

# BAHAMAS

## Country Report: Anti-terrorism laws & policing

### 1. Country summary

- a. **Government:** Constitutional Parliamentary Democracy (Elizabeth II, Governor and prime minister, bicameral parliamentary system)
- b. **Population:** 323 000
- c. **Size:** 13 838 sq km
- d. **Region:** Caribbean
  
- e. **General:**


After British rule, the Bahamas first internal self-government was established 1964 and in 1973 it became a fully independent state. Since then The Bahamas have experienced relative political stability.

The country confronted terrorism<sup>1</sup> in 1968, when the Consul Joseph Antoine Dorce was assassinated by four Haitian exiles, members of the Haitian Coalition (a New-York based anti-Duvalier Organisation); and in 1976, when a Soviet ship (Dzhordano Bruno) was attacked by gunfire from a small boat possibly manned by anti-Castro Cuban exiles, infamous for having committed similar actions.

Like most Caribbean countries, the economy is based on two main pillars: tourism (for 40 to 60 percent) and offshore financial services (15 percent). Both these sectors have experienced prosperity since the 1950s. The country's central tourism market is the USA, and a clear decline in tourism was observed after the September 11 2001 terrorist attacks. In relation to the offshore industry, in order not to be blacklisted by the FATF and remain competitive, the Bahamas have implemented the majority of the FATF recommendations (including those regarding the implementation of anti-terrorism measures). These are fairly costly for the industries and have caused a drop of that sector since 2002.

Nevertheless, the Bahamas still faces significant challenges in areas such as education, healthcare, correctional facilities, violent crime and illegal immigration. Furthermore, due to its geographical location, the country is a major transshipment point for illegal drugs, particularly to the USA, and its territory is often used for smuggling illegal migrants into the USA. The USA has close political, economic and commercial ties to the Bahamas. Hence, the stability of the country is particularly important to the USA, and both governments have been working closely together in crime reduction strategies.

The Bahamas passed its anti terrorism act in 2004 and the police force since made counter-terrorism measures a priority. The Royal Bahamas Police Force of Grand Bahama has strengthened anti-terrorist initiatives at the Lucayan Harbour and other Grand Bahama based marinas. The Bahamas Police now have a team of trained divers whose responsibilities include "ensuring the safety of marine facilities". The Superintendent of police Mr. Basil Rahming has stated that this capability is unique to the Caribbean and is not found in many other countries. The US Navy played a large part in the training in these facilities, for example,



through coordinating diving courses. In 2006, the Police Superintendent stated that although a terrorist threat may not be active in the Bahamas, the Royal Bahamas Police Force need to be well trained and equipped as the country is a potential “soft target”.<sup>2</sup> The FATF’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 the Bahamas, and US\$ 36 million has been used in the region to set up anti-terrorism financing and anti-money laundering mechanisms by the FAFT.<sup>3</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>4</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>5</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>6</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>7</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>8</sup>

With the primary emphasis on money laundering and terrorism financing (with the exception of the temporary measures enacted around the 2007 Cricket World Cup), there are few practical examples of counter-terrorism policing in Caribbean states.

## 2. Relevant legislation

*The Anti-Terror Act 2004 (ATA)* – the central anti-terrorism law of the Bahamas, which defines terrorism, provides the local law enforcement agencies with special investigation and punishment powers relating to terrorism offences, and empowers the Minister of National Security to proscribe organisations.

*The Proceeds of Crime Act* – gives the police, customs and courts certain powers in relation to money laundering, including for the search, seizure and confiscation of the proceeds of crime.

*The Financial Transaction Reporting Act*

*The Central Bank (Amendment) Act*

*The Banks and Trusts Companies Regulation Act*

*The International Business Companies Act*

## 3. Law summary

The *Anti-Terrorism Act 2004* was passed in order to implement the UN Convention on the Suppression of the Financing of Terrorism and UN Security Council Resolution 1373.<sup>9</sup> Certain provisions of the act relate directly to these issues, while few or no provisions deal with the detention of suspects, arrest.

## 4. Provisions

### a. Definition

The definition of terrorism is to be found in the ATA, Section 3, in the description of the offence of terrorism:

- 3 (1) A person who in or outside The Bahamas carries out;
- (a) an act that constitutes an offence under or defined in any of the treaties listed in the First Schedule [These are 7 international Treaties on aircrafts – Tokyo, The Hague and Montreal Conventions-, internationally protected people – UN Convention -, Hostages – UN Convention-, Financing of Terrorism – UN Convention-, Terrorism – Inter-American Convention] ; or
  - (b) any other act –
    - (i) that has the purpose by its nature or context, to intimidate the public or to compel a government or an international organization to do or to refrain from doing any act; and
    - (ii) that is intended to cause –
      - (A) death or serious bodily harm to a civilian or in a situation of armed conflict, to any other person not taking an active part in the hostilities;
      - (B) serious risk to health or safety of the public or any segment of the public;
      - (C) substantial property damage; whether to public or private property, where the damage involves a risk of the kind mentioned in sub-paragraph (B) or an interference or disruption of the kind mentioned in sub-paragraph (D); or
      - (D) serious interference with or serious disruption of an essential service, facility or system, whether public or private; not being an interference or disruption resulting from lawful advocacy or from protest, dissent or stoppage of work,

is guilty of the offence of terrorism and on conviction on information where death ensues and where that act would have constituted the offence of murder or treason, prior to the commencement of this act, shall be sentenced to death ; or in any other case, is liable to imprisonment for life.

