to the arrest, custody, detention of any person suspected of having committed such offence, and the investigation and prosecution of such offence, shall be in terms of the provisions of this Act (CTA).

(c) Trials for offences in terms of the PTA – Trials relating to indictments filed by the Attorney General prior to the enactment of the Counter Terrorism Act, shall also proceed in terms Counter Terrorism Act and other applicable laws, notwithstanding the repealing of the Prevention of Terrorism Act.

(d) Furthermore, prior to the forwarding of the Indictment pertaining to the committing of an offence in terms of the PTA, the Attorney general shall initially consider suspending or differing the institution of criminal proceedings, as provided in this Act. However, nothing in this section, shall preclude the Attorney General from instituting criminal proceedings, by forwarding Indictment.

(XI) Miscellaneous Provisions

(a) Proscription of Terrorist Organizations

- (i) *The Minister may, in compliance with the Rules promulgated in that regard in terms of this Act, acting on (a) a recommendation by the Inspector General of Police, or (b) a request made to the Government of Sri Lanka by a foreign State, or (c) following a resolution adopted by the Security Council of the United Nations, by order published in the Gazette, proscribe any organization for a period to be specified in the said order, which in the opinion of the Minister has as its' objective the perpetration of terrorism within or outside Sri Lanka at national or international level, or is engaged intentionally or knowingly in the perpetration facilitation of terrorism or the committing of any offence contained in this Act in a persistent and organized manner.*
- (ii) *Together with the Proscription of an organization in terms of this section, the Minister shall declare one or more of the following sanctions (conduct to be illegal):*

 - a. The conduct of meetings, activities and programmes by such organization.*
 - b. The use or mobilization of bank accounts and other financial depositories of such organization.*
 - c. The entering into of contracts.*
 - d. Solicitation and assimilation of funds, grants and bequests.*
 - e. Dissemination or transfer of funds and assets of the organization.*
 - f. Lobbying and canvassing on behalf of such organization.*

Provided however, any activity as provided for in this law or engaging in any other legal action aimed

at having the proscription issued on such organization, vacated, suspended or varied, shall not be illegal.

- (iii) Immediately following the issuance of an Proscription Order, such order shall be communicated to the organization and to its membership / employees together with reasons therefor, by way of direct communication (wherever such communication is possible). A public announcement of the proscription and the related sanctions shall also be made.*
- (iv) Any person or organization aggrieved by such decision of the Minister, shall be entitled to appeal to the Minister, and it shall be the duty of the Minister to provide a hearing to the appellant and consider his submissions.*
- (v) Any organization proscribed by the Minister in terms of this Act, shall be entitled to appeal against or seek revision of the decision made by the Minister to the Court of Appeal.*
- (vi) An order made in terms of this section shall be valid initially for a period of one year. Once a year, the Minister shall in the light of contemporary reliable information and security needs, review his decision to proscribe an organization and with the sanction of a judge of the High Court, extend the order for a period not exceeding one year at a time. The judge of the High Court shall grant such sanction, only if he upon a consideration of material placed before him, is satisfied that, (a) there remains reasonable grounds to believe that the organization has knowingly carried out, participated in or facilitated the committing of terrorism or any offence contained in this Act, and (b) the sanctions and consequences of the proscription of the organization is necessary and proportionate.*

The decision of the Minister following the review, shall also be liable for appeal.

(b) Prohibition and Restriction Orders

- (i) *Where the Minister on a recommendation made by the Inspector General of Police, has reasonable grounds to believe that, any person (a) has taken or is taking steps to commit an offence in terms of this Act and it is necessary to prevent the committing of such offence, or (b) has committed or has been concerned in the committing an offence contained in this Act, and his conduct can be investigated into without his being arrested, and if he is of the opinion that it is necessary to do so, he may make an order in writing imposing on such person such prohibitions or restrictions as may be prescribed in that order, for a period not exceeding one month at a time.*
- (ii) *The prohibitions and restrictions that the Minister may impose, shall be limited to one or more of the following:*

 - a. Movement outside the place of residence.*
 - b. Travel overseas.*
 - c. Travel within Sri Lanka.*
 - d. Travel outside the normal route between the place of residence and place of employment.*
 - e. Communication and or association with persons to be specified in the order.*
 - f. Engaging in certain specified activities that may facilitate the committing an offence contained in this Act.*
- (iii) *The conditions contained in the preceding paragraph and stipulated in the prohibition and restriction order, shall be necessary for the prevention of the committing of an offence contained in this Act or necessary to conduct investigations into the committing of an offence contained in this Act, and shall be proportionate and shall not amount to an arbitrary deprivation of liberty or an*

impermissible restriction on the exercise of a Fundamental Right.

