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GUYANA

Human Rights and Crime Control: Not Mutually Exclusive

Introduction

In August 2002, the government of Guyana stated that crime-fighting had become its top priority.

Shortly afterwards, on 26 September 2002, four laws were hastily passed after an emergency four and a half hour debate in the National Assembly. After being assented to by the President in October 2002 they became law.

Two of the laws -- the Criminal Law Offences (Amendment) Act 2002 and the Prevention of Crimes Amendment Act 2002 -- contain provisions that violate international human rights standards to which Guyana is a party.

- Amnesty International is concerned that the *Criminal Law Offences (Amendment) Act 2002* contains a broad definition of a “terrorist act” which undermines the principles of **legal certainty and the presumption of innocence** and risks facilitating politically motivated prosecutions and **threats to freedom of expression and association**. The act radically extends the scope of the mandatory **death penalty** to crimes other than murder and increases the risk that this penalty will be imposed following **unfair trials**.
- The *Prevention of Crimes (Amendment) Act 2002* contains a provision for particular categories of individuals to be subjected to executive orders for police supervision and other measures, on the grounds that they are deemed to constitute a threat to public order or public security. As well as undermining respect for the principles of certainty and the presumption of innocence, Amnesty International is concerned that the provision risks facilitating **arbitrary arrest, indefinite arbitrary detention, ill-treatment and torture** as well as creating a “**shadow**” **system of justice** in Guyana for those deemed to constitute a risk to “public order and public safety”, **devoid of the essential safeguards** needed to prevent abuses.

This briefing details Amnesty International’s concerns around the Criminal Law (Offences) (Amendment) Act 2002 and the Prevention of Crimes (Amendment) Act 2002 and makes related recommendations.

Domestic context: Rising fear about crime

'In our situation, and because of civil strife, and domestic terrorism, [the changes have] become inevitable at this stage' - Attorney General Doodnauth Singh, speaking during a debate on anti-crime legislation, August 2002.¹

Amnesty International recognises that Guyana is currently grappling with the problem of violent crime, and all of its attendant social and economic consequences.

"Everyone has a legitimate claim on the government for protection and security"
Guyana Human Rights Association.

Although the Guyana Police Force was unable to provide Amnesty International with recent statistics on violent crimes, in recent months there have been frequent press reports of violent crime including kidnappings, lootings, rape and murder. The number of murders committed so far in 2002 has been reported as having exceeded those committed in the same period last year by over four times.²

There have also been allegations that Indo-Guyanese citizens have been disproportionately affected. Amnesty International is unable to confirm or deny the veracity of these allegations. However, persistent tensions are frequently reported as occurring between some Indo-Guyanese and Afro-Guyanese citizens. These are allegedly aggravated by political tensions. Guyana's two main parties, the ruling People's Progressive Party (PPP) and the opposition People's National Congress Reform (PNC/R), are largely ethnically based.

The effects of violent crime on society have been noted by diverse sectors including the business and diplomatic communities. In July 2002, consensus on the escalation of crime levels prompted three organisations – the Guyana Bar Association, the Private Sector Commission and the Trades Union Congress (collectively referred to as the "Social Partners") - to attempt to get the parliamentary parties to sign a joint communiqué on crime. (At the time of writing, this had not been agreed but the Social Partners had been meeting with both the PPP and the PNC in an attempt to finalise the agreement).

"We believe it is the role of Guyana's government to safeguard the human rights of its citizens, including the right of peaceful assembly, and to implement all of its international obligations and commitments."

Joint communiqué issued by the Embassies of Canada, United Kingdom and the United States of America, 6 July 2002

¹ Starbroek News, 6 August 2002.

² "Three more killings in Guyana", Associated Press, 30 October 2002.

The national human rights organisation, the Guyana Human Rights Organisation (GHRA), has repeatedly called for the government to engage the opposition in devising a formal wide-ranging national consensus to put an end to “all criminal and politically-inspired violence.” Noting that “everyone has a legitimate claim on the government for protection and security”, the organisation stated in July that, “the scale of the incidents, their political overtones, their impact on business confidence, the impunity with which bandits conduct themselves, the traumatic effect on young people, and the racial animosity fuelled by all of this, point to the possibility of a complete breakdown in law and order.”³

The international context: Worldwide responses to terrorism

“I wish to challenge any person who seeks to say that what we have defined [in the Criminal Law Offences Amendment Act 2002...] as a terrorist act ought not to be called a terrorist act. This is almost identical to the definition which is in the greatest democracy of the world, the Union of India.” Attorney General, during debate in parliament, September 2002.