(2) A person who -

- (a) aids, abets, counsels, procures, incites or solicits the commission of an offence; or
- (b) conspires with another or others to commit an offence under subsection (1) is liable on conviction on information to be punished as a principal offender under that subsection.

#### **b. Arrest**

There are no specific provisions relating to arrest.

#### **c. Detention/custody**

No specific provisions, except for Section 15, which sets out conditions for the transfer of detainees to another state.

#### **d. Investigation**

Section 7 of ATA addresses investigation. Under this section there is a duty on a person having information about a financial offence to report to the police. There is also a subsequent duty on police to investigate such a report. Not reporting information is an offence punishable by up to 5-years imprisonment.

The police shall take “such measures as necessary to investigate the facts” and if the person is found, the Attorney General must take measures to prosecute the offender. This provision is unclear as to what measures are “necessary”, and there is no element of proportionality or reasonableness in the section providing a guarantee against arbitrary interpretation.

The Court may also make the following orders:

**Freezing order:** the Attorney-General can apply to the Court for such an order. This application can be made ex parte if: the person has or is about to be charged with an offence under the act; if the person or organisation is a listed entity under this act; or if a request has been made by another state who is about to charge the person with an offence under the Act or who has reasonable suspicion to do so. To fulfill this last condition, a reciprocal arrangement between the countries must exist. The order shall be published and the person targeted must be warned (if the Court does not find that this may cause the disappearance of the funds). The

person targeted can then be heard by the Court “within such time as the Court determines”. The order is valid for six months and is renewable for up to 18 months (Section 9).

- **Forfeiture order** - this can only be ordered when a person has been convicted of an offence of terrorism or financing terrorism activities (sections 3 and 5). The Attorney General can apply for it, and the Court may grant it if it is convinced that the funds originate from the commission by that person of an offence of terrorism or financing terrorism. There is a reversal of the burden of proof as to the origin of the funds. The Court can as well decide on how to dispose of the funds, including for the sharing with another state (section 11).



**e. Immunity**

With regards to a freezing order, section 9 subsection 9 states that the person charged with the administration of the funds is not liable for any loss or damage to the funds or for the costs of proceedings, unless the Court is of the opinion that there has been an act of negligence.

**f. General**

Section 4 provides for the listing of terrorist groups. The order to list a terrorist entity is given by the Supreme Court, upon application of the Attorney General. The Attorney General can apply for such an order if the entity is listed as terrorist by the UN, or if he or she reasonably suspects the entity is associated with terrorism. The decision shall be published within seven days and subject to review every six months. The entity can apply for a review of the order and it shall be provided with information on the grounds of the decision. Some information may not be given the entity if necessary for national security or if it endangers the life of a person.

Section 5 of the ATA addresses financial offences.

Extradition is provided for in Section 12: if an accused person is in the Bahamas and not subject to extradition, they shall be prosecuted. No person can be extradited to a country where there is substantial grounds for believing that the demand was made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion or that the compliance with the request would be prejudicial to that person's rank or status for any of these reasons.

The Bahamas have jurisdiction to prosecute offences whenever there is a link with the country (nationality of the alleged terrorist or the victim, if the offence conducted against a state or government facility of the Bahamas, if the offence was intended to influence the Bahamas, if the offence was committed by a stateless resident of The Bahamas, committed on board of a Bahamian aircraft, vessel etc, or if the offence threatens the security of the Bahamas).

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<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> Press Release (2006) "The Grant Bahama Police expands anti-terrorist efforts at sea port", *Bahamas Information Services*, 8 August:  
<http://www.bahamas.gov.bs/bahamasweb2/home.nsf/a2adf3d1baf5cc6e06256f03005ed59c/b923d80328c91bf7852571d400530b4c!OpenDocument>.

<sup>3</sup> Sir Ronald Michael Sanders, 'National Case Study: Antigua and Barbuda and the Human Rights Impact of Anti-terror Legislation in the Aftermath of September 11', CHRI Seminar, Institute of Commonwealth Studies, 5 June, 2003, pg 5.

<sup>4</sup> Ibid, p. 11.

<sup>5</sup> Ibid, p. 1.

<sup>6</sup> Ibid.

<sup>7</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>8</sup> *Barbados Free Press* (2007) 'Cricket World Cup: Barbados Government to Give Power, Authority to Armed Foreign Soldiers and Police on Bajan Soil' 3 February: <http://barbadosfreepress.wordpress.com/2007/02/03/cricket-world-cup-barbados-government.html>: as on 21 March 2007.

<sup>9</sup> Refer to the Preamble of the *Anti-Terrorism Act* 2004 (Bahamas).

