



**Australian Government**  
**Refugee Review Tribunal**

---

**Country Advice**  
**Sri Lanka**

Sri Lanka – LKA39133 – Prevention of  
Terrorism Act – Travel – Bail  
22 August 2011

---

**1. Are individuals who are charged with a crime under The Prevention of Terrorism Act granted bail?**

One reported incident was found in which an individual convicted or charged under *The Prevention of Terrorism Act* was granted bail. In January 2010, Jayaprakash Sittampalam Tissainayagam, a journalist who was convicted under *The Prevention of Terrorism Act* was released on bail following an appeal. In May 2010 Mr Tissainayagam received a full pardon from the Sri Lankan government.<sup>1</sup> International Crisis Group have reported that the initial conviction of Mr Tissainayagam was “criticised domestically and internationally.”<sup>2</sup>

*The Prevention of Terrorism Act* includes provisions for not granting bail to persons accused of an offence under this Act. The Act does, however, state that the Court of Appeal can grant bail in ‘exceptional circumstances’ and subject to conditions. Section 19 of *The Prevention of Terrorism Act* states that:

**Provisions of any written law relating to the grant of bail not to apply to persons accused of any offence under this Act**

19. Notwithstanding the provisions of any other written

(a) every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal;

(b) any order made under the provisions of subsection (4) of section 14 shall, notwithstanding any appeal made against such order, continue in force until the determination of such appeal.

---

<sup>1</sup> United Kingdom Foreign & Commonwealth Office 2011, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, March, p.291; Amnesty International 2011, *Amnesty International Annual Report 2011 – Sri Lanka*, p.304.

<sup>2</sup> International Crisis Group 2010, *Sri Lanka: A Bitter Peace: Asia Briefing N°99*, 11 January, p.18  
<http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/b99%20sri%20lanka%20a%20bitter%20peace.ashx> – Accessed 20 October 2010.

Provided, however, that the Court of Appeal may in exceptional circumstances release on bail any such person referred to in paragraph (a) subject to such conditions as the Court of Appeal may deem fit, or vary or suspend any order referred to in paragraph (b),<sup>3</sup>

A 2009 report by the International Crisis Group states that *The Prevention of Terrorism Act* “deprives judges of any authority to release prisoners on bail”. The report provides the following overview of *The Prevention of Terrorism Act*:

Parliament enacted the PTA in 1979 as a temporary response to growing unrest in the Northern Province. It was made permanent in 1982. Its provisions apply regardless of whether there is a declared emergency. Section 9 allows the justice minister to order a person detained without judicial review for renewable periods of three months, up to a total of eighteen months, if the minister “has reason to believe or suspect that any person is connected with or concerned in any unlawful activity”. The person is to be presented to a magistrate, however, within 72 hours of their initial detention under Section 7 of the ordinance.

The PTA differs from emergency regulations in that it requires ministerial involvement in detention decisions. **Like emergency regulations, however, the PTA deprives judges of any authority to release prisoners on bail.** Section 6 allows police to arrest persons and detain them for three days without judicial supervision, and to search their home without a warrant. Section 16 deviates from the standard criminal procedure code by making confessions to judges admissible. No provision of the PTA requires the detaining authorities to inform a prisoner of the reasons for the detention.

The PTA also restricts free speech by criminalising certain forms of political expression and requiring prior approval for certain publications.<sup>4</sup>

In 2003, the United Nations also reported that the *Prevention of Terrorism Act* “eliminates the power of the judge to order bail”:

The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14). The Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defense cannot be challenged in court. **The PTA also eliminates the power of the judge to order bail or impose a suspended sentence,** and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions,

---

<sup>3</sup> *Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)*, Commonwealth Legal Information Institute website, Section 19 [http://www.commonlii.org/lk/legis/num\\_act/potpa48o1979608/s19.html](http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/s19.html) - Accessed 16 August 2011.

<sup>4</sup> International Crisis Group 2009, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, Asia Report N° 172, 30 June, p.8

incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.<sup>5</sup>

## 2. Are individuals who are on bail for a crime under *The Prevention of Terrorism Act* permitted to exit the country?

No information was found as to whether individuals charged under *The Prevention of Terrorism Act* would be able to travel while on bail.

