



Proposed Anti – Terrorism Act (ATA) – Key Concerns

Centre for Policy Alternatives (CPA)

May 2023

In response to the notice issued on 2nd May 2023 by the Ministry of Justice calling for submission of proposals on the Anti-Terrorism Act (ATA) by interested parties, the following document contains an initial comment reflecting key concerns that the Centre for Policy Alternatives (CPA) has observed, and has continuously raised in the past.

Based on the breadth of the problematic provisions highlighted below - including the overbroad framing of the offence of terrorism, detention without charge with extended remand periods, excessive powers granted to the executive to the detriment of the judiciary, and increased militarization - CPA urges the government to withdraw the ATA.

The belated and rushed efforts by the government to extensively amend the ATA at the present moment will not only fall short of addressing the fundamental concerns raised, but it will also be a product of a problematic process with limited scope of consultation in drafting it. Any genuine consultation would require consulting communities / individuals who have been directly impacted by the PTA, including long term detainees and their next of kin, in order to understand the real-world impact of the PTA, and the human cost, torture, and abuse it has facilitated. Not reckoning with how the PTA has been used and abused will only lead to further abuse.

CPA expresses its continuing willingness to engage in a transparent and a consultative process involving all relevant stakeholders with future law reforms.

Definition of ‘terrorism’

- The proposed ATA includes broad acts under the offence of terrorism. The list of acts is vague and could be interpreted broadly. This broad definition grants the executive wide leeway in deciding who can be accused of terrorism and subjected to arrest, detention and other restrictions. It also poses a real risk that it could be used in circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner.
- Within the United Nations system, in the absence of a universally agreed definition of the term, various terminology describing the notion of "terrorism" can be found within its outputs.
- Security Council Resolution 1566 (2004), which aimed to assist States in meeting their obligations under Security Council Resolution 1373 (2001) to take domestic legislative action, refers to terrorism’ as:

“criminal acts, including against civilians, committed with intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.” (Para. 3).
- General Assembly Resolution 49/60, which seeks to criminalize a number of armed activities considered to be "terrorist" in nature defines ‘terrorism’ as:

“[A]cts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.” (Para. 3).
- The draft Comprehensive Convention on International Terrorism in its Article 2 denotes that, *“Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, does an act intended to cause:*
 - (a) Death or serious bodily injury to any person; or*
 - (b) Serious damage to a State or government facility, a public transportation system, communication system or infrastructure facility with the intent to cause extensive destruction of such a place, facility or system, or where such destruction results or is likely to result in major economic loss; when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act.”*

Punishments

- Clause 4(1)(a) of the ATA provides for the imposition of the death penalty for a person convicted for the death of any other person under the Act. This is a regressive step in a context where the best practice advocates for an abolition of/moratorium on death penalty, and the President has undertaken not to sign any death warrants.
- The newly added offences ‘Acts Encouraging Terrorism’ and ‘Disseminating Terrorist publications’ are vague and broadly defined, and especially risk abuse and exploitation against civil society activists, journalists and media organisations.

Militarization

- The proposed ATA provides far-reaching powers to the police, members of the armed forces and coast guards to arrest a person without a warrant. This formalises militarization even beyond that which was seen under the PTA. The power of the armed forces and coast guard to carry out arrests is not limited to situations of emergency. The armed forces and coast guard are also given similar powers of search and seizure.

Long Remand/Detention

- Though the period of remand before charges are brought against a person is capped at one year with bail to be granted thereafter, there is provision for the Attorney General to seek indefinite extensions on the period of remand custody.
- The Power to issue detention orders, which was formerly a power vested in the Minister of Defence, has now been given to any Deputy Inspector General of the Police.
- Initial detention orders issued by a Deputy Inspector General of Police can extend to up to three months without the sanction of a Magistrate, and a year in total with the approval of the Magistrate beyond the initial three months.

Independence of review mechanisms

- While there is a Board of Review and an Independent review committee to determine if administrative relief should be granted against the issuance of a detention order, the independence of these committees are doubtful as they both consist of members appointed at the sole discretion of the President.

Powers of the Executive: Orders and Regulations

- The Power given to the President to make proscription orders is over broad and can be abused, in a manner to curtail dissent and proscribe organisations that advocate for legitimate human rights concerns. No effective judicial remedy is provided in the ATA for any party interested in challenging such a proscription order. The existing Bill provides one judicial avenue which is not effective and is subject to technical challenges by the State / The Attorney General's Department.
- The scope for regulation-making power given to the President is overbroad, and allows regulations to be made to give effect to the ‘purposes and principles’ of the Act. This is similar to the broad regulation-making power under the PTA which has been abused for decades. This is especially concerning, given that ATA does not specify what the purposes and principles of the Act are. The preamble and the long title are far too broad and vague to provide any useful instruction on this matter.
- The President is given the power to make regulations to set up rehabilitation programmes. The concern is that reference to these rehabilitation programmes may not be voluntary, and additionally, that persons who have not been found guilty of an offence by a court of law may be compulsorily sent to these rehabilitation programmes, thus violating several of their Fundamental Rights including the principle of innocence until found guilty and the freedom of movement.

In view of the concerns highlighted above, CPA calls upon the government to withdraw the proposed ATA which is riddled with problematic provisions, and reiterates that any new process for drafting an anti-terrorism law should be transparent, accountable and be the product of a strong consultative process between all the relevant stakeholders.

CPA urges the government to ensure that a future anti-terror law addresses the above concerns, and is in line with the five benchmarks¹ set out by seven UN special rapporteurs in December 2021-

1. employing definitions of terrorism consistent with international norms;
2. legal certainty especially where it may impact freedom of expression, opinion, association, religion or belief;
3. preventing arbitrary deprivation of liberty;
4. preventing torture and enforced disappearance;
5. Ensuring due process, fair trial, judicial oversight and access to legal counsel.

¹ OHCHR, UN special rapporteurs’ Communication, Ref.: OL LKA 7/2021, 9 December 2021
<<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26863>> Accessed 28 May 2023.