

# ANTIGUA & BARBUDA

## Country Report: Anti-terrorism laws & policing

### 1. Country summary


- a. **Government:** Federal Parliamentary Constitutional Monarchy (Elisabeth II, with a Governor General and a Prime Minister)
- b. **Population:** 81 479
- c. **Size:** 442 sq km
- d. **Region:** Caribbean

### e. General

Antigua and Barbuda attained independence in 1981. The country has since experienced relative internal and political stability, with no apparent experience of terrorist activity.<sup>1</sup> Antigua and Barbuda's adoption of terrorism legislation was in response to international obligations since 2001 and can also be linked to pressure resulting from its economic relationship with the USA and UK. The main resource of the island is tourism, with most tourists from the USA and UK. In this way it is potentially of economic importance to the country, particularly to avoid jeopardising the tourism market, to cooperate with the international counter-terrorism response in line with the priorities of the USA and the UK. Antigua and Barbuda also established an off shore financial industry in the 1980s, comprising banks, insurance companies and trusts. These industries flourished in the first decade but were tempered by the drastic recommendations of the Financial Action Task Force on Money Laundering (FATF). FATF recommendations include a black listing for non-compliant countries described as "non-cooperative jurisdictions". Severe economic loss is likely to befall those countries subject to blacklisting. In 2000, 23 countries were black listed internationally, and 13 of them were required to introduce strict anti-terrorism financing and anti-money laundering laws to be removed from the list. For its off shore industry to survive, Antigua and Barbuda followed the 40 directives on money laundering and the 8 recommendations of terrorism of the FATF.<sup>2</sup>

### Counter terrorism measures in the Caribbean

The Caribbean is the tenth largest trading partner of the USA, a major regional source of migration and visitors to the USA, and an important destination for both tourists and business investments from America. The diplomatic ties, trade alliances and economic dependency on the USA, and the fact that Caribbean countries were seen as a base from where terrorists could carry out their operations, left the Caribbean with little choice but to adhere to the requirements outlined by the USA in the "war on terror". This is in spite of the fact that Caribbean countries have not been victim to any major terrorist attacks in the past. The requirements to implement anti-terrorist policies have proved extremely costly in the Commonwealth Caribbean particularly when the economies of these countries were already in decline.<sup>3</sup>



In those Commonwealth Caribbean countries with pre-existing anti-terrorism laws, the 2001 attacks on America led to a tightening of the existing laws. Additionally, the Financial Action Task Force on money laundering (FATF) has caused further concerns that the effect of international pressure and measures has been to undermine the sovereignty of some Caribbean states.<sup>4</sup> The FATF added terrorism financing to its remit in 2001. Some measures included establishing “regulatory and supervisory machinery, as well as Financial Intelligence Units for investigating money laundering and machinery for exchanging information with foreign authorities.”<sup>5</sup>

In an example of the heightened security concern in the region, all those Caribbean countries hosting the Cricket World Cup in 2007 (March 11 – April 28) were required to enact special anti-terrorism security legislation for the event. Those countries were Antigua & Barbuda, Barbados, Grenada, Guyana, Jamaica, St Lucia, St Kitts & Nevis, the Grenadines and Trinidad & Tobago. The laws were labeled “sunset legislation” across the region, due to expire after six months in June 2007.<sup>6</sup> The Legal Affairs Committee of CARICOM approved the draft of the legislation titled the *ICC Cricket World Cup West Indies 2007 Bill*, which was used as a model by the nine host venues to pass through their respective parliaments. The temporary security regulations provided for stricter immigration and customs controls and an enhanced police presence, including some foreign armed forces to assist regional and local police. There was debate as to whether it was appropriate to enact such security legislation without public debate about the issues or the implications on local policing.<sup>7</sup>

