

TANZANIA

Country Report: Anti-terrorism laws & policing

1. Country summary*

- a. **Government:** Republic
- b. **Population:** 37 445 392
- c. **Size:** 945 087 sq km
- d. **Region:** East Africa

2. General


The United Republic of Tanzania is a multiparty state led by the president of the union (consisting of the mainland, previously Tanganyika, that won independence in 1961, and the Zanzibar archipelago, which attained independence in 1963). Zanzibar, although integrated into the country's governmental and party structure, has its own president, court system and parliament and continues to exercise considerable local autonomy.¹

Tanzania was one of the first African states to implement a specific anti-terrorism act. The *Prevention of Terrorism Act* (2002) was passed by the National Assembly on 5 November 2002. The country had already witnessed a terrorist attack on 7 August 1998 when the US Embassy in Dar es Salaam was bombed, killing eleven and wounding 71. On the same morning the US embassy in Nairobi, Kenya was also bombed, killing 213 and wounding 4600. Both attacks were attributed to al-Qaeda.

Tanzania's counter-terrorism measures are outlined in a 2005 report from the Government to the UN Counter Terrorism Committee. According to that report, the Tanzania Police Force has a specific Counter Terrorism Unit based at the Criminal Investigative Division (CID) Headquarters. The Unit works with a number of other actors, particularly with a counterpart Unit under the Tanzania Intelligence and Security Service.

The US has been significantly involved in assisting and financing counter-terrorism measures in Tanzania, as it has been throughout the Horn of Africa (consisting of Somalia, Sudan, Ethiopia, Eritrea Djibouti and the Commonwealth member state Kenya). Two years after the embassy bombings, the US announced a policy to strengthen Tanzania's capacity to act against financial crimes and terrorism, and FBI agents conducted training with Tanzanian police in criminal investigation techniques.² In an example of this training, the US Department of State's Diplomatic Service ran a two-week course in surveillance detection for fifteen police officers in May 2006 "designed for police command officers, operational personnel responsible for conducting antiterrorist surveillance detection operations and police training officers responsible for training surveillance teams."³

* Many thanks to Annette Hubschle for her thoughtful review of this report.



In 2006, the US Coordinator for Counterterrorism reported that:

- Tanzania had taken steps to establish a National Counter-terrorism Centre, with members including the police and military, with the purpose of building capacity to prevent and respond to terrorist attacks;
- Police were working closely with the US to disrupt terrorist networks, prevent further acts of terrorism, and had cooperated in the exchange of evidence and testimony in cases related to the 1998 bombing of the USA Embassy; and
- the Police continued to take part in training courses in an effort to build Tanzania's law enforcement capacity. The report states that more than 100 police officers had been trained in courses including criminal investigation, crisis response, transnational terrorism and small arms trafficking.⁴

In relation to Tanzania's general policing and law enforcement, human rights violations by the police have been documented for a number of years.⁵