- (iv) *Following the issue of a restriction or prohibition order, the Minister shall cause the said order to be served on the person in respect of whom such order was made, and require the Inspector General of Police to take necessary steps to enforce the order and ensure compliance with it.*
- (v) *Within one week of the restriction or prohibition order being enforced, the Inspector General of Police shall cause the statement of the person in respect of whom such order was made to be recorded, and submit it to the Minister, enabling the Minister to determine whether the said order should be revoked or varied. Prior to the recording of the statement, he shall be informed of his rights in terms of this Act, and he shall be informed of the grounds for the issuance of the prohibition or restriction order. Prior to the recording of the statement, he shall also if he requests, be permitted access to or confidential communication with an Attorney-at-Law. If he does not understand the language spoken by the interviewer, the services of a translator shall be obtained and the interview shall be translated into the language understood by such person. A transcript of the interview shall be maintained for future verification. Wherever possible, the interview shall be audio-video recorded.*
- (vi) *Any person who wilfully acts in contravention of a prohibition or restriction order made in terms of this Act, shall commit an offence, and shall upon conviction by the High Court be punished with a term of imprisonment which may extend to 3 years and by a fine.*
- (vii) *The Minister shall review the need for the extension of such restriction or prohibition order, once in every month.*
- (viii) *The total period for which such a restriction or prohibition order shall be made, shall not exceed 6 months.*

- (ix) *The person in respect of whom such a restriction or prohibition order has been made or his Attorney-at-Law, shall be entitled to appeal against such order to the Court of Appeal.*
- (x) *The Court of Appeal shall consider the grounds of appeal and the reasons for making of such an order given by the Minister and the Inspector General of Police, and make order in respect of an appeal presented in terms of this Act, within one month of the presentation of the appeal.*

(c) **Curfew**

- (i) *Where the President acting on information provided by the Minister and on the request of such Minister, or on his own motion and on any information he may call for and receive, considers it expedient to do so, for the purpose of (a) controlling, detecting or investigating, the occurrence of systematic and widespread committing of terrorism and other offences in terms of this Act, (b) for the protection of national or public security from acts of terrorism and other offences in terms of this Act, or (c) to prevent the systematic and widespread committing of offences contained in this Act, may subject to such exemptions he may impose (to provide for emergency and humanitarian needs), for a time duration he shall specify, make order published in the gazette declaring a 'curfew' for either to the entirety or part of Sri Lanka including its territorial seas and airspace.*

Such order, shall include references to persons who may be authorised to issue permits, (a) authorising exemptions from adherence with the curfew order, and (b) authorising travel from one place to another, for reasons to be specified in such permit. Such authorization may be granted due to the need to maintain essential services and supplies, emergency requirements and humanitarian reasons.

Any person who requires exemption or variation of a curfew order, shall be entitled to make an application to the authority referred to in the preceding paragraph in the prescribed form.

The President making a curfew order, shall cause prompt and sufficient publicity to be given to such order.

Provided however, the maximum period in respect of which such curfew may be imposed shall not exceed 24 hours.

Provided further that, following a minimum period of 3 hours interval, a new curfew may be imposed.

Provided also that, no more than 3 curfew orders may be made in within a total period of 7 days, unless such curfew orders exceeding 3 is sanctioned by a judge of the High Court of Colombo (if the order is to be enforced throughout the country) or by the judge of the relevant High Court (if the order is to be enforced in a particular High Court zone), based on material placed before him, and his being satisfied that the imposition of such curfew orders is necessary.

As soon as a Curfew Order is issued, the Inspector General of Police shall notify the issuance of the order to the Human Rights Commission of Sri Lanka.

- (ii) A person who wilfully violates a curfew order, shall thereby commit an offence, and following conviction by a Magistrates Court, be liable to pay a fine.*
- (iii) It shall be lawful for any police officer or member of the armed forces or a coast guard officer to use reasonable force as may be necessary to ensure compliance with a curfew order, where all other means of ensuring compliance have proved ineffective and provided that only non-lethal use of force is used, unless in the exercise of private defence as provided in the Penal Code.*

(d) Prohibited Places

(i) For the purpose of protecting national security, prevention of terrorism and prevention of committing of terrorism related offences or any other offence contained in this Act, the Minister may acting on a recommendation by the Inspector General of Police or a Commander of the armed forces, or the Director General of the Coast Guard, from time to time, by the publication in the gazette, make order and thereby stipulate any public place or any place owned or controlled by the government, including a specified area of land, sea or air, or building or any other location, to be a 'Prohibited Place'. The Minister may where necessary stipulate in the said order that, entry, taking photographs, video recording and making sketches of the location, shall also be prohibited.

