

An Update of Anti Terror Legislation in the Commonwealth

By Dominic Bascombe

July 2004

Table of Contents

| | |
|--|-----------|
| Introduction | 2 |
| New Developments in Anti Terror Legislation | 4 |
| Human Rights Impacts | |
| Discrimination/Detention | 9 |
| Political Expression/Privacy | 12 |
| Media | 15 |
| Pending Legislation | 16 |
| Conclusion | 18 |
| Appendix I | 20 |
| Appendix II | 21 |

Introduction

Since the publication of the Commonwealth Human Rights Initiative's (CHRI) 2003 report on Anti Terror legislation in the Commonwealth, there has been a phenomenal increase in the amount and scope of anti-terror legislation and a proliferation of both governmental and non governmental anti terror activities. Yet despite the introduction of further measures and the increase in activities, most notably the invasion of Iraq, there is no end in sight to the global war on terror. Osama Bin Laden, the identified perpetrator of the September 11 attacks on the United States remains at large and there has been a sharp upturn in the number of terrorist attacks.

Commonwealth states remain under pressure to conform to global conventions against terrorism, whether that be identifying and removing financial activities that fund terrorists domestically and/or by turning over suspected terrorists. Terrorism and counter terrorism strategies have also received greater prominence internationally and across the Commonwealth. This is unsurprising given the extent to which counter terrorism strategies have become linked to diplomatic relations and a state's political advancement.

An internationally accepted definition of terrorism still eludes us. State definitions, as we have seen in the past, have tended to be self serving, and adaptable for particular circumstances. Subsequently, state and regional definitions can sometimes be at odds with each other. For example, the United States' Federal Regulations defines terrorism as: "the unlawful use of force against persons or property to intimidate or coerce a government, the civilian population or any segment thereof, in the furtherance of political or social objectives"¹ This definition includes three elements:

- 1) Terrorist activities are illegal and involve the use of force.
- 2) The actions are intended to intimidate or coerce.
- 3) The actions are committed in support of political or social objectives.²

The Commonwealth Secretariat's model legislation allows states to 'choose' their definition of terrorism, which may, or may not, include recognising the purpose behind such acts³. The UN General Assembly is also considering a comprehensive convention on terrorism, which would include a definitive meaning of the term⁴.

¹ 28 CFR Section 0.85, on Judicial Administration, describing functions of the FBI within the Department of Justice

² www.terrorismfiles.org/encyclopaedia/terrorism.html

³ See Appendix I

⁴ www.un.org/ga/57/sixth/index.html

This year's CHRI report on 'Anti Terrorism Legislation in the Commonwealth' serves to build on last year's information. The focus is on new developments and the impacts that these developments are having on human rights across the Commonwealth. This report is not exhaustive in nature but seeks to provide an overview. Attention is paid to Commonwealth member states that have not yet introduced anti-terrorism legislation. Though small in number, it is useful to recognise that whilst they may not have legislative measures in place, the anti terror 'battle' is certainly alive and well.

New Developments in Anti Terror Laws

New anti terror developments in the European Union (EU) may have implications for the Commonwealth. Following the bombings in Madrid that killed over 200 people, EU foreign ministers agreed to new measures to tackle terrorist attacks. EU states, including Britain, were urged to mobilise all of their resources and were warned that they could risk losing financial support if they did not do enough to fight the terrorist threat. The introduction of a European wide anti terror coordinator, the Dutch politician Gijs de Vries, is the first move in what will undoubtedly result in a large overhaul of Europe's terror laws⁵.

Any revision of EU legislation is likely to have global impacts and Commonwealth states could find themselves being urged, at the behest of Britain meeting EU guidelines, to streamline their resources towards fighting terrorism⁶. Many Commonwealth states felt they were being 'forced' to introduce anti terror laws⁷ in the aftermath of September 11 and the EU's move to introduce new anti-terrorism measures suggests that there is an increase, instead of the hoped for reduction, in potential pressure on states to conform.

Since CHRI's 2003 report there have been a number of notable developments in anti terror legislation across the commonwealth. Below, we examine some of these new developments, as well as implications that arose from older legislation.