*The Bail Act* states that individuals can be prohibited from leaving Sri Lanka as a condition of their being granted bail. *The Bail Act* does not, however, specify in which circumstances this condition would be imposed. Section 22 of *The Bail Act* states that:

### **Bail Act (No. 30 of 1997) – Sect 22**

Conditions to be attached to order

22. (1) Whenever a Magistrate makes an order that in the event of the arrest of the applicant he shall be released on bail it may attach such conditions to the order as it may think fit, in the light of the facts of the particular case, **(including conditions prohibiting the applicant from leaving Sri Lanka or requiring the applicant to surrender his passport to court)**, and shall specify-

(a) the non bailable offence or offences in respect of which the order is made ; and

(b) the manner in which bail shall be furnished by the applicant at the time of his arrest.

**(2) Where a Magistrate in making an order under section 21, prohibits the applicant from leaving Sri Lanka, he shall forthwith notify the Controller of Immigration and Emigration of such fact.**<sup>6</sup>

Section 11 of *The Prevention of Terrorism Act* includes provisions which allow for the Minister to restrict the movement of persons who are placed under a temporary detention order for an offence under this Act.<sup>7</sup>

Amnesty International also reported in February 2011 that under *The Prevention of Terrorism Act*, the Minister of Defence can impose restrictions on freedom of movement. The report states that:

---

<sup>5</sup> United Nations 2003, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Sri Lanka*, p.4  
<http://www.universalhumanrightsindex.org/documents/825/561/document/en/pdf/text.pdf> - Accessed 19 August 2011

<sup>6</sup> *Bail Act (No. 30 of 1997)*, Commonwealth Legal Information Institute website, Section 22  
[http://www.commonlii.org/lk/legis/num\\_act/ba30o199787/s22.html](http://www.commonlii.org/lk/legis/num_act/ba30o199787/s22.html) - Accessed 17 August 2011

<sup>7</sup> *Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)*, Commonwealth Legal Information Institute website, Section 11 [http://www.commonlii.org/lk/legis/num\\_act/potpa48o1979608/s11.html](http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/s11.html) - Accessed 16 August 2011; *Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)*, Commonwealth Legal Information Institute website, Section 9 [http://www.commonlii.org/lk/legis/num\\_act/potpa48o1979608/s9.html](http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/s9.html) - Accessed 16 August 2011

Like the emergency regulations, the Prevention of Terrorism Act grants broad powers to the police to enter and search premises without a warrant, to seize property and arrest individuals connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity'. The authorities have used the laws to shut down newspapers and printing presses. **The Prevention of Terrorism Act grants extraordinary power to the Minister of Defence** to order the detention of an individual suspect for investigation or as a preventative measure. **The Minister can determine not only the place and conditions of detention, but also impose continued restrictions or prohibitions on a person's basic freedoms, including freedom of expression, association and movement, even after he or she is released from official custody.**<sup>8</sup>

Recent advice from the British High Commission (BHC) Colombo indicates that all nationals exiting Sri Lanka are checked against an alert list which includes individuals not permitted to travel for legal reasons such as arrest warrants or bail conditions.<sup>9</sup>

On 18 March 2011 the British High Commission (BHC) Colombo confirmed advice provided on 30 August 2010 on exit procedures in Sri Lanka. The BHC advised that nationals exiting Sri Lanka through Colombo international airport must pass through immigration control and are checked against a Department of Immigration & Emigration (DIE) Border Control System database. The DIE database includes an alert or wanted list which provides information on arrest warrants, court orders and individuals not permitted to travel under bail conditions. The BHC provided the following advice on exit procedures and alert lists:

At the check-in desks, passengers have to produce their passports to airline staff and go through check-in procedures. Airline check-in staff routinely check the identity of the person against the passport details, the validity of the passport, and if the passenger has the appropriate visa for their country of destination or transit. Having checked-in, passengers then proceed to a security gate, where they produce their passport and boarding card in order to enter the Department of Immigration & Emigration [DIE] area. All passengers must complete a departure card and then queue at an immigration officer's desk. **Passengers must present their passport, departure card and boarding pass to the immigration officer. The immigration officer will swipe the passport on the DIE Border Control System database.**