The economy of Antigua and Barbuda is almost completely dependent on its tourism industry. Following 2001, port security became a primary area of concern. Security was increased with restrictions on access to the port and materials passing through it. Security was also increased at the international airport. These measures were adopted in order to maintain effective trade relations with the USA and the UK and to secure economic contributions from off shore industries. The FAFT’s demands to comply with their forty recommendations on money laundering and eight directives on terrorism financing have been a prime area of concern in Antigua and Barbuda. The anti-money laundering legislation has led to the virtual collapse of the offshore sector. In 1998 offshore banks numbered over 50 in Antigua and Barbuda, compared to the 15 remaining in 2003.<sup>8</sup>

## **2. Relevant legislation**

*The Suppression of Terrorism Act 1993*

*The Proceeds of Crime 1993*

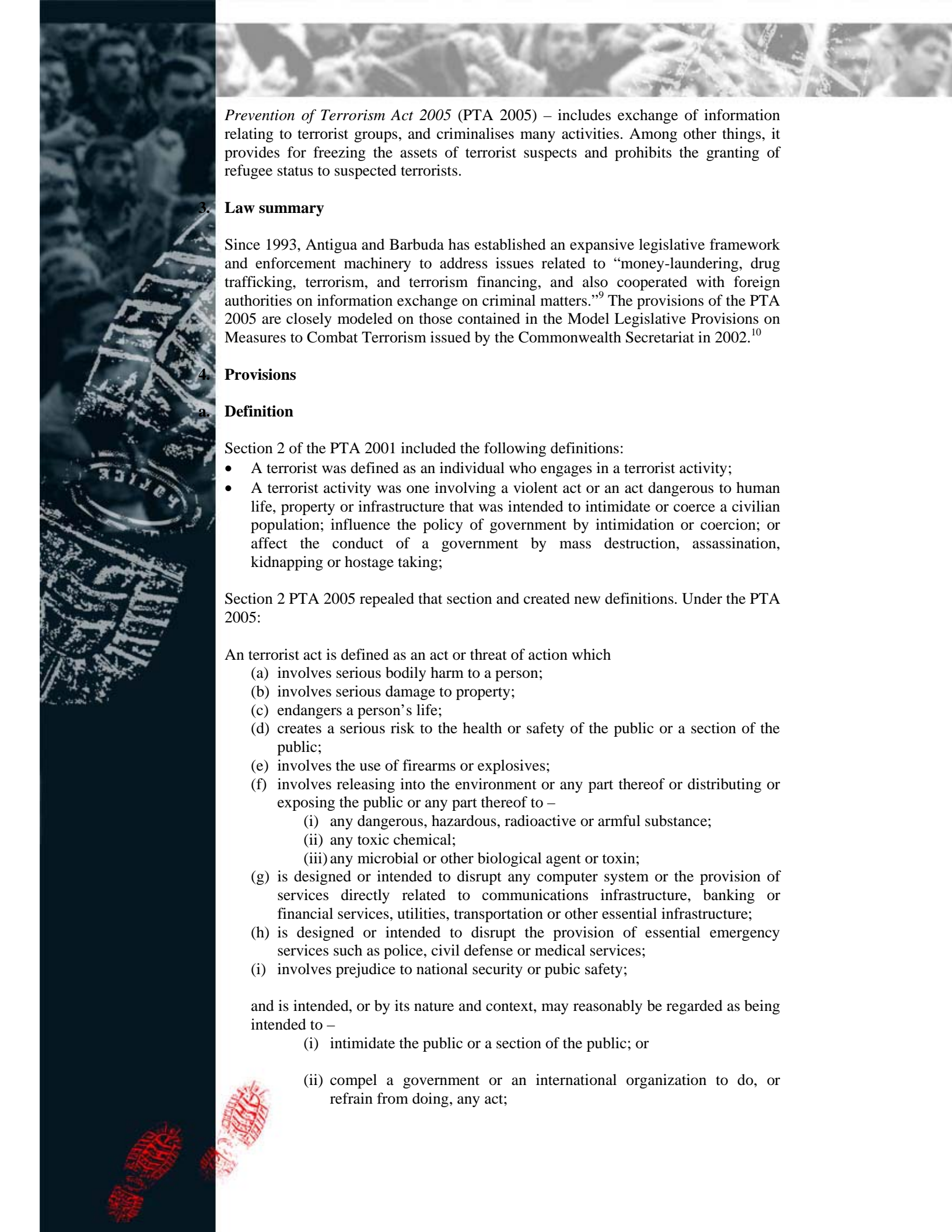
*The Mutual assistance in Criminal Matters Act 1993*