- In June 2000, the Financial Action Task Force (FATF) published a blacklist of non cooperative territories and countries. Commonwealth countries included on the list were **The Bahamas, Cayman Islands, Dominica, Nauru, St. Kitts and Nevis, and St. Vincent and the Grenadines**. The September 11 attacks saw the introduction of counter measures against states that failed to act quickly enough to tackle the financial loopholes that could allow for money laundering. As of March 2004, the only Commonwealth countries to remain on the list are **Nauru, and Nigeria**⁸.

⁵ 'Profile: New EU anti terror tsar'. The Guardian. 26 March 2004. <http://politics.guardian.co.uk/eu/story/0,9061,1178655,00.html>

⁶ A group of 250 non governmental organizations known as BOND (British Overseas NGO's for Development) have criticized EU proposals to link aid with anti terror capacity. EU foreign ministers have warned partner states that financial assistance may suffer if they fail to cooperate in the fight against terrorism. BOND says its concern is that "The aid relationship between donor and developing countries is being manipulated to secure political support for the 'war on terror'.

<http://www.bond.org.uk/advocacy/globalsecurity.htm>

⁷ The outcome of this has been that states have implemented anti terror laws to the detriment of human rights. Of particular importance to note UN General Assembly resolution 57/219 Protecting Human Rights and Fundamental Freedoms while countering terrorism. As a GA resolution, however, it has no binding power.

⁸ http://www1.oecd.org/fatf/NCCT_en.htm

- **Antigua and Barbuda** won the first round of its case against the United States at the World Trade Organisation in March 2004. The case focused on a ban imposed by the United States, on the island's internet gambling and betting services. Antigua's case is noteworthy because the US had argued that such services could allow shady financial dealings, including money laundering, which could potentially fund terrorists. Antigua and Barbuda's Prevention of Terrorism Act 2001 prohibits the financing of terrorists. However POTA 2001 will be repealed when a new anti terror bill based on the Commonwealth Secretariat model bill, is introduced. The new act would expand the monitoring of financial activities and carry a penalty of up to ten years imprisonment.
- There is a twenty year prison sentence for directly or indirectly assisting a terrorist group under the Anti Terrorism Act 2003⁹ in the **Bahamas**. A similar prison term greets anyone who 'harbours or conceals or prevents, hinders or interferes with the apprehension of terror suspects'¹⁰. Amnesty International has also raised its concerns that the death penalty would be extended to include those who commit terrorist acts. Campaigners argued that the right to demonstrate could be criminalized under the act¹¹.
- The 2002 Anti-Terrorism Act of **Barbados** defines an offence of terrorism as including any offence falling under nine of the international conventions, except the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1991 Plastic Explosives Convention and the 1999 Financing of Terrorism Convention.
- Banks are obliged to report suspicious financial transactions under **Bangladesh's** Money Laundering Act 2002. Failure to do so carries a minimum penalty of ten thousand Taka (£98) and maximum of one hundred thousand Taka (£984).
- Although it is yet to introduce specific anti terror laws, **Zambia** has hosted a workshop on weapons of mass destruction (WMD). In January 2004, a WMD workshop sponsored by the US State Department for Anti Terrorism instructed Zambian security and postal workers on awareness of WMD's. US ambassador to Zambia, Martin Brennan, noted that the country had not experienced terrorism. However, Home Affairs Minister Peter Mumba pointed out that Zambia has had concerns about terrorism during the liberation struggles in neighbouring South Africa and Zimbabwe.

⁹ [http://www.bahamas.gov.bs/BahamasWeb/aboutthegovernment.nsf/Subjects/PDFLaws/\\$file/Anti-Terrorism+Bill+2003.pdf](http://www.bahamas.gov.bs/BahamasWeb/aboutthegovernment.nsf/Subjects/PDFLaws/$file/Anti-Terrorism+Bill+2003.pdf)

¹⁰ <http://www.lexbahamas.com/Anti-Terrorism%20Bill%20-%202003.pdf>

¹¹ <http://web.amnesty.org/report2004/bhs-summary-eng>

- The **Pacific Islands** are the target of specific anti terror aid packages from Australia designed to assist the islands in meeting their international obligations¹². Donors provide in-country legislative drafting assistance to cover international conventions and UN Security Council resolutions on the financing of terrorism. In **Fiji**, a Law and Justice Sector Program began in June 2003, strengthening capacity to improve law and order. **Australia** and Fiji signed a Counter Terrorism Memorandum of Understanding in March 2003.
- **Papua New Guinea** and the Pacific Islands have been highlighted as possible gateways for terrorism after a man carrying a gun easily slipped through the island's airport security en route to Singapore. Australia has provided high-tech screening devices to PNG and spends millions of dollars to upgrade airport security.