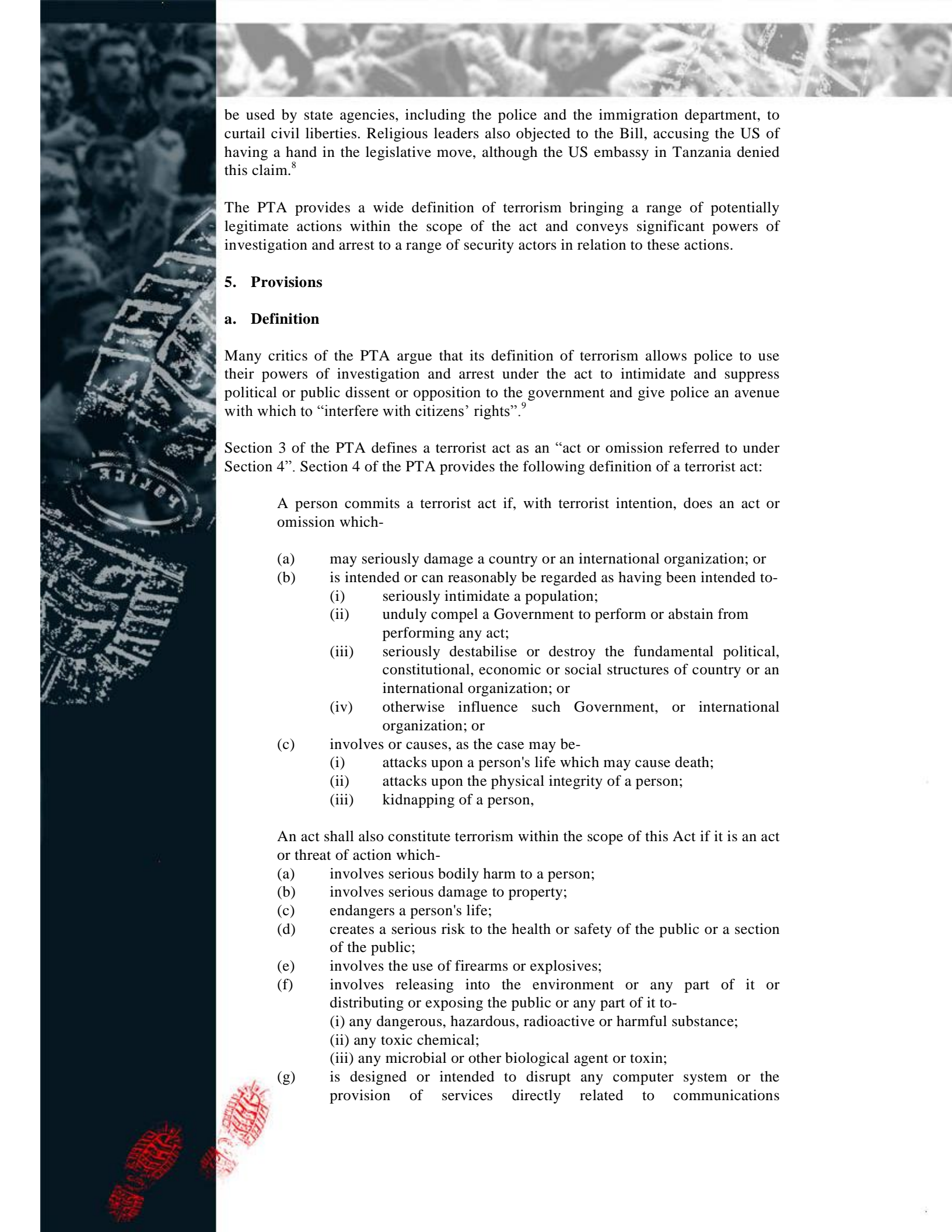
The 2005 US State Department Country Report on Tanzania lists a series of human rights violations that occurred throughout the reporting period. These included reports that: police officers tortured, threatened, and otherwise mistreated suspected criminals and prisoners, with beatings and floggings being the methods most commonly used; the police force was under-funded and inefficient and the use of excessive force, police corruption, and impunity were serious problems; police used the threat of arbitrary arrest to extort money; police frequently failed to comply with the legal requirements of arrest; and police used arbitrary arrest against politicians, members, and supporters of the political opposition.⁶

3. Relevant legislation

- *Criminal Procedure Act 1985*
- *Immigration Act 1995* – amended by the *Prevention of Terrorism Act 2002* to allow an immigration officer to arrest without warrant “any person whom he reasonably suspects to be a prohibited immigrant, a terrorist or to have been concerned in international terrorism... or to have contravened or to be about to contravene any of the provisions of [the PTA]”⁷
- *National Security Act 1970*
- *Preventative Detention Act 1962 (PDA)* – allows, among other things, for the president to order the arrest and indefinite detention without bail of any person considered dangerous to the public or national security
- *Prevention of Terrorism Act 2002 (PTA)*
- *Proceeds of Crime Act 1991*
- *Police Force and Auxiliary Services Act 2002*

4. Law summary

The President assented to the PTA on 14 December 2002. Opposition parties walked out of parliament during debate over the bill and protested that the legislation would



be used by state agencies, including the police and the immigration department, to curtail civil liberties. Religious leaders also objected to the Bill, accusing the US of having a hand in the legislative move, although the US embassy in Tanzania denied this claim.⁸

The PTA provides a wide definition of terrorism bringing a range of potentially legitimate actions within the scope of the act and conveys significant powers of investigation and arrest to a range of security actors in relation to these actions.

