



Commonwealth Human Rights Initiative

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SUBMISSION to the INTERNATIONAL COMMISSION of JURISTS EMINENT PANEL on TERRORISM, COUNTER-TERRORISM and HUMAN RIGHTS¹

**SOUTH ASIA SUB-REGIONAL HEARING
NEW DELHI
27-28 FEBRUARY 2007**

INTRODUCTION

Since the declaration of UN Security Council resolution 1373, prompted by the terrorist attacks in the USA on 11 September 2001, the international community has strengthened efforts to prevent and combat terrorist attacks from occurring within sovereign borders. Disturbingly, the legislative and practical mechanisms employed to this end have threatened the maintenance of human rights. The 'war on terror' has seen anti-terrorism and national security laws utilised to stamp out opposition forces, suppress marginalised sectors of society and significantly reduce the safeguards of the rule of law. The 'war on terror' has also produced a discourse in which counter-terrorism measures are seen as incommensurate, rather than synonymous, with human rights.

This report examines the legislation and policing practices enshrined in these laws that have been employed in the anti-terrorist measures of the four South Asian Commonwealth countries of India, Bangladesh, Sri Lanka and the Maldives. Legislative frameworks to counter terrorism in these countries have reduced procedural safeguards for accused persons. Simultaneously, nebulous or overly broad definitions of terrorism within these laws have captured within the anti-terrorism framework offences that have been conventionally dealt with under criminal law. This is particularly concerning given the reduced requirements for successful prosecution encompassed by these laws. Meanwhile these legislative frameworks have broadened police powers and reduced accountability mechanisms for the institutions of policing.

CHRI is concerned that the legislative and policing frameworks of the contemporary anti-terrorism agenda are incommensurate with the preservation of human rights in these countries. Furthermore, whilst many of these countries had histories of terrorism pre-dating 2001, the 'war on terror' has leant international legitimacy to the pursuit of internal security agendas even when they operate contrary to the principles of human rights.

¹ For further information on this submission or CHRI's ongoing work on anti-terrorism legislation and policing in the Commonwealth, contact Tessa Boyd-Caine, CHOGM coordinator, tessa@humanrightsinitiative.com.

SECTION 1: LEGISLATIVE PROVISIONS²

This section discusses the legislative frameworks of each country, drawing on both existing and new legislation. CHRI is concerned that the policing measures contained in these laws undermine or contravene established human rights.

Bangladesh

The international anti-terrorist climate appears to have had several effects in Bangladesh. For example, the nexus between Islamic fundamentalism and internal militancy in Bangladesh has been increasingly referred to in the international arena since 2001, where it had not been such a focal point previously. Meanwhile police impunity and militarisation have been instilled since this time. This was most evident in Operation Clean Heart, a government initiative conducted in 2002 under the auspices of the *Code of Criminal Procedure (1898)*. Its aim was to curb the country's increased crime rate. A combined force of military and police personnel arrested, detained and interrogated approximately 10,000 people. Concerns have been expressed that personnel acted outside the rule of law, including actions leading to the death of 40 individuals.³

In 2003 Bangladesh enacted the *Armed Police Battalion (Amendment) Act (APBn)*. This Act created the Rapid Action Battalion (RAB), a composite force comprising elite members from the military (army, air force and navy), the police and various law enforcement groups, to investigate offences in Bangladesh. Referred to as 'an elite anti-crime and anti-terrorism force,' it has been implicated in severe human rights abuses: there have been numerous reports of torture, custodial deaths and extra-judicial killings since its inception, and particular concerns over its actions when quelling cases of alleged 'Islamic militancy'.⁴ However with the adoption of the *Joint Drive Indemnity Act 2003 (JDIA)*, members of the armed forces, the police and government officials are immune from prosecution for their actions. Additionally, it is unclear who has authority over the RAB, either within government or the executive.