*The Money Laundering (Prevention) Act 1996* (as amended afterwards)

*The Money laundering (Prevention) Regulations 1999* (modified in 2002)

*Prevention of Terrorism Act 2001* (PTA 2001) – the Act was passed speedily within the two months of the September 11 2001 terrorist attacks. It mainly addressed the interdiction of terrorist property. It was repealed by PTA 2005.

*Money Laundering (Prevention) Amendment Act 2002*



*Prevention of Terrorism Act 2005 (PTA 2005)* – includes exchange of information relating to terrorist groups, and criminalises many activities. Among other things, it provides for freezing the assets of terrorist suspects and prohibits the granting of refugee status to suspected terrorists.

### 3. Law summary

Since 1993, Antigua and Barbuda has established an expansive legislative framework and enforcement machinery to address issues related to “money-laundering, drug trafficking, terrorism, and terrorism financing, and also cooperated with foreign authorities on information exchange on criminal matters.”<sup>9</sup> The provisions of the PTA 2005 are closely modeled on those contained in the Model Legislative Provisions on Measures to Combat Terrorism issued by the Commonwealth Secretariat in 2002.<sup>10</sup>

### 4. Provisions

#### a. Definition

Section 2 of the PTA 2001 included the following definitions:

- A terrorist was defined as an individual who engages in a terrorist activity;
- A terrorist activity was one involving a violent act or an act dangerous to human life, property or infrastructure that was intended to intimidate or coerce a civilian population; influence the policy of government by intimidation or coercion; or affect the conduct of a government by mass destruction, assassination, kidnapping or hostage taking;

Section 2 PTA 2005 repealed that section and created new definitions. Under the PTA 2005:

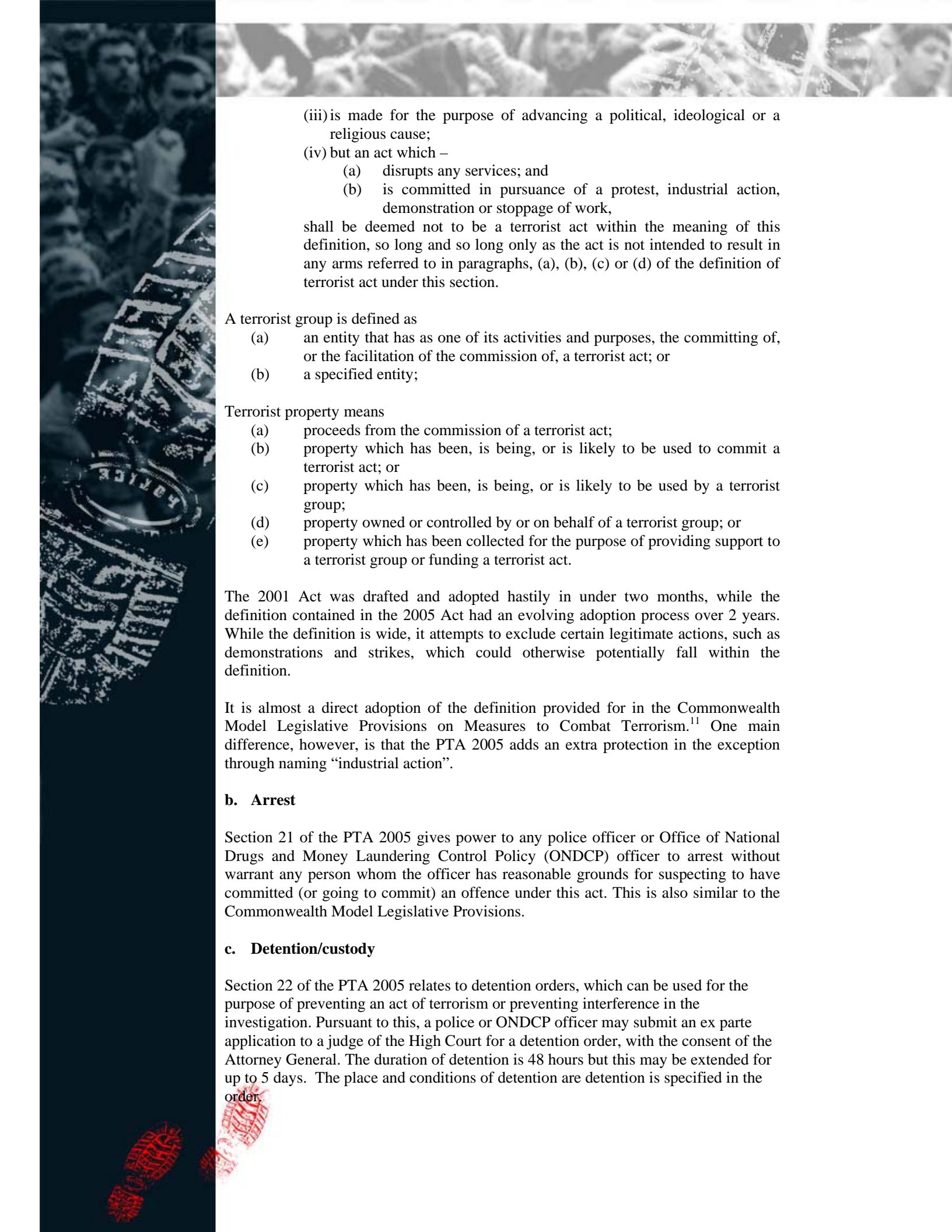
An terrorist act is defined as an act or threat of action which

- (a) involves serious bodily harm to a person;
- (b) involves serious damage to property;
- (c) endangers a person’s life;
- (d) creates a serious risk to the health or safety of the public or a section of the public;
- (e) involves the use of firearms or explosives;
- (f) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to –
  - (i) any dangerous, hazardous, radioactive or armful substance;
  - (ii) any toxic chemical;
  - (iii) any microbial or other biological agent or toxin;
- (g) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
- (h) is designed or intended to disrupt the provision of essential emergency services such as police, civil defense or medical services;
- (i) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to –

- (i) intimidate the public or a section of the public; or
- (ii) compel a government or an international organization to do, or refrain from doing, any act;





(iii) is made for the purpose of advancing a political, ideological or a religious cause;

(iv) but an act which –

(a) disrupts any services; and

(b) is committed in pursuance of a protest, industrial action, demonstration or stoppage of work,

shall be deemed not to be a terrorist act within the meaning of this definition, so long and so long only as the act is not intended to result in any arms referred to in paragraphs, (a), (b), (c) or (d) of the definition of terrorist act under this section.

A terrorist group is defined as

(a) an entity that has as one of its activities and purposes, the committing of, or the facilitation of the commission of, a terrorist act; or

(b) a specified entity;

Terrorist property means

(a) proceeds from the commission of a terrorist act;

(b) property which has been, is being, or is likely to be used to commit a terrorist act; or

(c) property which has been, is being, or is likely to be used by a terrorist group;

(d) property owned or controlled by or on behalf of a terrorist group; or

(e) property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act.

The 2001 Act was drafted and adopted hastily in under two months, while the definition contained in the 2005 Act had an evolving adoption process over 2 years. While the definition is wide, it attempts to exclude certain legitimate actions, such as demonstrations and strikes, which could otherwise potentially fall within the definition.

