

Anti Terrorism Legislation in the Commonwealth

**A Briefing Paper for the
Commonwealth Human Rights Initiative**

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INTRODUCTION

The sudden, dramatic, and horrifying effects of terrorist acts are perhaps the most, if not the only, identifiable nature of terrorism.

The terms, rooted in the French and Russian revolutions, have come to mean different things to different peoples over different times. Those who were once called ‘freedom fighters’ can easily be de-legitimized and may now carry the label of ‘terrorist’.

Since the attacks on the United States on 11 September 2001, terrorism has become the new global enemy, to be eradicated no matter the cost to domestic civil liberties.

Though much of the world now stands united against terrorism, and catching the perpetrators of terrorist acts, the task of defining terrorism still successfully evades us. There are some 19 international and regional conventions¹ relating to combating terrorism today, yet none start from a consensual definition.

The 2002 Report of the UN Policy Working Group on the UN and Terrorism² offers some guidance:

“Without attempting a comprehensive definition of terrorism, it would be useful to delineate some broad characteristics of the phenomenon. Terrorism is, in most cases, essentially a political act. It is meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of fear, generally for a political or ideological (whether secular or religious) purpose. Terrorism is a criminal act, but it is more than mere criminality. To overcome the problem of terrorism it is necessary to understand its political nature as well as its basic criminality and psychology”.

UN Security Council resolution 1373³ has formed much of the basis of the fight against terrorism condemning the 11 September attacks and permitting states to “take the necessary steps to prevent the commission of terrorist acts...” including suppressing the recruitment of members of terrorist groups, preventing those who finance, plan, facilitate or commit terrorist acts from using their respective territories, preventing the movement of terrorists, and measures to prevent counterfeiting, forgery or fraudulent use of identity papers and travel documents.

UNSCR 1373 fails to strictly define terrorism, but, according to Britain’s UN Ambassador Jeremy Greenstock, “if something looks like a terrorist and makes a noise like a terrorist, it’s a terrorist—and we now know what to do about it in terms of what we set out in this resolution”.

On 25 October 2001, the Commonwealth Heads of Government welcomed UNSCR 1373, pledging to assist each other in its implementation.

The February 2002 Report of the Expert Working Group on Legislative and Administrative Measures to Combat Terrorism from the Commonwealth Secretariat

¹ See Appendix 1

² 2002 Report of UN Policy Working Group on the UN and Terrorism.
<http://www.un.org/terrorism/a57273.htm>

³ Adopted 28 September 2001 under Chapter VII of the UN Charter. <http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.pdf?OpenElement>

provides Commonwealth states with a model framework of implementing UNSCR 1373 and provides sample legislative approaches to be adopted in domestic jurisdictions. These are not blanket measures however and are to be adapted by states as necessary.

However, in the attempts to implement measures to limit and deal with the terrorist threat, many fundamental human rights and civil liberties have been eroded or are under threat. States are under pressure to conform to the international thrust of counter terrorism, and have little discomfort in lengthening detention of suspects, blocking the right to legal access, removing the right of appeal, limiting free speech, and seizing property.

International law scholar Michael Byers, puts it thus: “The events of 11 September have set in motion a significant loosening of the legal constraints on the use of force, and this in turn will lead to changes across the international legal system”⁴.

This paper attempts to provide an overview of the range of anti terrorism measures introduced across the Commonwealth since 11 September 2001 and the aims and reaches of such legislation. There are some 54 countries in the Commonwealth and this paper does not aim to be exhaustive. It does however consider some of the criticisms and challenges that have been raised to such legislation. The initial overview provides a snapshot of the varying regions in the Commonwealth and the main concerns of the legislation that they have introduced. Civil liberties and human rights infringements are then expounded, encompassing concerns such as the effects on minorities, access to legal counsel, invasions of privacy, and limitations on freedom of assembly. Finally, the implication of recent terror attacks is assessed and the challenge that now faces the Commonwealth in dealing with what seems to be unabated attacks. The Appendixes provides a list of international and regional terrorism related conventions, as well as a quick reference of anti terror laws and actions in most Commonwealth countries.

⁴ Michael Byers, “Terrorism, the use of force and international law after 11 September”, 2002 Vol. 16(2) International Relations p155-170.

ANTI TERRORISM LEGISLATION ACROSS THE COMMONWEALTH

The introduction of anti terrorism legislation across the Commonwealth is indicative of the aims that many member countries wish to achieve.

For many small Caribbean and Pacific states, the anti terrorist legislation introduced has been to deal with addressing money laundering and drug trafficking concerns, following intense pressure from the US and Europe. Alternatively, many African and Asian states have tried to deal with their territories being used as a harbour for terrorists. Repressive legislation has also been used to suppress dissent and opposition groups. All of this varies somewhat from other Western countries who have introduced legislation to encompass a range of issues from financing to national security threats, boosting their own alleged need for state intervention.