Following the attacks in the United States of America on 11 September 2001, many states have taken steps – often in collaboration with other states -- to protect their populations from similar criminal acts. These measures have included new security legislation and law enforcement measures.

In October 2001, CARICOM⁴ heads of state released the Nassau Declaration on International Terrorism, which stated that CARICOM would accord, “the highest priority to the enhancement of existing national legislation relating to security in all its dimensions and to the enactment of new laws, as required.”⁵

Moves to enact national or regional measures to combat the threat of “terrorism” were an influential factor in the government of Guyana’s decision to instigate similar measures in Guyana. During the passage through Parliament of the legislation, the Attorney General made explicit reference to similar anti-terrorism legislation passed in India. He stated that the definition of “terrorism” under the Criminal Law Offences (Amendment) Act 2002 was “almost identical to the definition which is in the greatest democracy of the world, the Union

³ “No alternative to a political consensus”, 26 July 2002; “National Consensus on crime urgently needed”, 1 October 2002, Guyana Human Rights Association.

⁴ Members of the CARICOM Caribbean Community are: Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Kitts and Nevis, Saint Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago. Associate Members are Anguilla, British Virgin Islands, Cayman Islands and Turks and Caicos Islands. CARICOM exists to facilitate economic, social and political co-operation throughout the region.

⁵ <http://www.caricom.org/archives/nassaudeclaration%20on%20terrorism.htm>

of India. The first thing that is done is to enquire whether legislation exists either in the Caribbean or wider afield. It is only after such a search is made, that we determine and identify parallel legislation. We do not invent the wheel, we follow the tradition."⁶

However some security legislation passed outside of Guyana – including that passed in India - has infringed or undermined human rights. For example:

(In India the Prevention of Terrorism Ordinance was introduced in October 2001. This law gave the Indian police sweeping powers of arrest and detention and contained provisions undermining freedom of expression and association and the presumption of innocence.

In March 2002, the Indian Parliament enacted the Prevention of Terrorism Act. This provided that confessions made to a police officer are admissible in trial for “terrorism” offences. The provision was included despite a warning by the Indian National Human Rights Commission when a draft was prepared in 2000 that “it would increase the possibility of coercion and torture in securing confessions.” (For more information, see *India: Briefing on the Prevention of Terrorism Ordinance*, AI Index ASA 20/049/2001.)

(In the USA, legislation passed allowed for indefinite detention on national security grounds of non-US nationals facing deportation. (See *United States of America: Memorandum to the US Attorney General - AI's Concerns relating to the post 11 September investigations*, AI Index AMR 51/170/2001 and *United States of America Amnesty International's concerns regarding post September 11 detentions in the USA*, AI index AMR 51/044/2002).

(In the United Kingdom, the Anti-Terrorism, Crime and Security Act 2001 permits the indefinite detention without charge or trial, for an unspecified and potentially unlimited period of time, of those deemed to be “suspected international terrorists” by the Secretary of State for Home Affairs. The certification is based on secret information, which has not been disclosed to the detainees and which cannot be effectively challenged by them or by lawyers of their choice. Twelve people are currently detained under the Act. (See *United Kingdom: Rights denied: The UK's response to September 11*, EUR 45/019/2002; *Amnesty*

⁶ The definition of “terrorism” under the Criminal Law Offences (Amendment) Act 2002 is virtually identical to that provided for in legislation passed in India, which provides that:

“Whoever with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other legal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of its agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act ... commits a terrorist act.”

International's Memorandum to the Government on Part 4 of the Anti-terrorism, Security and Crime Act 2001, EUR 45/017/2002).

In the aftermath of 11 September, the organisation has noted the increasing tendency of governments around the world to portray human rights as an obstacle to achieving national security and freedom from fear. As Amnesty International's 2002 Annual Report noted: "the doctrine of national security has been used frequently in the past to deny human rights. The difference this time lies in the uneasy realisation that it was not autocratic regimes but established democracies that took the lead in introducing draconian laws to restrict civil liberties in the name of public security."⁷

Are human rights and crime control mutually incompatible?