Incursions into privacy have also been a feature of Bangladesh's anti-terrorism framework. The *Bangladesh Telecommunications (Amendment) Act 2006* allows intelligence and law enforcement agencies to tap telephone conversations. The legislation was justified as necessary to curb criminal activities and militancy.⁵ Concerns have been expressed by the opposition and lawyer groups that the law is unconstitutional, particularly in curbing the freedom of speech, and that it will be utilised against those who oppose the government.

Most recently the Bangladeshi government has declared a state of emergency in the lead up to the general elections (now suspended to a later date). The *Emergency Powers Ordinance 2007* restricts freedom of press and ceases any anti-government discourse in the news, on the internet and on television. Those accused of breaching the Ordinance can be arrested without warrant and subjected to preventive detention under the draconian *Special Powers Act 1974 (SPA)*.

2 A full list of relevant legislative provisions for all four countries is contained at Appendix 1.

3 Human Rights Features: 'Operation Clean Heart: Bangladesh's Dirty War', HRF/72/03, 15 February 2003 <http://www.hrdc.net/sahrdc/hrfeatures/HRF72.htm>.

4 International Secretariat of the World Organisation Against Torture (26/01/06), *Bangladesh: State of emergency causing death of at least 19 persons, including a minor, by security forces*, <http://www.crin.org/resources/infodetail.asp?id=12374>; Human Rights Watch (December 2006) *Judge, Jury and Executioner: Torture and Extra-judicial Executions by Bangladesh's Elite Security Force* http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.

5 'JS Okays Tele-Tapping as AL Walks Out' (13 February 2006), *The Daily Star*, Bangladesh <http://www.thedailystar.net/2006/02/13/d6021301085.htm>.

India

India's contemporary framework of anti-terror legislation and policy dates back several decades. The previous *Terrorist and Disruptive Activities (Prevention) Act 1987* (TADA) was repealed in 1997 and terrorist-related activities were being prosecuted under the conventional criminal law or region-specific anti-terrorism arrangements. The 2001 attacks in the USA furnished the Indian government with a renewed mandate to crack down on local terror. The *Prevention of Terrorism Ordinance 2001* (POTO) was promulgated by Presidential decree, bypassing legislative and democratic channels. POTO re-enacted certain controversial provisions of TADA, including a broad definition of 'terrorism', and introduced new financial offences in order to comply with the requirements of UN Security Council Resolution 1373. POTO was re-enacted as the *Prevention of Terrorism Act 2002* (POTA). The justification for POTA was located more clearly within the framework of tackling the ongoing terrorist problem internally rather than on an international scale. POTA was repealed in 2004 following widespread and public concern about its misuse, resulting in hundreds of arbitrary arrest and detention cases.⁶ Despite this repeal, it has been estimated that over 265 people remain detained without charge or trial under POTA.⁷

POTA was replaced with the *Unlawful Activities (Prevention) Amendment Act 2004* (UAPA), which amended existing legislation dating from 1967. UAPA reinforced the repressive powers introduced under POTA and became India's key anti-terror legislation. Like POTA, UAPA empowers the police to arrest, detain and interrogate individuals without charge or trial. The nebulous definition of terrorism potentially extends to even legitimate counter-government activity. UAPA also introduces new offences including 'association' (Section 38) 'unlawful secession' (Section 2(o)) and a range of other 'terrorism-related' offences (Sections 17-22).

One of the legacies of India's previous anti-terrorist legislation (TADA) was its misuse leading to the arrest and detention of tens of thousands of people without cause. From 1984 until the inception of POTO in 2001 some 75,000 people were detained across India. Of these, 73,000 cases had to be subsequently withdrawn for lack of evidence.⁸ This legacy lends even greater weight to concerns about the broadness of the current definition of terrorism and the police powers enshrined in this legislative framework. Already they have led to persons, including those engaged in democratic political and dissentient activities, being embroiled within the anti-terrorist framework. For example in 2002 POTA was used to quash the action of minority Dalit and Tribal groups who were seeking better pay and working conditions in Uttar Pradesh.