- In October 2001, the Attorney General of **Vanuatu** circulated a list of international terrorist suspects and Al-Qaida members to financial institutions advising them that any transactions with the individuals were to be reported to the Financial Intelligence Unit.
- In December 2002, **Nauru**'s financial systems were designated as 'bad for business' by the US Treasury having failed to meet FATF demands and faced sanctions under the USA Patriot Act. The US Deputy Treasury Secretary stated that the Pacific island nation did "not take the fight against money laundering and financial crime seriously"⁵.
- **Tonga** amended their Criminal Offences Act soon after the Bali bombing to define terrorism as an act "which is intended or can reasonably be regarded as being intended to seriously destabilise or destroy the fundamental, political, constitutional, economy or social structures of the country" and carries a penalty of up to 15 years imprisonment. Some MP's objected to the definition as it threatens their campaign to change the parliamentary representation in the Kingdom to a fully elected parliamentary system⁶. In February 2003, a newspaper, the Times of Tonga, was banned by the government. It was alleged that the newspaper was campaigning against the government and that allowing a critical foreign newspaper into the island was an infringement of the rights of the people of Tonga to "correct, unbiased, and balanced reporting". Ships flying the Tongan flag have also been investigated by the US after links to Al- Queda⁷.
- In **Grenada**, despite condemnation from the Parliamentary opposition for fast tracking legislation through Parliament, the government sought to introduce a number of bills to deal with money laundering in order to be removed from the

⁵ US Department of State. <http://usinfo.state.gov/topical/pol/terror/02122010.htm>

⁶ 9 of the 30 MP's are directly elected. The remaining 21 are appointed by the King.

⁷ 'The Ships that died of Shame'. <http://www.smh.com.au/articles/2003/01/13/1041990234408.html>

FATF Non Co-operative Countries and Territories blacklist⁸. The government openly stated that the legislation had to be passed within a certain time in order to remove the island from the blacklist. Grenada was subsequently removed from the blacklist in February 2003 after introducing the Proceeds of Crime Act, the Financial Intelligence Unit Act and the Exchange of Information Act.

The Financial Intelligence Unit is the newly formed national centralised unit for the collection, analysis and dissemination of suspicious transaction information to competent authorities defined as the Grenada police and the Grenada International Financial Services Authority. Grenada also suspended its economic citizenship program in October 2001⁹. There remains no definition of terrorist activities there however¹⁰.

- **Antigua and Barbuda's** Prevention of Terrorism Act 2001¹¹ prohibits the financing of terrorists or terrorist activities and creates offences for this violation. Violation carries a maximum penalty of 25 years imprisonment and a fine of \$100,000¹². The courts can also order forfeiture of any property and assets involved. The Act prohibits the supply, sale or transfer to terrorists or terrorist organizations of arms, weapons, ammunitions, military vehicles and equipment, paramilitary equipment, aircraft or ship or spare parts and related materials. Dealing in property of any kind with terrorists or terrorist organizations is also prohibited.
- In **Guyana**, the concept of terrorism was introduced in September 2002 in an amendment of the Criminal Law Offences Act. The Amendment provides that anyone who threatens the security or sovereignty of Guyana or strikes terror into any section of the population commits a terrorist act. Section 309 A (1) (b) of the bill states, "Whoever commits a terrorist act commits an offence and ...if such offence has resulted in death of any person, be punishable with a fine of G\$1,500,000¹³ together with death". This penalty is to be extended to anyone who "conspires, attempts to commit, or advocates, aids and abets, advises or incites or knowingly facilitates the commission" of such acts. The National Security minister openly stated that terrorism was appended to the Act as a means of dealing with the violent crimes that have recently been rocking the country. The government has also been accused of labelling the opposition party as 'terrorists'. Following voiced concerns about the legislation, President Bharrat Jagdeo reportedly said: "As soon as we have tough legislative action to support our law enforcement agencies, the same people turn around and complain about the human rights of the criminals"¹⁴.

⁸ The Financial Action Task Force (FATF) initiative on money laundering. As of March 2003, there were three (3) Commonwealth countries on the NCCT list –St Vincent and the Grenadines, Nauru, and Nigeria. On 30 October 2001, the FATF agreed to eight Special Recommendations to combat terrorist financing. The Organisation for Economic Cooperation and Development has also published a list of uncooperative tax havens.

⁹ Economic Citizenship Programs continue in Dominica however for investments of US\$100,000 to US\$150,000.

¹⁰ Offences are covered in the Criminal, Immigration and Financial regulatory laws.

¹¹ Came into force 27th December 2001

¹² Almost £23,000.

¹³ Just over £5,000.