It is almost a direct adoption of the definition provided for in the Commonwealth Model Legislative Provisions on Measures to Combat Terrorism.<sup>11</sup> One main difference, however, is that the PTA 2005 adds an extra protection in the exception through naming “industrial action”.

## **b. Arrest**

Section 21 of the PTA 2005 gives power to any police officer or Office of National Drugs and Money Laundering Control Policy (ONDCP) officer to arrest without warrant any person whom the officer has reasonable grounds for suspecting to have committed (or going to commit) an offence under this act. This is also similar to the Commonwealth Model Legislative Provisions.

## **c. Detention/custody**

Section 22 of the PTA 2005 relates to detention orders, which can be used for the purpose of preventing an act of terrorism or preventing interference in the investigation. Pursuant to this, a police or ONDCP officer may submit an ex parte application to a judge of the High Court for a detention order, with the consent of the Attorney General. The duration of detention is 48 hours but this may be extended for up to 5 days. The place and conditions of detention are specified in the order.



#### d. General

##### Investigation powers

Section 23 PTA 2005 requires police or the ODCP officer to file an application before a judge before they can gather information. Some guarantees are included in the section, including the ability to access to a judge to challenge the decision. It is interesting to note that the order can include “any other terms or conditions that the Judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any ongoing investigation.” A lawyer can be present during the interrogation. Section 24 refers to the power to intercept communications and the admissibility of intercepted communication. The police or ONDCP officer must also apply ex parte to the High Court Judge in this instance.

##### Other provisions

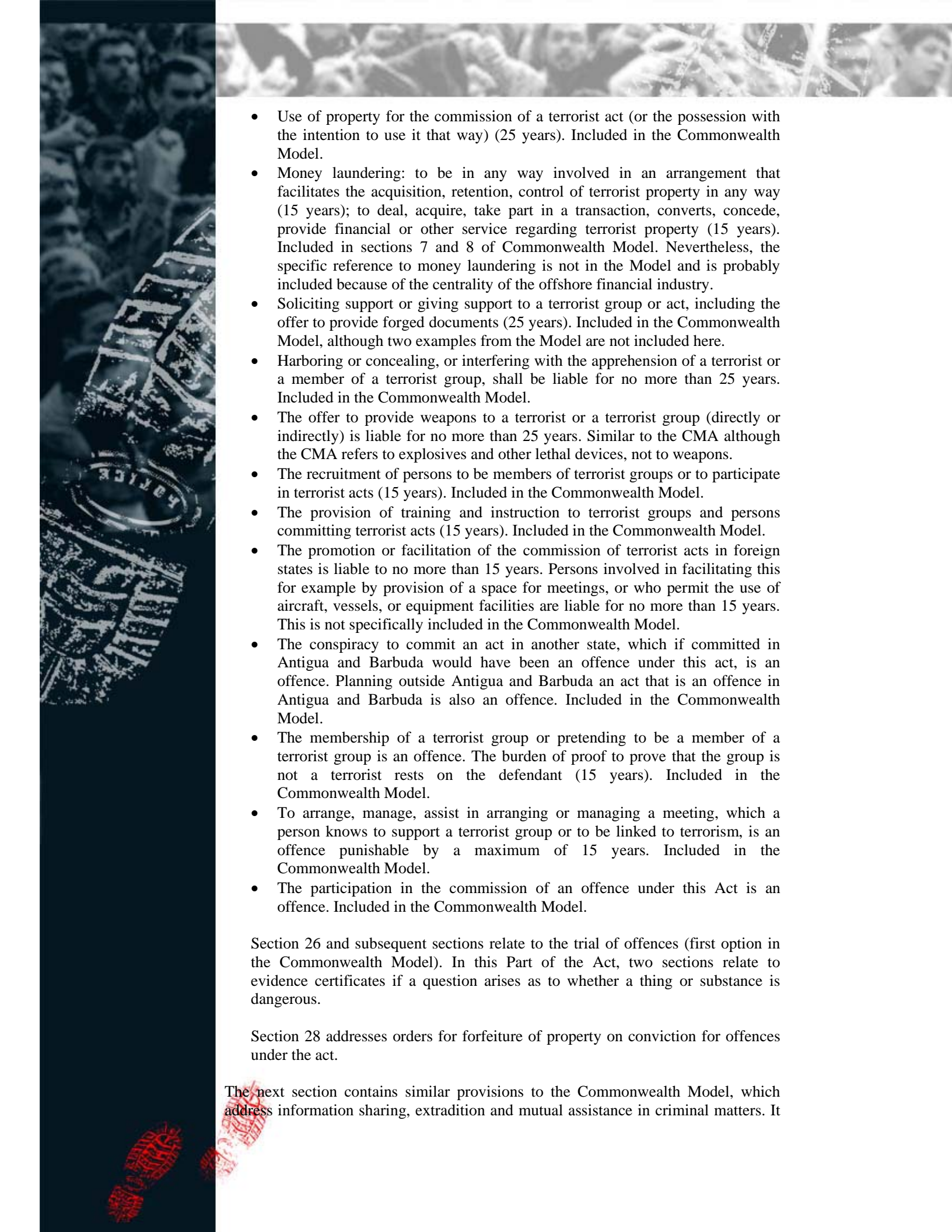
Under Section 3 of the PTA, the Attorney General may (acting on a request from the Commissioner of Police or the Director of ONDCP) to make orders against certain entities suspected of having terrorist links. For example, an order might include freezing the assets of the entity. The order is required to be published and the entity can request a decision for the revocation of the order, with the option of appealing that decision.