Maldives

The *Prevention of Terrorism Act (1990)* was drawn up following terrorist acts in the country in November 1988. The act contains a nebulous definition of terrorism under which those convicted can be sentenced to death, life imprisonment, or banishment for life. Cases prosecuted under the Maldives anti-terrorism legislation have received international condemnation, with the suggestion that some cases have involved unduly long detention pre-trial and inadequate time to prepare a defence.⁹ Of particular concern is the inclusion of political motive as a criterion for intent to commit a terrorist act.¹⁰ Consequently, political opponents and members of the press have been targeted by the use of the PTA, with many cases of arrests under suspected terrorist activities.¹¹

6 For further analysis on the POTA see Commonwealth Human Rights Initiative: *Submissions to the Review Committee on POTA*, 7 October 2003, prepared by Swati Mehta.

7 Amnesty International (20 September 2006), *India: Continued detention two years after the repeal of POTA*, AI Index: ASA 20/026/2006, <http://web.amnesty.org/library/index/engASA200262006?open&of=eng-IND>.

⁸ Iype, George: *Goodbye to POTA*, Rediff News Editorial, <http://in.rediff.com/news/2004/sep/18spec1.htm>.

⁹ Minivan News (Independent Media for the Maldives), 'UK Conservatives Criticise Maldives Human Rights', 13 December 2006.

¹⁰ *Prevention of Terrorism Act 1990* section 2a.

¹¹ Asian Centre for Human Rights (13/12/06), *SAARC Human Rights Report 2006*, <http://www.achrweb.org/press/2006/SAARC0106.htm>;

Sri Lanka

In October 2006 the Sri Lankan government declared a state of emergency using the *Public Security Ordinance 1947* (PSO). This was precipitated by the increase of conflict and violence between Sri Lankan Security Forces and the Liberation Tigers of Tamil Elam (LTTE), despite a ceasefire agreement in February 2002. Each month the state of emergency has been extended under the *Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 2006* (ER). These regulations introduced a broad definition of 'terrorism' and listed terror-related offences. Of particular concern is the potential for inclusion of legitimate political activity within the terms of the new definition. The Ordinance provides immunity to those executing military activities under these Regulations. Police powers within this framework include the right to arrest and detain without warrant and to extend detention for up to 18 months. Detention orders are not reviewable. Additionally, the movement and association of suspected persons may be prohibited or restricted by ministerial order, enforceable by the police.

The *Prevention of Terrorism (Temporary Provisions) Act 1979* (PTA) was re-enacted in December 2006, following its four-year suspension as part of the 2002 ceasefire agreement. The PTA was accompanied by regulations that introduced the first definition of terrorism in Sri Lankan law. However the definition is so broad as to capture a whole range of conventional criminal offences within in; indeed it specifically defines behavior it deems to be criminal within its ambit. The reintroduction of these measures was justified by reference to Security Council Resolution 1373.¹²

SECTION 2: IMPACTS ON THE RULE OF LAW

In this section we examine how policing practices enshrined in these legislative counter-terrorism measures have impacted upon the rule of law. CHRI has found that the rule of law in these countries has been undermined by measures such as immunity from prosecution and a definitional ambiguity that avoids legal certainty. Measures such as preventive detention, repeatedly extendable periods of detention and expanded provisions for admissibility of evidence have licensed police practices that could undermine non-derogable human rights through arbitrary arrest, detention and torture. Additionally, whilst these measures may have been introduced through democratic parliamentary processes, they are fundamentally undemocratic. In many cases these pieces of legislation mandate the executive usurpation of the judicial prerogative to try and sentence individuals. They have also been employed against a range of actors, including those expressing legitimate political opposition.