We consider human rights not to be a luxury, not one of those agreeable subjects that can conveniently be put aside when more important matters, like security or combating terrorism, require attention. We believe the opposite is true. [Human rights are] the most reliable foundation for stability and peace". Dr. Hausmann, Ambassador of Germany in Jamaica, 26 November 2002 ("German City honours JfJ", Jamaica Gleaner, 27 November 2002)

Violent criminal acts, such as those occurring in Guyana, cause shock, outrage and grief and give rise to strong public demand for the punishment of the perpetrators and the prevention of further attacks.⁸

Amnesty International has reported on and condemned killing and other acts of violence against civilians by armed opposition groups in all circumstances, whether or not there is an armed conflict.⁹ Although Amnesty International does not use the term "terrorism" because it

⁷ <http://web.amnesty.org/web/ar2002.nsf/FOREpart1/FOREpart1?OpenDocument>

⁸ See for example, Starbroek News, "Dozens killed in unrelenting crime wave, few prosecutions By Kim Lucas", 10 October 2002; Guyana Chronicle, " ", 2002; Starbroek News, letter "We are in a state of emergency, whether proclaimed or not," Letters page, 29 September 2002, Starbroek News, "Saving the state", editorial, 27 September 2002, "Helping the victims of terror", Guyana Chronicle, 11 May 2001, "Government coping with a new criminality", Guyana Chronicle, 11 September 2002.

⁹ See for example, *Annual Report 2002: Algeria* – "Hundreds of civilians, including women and children, were killed in targeted and indiscriminate attacks by armed groups who define themselves as "Islamic groups."; "India: Civilians are not legitimate targets", ASA 20/013/2002, News Service No. 12, 15 July 2002. condemning killing of 27 civilians in an attack on a town by unknown people; "Spain – ETA's new killing campaign must end", EUR 41/12/2000, 5 October 2000; "Jamaica – Right of civilians to be protected from crime must prevail", AMR 38/003/2002, 8 January 2002; "USA – Amnesty International appalled at devastating attacks against civilians", AMR 51/134/2001, News Service No. 162, 21 September 2001.

is an emotive and politically-loaded term without an agreed legal definition, the organisation takes action against killings and other acts which constitute abuses of human rights as defined under international humanitarian law and general human rights instruments.

Amnesty International believes that the perceived dichotomy between national security and human rights is a false one. Far from undermining the fight against crime, international human rights standards provide an effective tool for combating both its causes and the manifestations.

International and regional human rights instruments require states to prevent, investigate and punish human rights abuses, whoever commits them. Amnesty International recognises that

“However frustrating may be the search for those behind the abominable acts of terrorism and for evidence that would bring them to justice, I am convinced that any temptation to resort to torture or similar ill-treatment..., must be firmly resisted. ... It would be signalling to the terrorists that the values espoused by the international community are hollow and no more valid than the travesties of principle defended by the terrorists.” United Nations Special Rapporteur on Torture

states have a duty under international human rights standards – to protect citizens from crime and to provide justice and reparation for victims of violence.

This responsibility has been recognised by both the United Nations¹⁰ and the Inter-American Court of Human Rights. The

latter has explicitly stated that governments have a duty to respond in the same manner to all serious violations, whether the perpetrator is an official, a non-state actor or a person whose status is not known.¹¹ The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power outline comprehensive measures to be implemented for victims of crime and emphasise their entitlement to the mechanisms of justice and to prompt redress for the harm they have suffered; requiring states to strengthen judicial and administrative procedures so that this can happen.

Human rights laws provide a set of standards to be respected in all circumstances – by both State and non-State actors. It is precisely because of the pressures that endemic crime and violence place upon governments and citizens that human rights protection is more important than ever. The rights enshrined in human rights treaties, such as the right to life and the right not to be subjected to torture, describe the security that people expect their governments to ensure.¹²

¹⁰ See for example General Assembly Resolution 54/164 of 17 December 1999 on “Human Rights and Terrorism” – “Reiterating that all States have an obligation to promote and protect human rights and fundamental freedoms...” [A/RES/54/164].

¹¹ *Velasquez Rodriguez v Honduras*, judgment of 29 July 1988, Inter-American Court of Human Rights, Seri. C, No. 4, 1988, paragraph 174.

¹² See Annual Report 2002, *ibid*.

It is perhaps no coincidence that Amnesty International has noted in its work over the past forty years that incidents of torture by the state are commonly reported in situations where states are combating “terrorism.” This may be because law enforcement agents consider such methods to be useful to secure information or confessions. It may also be to deter support for perceived “terrorists” or to instigate reprisals.