Australia's Transport Minister John Anderson said the incident was of concern because it showed that terrorists could take advantage of lax security at Papua New Guinea's airports to launch an attack on Australia. Kiribati, Vanuatu, Fiji, and the Solomon Islands have all been warned to tighten their airport security.

- **Vanuatu** came under fire in September 2003 from Indonesia after it allowed the Aceh Separatist Movement (GAM) to open an office. Vanuatu has previously allowed the separatist group Free Papua Organization (OPM) to open offices on the island.
- In what can only be viewed as a positive step, **Australian** Prime Minister John Howard ruled out allowing anti terror laws to operate retrospectively. There are two Australian detainees in the Guantanamo base camp. However the men are to be tried under retrospective laws in the US. In a deal with the US government they are now expected to serve their jail terms in Australia. Australia introduced a raft of measures post September 11 including the Security Legislation Amendment (Terrorism) Act 2002, the Suppression of the Financing of Terrorism Act 2002, the Criminal Code Amendment (Suppression of Terrorist Bombing) Act 2002, the Telecommunications Interception Legislation Amendment Act 2002, and the Border Security Legislation Amendment Act 2002.
- In the **United Kingdom**, the government is considering extending the reach of anti terror law to persons that 'associate' with suspected terrorists. The controversial move would bring civil orders against those associating with

¹² The Peace and Security Fund will provide \$7.5 million in a security aid package

suspected terrorists or terrorist groups and breach of this would carry a jail term. The process is based on a French system used to deal with Algerian terrorism¹³.

- As a result of the implementation of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (updated November 2003), **Canada** created a specialised agency, the Financial Transactions and Reports Analysis Centre (FINTRAC) to analyse information on the financial dealings of terror suspects. Businesses are required to report suspicious transactions to FINTRAC. Reports of suspicious transactions have numbered over 1,000 at its peak. The Immigration and Refugee Protection Act outlines the powers to refuse entry to non nationals, in particular suspected terrorists. Penalties under the act can extend up to 14 years. Since September 11, 2001, there has been enhanced focus on security cards for nationals. In November 2003, the Immigration minister touted the idea of introducing ID cards for Canadian citizens traveling abroad, particularly to tackle problems when they arrive at US entry ports. If the card is introduced, it is expected to contain basic information such as name and address as well as biometric information¹⁴.
- Under Section 14 of the Anti Money Laundering Act 2001 in **Malaysia**, financial institutions as well as lawyers and accountants are required to report suspicious transactions to their respective regulating authorities. Non compliance to report such transactions carries a fine of RM 100,000 (£15 000) and/or a prison term of six months. Continued refusal carries a fine of RM 1,000 (£149) per day. Opposition leaders have also objected to the freezing of grants to the People's Religious School (Sekolah Agama Rakyat or Sar). The government has accused the school of being a breeding ground for terrorists and promoting anti government slogans.
- The Prevention of Terrorism (Special Measures) 2003 Regulations in **Mauritius** allows for the freezing of assets of any listed terrorist. Banks are allowed to derogate from the duty of confidentiality to report suspicious transactions to the Financial Intelligence Unit.
- In **Mozambique**, acts of terrorism are punishable with between 16 and 20 years imprisonment (under Act 19/91 of 1991) whilst money laundering carries a sentence of between 2 and 12 years imprisonment (under Act 7/2002 of 5 February). Weapons involvement under Act 19/91 is criminalized if participants 'aimed or knew that they were aimed to perpetrate any crime against State

¹³ The Observer. 'Now Blunkett plans to jail friends of terrorist suspects' Gaby Hinsliff and Martin Bright. April 11, 2004

¹⁴ <http://www.cbc.ca/news/background/airportsecurity/idcards.html>

security. The police have been accused of using terror laws to limit the rights of protestors. On June 30 2004, the police placed an indefinite banned on former migrant workers in the country¹⁵.