Lack of accountability

Of particular concern has been the prevalence of measures that reduce or remove accountability by the policing institutions of the state. India's legislation provides immunity under the *Unlawful Activities (Prevention) Act 1967* (section 49) (amended in 2004) for the consequences of any act committed in good faith in pursuance of that act; under the *Jammu and Kashmir Disturbed Areas Act 1992* (section 6); and under the *Code of Criminal Procedure 1973* (section 197) providing for the non liability of agents without the sanction of the government. Sri-Lanka's legislation provides for immunity for actions done in good faith under the *Prevention of Terrorism Act 1979* (section 26); under the *Emergency Regulation 2006* (regulation 19); and under the *Public Security Ordinance 1947* (sections 9 and 23), where the sanction of the attorney general is required for a prosecution. In Bangladesh, the Constitution empowers the government to extend impunity from prosecution to any state officer on any grounds (section 46), and the *Special Powers Act* (section 34) and the *Code of Criminal Procedure 1898* (section 132 and 197) both include immunity provisions.

¹² President Mahindra Rajapakse commented: 'These Regulations have been promulgated in keeping with the United Nations Security Council Resolution 1373 of 2001 adopted under Chapter 7 of the United Nations Charter, under which it is obligatory to take meaningful measures to prevent and suppress terrorism,' December 2006, <http://www.lankaweb.com/news/items06/081206-3.html>.

Poor accountability and immunity from prosecution are clear departures from the rule of law. Additionally, as CHRI has argued previously, it is extremely difficult to prove the absence of good faith of police officers acting within a legislative framework.¹³ Provisions requiring executive sanction are a further cause for concern as they undermine the separation of powers essential to a functioning democracy.

Definitional Ambiguities

In the absence of internationally accepted definitions of 'terrorism', 'terrorist' and 'terrorist act', definitional problems are a feature of the legislation in all four countries. In some cases no definition is enshrined at all. Other laws employ overly broad or vague definitions. These definitional ambiguities undermine the rule of law through their absence of legal certainty. In all cases they either remove the mental element of the offence, or provide an extremely broad, all-encompassing element. Consequently matters that are usually dealt with under criminal codes can be brought within the counter-terrorism framework, which requires lower thresholds of proof and intent, especially where no justification or intent to commit a terrorist act is required for conviction.

For example the Maldivian legislation lists a wide range of offences, from killing and kidnapping to use of a weapon, arson, and anything done 'to cause harm or damage to persons or property orally or in writing or other means'.¹⁴ Conviction for most of these offences does not require intention of terrorism. The exceptions are cases of homicide or causing bodily harm, in which case the requisite intent is either creating fear or terror, or having a political motive. These offences could equally be pursued under criminal law. The Sri-Lankan legislation does not define terrorism, but lists extensive infractions and codifies severe punishment for them, with no suggestion of intent to committing a terrorist act. The Indian legislation contains a broad and ambiguous list of material acts combined with a broad framework of intent: 'to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country'.¹⁵ The Bangladeshi legislation does not define terror offences at all.

Extension of Police Powers

The extension of police powers through these legislative frameworks has seen the introduction of extended powers of arrest and search without warrant; detention without charge (including preventatively); and wider grounds for the admissibility of evidence. Whilst some of these measures may impact upon derogable human rights, CHRI is concerned that the requisite context to allow such derogations has not been met. The war on terror has been construed as an ongoing state of emergency and exception, legitimising the deferral of human rights even in the absence of the requirements of international instruments. For example in article 4 of the ICCPR, the derogation of certain rights is legitimised only in exceptional circumstances threatening the life of the nation. These circumstances are of a temporary nature and do not refer to an ongoing threat.

Freedom from arbitrary detention

Many of these legislative frameworks undermine the fundamental right to freedom from arbitrary detention. Sri Lankan legislation allows for detention without charge for up to 72 hours after an arrest without warrant, or detention up to 18 months under an order from the Minister.¹⁶ Bangladeshi law allows for preventative and indefinite detention, each with extension

13 Commonwealth Human Rights Initiative: *The Need to Reconcile Security and Human Rights*, October 2006, prepared by Caroline Avanzo and Devika Prasad.