The need for states to remain vigilant as they put in place measures to protect civilians has been acknowledged and explicitly incorporated into international agreements requiring states to take measures to eliminate “terrorism.”

For example, the Inter-American Convention against Terrorism obliges states to act in conformity with human rights. Measures taken must “take place with full respect for the rule of law, human rights and fundamental freedoms.”¹³ The Convention was adopted by the OAS and Guyana was one of the 29 members that ratified it in June 2002.

Guyana’s anti-crime legislation

The government of Guyana has declared itself sensitive to the need to respect human rights. During the passage through Parliament of the anti-crime legislation, the government defended

*“Legislation must be able to keep abreast with the menace of society. It does not, however, seek to infringe on constitutional rights of citizens.”*Ronald Gajraj, Minister of Home Affairs

the bills as not only necessary to support the law enforcement agencies' efforts to maintain law and order and effectively fight crime but fully consistent with Guyana’s human rights

obligations.

Amnesty International welcomes the fact that the government recognises a need for implementation of measures to ensure respect for the state’s human rights obligations. However, the organisation disagrees with the government’s assessment that the legislation passed fully complies with Guyana’s obligations under national and international human rights standards.

Far from according with national and international obligations, the Criminal Law (Offences) Amendment Act 2002 (CLOAA 2002) and the Prevention of Crimes (Amendment) Act 2002

¹³ Article 15. Furthermore, nothing in the Convention, “shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular, the Charter of the United Nations, the Charter of the Organisation of American States, international humanitarian law, and international refugee law.”

(PCAA 2002) contain provisions which undermine fundamental human rights, violate Guyana's obligations under international law and risk facilitating further widespread human rights violations.¹⁴

CRIMINAL LAW (AMENDMENT) ACT 2002

Definition of terrorism

The Criminal Law (Offences) Amendment Act 2002 (CLOAA 2002) introduces a new form of criminal offence: the terrorist act.

A terrorist act is defined, section 309A. (1) of the Act, as follows:

“Whoever with intent to threaten the unity, integrity, security or sovereignty of Guyana or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other legal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defence of Guyana or in connection with any other purposes of the government of Guyana or any of its agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act commits a terrorist act.”

This definition is of concern because it is broad, complex and vague. Its loose wording leaves it open to different interpretations.

In human rights terms, this is objectionable on several counts.

¹⁴ The Special Rapporteur on Torture has found that in many countries, draconian legislation has been passed in the context of measures purporting to fight crime. See for example the Report of the Special Rapporteur on Torture on a visit to Brazil, E/CN.4/2001/66/Add.2 (recommendations)159.

Undermining legal certainty

Firstly the imprecise definition of a “terrorist act” makes it difficult for people to know if their behaviour is lawful or not and to adjust their behaviour accordingly. This violates the principle of legal certainty, which is central to ensuring respect for human rights and the rule of law.

Lack of legal certainty undermines the right of those in custody to be informed immediately of the reason for their deprivation of liberty, to enable them to challenge the legality of their detention. This is because it will be harder for the authorities to provide detainees with specific reasons for their arrest.

Failure to provide detainees with specific reasons for their arrest constitutes a clear violation of international law. The Human Rights Committee has made it clear that explanations by authorities should include “a clear explanation of the factual and legal basis of arrest or detention.”¹⁵

Risk of unfair trials and politically-motivated prosecutions

The conceptualisation of terrorism gives rise to further concerns in that the decision to bring a prosecution for such offences could, in some cases, be politically-motivated. The risk of politically-motivated persecutions increases where a law is vague.

It is a principle of international law that there should be no prosecution for acts which have not already been clearly defined as criminal offences. The UN Human Rights Committee has criticised the definition of “terrorist” activities where this lends itself to abuse.¹⁶

In the case of Guyana, the purpose qualifying an act or threat as terrorist for example is very wide and open to subjective interpretation: “intent to threaten the unity, integrity, security or sovereignty of Guyana or to strike terror into any section of the people”.

Amnesty International would consider the imprisonment of anyone on grounds solely of their political beliefs or identity attributes (such as race or gender), who has not used or advocated

¹⁵ *Drescher Caldas v Uruguay*, (43/1979), 21 July 1983, 2 Sel. Dec. 80. It held that it was “not sufficient simply to inform [the detainee] that he was being arrested under the prompt security measures without any indication of the substance of the complaint against him.”