This section is similar to that contained in the Commonwealth Model Legislative Provisions, although the PTA extends it to financial institutions, and the time limit for the entity to appeal the decision is broader than the Model Provisions. In the PTA the Police Commissioner and ONDCP director replace the Minister (excluding Subsection 2), or in some cases the Attorney General (excluding Section 9) who assumes the role in the Model Provisions.

Section 4 compels the Minister of Foreign Affairs to take orders to comply with the UN Security Council’s decisions on the measures to be employed to give effect to its decisions, or to its calls upon Antigua and Barbuda. If that order refers to a terrorist group, it shall be considered as a specified organisation. This is very similar to the provision provided in the Commonwealth Model.

Part 3 of the PTA 2005 establishes some specific terrorism related offences. Like the PTA 2001, some of them are focused on terrorism property, but contain some other offences as well. These offences are similar to those contained in the Commonwealth Model, with certain small differences. For example, the Commonwealth Model does not provide recommended penalties:

- The prohibition of a terrorist act includes the threat, the preparation of acts, or even the omission to do something to prevent a terrorist act. The penalty is 25 years imprisonment max. Not included in Commonwealth Model.
- The provision or collection of funds to commit terrorist acts is punished by 25 years imprisonment max. Included in Commonwealth Model, but the focus here only relates to funding.
- The collection of property and services for the commission of terrorist acts (25 years as well). Included in the Commonwealth Model.