(ii) In addition to the publication of the declaration of a prohibited place in the Gazette, sufficient publicity through other means shall also be provided.

(iii) The declaration of a place as a Prohibited Place shall as soon as possible be communicated by the Inspector General of Police to the Human Rights Commission of Sri Lanka.

(iii) Following a place being declared a prohibited place, where possible, notices shall be placed at entry points to such location, indicating that such location has been declared a prohibited place.

(iv) Following a place being declared a prohibited place, the chief executive officer of such place or the lawful guardian or any other person stipulated in that regard by the Minister, shall stipulate the categories of persons who shall be authorised to enter and remain in such place. Such person shall also be entitled to authorise any other person to enter such place on conditions he may specify.

(v) Any person who following publication of the Prohibition Order and Notices, wilfully enters or remains in a prohibited

place without lawful authority, shall commit an offence, and shall be liable to punishment for a term not extending 3 years and or to a fine.

(vi) Where taking photographs, video recording and making sketches of a location has been prohibited, doing so, following the publication of the Prohibition Order and Notices, in wilful violation of the prohibition order, shall be an offence, and shall be liable to punishment for a term not extending 3 years and or to a fine.

(e) Armed forces to assist the Police to perform certain specified functions and operations

(i) Upon receipt of information that there are widespread attacks of terrorism and committing of other offences contained in this Act, and the President, either on his own motion or acting on a request by the Minister and or the Inspector General of Police forms the view that such information to be well-founded, and upon the advice received from among others the Inspector General of Police, he is of the opinion that the police officers acting by themselves are unable to effectively deal with the situation, maintain law and order, and enforce provisions of this Act, for reasons to be stated by the President, may by proclamation, direct the Commanders of the Armed Forces to direct members of the Armed Forces to provide assistance to the police to perform certain specified functions, which the police are empowered in terms of this act to carryout.

(f) Seizure, Confiscation and Forfeiture of Property

(i) Any police officer may seize any property including money that has been kept to commit, used to commit or derived out of committing an offence contained in this Act. Such seizure shall be valid for a period not exceeding 3 days.

- (ii) *Unless the seizure made in terms of the above paragraph is ratified and extended by a police officer of a rank not less than that of an Assistant Superintendent of Police on a request made by an officer-in-charge of a police station, it shall cease to have any effect.*
- (iii) *The seizure ratified and extended by a police officer of a rank not less than an Assistant Superintendent of Police shall cease to be in force upon the expiry of 90 days, unless authorised by a Magistrate. The Magistrate on whom a request is made by an officer-in-charge of a police station to grant authorization for extension of the seizure till the end of the trial relating to the committing of the relevant offence, shall hear parties who may present claims in respect of the property. The Magistrate may release property used for the committing of an offence in terms of this Act, on conditions to be imposed on such party to whom the property is being released, if he is satisfied that such party was a bona-fide owner, who had no knowledge that the property in issue will be used or is being used for the committing of an offence or had exercised due diligence to prevent the committing of an offence contained in this Act.*
- (iv) *Following the conviction of a person for having committed an offence in terms of this Act, subject to the determination of an appeal against such conviction, the court shall make order that any property including any weapon, vehicle, equipment, land or house used in the commission of such offence or derived out of such offence be forfeited and confiscated to the State. Provided however, for reasons to be adduced by a bona-fide claimant, any property which may have been used by any person to commit an offence in terms of this Act without the knowledge or consent of the owner of such property, shall not be subjected to such forfeiture and confiscation.*
- (v) *Even following the acquittal of a person having committed an offence in terms of this Act, the Court may make order*

that any property used for or derived out of the committing an offence in terms of this Act be forfeited and confiscated to the State. Provided however, for reasons to be adduced by a bona-fide claimant, any property which may have been used by any person to commit an offence in terms of this Act without the knowledge or consent of the owner of such property, shall not be subjected to such forfeiture and confiscation.

(vi) Any person aggrieved by an order made in terms of this paragraph, may appeal against such order to the Court of Appeal.

(vii) It shall be lawful for any police officer to take into his custody and retain any instrument, weapon, ammunition or utensil used to commit an offence contained in this Act, and provisions contained in this chapter shall not apply for such weapon.