¹⁶ See for example the case of Algeria, where the Committee recommended that an anti-terrorism law be amended to bring it into compliance with international human rights standards. CCPR/C/79/Add.95 – Concluding Observations of the UN Human Rights Committee: Algeria 10/08/98.

violence, to be a prisoner of conscience, and would call for their immediate unconditional release.¹⁷

Risks to freedom of expression and assembly

Thirdly, there is a risk that the definition of a “terrorist act” could be interpreted so as to criminalise or otherwise limit the peaceful expression of dissenting views or activities.

The definition of terrorism includes a variety of different behaviours. Whilst some of these are already criminal offences, there is a danger that the definition is capable of encompassing activities that constitute a legitimate exercise of the rights of freedom of expression and freedom of assembly.

Amnesty International notes that very similar provisions are contained in other “anti-terrorism” laws or emergency powers in other countries, and that these provisions have led to abuses.

Striking, for example, could feasibly be interpreted as terrorism, since it is an offence under the Act for an individual to “with intent to threaten the unity... of Guyana ... do.. any act or thing by... any... means whatsoever, in such a manner as to cause, or likely to cause.... disruption of any supplies or services essential to the life of the community.”

Similarly, Amnesty International fears that the law could be used against journalists and others investigating and reporting on the activities of individuals under suspicion of the state.

The threat to the rights of freedom of expression and association is reinforced by section 301(a) (2) of the act, which provides that it is an offence for anyone to conspire, advocate, advise or incite or knowingly facilitate “the commission of a terrorist act or any act preparatory to a terrorist act”.

The right to freedom of expression and association have been universally recognised as essential. They are guaranteed by human rights treaties which Guyana has ratified. The International Covenant on Civil and Political Rights (ICCPR) recognises the right to peaceful assembly (article 21) and the right to freedom of expression (article 19). The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to strike.¹⁸

¹⁷ Prisoners of conscience are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence.

¹⁸ Article 8.1.

The ICCPR provides for very limited restrictions to be placed upon these rights. Such restrictions must be proportional and strictly interpreted. Restrictions that can be placed on the right to peaceful assembly are those placed on “necessary in a democratic society in the interests of national

In all of the above cases, the offence would provide severe penalties of fifteen years' imprisonment. Amnesty International would consider anyone imprisoned for peaceful activities involving the legitimate exercise of these rights, such as striking, arranging a meeting or writing an article in a newspaper, who has not used or advocated violence, to be a prisoner of conscience.

Punishing “terrorist acts”: The death penalty

Amnesty International opposes the death penalty in all cases as it violates the right to life and is the ultimate cruel, inhuman and degrading punishment.

The introduction of a new offence of a “terrorist act” under the CLOAA 2002 is especially alarming in human rights terms because the maximum penalty upon conviction is the death penalty. Amnesty International is concerned that there is a risk that the death penalty will be imposed in Guyana following unfair trial procedures.

The law provides for the mandatory imposition of the death penalty if a death results from a “terrorist act”. This is so even if the death was unintended and not reasonably foreseeable.¹⁹

Introducing a further disproportional element, section 309a(2) provides that the penalties proscribed for committing a terrorist act --- including the death penalty or fifteen years' imprisonment --- are the same as the penalties for “inciting, advising, aiding, abetting, or knowingly facilitating” that such an act take place.

Together, these sections represent a vast extension of scope of the death penalty in Guyana.

security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” Restrictions on freedom of expression must be provided by law and be necessary “(a) For respect of the rights or reputations of others; [or] (b) For the protection of national security or of public order (ordre public), or of public health or morals.”

The UN Human Rights Committee has provided guidance on the interpretation of Article 4 – “General Comment on Article 4, adopted at 1950th meeting on 24th July 2001”, CCPR/C/21/Rev.1/Add.11.

¹⁹ Section 309A. (1) (b) provides that the penalty for committing a terrorist act shall be death, if such an act has resulted in the death of any person, or imprisonment for fifteen years along with a fine in all other cases. Section 309A. (2) provides that anyone who “conspires or attempts to commit, or advocates, aids and abets, advises or incites or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act commits an offence shall be punishable for the offence as if he had been guilty as a principal offender.”