14 *Prevention of Terrorism Act 1990*.

15 *Unlawful Activities (Prevention) Amendment Act 2004*.

16 *Prevention of Terrorism Act 1979*.

mechanisms codified in law.¹⁷ Indian law has a three-month detention order extendable by up to one year.¹⁸ All three countries have extended powers of arrest without warrant.

Right to life and freedom from torture

CHRI is concerned that some of these legislative provisions legitimate violations of the non-derogable rights to life and not to be subjected to cruel, inhuman or degrading punishment or treatment. For example, allegations of disappearances, arbitrary killings and torture have been reported in Bangladesh, India and Sri Lanka.¹⁹ Of particular concern is Indian legislation allowing a police officer to 'fire upon, or otherwise use force, even to the causing of death, against any person' breaching public order or acting in contravention of any law or order currently in force.²⁰ Thus the introduction of measures such as immunity, reduced levels of accountability, extended police powers in the absence of warrants and wider admissibility of evidence could be taken as licensing police actions even when they contravene the fundamental principles of right to life and freedom from torture.

SECTION 3: CONCLUDING REMARKS ON THE 'WAR ON TERROR'

All four countries had extensive experience with terrorism prior to 2001. In all four countries the powers through which they police the contemporary anti-terrorist agenda are enshrined in legislation several decades old. Nonetheless the 'war on terror' and the international processes set in motion by it have effected both the security environments and the spirit of policing in these nations. Whilst there has not been one identifiable impact of the 'war on terror' in South Asia, CHRI has identified two trends in the development of policing and security within the nations examined.

Firstly, the 'war on terror' has enabled South Asian nations to confer or consolidate military or quasi-military powers upon civilian police forces; or to transform military forces into civilian policing units. For example, whilst figures vary, the Bangladeshi RAB is between 40%-70% military personnel, with the remainder of the force drawn from policing and civilian organisations.²¹ This militarisation has occurred within a context of greater powers of arrest, search and detention. Simultaneously accountability mechanisms have been reduced, most notably through the enactment of immunity provisions. These developments have led to what CHRI has previously described as a 'culture of impunity' amongst law enforcement authorities.²²

Secondly, the 'war on terror' has allowed South Asian countries to claim an international mandate for a toughened stand against local 'terrorists' or insurrectionaries. The attempt to involve the global community in support of diverse domestic security issues has been a general trend in South Asian nations' responses to the contemporary anti-terrorism climate. This was evident in the statement of the Maldives Foreign Affairs Minister Fathulla Jameel to the UN in 2004. Mr Jameel reasoned that terror often begins in weak and 'smaller' states, arguing that the present juncture represented an opportunity for these states to clamp down on terrorism.²³ In this context he stated that it was 'imperative that the international community takes on the crucial responsibility of protecting the security of small states.'²⁴

17 *Special Powers Act 1974.*

18 *National Security Act 1980.*

19 Human Rights Watch: *Judge, Jury, and Executioner: Torture and Extrajudicial Killings by Bangladesh's Elite Security Force*, December 2006 (Volume 18, No. 16(C)) <http://www.hrw.org/reports/2006/bangladesh1206/index.htm>; and Human Rights Watch: *"Everyone Lives in Fear" Patterns of Impunity in Jammu and Kashmir*, September 2006 (Volume 18, No. 11(C)) <http://hrw.org/reports/2006/india0906/>; Amnesty International (30 August 2006) *South Asia: 'War on terror' spawns new patterns of enforced disappearance*, AI Index: ASA 04/001/2006, <http://web.amnesty.org/library/index/engasa040012006>.

20 *Jammu & Kashmir Disturbed Areas Act 1992*, sections 3 & 4.

21 Government figures state 60% of RAB members are police and the rest are drawn from the military and various civilian organisations. Human Rights Watch reports that 70% of the force is military and 30% police (*op cit* 4).

22 *Op cit* 13.