The Department of Immigration & Emigration (DIE) are notified only when a Court decides to impound the suspect's passport or an arrest warrant is issued. **The details of such persons would be placed on their alert or wanted list within their database.** There is no other mechanism to ensure that the Immigration Officers are aware of such instances. **Apart from these Court powers, Immigration Officers have no power in law to prevent persons embarking. The other method, which is rare and case specific, is that the State Intelligence Service (SIS) can inform Immigration Officers of individuals suspected of terrorist activity and those on a wanted list.** Again the details of suspects would be put on the DIE database. Without Court sanction, Immigration officers are powerless to put an individual in detention if they are otherwise satisfied that they have a right to enter or live in Sri Lanka.

---

<sup>8</sup> Amnesty International 2011, *Forgotten Prisoners: Sri Lanka Uses Anti-Terrorism Laws To Detain Thousands*, February, p.5 <http://www.amnesty.org/en/library/asset/ASA37/001/2011/en/64530ad7-76a6-4fb1-8f46-996c8543daf8/asa370012011en.pdf> - Accessed 22 August 2011

<sup>9</sup> UK Home Office 2011, *Country of Origin Information Report: Sri Lanka*, UK Home Office website, 4 July, pp.142- 144

...Each immigration officer's desk has a terminal connected to the Department of Immigration & Emigration (DIE) Border Control System. This system contains border control, visa, citizenship and passport records and is networked to the DIE office in Colombo. It is not linked to any police or military database; however, **there is an alert list containing information relating to court orders, warrants of arrest, jumping bail, escaping from detention, as well as information from Interpol and the State Intelligence Service (SIS) computer system.** The immigration officer will check for any data matches, check that the document is genuine and unaltered, and look through the passport for visas and/or endorsements.<sup>10</sup>

---

<sup>10</sup> UK Home Office 2011, *Country of Origin Information Report: Sri Lanka*, UK Home Office website, 4 July, pp.142- 144

## Attachments

Amnesty International 2011, *Amnesty International Annual Report 2011 – Sri Lanka*.

Amnesty International 2011, *Forgotten Prisoners: Sri Lanka Uses Anti-Terrorism Laws To Detain Thousands*, February

<http://www.amnesty.org/en/library/asset/ASA37/001/2011/en/64530ad7-76a6-4fb1-8f46-996c8543daf8/asa370012011en.pdf> - Accessed 22 August 2011.

*Bail Act (No. 30 of 1997)*, Commonwealth Legal Information Institute website, Section 22  
[http://www.commonlii.org/lk/legis/num\\_act/ba30o199787/s22.html](http://www.commonlii.org/lk/legis/num_act/ba30o199787/s22.html) - Accessed 17 August 2011.

International Crisis Group 2009, *Sri Lanka's Judiciary: Politicised Courts, Compromised Rights*, Asia Report N° 172, 30 June.

International Crisis Group 2010, *Sri Lanka: A Bitter Peace: Asia Briefing N°99*, 11 January  
<http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/b99%20sri%20lanka%20a%20bitter%20peace.ashx> – Accessed 20 October 2010.

*Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)*, Commonwealth Legal Information Institute website, Section 19  
[http://www.commonlii.org/lk/legis/num\\_act/potpa48o1979608/s19.html](http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/s19.html) - Accessed 16 August 2011.

*Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)*, Commonwealth Legal Information Institute website, Section 11  
[http://www.commonlii.org/lk/legis/num\\_act/potpa48o1979608/s11.html](http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/s11.html) - Accessed 16 August 2011.

*Prevention of Terrorism (Temporary Provisions) Act (No. 48 of 1979)*, Commonwealth Legal Information Institute website, Section 9  
[http://www.commonlii.org/lk/legis/num\\_act/potpa48o1979608/s9.html](http://www.commonlii.org/lk/legis/num_act/potpa48o1979608/s9.html) - Accessed 16 August 2011.

UK Home Office 2011, *Country of Origin Information Report: Sri Lanka*, UK Home Office website, 4 July.

United Kingdom Foreign & Commonwealth Office 2011, *Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report*, March.

United Nations 2003, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Sri Lanka*  
<http://www.universalhumanrightsindex.org/documents/825/561/document/en/pdf/text.pdf> - Accessed 19 August 2011.