- The US travel ban on **Kenya**, imposed in May 2003, severely strained relations between the two countries. Critics argued that the reduction of American tourism greatly affected Kenya's fight against poverty, a recognised contributing factor towards terrorism. The ban was finally lifted in May 2004. Kenya is still struggling to introduce anti terror laws.
- Failure to prevent terrorist acts in **Uganda** carries a sentence of five years on conviction and a hefty fine, under section 13 of the Anti Terrorism Act 2002. It is also an offence to be a passive or active member of a terrorist organization as listed by the government. Membership carries a sentence on conviction of ten years imprisonment. Uganda has suffered acts of terrorism since 1988 from the Lord's Resistance Army and the Allied Democratic Forces.
- **South African** port operators have been warned to implement counter terror measures in the event of maritime attacks. Global insurance providers warned the country earlier this year that failure to implement measures outlined in the International Shipping and Ports Security Code could result in blacklisting and isolation from world trade. Compliance would protect operators from allegations of negligence¹⁶.
- Although **Botswana** has not implemented any specific anti terror laws, some of the general components of anti terror laws are in place. The National Security Act 1986 punishes citizens for committing terrorist acts while the Proceeds of Crime Act 1990 proscribes money laundering and carries a high sentence. Under section 68 of the Penal Code, recruitment to membership of an unlawful society carries a sentence of seven years imprisonment.
- In an attempt to tighten existing security measures, **Malawi** focused its attentions on entry into the country, proposing changes to its passports. The government announced that there was "thorough scrutiny of those seeking asylum in the country to check against the possibility of terrorists sneaking into Malawi as refugees or asylum seekers. However, this is done with due consideration of the Geneva Convention." Ad hoc security checks have taken place around the

¹⁵ <http://allafrica.com/stories/200406300917.html>

¹⁶ AllAfrica.com. 'Noncompliant Container Ports Warned of Terror Risk'. 13 April 2004.

<http://allafrica.com/stories/200404130168.html>

country, but there have been no arrests on suspicion of terrorism. Violent protests took place in June 2003 against the Malawi government, when it handed over five Al Qaeda suspects to the US for interrogation.

Human Rights Impacts

Discrimination/ Detention:

The power of anti-terror laws being introduced is often ill defined and poorly constructed. As a result they have proven to be most effective in marginalising and sometimes criminalising minority groups within societies. Anti terror laws place a strong emphasis on the detention of suspects and often do not require the presentation of evidence prior to a suspect's detention. This undermines the due process of law and has been exemplified in a number of Commonwealth states, even those that loudly trumpet the values of human rights.

- In early 2004, the government of the **United Kingdom** was refused the right to appeal against a ruling by the country's Special Immigration Appeals Commission (SIAC) that the detention of a Libyan man known only as 'M' as a suspected international terrorist was illegal. Under Part 4 of the UK's Anti Terror Crime and Security Act (ATCSA) 2001, foreign nationals could be detained indefinitely without charge. Over the past three years, fourteen men were arrested and held in high security prisons in the UK. The decision against the government in the case of 'M' challenges the legitimacy of the act.

In December 2003, the Committee of Privy Counsellors, who had been charged with reviewing the ATCSA, recommended the urgent repeal of ATCSA powers allowing non-UK nationals to be detained potentially indefinitely¹⁷. Amnesty International has also denounced the ATCSA as discriminatory.

Under Sections 44 (1) and (2) of the Terrorism Act 2000, the British police also have greater powers to stop and search suspects for terrorism offences. Civil liberties group *Statewatch* estimates that there were more than 71,000 stop and searches as part of anti-terrorist operations. The percentage of resulting arrests was only 1.18 per cent - the majority of which were not connected with terrorism. Searches have also been taking place disproportionately in cities with large ethnic communities¹⁸. A criminal justice report from the Home Office on 2 July 2004 also revealed a 30 percent increase within the past year in the number of searches of Asian Muslims since the introduction of the 2000 Act¹⁹.