5. Provisions

a. Definition

Many critics of the PTA argue that its definition of terrorism allows police to use their powers of investigation and arrest under the act to intimidate and suppress political or public dissent or opposition to the government and give police an avenue with which to “interfere with citizens’ rights”.⁹

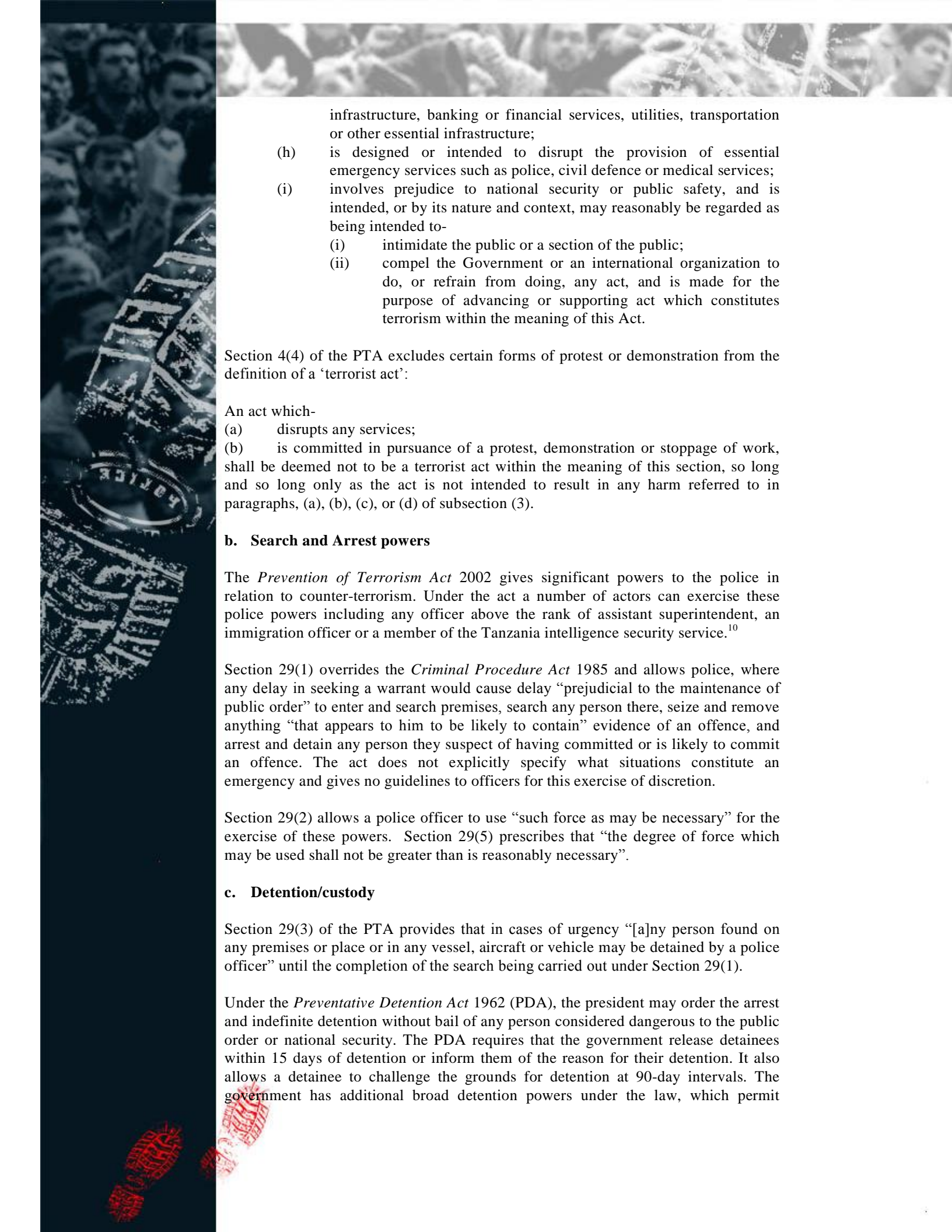
Section 3 of the PTA defines a terrorist act as an “act or omission referred to under Section 4”. Section 4 of the PTA provides the following definition of a terrorist act:

A person commits a terrorist act if, with terrorist intention, does an act or omission which-

- (a) may seriously damage a country or an international organization; or
- (b) is intended or can reasonably be regarded as having been intended to-
 - (i) seriously intimidate a population;
 - (ii) unduly compel a Government to perform or abstain from performing any act;
 - (iii) seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of country or an international organization; or
 - (iv) otherwise influence such Government, or international organization; or
- (c) involves or causes, as the case may be-
 - (i) attacks upon a person's life which may cause death;
 - (ii) attacks upon the physical integrity of a person;
 - (iii) kidnapping of a person,

An act shall also constitute terrorism within the scope of this Act if it is 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 of it or distributing or exposing the public or any part of it to-
 - (i) any dangerous, hazardous, radioactive or harmful 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

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- 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 defence 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;
 - (ii) compel the Government or an international organization to do, or refrain from doing, any act, and is made for the purpose of advancing or supporting act which constitutes terrorism within the meaning of this Act.

Section 4(4) of the PTA excludes certain forms of protest or demonstration from the definition of a 'terrorist act':

An act which-

- (a) disrupts any services;
- (b) is committed in pursuance of a protest, demonstration or stoppage of work, shall be deemed not to be a terrorist act within the meaning of this section, so long and so long only as the act is not intended to result in any harm referred to in paragraphs, (a), (b), (c), or (d) of subsection (3).

b. Search and Arrest powers

The *Prevention of Terrorism Act 2002* gives significant powers to the police in relation to counter-terrorism. Under the act a number of actors can exercise these police powers including any officer above the rank of assistant superintendent, an immigration officer or a member of the Tanzania intelligence security service.¹⁰


Section 29(1) overrides the *Criminal Procedure Act 1985* and allows police, where any delay in seeking a warrant would cause delay "prejudicial to the maintenance of public order" to enter and search premises, search any person there, seize and remove anything "that appears to him to be likely to contain" evidence of an offence, and arrest and detain any person they suspect of having committed or is likely to commit an offence. The act does not explicitly specify what situations constitute an emergency and gives no guidelines to officers for this exercise of discretion.

Section 29(2) allows a police officer to use "such force as may be necessary" for the exercise of these powers. Section 29(5) prescribes that "the degree of force which may be used shall not be greater than is reasonably necessary".

c. Detention/custody

Section 29(3) of the PTA provides that in cases of urgency "[a]ny person found on any premises or place or in any vessel, aircraft or vehicle may be detained by a police officer" until the completion of the search being carried out under Section 29(1).

Under the *Preventative Detention Act 1962* (PDA), the president may order the arrest and indefinite detention without bail of any person considered dangerous to the public order or national security. The PDA requires that the government release detainees within 15 days of detention or inform them of the reason for their detention. It also allows a detainee to challenge the grounds for detention at 90-day intervals. The government has additional broad detention powers under the law, which permit



regional and district commissioners to arrest and detain for 48 hours persons who may "disturb public tranquility."¹¹

d. Use of force

Section 29(2) of the PTA 2002 allows a police officer to use "such force as may be necessary" for the exercise of their powers of investigation. Section 29(5) mandates that "the degree of force which may be used shall not be greater than is reasonably necessary".

e. Immunity

Section 29(6) of the PTA 2002 provides police with immunity from both civil and criminal proceedings in relation to force employed under the Act, even when force results in death:

"A police officer who uses such force as may be necessary for any purpose, in accordance with this Act, shall not be liable, in any criminal or civil proceedings, for having, by the use of force, caused injury or death to any person or damage to or loss of any property."