The extension of the scope of the death penalty runs counter to trends in international jurisprudence from around the world and violates Guyana's obligations arising under the ICCPR and from Guyana's membership of the Organisation of American States (OAS).²⁰ The UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions has stated that

“the scope of the death penalty should never be extended. There is international consensus on this and on, in states which have not yet abolished capital punishment, the death penalty should only be imposed for the most heinous crimes; that is to say, intentional crimes with lethal or very grave consequences.”²¹

Guyana's international obligations are also violated by the mandatory nature of the death penalty.²² According to the UN Human Rights Committee the mandatory death penalty for cases of “murder” (intentional acts of violence resulting in the death of a person”) amounts to the arbitrary deprivation of life.²³

The Inter-American Commission on Human Rights recently held that the mandatory death penalty violates the American Declaration on Human Rights; constituting cruel, inhuman or degrading punishment or treatment. The Commission stated that the penalty could not be reconciled with the essential respect for humanity and the dignity of the individual required under the Declaration.²⁴ This decision was later confirmed by the Inter-American Court on Human Rights. The jurisdiction of the court is binding.

²⁰ The UN Human Rights Committee, the expert body established under the ICCPR to examine state parties' compliance with the Covenant, has stated that “extension of the scope of application of the death penalty raises questions as to the compatibility with article 6 of the Covenant.” Article 6(2) states that, “in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious of crimes.”

Preliminary observations of the Human Rights Committee on the third periodic report of Peru submitted under Article 40 of the Covenant, UN Document No. CCPR/C/79/Add.67, 25 July 1996, paragraph 15.

²¹ See *Extrajudicial, Arbitrary and Summary Executions: Report by the Special Rapporteur*, UN Doc No. E/CN.4/1994/7, 7 December 1993, paragraph 677.

²² As a member of the Organisation of American States, Guyana is obliged to respect the rights which are listed in the American Declaration of Human Rights (the Declaration). See Advisory Opinion OC 10/89 of the Inter American Commission on Human Rights, paras. 42-43, 45-47. In *Patrick Reyes v The Queen*, Judicial Committee of the Privy Council, Appeal No. 64 of 2000, delivered 11 March 2002, the Privy Council noted that Belize “by becoming a member of the Organization of American States ... [has] proclaimed its adherence to rights which, although not listed in the charter of the Organization, are expressed in the Declaration” (at 43).

²³ This violates article 6 of the ICCPR (the right to life). See *Thompson v Saint Vincent and the Grenadines* (2000), UNDOC/CCPR/C/70/D/906/1998, paras. 8.2 and 8.3. and *Rawle Kennedy v Republic of Trinidad & Tobago*, UNDOC/CCPR/C/74/D/845/1998 UN HRC.

²⁴ As such, it was held to violate articles XXV and XXVI of the Declaration. See further *Edwards v The Bahamas*, Report No. 48/01, 4 April 2001, paras. 147 and 178.

The extension of the mandatory death penalty also runs counter to recent trends in Caribbean jurisprudence. Upholding a decision from the Eastern Caribbean Court of Appeal that the mandatory death penalty was unconstitutional, the Judicial Committee of the Privy Council -- the final court of appeal for most of the region -- has recognised the fact that international bodies interpreting human rights instruments have accepted the need for proportionality and individualised sentencing in cases of murder and other serious crimes.²⁵ In a trilogy of cases determined in March 2002, the Privy Council held that the mandatory death penalty violated the constitutional prohibition on inhuman or degrading punishment or other treatment.²⁶

²⁵ Guyana is the only country of the English-speaking Caribbean that does not currently have the Judicial Committee of the Privy Council (JCPC or Privy Council) as its final court of appeal.

²⁶ In Patrick Reyes v The Queen, Judicial Committee of the Privy Council, Appeal No. 64 of 2000, delivered 11 March 2002 (concerning Belize) at 43 the Privy Council held that there are murders of quite different purposes and that, “to deny the offender the opportunity, before sentence is passed, to seek to persuade the court that in all the circumstances to condemn him to death would be disproportionate and inappropriate is to treat him as no human being should be treated and thus to deny his basic humanity, the core of the right which [the constitutional provision] exists to protect.”

The Privy Council acknowledged that in considering what norms had been accepted by a country as consistent with the fundamental standards of humanity, “it is relevant to take into account the international instruments incorporating such norms to which that country had subscribed” (at 27).

The Privy Council also noted the equivalence in meaning between the prohibition in the constitution of Belize on inhuman or degrading punishment or other treatment and the prohibition in the Declaration of “cruel, inhuman or degrading treatment or punishment” (at 43). (Section 141(1) of the Constitution of Guyana is almost identical, reading as follows: “No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.”)