¹⁴ 'Guyana: Targeting Terrorism'. <http://www.worldpress.org/Americas/796.cfm>

- **Malta** has amended their Prevention of Money Laundering Act to create the Financial Intelligence Analysis Unit. Staff of financial institutions are under a statutory obligation to report suspicious transactions. Belonging to a terrorist organisation carries an increased penalty from 1 to 5 years, to 18 months to 9 years. For the first time, corporate criminal responsibility was introduced for corruption, fraud, money laundering and participation in a criminal organisation.
- In **Singapore**, the Terrorism (Suppression of Financing) Act 2002¹⁵ defines a terrorist as any person who “commits, or attempts to commit, any terrorist act; or participates in or facilitates the commission of any terrorist act”. A terrorist act includes ‘releasing into the environment any harmful substance, chemical or biological agent, disrupting any public computer system..., public utilities, public transportation...or disruption to the police...’. There is also a duty to inform the police of terrorist activities. Failure to do so carries a fine of maximum \$50,000¹⁶ and/or imprisonment for 5 years.
- In October 2002, **New Zealand** passed the Terrorism Suppression Bill (formerly known as the Terrorist (Bombing and Finance) Bill). That Bill was significantly expanded following the September 11 attacks incorporating a broad meaning of terrorist (“intention to induce terror in a civilian population; or unduly compel or to force a government or an international organisation to do or abstain from doing any act”) and was seen as potentially threatening legitimate protesters.
Terrorism could involve causing serious economic loss or seriously destructing an infrastructure facility in a way likely to endanger human life. The Counter Terrorism Bill, introduced this year, adds to the measures imposed by the government. The Bill creates an offence for contamination of food, crops, water or other products.
- **Australia** introduced a raft of anti terror legislation in March 2002 including:
 - The Security Legislation Amendment (Terrorism) Act 2002 [no.2]- defines a terrorist act as ‘an act, or threat of action (which causes serious physical harm or death or threatens public health or safety, or damage to property), that is done or made with the intention of advancing a political, ideological or religious cause; and done or made with the intention of either coercing or influencing by intimidation the Government of Australia or of another country; or intimidating the public or a section of the public’. Industrial action is not prohibited but the terrorist definition has been criticised as being too broad.
 - The Suppression of the Financing of Terrorism Act 2002 inserts a new offence into the Criminal Code act aimed at financiers who are reckless as to whether those funds will be used to facilitate a terrorist act and carries a maximum penalty of life imprisonment.

¹⁵ Entered into force 29 January 2003.

¹⁶ About £17,600.

- The Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002- makes it an offence to place bombs or lethal devices in prescribed places with the intention of causing death or serious harm or causing extensive destruction which would cause major economic loss.
- The Telecommunications Interception Legislation Amendment Act 2002 – recognises terrorism offences as serious enough to allow for interception warrants.
- The Border Security Legislation Amendment Act 2002 – increases border controls and the movement of goods and people.

All these bills became law in July 2002. The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 has not yet been made law (see below).

- **Canada's** definition of terrorist activity includes actions that are an offence under the UN anti terrorism conventions or are taken for political, religious, or ideological purposes that threatens the public or national security by killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people, or by interfering with or disrupting an essential service, facility or system. It is not intended to apply if essential services are disrupted during a lawful or illegal strike. The Anti Terrorism Act allows for the designation of terrorist groups. Suspects could be brought before a judge to give information as part of 'investigative hearings'. Knowingly participating in a terrorist act carries a penalty of 10 years imprisonment whilst the leader in a terrorist activity would be liable to life imprisonment.
- Perhaps one of the more extreme examples of the abuse of anti terror legislation has been in **Zimbabwe**. In 2001, six foreign journalists were accused of terrorism for writing on political violence in the country. A spokesman for the government said: "...we agree with U.S. President Bush that anyone who in any way finances, harbors or defends terrorists is himself a terrorist. We, too, will not make any difference between terrorists and their friends and supporters". Human rights violations have been legitimized under 5 main pieces of legislations: The Public Order and Security Act, the Broadcasting Services Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act, and the Labour Relations Amendment Act.
- **South Africa's** Anti terrorism laws post September 11th, makes the commission of a terrorist act punishable by life in prison, and criminalizes membership in a designated terrorist group. A terrorist act is defined as an unlawful act committed in or outside of South Africa. Providing support to a terrorist group is also an offence. Unlike a previous draft anti terrorism bill, police cannot detain a suspect without consent from a judge. Journalists are also obliged to provide required information to the police, failure of which could lead to up to five years imprisonment.

- **The Gambia's** Anti Terrorism Act 2002 and Money Laundering Act 2003 allows the Central Bank to take possession of a banking institution if banking is deemed to be conducted in an unlawful manner. An unlawful manner is defined as being activities contrary to the ATA or the MLB.
- **Bangladesh's** response to September 11th has been to implement the Money Laundering Act 2002. However, the Special Powers Act 1974 gives the Bangladesh government a wide range of powers to detain suspected persons without any express reasons and has been used against political opponents. In 2002, human rights group Odhikar, reported that more than 300 people were killed as a result of political violence. The schedule to the act covers offences under the Arms Act and Explosive Substances Act and provide for mandatory sentencing, including the death penalty.
- **Pakistan's** Anti Terrorism (Amendment) Ordinance came into force in November 2002 and allows for the detention of a suspected person for up to 12 months. The Human Rights Commission of Pakistan has constantly lobbied for an end to illegal detentions and cases where suspects have been extradited to the US without due process.