23 Statement by His Excellency Mr Fathulla Jameel, Minister of Foreign Affairs of the Republic of Maldives at the 59th session of the UN General Assembly, 30 September 2004 <http://www.un.org/webcast/ga/59/statements/mald040930.pdf>.

24 *Op cit* 23.

Internal dissent has been a feature of the political landscape in each of these countries. South Asian nations have each utilised the contemporary anti-terrorist framework to suppress and even criminalise such dissent. The expandable framework implied by a 'war on terror' has been taken as a mandate for the control of internal security issues, even where their articulation as terrorist activities is highly dubious. CHRI is concerned that, whilst some of these issues may relate to terrorism, others are issues of political opposition, civil unrest or criminal activity. The 'war on terror' has leant an international legitimacy to measures employed to address internal security agendas, even where these measures violate human rights.

RECOMMENDATIONS

The ICJ has requested submissions on what lessons could be learnt from past experiences of terrorism and counter-terrorism. CHRI makes the following recommendations in this regard.

1. Counter-terrorism measures must be adopted in accordance with the principles enshrined in the international human rights framework. Further to this, counter-terrorism measures must not be constructed as incommensurable with, or legitimating derogations from, human rights.
2. CHRI has been advocating for the establishment of a Commonwealth Expert Group on Policing to address policing reform within the framework of international principles of human rights throughout the Commonwealth. CHRI recommends the ICJ support this and other measures to ensure compliance of policing practices with human rights principles.
3. CHRI recommends the establishment of a review or oversight body to consider country reports submitted to the UN Security Council Counter-terrorism Committee from the specific perspective of human rights compliance.
4. CHRI recommends the re-institution of the former (or establishment of a new) definition-setting body to reach a set of agreed definitions for 'terrorism', 'terrorist' and 'terrorist activity' that conform to international principles of human rights.

APPENDIX 1: Legislation relevant to the anti-terrorism framework for India, Bangladesh, Sri Lanka and the Maldives

Bangladesh

Code of Criminal Procedure 1898 (CCP 1898): Section 54 (allowing arrest without warrant and up to 24 hours detention); Section 132 (requiring government sanction to prosecute a government official); Section 167 (allowing a Magistrate to extend remand in custody beyond 24 hours for a total period of 15 days on request from the police); Section 197 (mandating courts to obtain government approval to hear a case against government officers and conferring complete control over how the case is heard on government).

Constitution of Bangladesh 1972: Article 46 (allowing laws to be made granting immunity to government officers from prosecution for abuse).

Special Powers Act 1974 (SPA 1974): Allows preventative detention of individuals who might commit 'prejudicial acts' against the state. There are numerous mechanisms to extend preventive detention despite absence of evidentiary criteria to justify detention.

Dhaka Metropolitan Police Ordinance 1986 (DMPO 1986): Section 86 and Section 100 provide for the arrest of persons in the absence of a warrant in the Dhaka City area.

Suppression of Terrorist Offences Act 1992: This Act lapsed in 1994 however its two-year lifespan saw over 6900 people detained and subject to summary trials.²⁵

Suppression of Terrorist Offences (Special Provisions) Act 1994: This Act was enacted upon the expiry of the *Suppression of Terrorist Offences Act 1992* to provide for the settlement of suits, appeals and other proceedings filed on or before the date of expiry.

Money Laundering Act 2002 (MLA 2002): Contains no specific reference to terrorism or terrorist activity.

Joint Drive Indemnity Act 2003 (JDIA 2003): Provides immunity from prosecution for activities conducted during Operation Clean Heart by members of the armed forces or government officials (including police) under the direction of the government.