- One of **Canada's** anti terror operations, specifically known as 'Project Thread', has been accused of sending terrorist suspects to countries where they may face

¹⁷ The review report can be found at www.atcsa-review.org.uk

¹⁸ <http://www.statewatch.org/news/2004/jan/13uk-stop-and-search-targets-Muslim-communities.htm>

¹⁹ <http://news.bbc.co.uk/1/hi/uk/3859023.stm>

torture. Pakistani Fahim Kayan's case for a stay of deportation was turned down by the Canadian government in March 2004. Kayani was one of 24 Asian men detained under the anti terror investigations²⁰. The terror allegations were eventually dropped and the men deported for immigration violations. On March 31, 2004, a Canadian man of Pakistani descent was the first person to be arrested under anti terror laws.

- Under the barrage of anti terror laws introduced in **Australia**, foreign governments can request that individuals or organisations be listed as terrorists. People dealing with the assets of those listed would be committing a criminal offence and would be subject to a five year imprisonment sentence. This largely mirrors the proposals from the UK government to detain those dealing with terror suspects. However, under section 22 of the Extradition Act 1988, Australia cannot return individuals to countries practicing the death penalty. Australia has so far undertaken prosecution against one terrorist suspect.
- **Malaysia's** Internal Security Act 1960 allows for an extended period of detention without trial for up to two years. However, the detention order can be reviewed, allowing for continual renewal of the order. The police can also detain suspects for up to 60 days without the need to reveal the grounds of the arrest in court. The Islamic Party of Malaysia has accused the police of denying detainees the right of access to legal counsel, family and friends. The Act has been used against religious leaders, the media, and political opposition parties, but despite heavy criticism, remains in force.
- The 1974 Special Powers Act in **Bangladesh** allows for the detention of suspects without the obligation to provide explicit reasons. The act provides for mandatory sentencing including the death penalty for certain offences. Domestic criticism has not forced any amendment to the act.
- In **Tanzania**, Muslims have protested that the Prevention of Terrorism Act, 2002, threatens their religious freedom. The government insisted that the introduction of the law was a response to the December 2002 bombings in nearby Mombasa. In the March 2004 report from the Legal and Human Rights centre, human rights campaigners have continued to argue that the definition of the act is too broad, and also holds implications for those representing terror suspects²¹

²⁰ <http://www.threadbare.tyo.ca/>

²¹ <http://www.humanrightstsz.org/whatsnew/Short-resume-of-Tanzania-Human-Rights-Report-2003.htm>

- **Guyana**'s Criminal Law (Offences) Amendment Bill 2002 introduces a definition of a terrorist act and provides for the criminalisation of ancillary offences. However, the financing of terrorism is not considered a specific offence. The bill was introduced to tackle the growing numbers of deported criminals to Guyana. The Bill "seeks to introduce legislation that allows Guyanese convicted of certain offences in a foreign state and who are deported to Guyana to be effectively monitored by the police." Critics have argued that the wide definition allows the government to target minorities in the country. The government has insisted that the legislation is necessary however. It is unclear exactly how many people have been affected by it.
- In the **Bahamas**, the Anti Terrorism Act 2003 allows for a judge to privately hear information against a suspected terror suspect without being required to reveal that information if the judge believes that disclosure of the information would be prejudicial to national security. Even though the act requires the suspect to be provided with a statement giving reasons for a decision, certain information may not be disclosed thus undermining the judicial process.
- In its report to the United Nations Counter Terrorism Committee²², the government of **Antigua and Barbuda** notes that the practical methods of preventing recruitment to terrorist organisations is to prevent entry or refuse residency to suspected terrorists. They go on to say that their Immigration Department uses a list of terror suspects from the UN and the FBI and monitors suspects. Under Section three of the Undesirable Persons Expulsion Act, the cabinet can remove non nationals it is deemed, "expedient for the peace and good order of the country."
- The **United Kingdom** government has promised to introduce biometric ID cards within three years. Home Secretary David Blunkett has described them as being necessary in the 'terror fight'. The government has insisted that the identity cards would prevent people from assuming multiple identities as well as tackle benefit fraud in the country. Civil liberties groups denounced the introduction of ID cards as 'unworkable' and argued that it would further discriminate against minority groups.