IMPACT ON HUMAN RIGHTS

Refugees/ Minorities

Repressive anti terror legislation has been used as a pretext by governments to suppress minority groups and to curtail their international responsibilities in accepting asylum seekers and refugees.

- Part 4 of the **United Kingdom's** Anti Terrorism Crime and Security Act provides for the Home Secretary to certify an individual as an international terrorist on reasonable suspicion. Non UK nationals can be detained indefinitely without charge. The Special Immigration Appeals Commission can hear only one appeal against certification within strict guidelines including commencing appeals within 3 months of certification. In 2002, 11 non UK nationals brought appeals to the SIAC, but the commission found that the UK government was entitled to form the view that there was a public emergency and that their detention was required in the interest of national security.
- **India's** Prevention of Terrorism Act (26 March 2002) has been criticized for targeting minorities and political opponents. Under POTA, terrorist acts include disruption of essential services carried out with the "intent to threaten the unity and integrity of India or to strike terror in any part of the people". Suspects can be detained for up to three months without charge which can be extended for up to three months more with permission from an appointed judge. The Act has been cited as an excuse for targeting political opponents in Uttar Pradesh and Kashmir and was used in January 2003 against an independent member of the legislative assembly. According to Human Rights Watch, over 300 people were arrested under the Act in February this year. Muslims have also been branded as terrorists in Gujarat for allegedly attacking Hindus and officials in the Home Ministry have been reported as saying that 'Islamic terrorism' poses the main threat to national security.
- **Sri Lanka's** Prevention of Terrorism Act and Security Ordinance were introduced to continue the emergency laws in the country and have been invoked as a means of suppressing the rebel Tamil fighters. Under the PTA, the police can arrest a person connected with, or reasonably suspected of being connected with, any unlawful "terrorist" activity. The suspect can be kept in police custody for up to 72 hours before appearing before a Magistrate. The Magistrate has no discretion but to remand the person until conclusion of the trial.
- **Tanzania's** Prevention of Terrorism Act 2002 gives immigration officers the power, without warrant, to arrest any person suspected to be terrorist or to have been involved in international terrorism. The Minister for Immigration has the authority to refuse asylum to anyone he believes will be involved in the commission of a terrorist act. Muslims in the country have complained

that the act targets their religious freedom- a claim strongly denied by the government.

- The **Guyana** Bar Association has aired concerns about the measures introduced in the Prevention of Crimes Bill. The Act states that it "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." It is not limited to persons who have been deported but to any person who returns to Guyana "in lieu" of deportation. The Criminal Offences Amendment Act has also been criticised for its lack of categorisation of the various acts of terrorism. Thus a person who burns an effigy of religious and/or cultural importance to a section of people and causes the disruption of services essential to the life of the community (eg. a strike) is now guilty of the offence of terrorism and liable to imprisonment for 15 years.

Detention/Access to Legal Counsel

Fundamental legal rights of an accused person includes the right to be informed of the reason for detention, and the right to consult legal advice. Anti terror legislation often removes these basic rights under the guise of needing increased detention times in order to carry out investigations, or to only allow contact with approved lawyers.

- **Australia's** ASIO Amendment (Terrorism) Bill 2002 has the potential to dissolve the nation's parliament as the opposition objects to the grave human rights violations that the Bill legitimizes¹⁷. The Bill is presently stuck in the House of Representatives and if it is reintroduced into Parliament within 3 months could trigger a double dissolution of Parliament. Clause 34C (3C)(D)(ii) allows for access to a lawyer to be denied within the first 48 hours. Even after this, only monitored contact is permitted (Clause 34u(2)) and this can only be with a legal representative who has undergone a security assessment, rather than one of the detainee's choosing. Failure to give any requested information, record, or thing¹⁸ can lead to 5 years imprisonment under Clause 34G (6). A child of 14 years can also be questioned and detained.
- In **Singapore**, it is the Internal Security Act which seriously impinges on human rights as it allows for detention of a person for a period of up to two years if the President is of the view to prevent, "that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein". There is no judicial review or appeals process against this act.
- **Mauritius** has enacted The Prevention of Terrorism, The Financial Intelligence and Anti Money Laundering Act, and The Prevention of Corruption Act. The Prevention of Terrorism (Special Measures) Regulations was introduced on 25 January 2003. A person who is suspected of engaging in terrorist acts can be detained for up to 36 hours without access to any person other than a police officer or a government medical officer on request. The bill was only enacted after two Presidents stepped down rather than give their assent to the bill.
- The **United Kingdom's** draconian Anti Terrorism Crime and Security Act entered into force in December 2001 with a derogation from the European Convention on Human Rights. The Act allows the Secretary of State to certify someone (non UK nationals who cannot be returned to another country) as a suspected terrorist or national security risk and they can be detained indefinitely. The process in making this determination is secret and can only be appealed on a point of law to the Special Immigration Appeals Commission. There is no right to legal representation. In 2002, the European Committee for the Prevention of Torture (ECPT) expressed concern on the conditions of detention including lack of psychological support and treatment.