Armed Police Battalions (Amendment) Act 2003 (APBAA 2003): This Act created the Rapid Action Battalion (RAB) by amending the *Armed Police Battalions Ordinance 1979 (APBO 1979)*. The RAB has been in operation since June 2004 and is assigned to investigate any offence on the direction of the government. Since its inception there has been a dramatic rise in the number of deaths in custody and extra judicial killings.²⁶ The RAB has been referred to as 'an elite anti-crime and anti-terrorism force'.²⁷

Bangladesh Telecommunications (Amendment) Act 2006: Allows intelligence and law enforcement agencies to tap telephone conversations and was justified as necessary to curb militancy.²⁸

25 South Asia Human Rights Documentation Centre (11 October 1999), *Dealing with Dissent: The 'Black Laws' of Bangladesh*, HRF/8/99 <http://www.hri.ca/partners/sahrdc/hrfeatures/hrf8.htm>.

26 Farhad Mazhar and Abu Saleh Mohammad Elan (10 December 2005), 'Who's Security?' *The Daily Star: Law and Our Rights* <http://www.thedailystar.net/law/2005/12/02/index.htm>.

27 International Secretariat of the World Organisation Against Torture (26 January 2007), *Bangladesh: State of emergency causing the death of at least 19 persons, including a minor, by security forces* <http://www.crin.org/resources/infodetail.asp?id=12374>.

28 Introduced in the face of strong opposition including a parliamentary walkout ('JS Okays Tele-Tapping as AL Walks Out' (13 February 2006), *The Daily Star*, Bangladesh <http://www.thedailystar.net/2006/02/13/d6021301085.htm>).

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Emergency Powers Ordinance 2007: Allows the government to ban any meeting, procession, siege, demonstration, speech, statement, and any harmful news or information in the interest of government, state or public security and peace. The government can also restrict any publication or transmission of any anti-government news, editorial, post editorial, article, feature, cartoon, talk show or discussion in print or electronic media and any mass media, including the internet.²⁹ Offences under this Ordinance legitimise arrest in the absence of a warrant. Additionally, individuals can be preventatively detention under the *Special Powers Act 1974* if deemed that the individual might create an offence under the emergency rules.³⁰

India

Armed Forces (Special Powers) Act 1958 (AFSP Act 1958): This Act applies specifically to the armed forces, however certain state Acts such as the *Jammu and Kashmir Disturbed Areas Act 1992 (JKDA Act 1992)* have extended these powers to members of the police service. A Government appointed Committee has recommended that the AFSP be repealed but that a number of its powerful provisions are inserted into the *UAP Act 1967*. The Government has deferred its decision on the repeal.

Unlawful Activities (Prevention) Act 1967 (UAP Act 1967): This Act was amended by the *Unlawful Activities (Prevention) Amendment Act 2004 (UAPA Act 2004)* following the repeal of the *POTA 2002*. The *UAPA 2004* amended the long title of the *UAP Act 1967* to read, 'An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith.' The 2004 amendment made the *UAP Act 1967* India's key anti-terrorism legislation.

National Security Act 1980 (NSA 1980): This Act does not specifically pertain to terrorism. However, it confers wide powers on police in the case of threats to the 'security of India' which may be invoked against a perceived 'terrorist threat'.

Terrorist and Disruptive Activities (Prevention) Act 1987 (TDAP Act 1987): The *POTA 2002*'s predecessor. This Act was repealed one decade ago yet Amnesty International reports that people remain detained under it.³¹

Jammu and Kashmir Disturbed Areas Act 1992 (JKDA Act 1992): This Act operates in the State of Jammu and Kashmir only. The legislative provisions do not only pertain to terrorism, covering militancy as well. The Act's 'statement of objects and reasons' refers to 'militants/terrorists' who pose a great challenge to State administration.

Prevention of Terrorism Ordinance (2001) (POTO 2001): *The presidential decree under which the provisions of the POTA 2002 were initially brought into force as an immediate response to September 11 and UN Security Council Resolution 1373 (repealed)*.