22 http://www.un.org/Docs/sc/committees/1373/submitted_reports.html

Political expression/Privacy

Unscrupulous governments have used anti terror laws as an excuse to limit the freedom of political expression of opposition groups in the name of fighting terrorism. Unseen levels of invasion of privacy are now more and more evident as governments use various means to obtain information and even take property based merely on suspicion.

- **Swaziland's** Internal Security Act 2002 (Makhundu) outlaws the support of any political party in the Kingdom. Political parties have been banned in the Kingdom since 1973 but opposition groups do exist²³ and have heavily criticised the act for further infringing human rights. Passages of the act restrict the freedom of association and expression and authorise police searches without warrants. The Kingdom's introduction of the act marks a further move away from its fulfillment of international human rights standards. Activists' hope that a new constitution, due to be introduced in 2005, will bring change.
- Under the Prevention of Terrorism Act and Public Security Ordinance 1979 in **Sri Lanka**, individuals face a seven year prison sentence for failure to give information to prevent a terrorist offence. Persons suspected of committing an unlawful offence can be detained for a period of up to three months which is extendable by three months at a time. In the past, anti terror laws have been used against the rebel Tamil Tigers but following the May 2004 elections, they now control the third largest party in Parliament²⁴.
- **Australia's** Advanced Passenger Processing system made it mandatory from January 1, 2004 for information on all international travellers as well as crew arriving by air or sea to be submitted. Under the new Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001, cargo carriers are required to report their cargo before arrival.
- Under the Money Laundering (Prevention) Act 2003 of **Belize**, the financial supervisory authority, which oversees the regulation of the financial services, has a wide discretion to freeze funds of suspected terrorists even if the funds were legally obtained. Terrorism is defined in Section two as the use or threat of action "to influence the government or to intimidate the public", used to advance "a political, religious or ideological cause". All records of financial transactions are held for five years and the supervisory authority can inspect these records at any time.

²³ <http://www.iss.co.za/AF/current/swazijun03.pdf>

²⁴ http://news.bbc.co.uk/1/hi/world/south_asia/3643055.stm

- **Canada's** 2001 anti terror laws allows for surveillance of terror suspects. Electronic surveillance is normally for a maximum of 60 days however; this can be extended to one year for terror suspects by a court. In April 2004, Canadian police arrested terror suspect Momin Khawaja after a month of surveillance on request from the British police. In June 2004, Canada's Supreme court ruled that a witness had to give information relating to the country's national security under anti terror laws²⁵.
- The Registry of Societies²⁶ in **Malaysia** monitors charitable societies in the country. Under 1984 regulations that tighten the Societies Act 1966, societies receiving any 'money, property, pecuniary benefit or advantage' from any "person, organization, government or agency of any government outside Malaysia" have to reveal the use of such resources. Additionally, societies are required to remove any person in the organization who is involved in terrorist activities. It is not clear whether this applies to terror suspects or people convicted of terrorist offences. Failure to do so could result in the closure of the society. Societies, including clubs, organizations, and political parties, already have to apply for a licence from the government.
- Under the Terrorism Suppression Act in **New Zealand**, individuals or organizations can be designated as terrorist if they knowingly participate in terrorist acts, or are listed as terrorists by the United Nations. There is provision for interim and final designations, with the interim designation extending to 30 days. The legislation further allows that when a murder occurs during the course of a terrorist act, there should be a minimum prison sentence of 17 years without parole²⁷.
- **India's** Prevention of Terrorism Act (POTA) was passed in 2002. The government faced stiff opposition to the Bill from a wide section of society. The Indian government, assured citizens that the Act, which granted security forces wide ranging special powers, would not be misused. They insisted that the Act would only be invoked to combat terrorism. However, in the 20 months of its operation, all evidence indicates the contrary. POTA appears to have been consistently targeting political opponents.