¹⁷ Australia is present Chair of the Commonwealth.

¹⁸ The Bill does not define 'thing' -

<http://parlinfoweb.aph.gov.au/piweb/Repository/Legis/Bills/Linked/17040301.pdf>

Unfounded media reports have also linked asylum seekers with terrorist activities spurning a backlash from the population and the political opposition.

- The Emergency Powers Act in **Zambia** allows for indefinite detention without trial under a Presidential Detention Order. Amnesty International reports incidents of abuses of the Act in the case of a freelance journalist and opposition supporter who was detained without charge for more than three months.

Privacy

In the fight against terrorism, privacy rights are among the first to go as governments justify their 'Big Brother' activities on pre-emptive grounds.

- **New Zealand's** Counter Terrorism Bill allows provisions for warrants issued to gather evidence on one offence to be extended to gather evidence for other offences not covered by the warrant. Tracking devices, which are not limited to car tracking can also be used by the police to follow suspects. People in a place that is being searched could also be forced to assist police in getting information from computers on the premises. Refusal to do this could result in a three month fine. An intention to cause significant disruption to commercial or government interests also carries a seven year term of imprisonment.
- **Canada's** Anti Terrorism Act gives the police extended powers to use electronic surveillance to identify terrorists. Genetic information can also be stored by the government, and an individual's access to stored personal information is removed and cannot be overturned by a Federal Court. Canada's intelligence communications agency, the Communications Security Establishment also has increased powers to monitor Canadians.
- The **United Kingdom's** Anti Terrorism Crime and Security Act contained a provision for the Secretary of State to issue a code of conduct for the retention of communications data by communications providers for national security reasons. Plans to increase the number of government agencies authorized to intercept web and mobile information were eventually dropped. Government plans to introduce a 'universal entitlement card' has fluctuated, though the government has previously admitted that it may not be useful in combating terrorism.

Freedom of Expression

The freedom to criticize and voice opposition to government activities has born the brunt of the anti terrorist rhetoric as media groups are labeled ‘terrorists’ and face great difficulties in carrying out their duties.

- The **Malaysia** Internal Security Act, though introduced in the 1960’s remains a powerful tool to suppress opposition voices. Since September 11th, the Prime Minister has justified its use as counter terrorist in nature. Under Section 73 (1) of the ISA police can detain a person for up to 60 days without warrant or trial or access to a lawyer. All that is needed is suspicion that ‘he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to maintenance of essential services therein or to the economic life thereof’. The Minister of Home Affairs can increase the length of detention to up to 2 years without review by the courts. There are also restrictions on freedom of assembly, association, and expression, freedom of movement, residence and employment. Schools could be closed if they are used as a meeting place for an unlawful organization or for any other reason deemed detrimental to the interests of Malaysia or the public. According to Amnesty International reports, six members of an opposition group have been detained without charge for the past two years under the Act. The government alleged that the six were plotting to overthrow the government through militant means¹⁹.
- **Uganda**’s Anti Terrorism Act 2001, which was supported by US embassy officials, prohibits media houses from giving publicity to terrorists thus strictly limiting the right to freedom of expression. Terrorism is defined as, "the use of violence or threat of violence with intent to promote or achieve, religious, economic and cultural or social ends in an unlawful manner, and includes the use, or threat to use, violence to put the public in fear or alarm," and carries a mandatory death sentence. The government has the authority to list an organisation as banned. Security officials are also given powers to intercept bank accounts, emails, telephone calls, and faxes of suspects. Employers are also under a duty to report absences if they suspect any involvement in terrorism.
- Under **India**’s POTA, journalists are also obliged to inform the police on information that is terrorist related. The government has accused the media of giving ‘too much publicity’ to terrorists.
- In **Zimbabwe**, The Broadcasting Services Act 2001 gives the Minister of State for Information the authority to issue licences for independent radio broadcasters. While registration itself is not an unusual phenomenon, the Minister also retains the authority to ban any broadcaster deemed to be a threat to national security. The Access to Information and Protection of Privacy Act 2002 has been used to suppress news media, and restricting the information that is publicly available on public bodies. The AIPPA also demands

¹⁹ Amnesty International <http://web.amnesty.org/library/Index/ENGASA280142003?open&of=ENG-MYS>

registration of journalists by a government appointed board. Most notably it was recently used as a charge against *The Guardian* newspaper correspondent Andrew Melburn who was deported from Zimbabwe on 16th May 2003.