Although this limitation of liability is in the section dealing with "power of investigation in cases of urgency", the immunity appears to cover force used for "any purpose" in accordance with the PTA and not solely that exerted in cases of urgency.


Section 33(8) of the PTA provides that no civil or criminal proceeding shall lie against the police officer for a seizure of property made in good faith pursuant to Section 33(1).

f. General

The PTA introduces a string of new terror-related offences. The significant expansion of definitions to include what have been traditionally deemed as criminal activity has the indirect consequence of increasing the scope of police power to conduct arrests, carry out searches and bring people into detention.

The PTA contains the following terror-related offences, bringing them within the definition of a terrorist act (Section 4(5)).

- Terrorist meeting: it is an offence to arrange, manage, assist in arranging or managing, participate in, provide logistics, equipment or facilities to a meeting in the knowledge that it is concerned with an act of terrorism, or to attend a meeting knowing that it supports or furthers the objectives of a terrorist organisation (Section 5);
- Proscribed organisations: where two or more persons associate, or where an organisation engages in any act, for the purpose of participating or collaborating in an act of terrorism; or of promoting, encouraging or exhorting others to commit an act of terrorism; or for setting up or pursuing acts of terrorism, the Minister may declare such persons or organisations to be a proscribed organisation. It is an offence to belong, or profess to belong, to a proscribed organisation (Section 6);
- Rendering support to terrorism: it is an offence to solicit support for or tender support to, an act of terrorism or a proscribed organisation. "Support" is defined to include: instigating the cause of terrorism; offering material;




assistance, weapons, explosives, transportation or false documentation; offering or provision of moral assistance; making available financial or other related services; dealing directly or indirectly in any property that is owned or controlled by or on behalf of any terrorist, or any entity owned or controlled by any terrorist; or entering into or facilitating any financial transaction related to a dealing in terrorist owned or controlled property (Section 7);

- Harboursing a terrorist: it is an offence to harbour, conceal, or cause to be harboured or concealed, any person known to have committed or to have been convicted of, an act of terrorism, or against whom he knew that a warrant of arrest or imprisonment has been issued (Section 8);
- Possession of unauthorized articles and information: it is an offence for a person who is in possession of any code, password, sketch, plan, model, note or other document, article or information on account of their office in government or relations with someone who holds office in government, to: use that document or information for terrorist intention or for any purpose prejudicial to the safety or interest of the Republic; or to communicate that information to an unauthorized person; or to retain the document or information when they have no right to do so; or to use the document or information for terrorist purposes (Section 9);
- Making a false threat of a terrorist act: it is an offence to communicate information known to be false with the intention of inducing another person to believe that a terrorist act has been or will be carried out; and to place any article or substance in any place, or to dispatch it by post or rail, with the intention of inducing a false belief that the article is hazardous or likely to explode (Section 10 of the PTA 2002).

Additional terror related offences that fall within the definition of “terrorist act” include:

- Provision or collection of funds to commit terrorist acts (Section 13);
- Collection of property or provision of property and services for the commission of terrorist acts (Section 14);
- Use of property for the commission of a terrorist act (Section 15);
- Arrangements for retention or control of terrorist property (Section 16);
- Dealing with property owned or controlled by terrorist groups (Section 17);
- Soliciting and giving support to terrorist groups for the commission of a terrorist act (Section 18);
- Harboursing of persons committing a terrorist act (Section 19);
- Provision of weapons to a terrorist group (Section 20);
- Recruitment of persons to be members of terrorist groups or to participate in a terrorist act (Section 21);
- Promotion or facilitation of the commission of terrorist acts in foreign states (Section 22);
- Promotion of offences (permitting a premises, room or vessel to be used for the purposes of committing an offence or promoting or supporting the commission of an offence) (Section 23);
- Conspiracy to commit offences under this Act (Section 24);
- Membership of terrorist groups (Section 25);
- Arrangement of meetings in support of terrorist groups (Section 26); and
- Participation in the commission of offence under this Act (aids and abets, attempts to commit, conspires to commit, or counsels and procures the commission of) (Section 27).