²⁵ <http://news.bbc.co.uk/1/hi/world/americas/3834987.stm>

²⁶ <http://www.jppmros.gov.my/index1.htm>

²⁷ www.clerk.parliament.govt.nz/Content/SelectCommitteeReports/27bar2.pdf

- In **Uganda** financing terrorism carries the death penalty. Section 10 of the Anti Terrorism Act 2002 states that: “Any person who aids or abets or finances or harbours or in any other way renders support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism, commits an offence and shall, on conviction, be sentenced to death.” Opponents have objected to the broad reach of the act.
- Under Section 19 of the **Kenyan** Suppression of Terrorism Bill 2003, the Attorney General can compel a person to give up the documentation held on their property if there are “reasonable grounds to suspect that a person has committed, is committing, or is about to commit an act of terrorism, or is in possession of terrorist property’.

Media

The freedom to obtain information as well as criticise governments has been severely curtailed in the fight against terrorism. This has been particularly evident in states with a reputation for repression. Yet it has also taken root in other states, as governments use the war on terror to justify withholding information and limiting press freedom.

- In **Tonga**, activist Alan Taione was hauled before the Supreme Court in May 2004, having been charged with distributing 30 copies of an unlicensed newspaper the 'Times of Tonga'. The government amended the country's constitution in order to tighten media control and a number of publications, including the Times, were not reissued licenses.
- In **Bangladesh**, the country's mainstream Islamic parties have joined forces with the government to crack down on extremist groups. More than a dozen parties have begun openly opposing militant Islamic groups. Under the 1974 Special Powers Act, the government has a range of powers to detain suspected persons. This has been continually used against political opponents.
- In **Uganda**, the Anti-terrorism Act, 2002, has been used to limit freedom of expression and repress political opposition. In the past year, radio stations were warned against broadcasting interviews with exiled opposition leader, Col Kizza Besigye and giving publicity to terrorists. They were threatened with prosecution under the Act. Government officials stated that anyone who aided Mr Besigye, a labeled terrorist, would be guilty of an offence under the Act. The government is now seeking some of the \$150 million promised by President George Bush to target the long running war against the Lord's Resistance Army (LRA) rebels.

Pending Legislation

Despite the plethora of anti terror laws, some countries are still to introduce anti terror laws and others have even shelved their planned legislation amidst mounting criticism.

South African legislators eventually shelved their plans after intense pressure from trade unions and civil society. The bill was due to be implemented in March 2004 however, the Congress of South African Trade Unions (COSATU) warned that the bill's definition of 'terrorist act' was too vague and potentially characterized some forms of industrial action, as 'terrorist' in nature.

The **Jamaican** government is also facing opposition from domestic civil liberties groups over its Anti Terrorism Bill. Tabled in the House of Representatives in October 2003, by Minister of Foreign Affairs and Foreign Trade, K.D. Knight, the Bill seeks to implement United Nations (UN) Security Council Resolution 1373. Minister of Justice and Attorney General, Senator A.J. Nicholson said that the Bill does not provide a definition of 'terrorist' but defines terrorist acts: "It is the same approach we have taken in the Terrorism Prevention Bill, he who does so and so in certain circumstances is likely to be labeled a terrorist or that he has assisted terrorists". However civil liberties group Jamaicans for Justice pointed out that the Bill "subverts the presumption of innocence, applies broadly to actions of Jamaicans citizens in Jamaica rather than limiting its objectives to international terrorism, it defines terrorism offence much too broadly and speculatively and has the potential to make terrorists of many citizens and entities."

Trinidad and Tobago's Terrorism Bill, 2003 seeks to bring the country in line with UNSCR 1373 but the government has yet to offer a timetable for its introduction.

Kenya's parliamentary committee has opposed a draft Suppression of Terrorism Bill after hundreds of protestors took to the streets. Muslims in the country have expressed fears that they would be targeted if the Suppression of Terrorism Bill were implemented. The bill allows police to arrest and search property without authority from the courts. It also allows investigators to detain suspected terrorists for 36 hours without permitting them contact. Legal experts and human rights groups in Kenya have dismissed the bill as imitating the US Patriot Act 2001, the South African Terrorism Bill 2002 and Britain's Anti-Terrorism, Crime and Security Act 2001. Participants at a meeting organised by the All Africa Conference of Churches (AACC) and the World Council of Churches (WCC), fear that the police would resort to harassing citizens under the pretext of tracking down terror suspects.