- No specific anti terrorism legislation was introduced in **Brunei Darrussalam** post September 11th, however the Internal Security Act has been used to limit the right to freedom of religion. In 2001, Amnesty International listed three men as Prisoners of Conscience after they were detained for a number of months, accused of trying to convert by deception²⁰.

²⁰ Amnesty International
<http://web.amnesty.org/web/www.nsf/8764c1a29cfd135f80256a3800423470/bf40202253ac4ff880256a76003bd716!OpenDocument>

Freedom of Assembly/Association

In the war against terrorism, governments have seized the opportunity to outlaw demonstrations in the name of national security, thus undermining a basic civil right.

- The Public Service Union (PSU) in **Dominica** has criticized the May 2003 Suppression of the Financing of Terrorism Act as having the potential to affect legitimate trade union activities. The Act states, “An act or omission which disrupts any government or essential service and which is committed in pursuance of a protest, demonstration or stoppage of work which is accepted as a legitimate means of ventilating grievances in a democratic society, shall not be deemed a terrorist act within the meaning of this Act so long and so long only as the act or omission does not involve any serious bodily harm to a person; involve damage to property; endanger the life of a person or create a serious risk to the health or safety of the public or a section of the public.” Terrorist activities in Dominica carry a penalty of EC\$100,000²¹ or 25 years imprisonment.
- **Zimbabwe**’s Public Order and Security Act 2002 enabled the government to suppress political opposition in the run up to the national election. Sections 15 and 16 make it an offence to publish statements that promote public disorder or undermine public confidence in the police or to insult the office of the President. The Zimbabwe Human Rights NGO Forum reported 89 people as being killed in political violence in 2001. Since then, the Act continues to be used to limit peaceful assemblies and any form of opposition to the government, criminalizing any attempts to ‘coerce’ the government with a punishment of up to 20 years imprisonment. The Act has been particularly used to tackle ‘terrorist’ threats post September 11th. In March and April this year, the country was brought to a standstill by national strikes initiated by the MDC opposition, however, the police and army attacked numerous protestors. Another mass strike was called on May 29.
 - The Private Voluntary Organizations Act 2002 ensures that all NGO’s are registered by the government. However, any alleged governmental criticisms could result in de- registration and thus criminalization of the organization. This is particularly threatening to independent human rights NGO’s who may be critical of governmental actions. In January this year, the Amani Trust, an NGO which provides assistance to victims of political violence, was forced to close after government ministers alleged that the NGO was not properly registered under the Act and that it was channeling British funds to the opposition MDC party. Other human rights groups, including Zimrights which carries out human rights education activities in rural areas, have been forced to stop.
 - The Labour Relations Amendment Act 2003 imposes strict guidelines before any strike action can be taken. In particular, the Act bans strike action by essential services workers, which is taken to include any

²¹ About £23,000.

workers in those services where, "the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public". A penalty of 5 years imprisonment is imposed on unlawful strike action.

PENDING LEGISLATION

According to the 5th March 2003 report to the Counter terrorism Committee, **Nigeria**'s national assembly is still considering the Anti-Terrorism, Economic and Financial Crimes bill. Political groups and the media have rejected government calls for the anti terrorism police squad to be re-enacted following the September 11th attacks. The squad was known for its gross human rights abuses in the pre-civilian government days of the country. Nigeria remains on the FATF blacklist.

In **Trinidad and Tobago**, a proposed Anti Terrorism Bill was suspended as the country faced political turmoil. The opposition has since refused to debate upcoming legislation until constitutional reform is discussed. The US Ambassador to the country recently publicly stated that the country risked losing American investors if they did not implement anti terror legislation²².

Swaziland's proposed Internal Security Bill fails to define terrorism and is aimed at acts of insurgency, banditry or sabotage aimed against the government. It is not intended to apply to acts directed at foreign governments or nationals.

St Lucia does not encompass terrorism as a crime though offences including loss of life and damage to property are included in the common law. Specific anti terror legislation to deal with the combating of terrorism is to be enacted.

Kenya's Counter Terrorism Bill and Anti Money Laundering and Proceeds of Crime Bill is in direct response to the terrorist attacks that the country experienced in 1998 and 2002. The Bill provides for the authorities to seize cash and property belonging to suspected terrorists, and for terrorist organisations to be proscribed. The bills also provide for a terrorist suspect to be detained in police custody for up to 36 hours, with access limited to the rank of police inspector or higher, or a medical doctor. The government has also announced the formation of the Anti Terrorist Unit within the police force in February this year.

²² Trinidad Express. <http://www.trinidadexpress.com/news.asp?mylink=2003-05-23%2Fnews%2FTT%20not%20immune%20to%20terrorist%20acts.htm&mydate=2003-05-23&mypage=news>

CONCLUSION

Anti terror legislation introduced across the Commonwealth has all been largely prompted by the September 11th attacks. For those countries with pre existing anti terror laws, September 11th provided a further justification for amending and generally tightening those laws, allowing for even greater intrusion on civil liberties and human rights of the general populace.