The failure to disclose information to a police officer, which may assist in preventing the commission of a terrorist act or the arrest or prosecution of a person under the PTA, is also an offence under Section 40. Additionally, Section 41 requires the disclosure to a police officer of the existence of any property which is owned or controlled by a terrorist group, and of any transaction involving this property. Financial institutions also have obligations under this section.

International terrorism and powers of designation

Section 12 of the PTA provides broad powers to the Minister to declare any person to be a “suspected international terrorist” or any group to be an “international terrorist group”. Examples of the former include, if the Minister reasonably suspects that the person has been concerned in the commission or preparation of a terrorist act, or if the person “has links with an international terrorist group, and he reasonably believes that the person is a risk to national security” (Section 12(1)). Once this designation has been made, the Minister may make regulations to provide for the freezing of funds or other economic resources, for the prevention of entry to Tanzania, and for the prohibition of supply of arms to that entity or person.

6. Further example

An eminent jurists panel of the International Commission of Jurists expressed concern regarding the vulnerability of the Muslim community in East Africa as a result of counter-terrorism laws and policies.

http://ejp.icj.org/hearing.php3?id_rubrique=11

http://ejp.icj.org/IMG/pdf/Press_release_Kenya_hearing-2.pdf.

¹ See further, Commonwealth Human Rights Initiative (2006) *The Police, the People, the Politics: Police Accountability in Tanzania*:

http://www.humanrightsinitiative.org/publications/police/tanzania_country_report_2006.pdf.

² Stephen Mbogo (2002) *East African Muslims Protest New Anti-Terror Law*:

<http://www.wrn.org/article.php?idd=14231&sec=33&con=58> as on 1 February 2007.

³ See Embassy of the United States Dar Es Salaam Tanzania (19 May 2006) “Press Release: 15 Tanzanian Police officers benefits from surveillance detection course”:

http://tanzania.usembassy.gov/pr_05192006a.html.

⁴ United States Department of State, Office of the Coordinator for Counterterrorism (2005) *Country Reports on Terrorism*: <http://www.state.gov/s/ct/rls/crt/2005/64335.htm>.

⁵ See, eg, Amnesty International (9 July 2002) *Policing to Protect Human Rights: A survey of police practices in countries of the Southern African Development Community, 1997-2002*, AI Doc AFR 03/004/2002: <http://web.amnesty.org/library/Index/ENGAFR030042002?open&of=ENG-TZA>.

⁶ United States Department of State (2005) *Country Reports on Human Rights Practices: Tanzania*: <http://www.state.gov/g/drl/rls/hrrpt/2005/61596.htm> as on 1 December 2006.

⁷ Section 53(j), *Prevention of Terrorism Act 2002*.

⁸ Mbogo, S (28 November 2002) “East African Muslims Protest New Anti-Terror Law”, *CNSNews.com*: <http://www.wrn.org/article.php?idd=14231&sec=33&con=58> as on 1 February 2007.

⁹ Mbogo, S (28 November 2002) “East African Muslims Protest New Anti-Terror Law”, *CNSNews.com*: <http://www.wrn.org/article.php?idd=14231&sec=33&con=58> as on 1 February 2007.

¹⁰ Section 28(2), *Prevention of Terrorism Act 2002*: for the purpose of this act, “police officer” means and include a police officer of or above the rank of Assistant Superintendent, an immigration officer or a member of the Tanzania intelligence security service.’

¹¹ United States Department of State (2005) *Country Reports on Human Rights Practices: Tanzania*: <http://www.state.gov/g/drl/rls/hrrpt/2005/61596.htm> as on 1 February 2007.