(g) Certain provisions of the Code of Criminal Procedure Act

(i) Provisions of sections 303 and 306 of the Code of Criminal Procedure Code shall not apply in the case of a person who pleads guilty, is found guilty and is convicted for having committed an offence contained in this Act. Provided however, it shall be lawful for an order to be made in terms of section 303 of the Code of Criminal Procedure Act, if the accused at the time of conviction is less than 18 years of age or has reached the age of 70 years or more.

(ii) Provisions of the Child Protection and Justice Act (to be enacted by Parliament shortly, which would inter-alia repeal the Children and Young Persons Ordinance) shall apply to any child who may be found guilty and convicted for having committed an offence contained in this Act.

(h) Offences committed by bodies of persons

- (i) *When an offence in terms of this Act is committed by a body of persons, if that body of persons is a body corporate, every director and the principal executive officer of such body corporate, shall be deemed to be guilty of having committed such offence.*
- (ii) *When an offence in terms of this Act is committed by an unincorporated body of persons, if that body is a firm, every partner of that firm, and if it is an unincorporated body of persons, all persons responsible for the management and administration of such body, shall be deemed to be guilty of having committed such offence.*
- (iii) *Provided however, no person shall be liable for punishment, if an offence had been committed without his knowledge or consent, or if such person had taken reasonable steps to prevent the committing of the offence. However, the duty of proving that such person did not have any knowledge or that the offence had been committed against his consent or that he has taken reasonable steps, shall be on such person claiming so.*

(i) Sentencing Policy and Guidelines

- (a) *Aggravating factors - When determining the term of imprisonment to be imposed on a person convicted of having committed an offence in terms of this Act, the following factors may be taken into consideration as aggravating factors and hence may attract enhanced penal sanctions:*

 - *Effect of the committing of the offence on the unity, territorial integrity, or sovereignty of Sri Lanka or of any other sovereign country.*
 - *Effect of the committing of the offence on the security or defence of Sri Lanka.*
 - *Loss of life.*
 - *Expression of public disquiet.*

- *Injury or harm inflicted on the people of Sri Lanka or those of any sovereign country.*
- *Impact on the victims of crime and consequences faced by them.*
- *Effect and impact on the security of the people of Sri Lanka.*
- *Impact on the peaceful coexistence of the people of Sri Lanka.*
- *Financial harm and material loss to the government of Sri Lanka and to the people of Sri Lanka.*
- *Financial and other resources required for the reparation and restoration of damage caused.*

(b) Mitigating factors - When determining the term of imprisonment to be imposed on a person convicted of having committed an offence in terms of this Act, the following circumstances may be taken into consideration as mitigating factors and hence may attract a mitigated term of imprisonment:

- *Publicly denouncing terrorism*
- *Expression of remorse.*
- *Young age at the time of committing the offence.*
- *Old age at the time of sentencing.*
- *Time period spent in detention / remand.*
- *Coercion or duress under which the offence had been committed.*
- *Consent on the part of the victims of crime to grant pardon to the convict.*
- *Voluntary provision of reparation by the convict to the victims of crime.*
- *Public denouncement of violence, terrorism and offence in respect of which the convict has been found guilty.*
- *Genuine commitment towards the preservation and protection of the unity, territorial integrity, and sovereignty of Sri Lanka.*
- *Having voluntarily completed participating in a rehabilitation programme, or voluntary participation in a rehabilitation programme stipulated by the Judge.*

(j) Judicial Review and Appeal

- (i) For avoidance of doubt and for clarity, it is stated that, any person aggrieved by a decision or action purported to have been taken in terms of this Act, shall be entitled to, in*

addition to any legal remedy he may be entitled in terms of the law, to seek relief in terms of Article 126 and 140 of the Constitution, if such person is otherwise entitled to in terms of the law.