Namibia's Anti Terrorism Activities Bill would require financial institutions as well as banks, to report suspicious financial transactions. Fundraising for terrorist organizations would carry a penalty of up to ten years imprisonment. Current laws do not criminalize recruitment to terrorist organizations, but this is expected to be amended in the anti terror bill.

Conclusion

Anti terror legislation in the Commonwealth has largely been prompted by the events of September 11 2001. Governments were quick to fall in line with new international requirements introduced by the United Nations and further espoused by the United States. Almost three years have passed and numerous political commentators have adopted the common phrase that 'the world will never be the same'²⁸. Communities across the commonwealth now face new challenges; no longer just externally, but also internally.

For their safety, citizens should be aware of the measures introduced by their governments' in the fight against terrorism. For many, the fight against terrorism in the Commonwealth has meant that justification has been found to further limit their existing freedoms. For others, travel within the Commonwealth and indeed the world is now fraught with new fears. Not only fears that one may become a target of terrorism – particularly in Commonwealth members that have played a role in the war on terror – but that suspicion of terrorism now extends so widely.

With the advent of Britain's closer ties to Europe, the possible end result is two fold. There may be a further shift in the Commonwealth whereby Britain develops its anti terror laws in line with EU requirements, sidelining other Commonwealth states; or other Commonwealth members follow suit to develop their regional capacity in the fight against terrorism. The latter seems to be the preferable route, but it is already clear, particularly in the country reports to the United Nations, that terrorism is becoming another aspect in which developed Commonwealth members are increasingly outstripping the pace of developing members. Subsequently, greater assistance needs to be given to developing Commonwealth states to ensure that their own borders are protected, for their safety and the safety of all Commonwealth members.

Most importantly, a firm commitment needs to be made to ensure that human rights, as espoused in the Commonwealth's core principles and values²⁹, are placed at the heart of anti terror laws. Some critics argue that it is already too late to amend anti terror laws to take human rights into consideration. Indeed, even the UN's counter terrorism committee has failed to do so but the Commonwealth needs to be and can be different.

²⁸ 'Beyond September 11: An Anthology of Dissent.' 2002. Ed. Phil Scraton. Pluto Press, England.

²⁹ See the 1991 Harare Declaration.

Appendix I

Commonwealth Secretariat Model Legislation

The Commonwealth Secretariat has prepared an in depth model anti terror legislation for its member states. Because the model is to act as a guide for participating states, it tries to stick closely to those aspects that are required by the international community on terrorism. The model does not denote specific human rights principles that should be endorsed, but does encourage states to include provisions to respect human rights. It is too long to include in its entirety however, some points can be noted.

- The model was prepared following the report of the Expert Working Group on Legislative and Administrative Measures to Combat Terrorism.
- The model legislation offers members alternatives in drafting their legislation and highlights particular nuances to take into consideration. It also explores the requirements of UN Security Council resolution 1373 at length.
- States are also guided on recognising the appropriate authorities to be accorded legislative powers under the model, as well as implementing penalties for offences.
- It is of particular interest to note that the model recognises the absence of an international definition of terrorism and offers alternatives. One of the options in the model includes the element of ‘purpose’ of terrorist acts.

The model legislation is available from the Secretariat.

Appendix II

Useful websites

Commonwealth Human Rights Initiative
<http://www.humanrightsinitiative.org/>

Commonwealth Secretariat
[ww.thecommonwealth.org](http://www.thecommonwealth.org)

World Anti Terrorist laws
<http://jurist.law.pitt.edu/terrorism/terrorism3a.htm>

United Nations Counter Terrorism Committee
http://www.un.org/Docs/sc/committees/1373/submitted_reports.html

Jamaicans for Justice
http://www.jamaicansforjustice.org/jw_archives.htm

Human Rights Documentation Centre
<http://www.hrdc.net>

Ausaid
<http://www.usaid.gov/pressroom/publications/pdf/counterterrorism.pdf>

The Asian Centre for human Rights
<http://www.achrweb.org/>