The present state of world affairs seemed to lend justification to these legislative measures.

In the past weeks, the world has been shocked by consecutive terror attacks and threats of attacks.

In Saudi Arabia, some 30 people were killed in Riyadh. Authorities there have since detained four alleged members of Al Qaida with another 19 identified as being involved in the bombing. In Morocco, 13 suicide bombers killed 28 people in a co-ordinated attack on Western and Jewish targets. Suspects detained by the authorities are believed to be members of a splinter terror group.

Flights between the UK and Kenya were indefinitely suspended after the British government reported on 'imminent' attacks to British flights. A further advisory was later issued warning of a 'clear terrorist threat' in six other African countries including Djibouti, Eritrea, Ethiopia, Somalia, Tanzania and Uganda.

Security officials find it difficult to pinpoint the locations of the next terror attacks and as they do so, governments instead seek to reaffirm their own agendas.

In the UK, Home Secretary David Blunkett announced early in May, of plans to increase the lengths of detention available for holding terrorist suspects without charge²³. This as the 13 suspects held in a maximum security prison began their appeals against their detention.

The actions of powerful Commonwealth nations such as the UK and Australia in limiting the civil liberties of the population serve as an impetus to other, less economically powerful states, that their restrictive laws are necessary in today's society. It is precisely against this sort of ideology that human rights violations are allowed to continue unabated. When the large movers and shakers on the international stage encourage the limitations of human rights of their own populations, they lose any moral ground in criticizing other nations.

As the war on terror continues, it is important that the violations that take place in all countries of the Commonwealth do not escape unchecked. The heightened security measures that are introduced to combat terror need not supercede the rights of the population. Indeed, it is when tackling the horror of terrorist attacks that the fundamental freedoms that define civil society need to be most treasured and respected.

²³ The Guardian. <http://politics.guardian.co.uk/homeaffairs/story/0,11026,954254,00.html>

Appendix I
INTERNATIONAL AND REGIONAL CONVENTIONS

Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.

International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.

International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.

Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. (Deposited with the Secretary-General of the International Civil Aviation Organization).

Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970. (Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America).

Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971. (Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America).

Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980. (Deposited with the Director-General of the International Atomic Energy Agency).

Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988. (Deposited with the Governments of the Russian Federation, the United Kingdom and the United States of America and with the Secretary-General of the International Civil Aviation Organization).

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988. (Deposited with the Secretary-General of the International Maritime Organization).

Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988. (Deposited with the Secretary-General of the International Maritime Organization).

Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991. (Deposited with the Secretary-General of the International Civil Aviation Organization).

Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo on 22 April 1998. (Deposited with the Secretary-General of the League of Arab States).

Convention of the Organization of the Islamic Conference on Combating International Terrorism, adopted at Ouagadougou on 1 July 1999. (Deposited with the Secretary-General of the Organization of the Islamic Conference).

European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977. (Deposited with the Secretary-General of the Council of Europe).

OAS Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C. on 2 February 1971. (Deposited with the Secretary-General of the Organization of American States).

OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July 1999. (Deposited with the General Secretariat of the Organization of African Unity).

SAARC Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987. (Deposited with the Secretary-General of the South Asian Association for Regional Cooperation).

Treaty on Cooperation among States Members of the Commonwealth of Independent States in Combating Terrorism, done at Minsk on 4 June 1999. (Deposited with the Secretariat of the Commonwealth of Independent States).

(See <http://untreaty.un.org/English/Terrorism.asp>)

APPENDIX II

Antigua & Barbuda

- 25 years imprisonment and a EC\$100,000 fine for financing terrorism.

Australia

- No legal access in first 48 hours and then strictly limited.
- Fears that the terrorist definition is too broad and may affect legitimate strikes.
- Life imprisonment for the 'reckless financing' of terrorists.

Bangladesh

- Suspects can be detained without giving reasons.
- Special Powers Act has used against political opponents.
- Money Laundering Act implemented.

Barbados

- Offence to collect funds for terrorists. It does not matter if funds are actually used in the act.

Belize

- Money Laundering Prevention Amendment Bill enacted.

Brunei Darussalam

- Internal Security Act used to limit expression and religious freedom.

Cameroon

- The government undertook the 'assessment and surveillance of sociological structures and groups that might serve as fertile soil ... for terrorist activities'.
- Border police can deny entry to alleged terrorist even if they are in possession of entry visas from diplomatic consulates.

Canada

- Suspects can be brought before a judge for 'investigative hearings'.
- 10 years imprisonment for knowingly participating and life for leaders of terrorist acts.
- Police have extended powers to use electronic surveillance of suspects.

Cyprus

- The financing of terrorist acts carries penalties of 15 years imprisonment or a fine of 1 million Cyprus pounds²⁴.