Prevention of Terrorism Act 2002 (POTA 2002) (repealed): This Act was in force between 2001 (when it was introduced presidential decree in the form of the *POTO 2001*) and 2004 when it was repealed by Prime Minister Singh in recognition of widespread abuse that had occurred under its authority. Despite this repeal, Amnesty International estimates that over 265 people remain detained without charge or trial under the *POTA 2002*.³²

29 'Rules Promulgated to Curb Political Activity' (27 January 2007), *The Daily Star*, Bangladesh <http://www.asiamedia.ucla.edu/article-southasia.asp?parentid=62345>.

30 'Rules Promulgated to Curb Political Activity' (27 January 2007), *The Daily Star*, Bangladesh <http://www.asiamedia.ucla.edu/article-southasia.asp?parentid=62345>.

31 Amnesty International (20 September 2006), *India: Continued detention two years after the repeal of POTA*, AI Index: ASA 20/026/2006, <http://web.amnesty.org/library/index/engASA200262006?open&of=eng-IND>.

32 Amnesty International (20 September 2006), *India: Continued detention two years after the repeal of POTA*, AI Index: ASA 20/026/2006, <http://web.amnesty.org/library/index/engASA200262006?open&of=eng-IND>.

The Maldives

Prevention of Terrorism Act 1990: Although a brief piece of legislation, it contains an extremely broad definition of terrorism, and severe penalties ranging from death sentence to life imprisonment and imprisonment with hard labor upon conviction.

Sri Lanka

Public Security Ordinance 1947 (PSO 1947) (Chapter 40) (Long title: An Ordinance to provide for the enactment of emergency regulations or the adoption of other measures in the interests of the public security and the preservation of public order and for the maintenance of supplies and services essential to the life of the community) (as amended by *Act No. 8 of 1959*; *Law No. 6 of 1978* and *Act No. 28 of 1988*): Under this Ordinance a state of emergency was declared on 2 October 2006, and extended each month until the present date. The PSO allows the Prime Minister to utilise the armed forces to maintain public order, empowering the military with search and arrest powers usually conferred on police officers only. It also allows the Prime Minister to criminalise any disruption of 'essential services' and to restrict movement in an extreme manner.³³

Prevention of Terrorism (Temporary Provisions) Act 1979 (PTA 1979) (Long title: An Act to make temporary provision for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, group of individuals, association, organisation or body of persons within Sri Lanka or outside Sri Lanka and for matters connected therewith or incidental thereto): Contains no specific definition of 'terrorism', but criminalises as a terrorist persons who may have acted illegally but in the absence of any intent to commit acts of terrorism. Powers include search, arrest and detain without a warrant. This Act was re-enacted on 6 December 2006 after a period of suspension as part of the February 2002 ceasefire agreement.

Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006 (ER 2006): Introduced through the *Public Security Ordinance* (Chapter 40) in tandem with the 6 December 2006 re-introduction of the *PTA 1979*. The Regulations contain a definition of 'terrorism', the first time such a definition has been articulated in Sri Lankan history; proscribed a range of new terror offences relating to engaging in terrorist activity; and enshrined immunity from prosecution for any public servant or other person acting under the terms of the regulations.

Prevention of Hostage Taking Act 2000 (PHT Act 2000): Introduced to give legal effect to Sri Lanka's signing of the UN International Convention against the Taking of Hostages 1979. The Act does not explicitly provide police with enhanced powers.

Convention on the Suppression of Terrorist Financing Act 2005 (CSTF Act 2005): Section 3 contains the offence of financing terrorists or terrorist organisations, which is a 'specified terrorist activity' under the *ER 2006*. The Act does not explicitly provide police with enhanced powers.

Prevention of Money Laundering Act 2006 (PML Act 2006): Section 3 contains the offence of money laundering, which is a 'specified terrorist activity' under the *ER 2006*. Section 7 of the Act provides police with the power to freeze assets or property reasonably believed to be involved in the offence of money laundering.

³³ Under Section 16, the Prime Minister of the PSO 1947 the Prime Minister can authorise a curfew stopping people from bring on any public road, railway, public park, public recreation ground or other public ground or the seashore unless they have an official written permit.