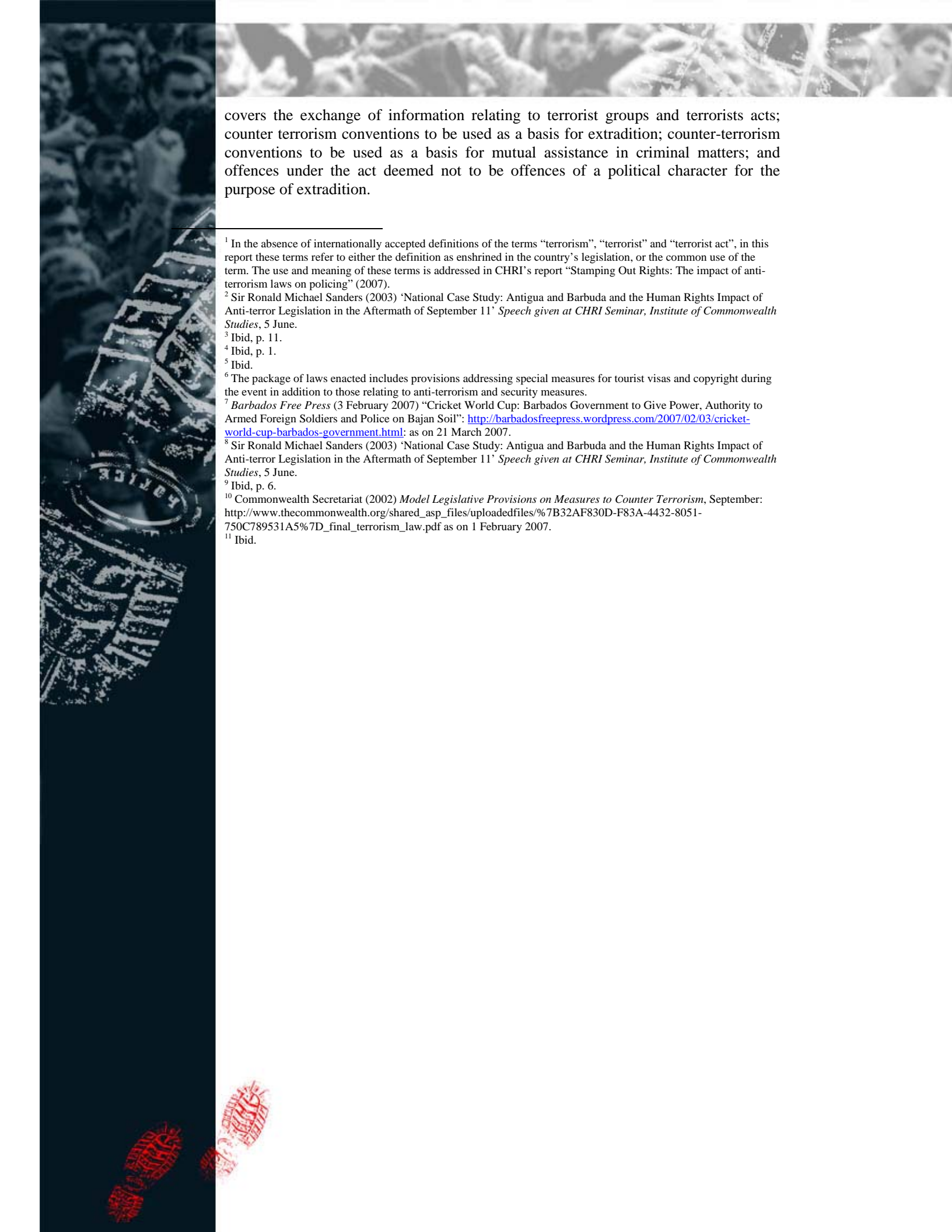
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- Use of property for the commission of a terrorist act (or the possession with the intention to use it that way) (25 years). Included in the Commonwealth Model.
  - Money laundering: to be in any way involved in an arrangement that facilitates the acquisition, retention, control of terrorist property in any way (15 years); to deal, acquire, take part in a transaction, converts, concede, provide financial or other service regarding terrorist property (15 years). Included in sections 7 and 8 of Commonwealth Model. Nevertheless, the specific reference to money laundering is not in the Model and is probably included because of the centrality of the offshore financial industry.
  - Soliciting support or giving support to a terrorist group or act, including the offer to provide forged documents (25 years). Included in the Commonwealth Model, although two examples from the Model are not included here.
  - Harboring or concealing, or interfering with the apprehension of a terrorist or a member of a terrorist group, shall be liable for no more than 25 years. Included in the Commonwealth Model.
  - The offer to provide weapons to a terrorist or a terrorist group (directly or indirectly) is liable for no more than 25 years. Similar to the CMA although the CMA refers to explosives and other lethal devices, not to weapons.
  - The recruitment of persons to be members of terrorist groups or to participate in terrorist acts (15 years). Included in the Commonwealth Model.
  - The provision of training and instruction to terrorist groups and persons committing terrorist acts (15 years). Included in the Commonwealth Model.
  - The promotion or facilitation of the commission of terrorist acts in foreign states is liable to no more than 15 years. Persons involved in facilitating this for example by provision of a space for meetings, or who permit the use of aircraft, vessels, or equipment facilities are liable for no more than 15 years. This is not specifically included in the Commonwealth Model.
  - The conspiracy to commit an act in another state, which if committed in Antigua and Barbuda would have been an offence under this act, is an offence. Planning outside Antigua and Barbuda an act that is an offence in Antigua and Barbuda is also an offence. Included in the Commonwealth Model.
  - The membership of a terrorist group or pretending to be a member of a terrorist group is an offence. The burden of proof to prove that the group is not a terrorist rests on the defendant (15 years). Included in the Commonwealth Model.
  - To arrange, manage, assist in arranging or managing a meeting, which a person knows to support a terrorist group or to be linked to terrorism, is an offence punishable by a maximum of 15 years. Included in the Commonwealth Model.
  - The participation in the commission of an offence under this Act is an offence. Included in the Commonwealth Model.