- (ii) The right of appeal to the Court of Appeal shall be available to the extent provided for by the Code of Criminal Procedure Act.*
- (iii) Any person aggrieved by a judgment of the Court of Appeal shall with the leave obtained from such court or with special leave to appeal being obtained from the Supreme Court, be entitled to appeal to the Supreme Court.*

(k) Regulations and Directions

- (i) The President either on his own motion or acting on the recommendation of the Minister, may make Regulations and issue Directions under this Act, that may become necessary from time to time, for the purpose of carrying out or to give effect to the principles and provisions of this Act, including to comprehensively and effectively give effect to the purposes for which this Act has been enacted, to fill lacuna in the law and to lawfully respond to situations pertaining to national security or the security of the people, that had not been envisaged at the time of enacting this Act.*
- (ii) Every Regulation and Direction made in terms of this section shall be published in the gazette, and shall come into operation on the date specified in the said Regulations.*
- (iii) Regulations made in terms of this Act, shall be placed before Parliament within 30 days of the said Regulations being promulgated, and may be approved, rescinded or varied by Parliament.*
- (iv) The President on the advice of the Minister, may from time to time, issue Directions applicable to police officers*

and armed forces personnel, pertaining to the manner in which provisions of this Act shall be enforced. When making such Directions, the Minister shall pay due regard to ensuring that provisions of this Act are enforced in an efficacious manner, and that Human Rights norms and standards are adhered to. Following the making of such Directives, they shall be Gazetted.

(l) Priority

Provisions of this Act shall have effect notwithstanding anything contained in any other written law and accordingly in the event of any conflict or inconsistency between provisions of this Act and such other written law, the provisions of this Act shall prevail.

(m) Repeal of the Prevention of Terrorism Act

Subject to the transitional provisions contained in this Act, the Prevention of Terrorism Act is hereby repealed.

(n) Definitions

- a. Proscribed Terrorist Organization** – *A proscribed terrorist organization shall mean an organization that has been proscribed by the Minister in terms of this Act, and shall include any organization proscribed in terms of a Regulation made in terms of the United Nations Act.*
- b. Confidential Information** – *Confidential Information shall mean the following:*
 - i.** *Any information, the dissemination of which is likely to have an adverse impact on the security and the defences of Sri Lanka.*

- ii. *Any information not in the public domain, the dissemination of which is likely to have an adverse effect on national or public security.*
 - iii. *Any information not in the public domain, relating to the personnel or functioning of the Police, Armed Forces, Department of the Coast Guard, the dissemination of which is likely to have an adverse effect on national or public security.*
 - iv. *Any information not in the public domain, relating to the functioning, movement or whereabouts of a specified person, the dissemination of which is likely to have an adverse effect on national or public security.*
 - v. *Any information not in the public domain relating to a prohibited place or an approved place of detention, the dissemination of which is likely to have an adverse effect on national or public security.*
 - vi. *Any information not in the public domain relating to the conduct of investigations into offences contained in this Act, investigational findings, persons arrested and detained and identity of officers conducting investigations, the dissemination of which is likely to have an adverse effect on national or public security.*
 - vii. *Any information relating to the police or the armed forces, pertaining to the conduct of any official activity, including any law enforcement or military measure, which it intends to carryout or is carrying out or has carried out, and which is not already in the public domain, the dissemination of which is likely to have an adverse effect on national or public security.*
 - viii. *Any secret code, word, password or encryption details relating to national security and defence, the dissemination of which is likely to have an adverse effect on national or public security.*
- c. *Gratification – The term gratification shall have the same meaning as given to the term in the Bribery Act.*
- d. *Minister – ‘Minister’ means the Minister in charge of the subject ‘police’.*

- e. *Witness* – The term ‘witness’ shall have the same meaning given to the term in the Assistance to and Protection of Victims of Crime and Witnesses, Act No. 4 of 2015.
- f. *Victim of Crime* – The term victim of crime shall have the same meaning as given for the term in the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015.
- g. *Approved Place of Detention* – A specified place of detention, shall mean, a place specified by the Minister as being an authorised place of detention, which shall be determined by the Minister from time to time, on recommendation made by the Inspector General of Police and published in the Gazette.
- h. *Approved conditions of Detention* – Approved conditions of detention shall mean, conditions specified by the Minister from time to time, which conditions shall be determined by the Minister in consultation with the Inspector General of Police and the Human Rights Commission of Sri Lanka, and published in the Gazette.
- i. *Aircraft* – An aircraft shall include a helicopter.
- j. *Specified Rehabilitation Programme* – The Minister may from time to time, develop and prescribe rehabilitation programmes which may be followed by persons in respect of whom the Attorney General considers the suspension and deferment of indictment. Details of such rehabilitation programmes shall be published in the Gazette, and shall include (a) objectives to be achieved by the conduct of the programme, (b) nature of rehabilitation activities, (c) nature of the training to be provided, (d) trainers, (e) where the programme would be conducted, and (f) the duration of the programme.
- k. *Curfew* – A curfew shall be an order prohibiting the presence or movement in or through a public place, including any road, railway, tunnel, territorial sea, stream, park, market, seashore, and recreation area.