Dominica

- Legitimate strikes can be deemed to be terrorist and carry a penalty of 25 years imprisonment.

²⁴ About £1,220,000.

Fiji Islands

- Signed Memorandum of Understanding with Australia, to combat terrorism.

Ghana

- Established a counter terrorism intelligence centre under the auspices of the National Security Council.

Grenada

- Anti terror laws fast tracked through Parliament to escape FATF blacklist.
- Economic citizenship programme suspended.

Guyana

- Terrorism introduced on statute books to deal with ethnically charged violent crimes.
- Opposition has been labelled as terrorist by the government. Terrorist acts carries mandatory death sentence.

India

- Journalists obliged to inform police of terrorist activities.
- Suspects detained for up to 3 months without charge.
- Opposition supporters arrested under the Prevention of Terrorism Act.

Kenya

- Counter Terrorism Bill, and Anti Money Laundering and Proceeds of Crime Bill pending.
- Suspects can be detained up to 36 hours without legal access
- Authorities can seize cash and property of suspects.

Malaysia

- Detain suspects up to 60 days without warrant or legal access. Can be extended up to 2 years without review.
- Opposition members currently imprisoned without charge for past 2 years.

Malta

- Financial Intelligence Analysis Unit created.
- Staff at financial institutions under duty to report suspicious transactions.

Mauritius

- Two Presidents stepped down rather than give their assent to anti terror bills.
- Suspects can be detained for 36 hours with access only to a government medical officer.
- Financial Intelligence and Anti Money Laundering Act created.

Namibia

- Anti Terrorism Activities Bill to be introduced to expand offences to include funding terrorist activities.

Nauru

- Designated as 'bad for business' by US Treasury

New Zealand

- Warrants can be extended for other offences.
- Police can use tracking devices. Refusal to assist police in getting info from computers carries a 3 month penalty.
- The Terrorism Suppression Bill could target legitimate protestors.

Nigeria

- Government to re- enact anti terrorism police squad.
- Remains on FATF blacklist.

Pakistan

- Can detain suspects for up to 12 months.
- Suspects have been extradited to US without due process.

Seychelles

- An anti terrorism bill based on the Commonwealth Secretariat model is being drafted with penalties for terrorist involvement ranging from 10 years to life imprisonment.
- A previous money laundering law authorises the seizure of any related monies or property.

Singapore

- Detention up to 2 years without review of the courts.

Sri Lanka

- Detention for up to 72 hours before appearing before a magistrate.
- Suspects remanded until trial is completed.

South Africa

- Offence to be a member of a proscribed group.
- Draft bill changed so that Police must get consent from a judge before detaining suspects.
- Journalists who don't give information to the police can be imprisoned for up to 5 years.

St Lucia

- Money Laundering offences carry fines between EC\$1 and \$2 million²⁵.

St Vincent & the Grenadines

- Anti Money Laundering Committee established in 2002.

Swaziland

- Internal Security Bill doesn't define terrorism and may target legitimate protests. It is aimed at acts of insurgency against the government.

²⁵ About £230,000.

The Bahamas

- Three bank accounts containing over US\$30 million were frozen after US demands.

The Gambia

- Central Bank can take possession of a banking institution if deemed to be acting unlawfully, contrary to Anti Terrorism and Money Laundering Act.

Tonga

- A newspaper was banned for allegedly campaigning against the government.
- Terrorist definition includes destabilizing the country's constitutional or political structures.

Trinidad & Tobago

- US Ambassador recently warned that the country would lose US investors if anti terror laws were not implemented.

Tuvalu

- Introduced the Proceeds of Crime, Mutual Assistance and Extradition Bills.

Uganda

- Media cannot give 'publicity' to terrorists.
- Employers under duty to report absences if they suspect terrorist involvement.

United Kingdom

- Non UK nationals detained without charge indefinitely.
- Secretive process of certification of suspects.
- Appeals only to Special Immigration Appeals Commission.

United Republic of Tanzania

- Immigration officials can arrest suspects without warrant. Immigration Minister can refuse asylum to anyone he suspects will be involved in terrorism.
- Muslims claim Prevention of Terrorism Act targets their religious freedom.

Vanuatu

- List of terrorist suspects circulated to financial institutions.

Zambia

- Indefinite detention without trial under Emergency Powers Act.
- Amnesty International recorded journalists detained without charge for more than 3 months.

Zimbabwe

- Media licences can be revoked for threat to national security. Foreign journalists have been attacked and expelled.
- 20 years imprisonment for attempting to 'coerce' the government. Five years imprisonment for unlawful strike action.
- Human rights NGO's harassed and forced to close.

It has been difficult to obtain information on the following Commonwealth countries:
Botswana, Jamaica, Kiribati, Lesotho, Malawi, Maldives, Mozambique, Papua New
Guinea, Samoa, Sierra Leone, Solomon Islands, St Kitts & Nevis.