Section 26 and subsequent sections relate to the trial of offences (first option in the Commonwealth Model). In this Part of the Act, two sections relate to evidence certificates if a question arises as to whether a thing or substance is dangerous.

Section 28 addresses orders for forfeiture of property on conviction for offences under the act.

The next section contains similar provisions to the Commonwealth Model, which address information sharing, extradition and mutual assistance in criminal matters. It





covers the exchange of information relating to terrorist groups and terrorists acts; counter terrorism conventions to be used as a basis for extradition; counter-terrorism conventions to be used as a basis for mutual assistance in criminal matters; and offences under the act deemed not to be offences of a political character for the purpose of extradition.

<sup>1</sup> In the absence of internationally accepted definitions of the terms “terrorism”, “terrorist” and “terrorist act”, in this report these terms refer to either the definition as enshrined in the country’s legislation, or the common use of the term. The use and meaning of these terms is addressed in CHRI’s report “Stamping Out Rights: The impact of anti-terrorism laws on policing” (2007).

<sup>2</sup> Sir Ronald Michael Sanders (2003) ‘National Case Study: Antigua and Barbuda and the Human Rights Impact of Anti-terror Legislation in the Aftermath of September 11’ *Speech given at CHRI Seminar, Institute of Commonwealth Studies*, 5 June.

<sup>3</sup> Ibid, p. 11.

<sup>4</sup> Ibid, p. 1.

<sup>5</sup> Ibid.

<sup>6</sup> The package of laws enacted includes provisions addressing special measures for tourist visas and copyright during the event in addition to those relating to anti-terrorism and security measures.

<sup>7</sup> *Barbados Free Press* (3 February 2007) “Cricket World Cup: Barbados Government to Give Power, Authority to Armed Foreign Soldiers and Police on Bajan Soil”: <http://barbadosfreepress.wordpress.com/2007/02/03/cricket-world-cup-barbados-government.html>; as on 21 March 2007.

<sup>8</sup> Sir Ronald Michael Sanders (2003) ‘National Case Study: Antigua and Barbuda and the Human Rights Impact of Anti-terror Legislation in the Aftermath of September 11’ *Speech given at CHRI Seminar, Institute of Commonwealth Studies*, 5 June.

<sup>9</sup> Ibid, p. 6.

<sup>10</sup> Commonwealth Secretariat (2002) *Model Legislative Provisions on Measures to Counter Terrorism*, September: [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/%7B32AF830D-F83A-4432-8051-750C789531A5%7D\\_final\\_terrorism\\_law.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/%7B32AF830D-F83A-4432-8051-750C789531A5%7D_final_terrorism_law.pdf) as on 1 February 2007.

<sup>11</sup> Ibid.