It held that: “the requirement of humanity has been read as incorporating the precept that consideration of the culpability of the offender and of any potentially mitigating circumstances of the offence and the individual offender should be regarded as a *sine qua non* of the humane imposition of capital punishment.”

Also see Berthill Fox v The Queen, Judicial Committee of the Privy Council, Appeal No. 66 of 2000, delivered 11 March 2002; The Queen v Peter Hughes, Judicial Committee of the Privy Council, Appeal No. 91 of 2000, delivered 11 March 2002.

PREVENTION OF CRIMES (AMENDMENT) ACT 2002

Detention on grounds of public security

The second law passed under emergency debate was the Prevention of Crimes (Amendment) Act 2002 (PCAA).

The Act provides for “orders” to be issued by the executive (Minister for Home Affairs) subjecting a person who “may reasonably be regarded as constituting a threat to public order or public safety” (and who is also a deportee previously convicted of a criminal offence) to a wide variety of restrictions.²⁷ The restrictions include “police supervision” as well as any other measures that “the Minister may deem necessary in the interest of public order and safety.”²⁸ The act’s Explanatory Memorandum explained that the purpose of the act is to allow for certain categories of Guyanese citizens “to be effectively monitored by the Police.”

Amnesty International is concerned that the PCAA violates fundamental human rights and risks facilitating further human rights violations.

The right to be charged with a recognised criminal offence

Section 3A. of the Act states that: “The Minister may by order, upon application by the Commissioner and upon being satisfied that it is necessary to do so in the interest of public order, designate as subject to police supervision any Guyanese citizen...” Orders may include: “restrictions as to residence, reporting to the police, registration, use or possession of firearms or other weapons *or otherwise as the Minister may deem necessary in the interest of public order and public safety*” (emphasis added).

²⁷ Under section 3A.(1): “the Minister [for Home Affairs] may by order, upon application by the Commissioner [of police] and upon being satisfied that it is necessary to do so in the interest of public safety or public order, designate as subject to police supervision any Guyanese citizen: (a) who has been convicted of a specified offence in a foreign state; (b) who is the subject of a deportation order in a foreign state or who has elected to return to Guyana from that state in lieu of deportation; and (c) whose conduct and activities have been of such a nature that he may reasonably be regarded as constituting a threat to public safety or public order of Guyana.”

²⁸ An order may impose: “restrictions as to residence, reporting to the police, registration, use or possession of firearms of weapons or other weapons *or otherwise as the Minister may deem necessary in the interest of public order and public safety*” (section 3A.(5), emphasis added).

These provisions give the authorities a wide discretion to impose a variety of measures. Amnesty International is concerned that the vagueness of this provision -- particularly the use of the term "police supervision" as well as the latter part of the section -- opens the door to the possibility of interpretations which undermine human rights standards. The organisation is particularly concerned that the law may be interpreted by the police or other authorities as legitimising indefinite detention without charge or trial of those deemed to constitute a threat to national or public security. This would give rise to the possibility that a person could be arrested and detained on grounds other than for a recognised criminal offence.

The right to be charged with a recognised criminal offence is fundamental; detention without charge is a practice deemed to be arbitrary under international law and contrary to article 9 of the ICCPR and to the principle of security of the person as laid down in Article 3 of the Universal Declaration of Human Rights.²⁹ Detention on grounds of public or national security grounds of individuals whom the authorities do not intend to prosecute and who cannot be deported constitutes a fundamental breach of human rights.

Amnesty International's concerns regarding the legitimisation of unlawful, indefinite detention are increased in light of the frequent reports of human rights violations that the organisation receives, as well as by the lack of effective judicial oversight under the Act (see below). The organisation currently receives reports of persons detained for long periods, without access to outside persons (including lawyers, medical assistance and family members), who are subjected to ill-treatment or, in some cases, torture.³⁰

²⁹ **Article 9** of the ICCPR states that: 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

³⁰ See further Amnesty International Annual Report 2002, 2001, 2000:

<http://web.amnesty.org/web/ar2002.nsf/amr/guyana!Open>

Presumption of innocence

Everyone has the right to be presumed innocent, and treated as innocent, until and unless they are convicted according to law in the course of proceedings which at least meet the minimum requirements of fairness. The Human Rights Committee has identified this as one of the non-derogable aspects of a fair trial.³¹

Indefinite detention on the basis of “public security or public order” may be equivalent to a criminal punishment; tantamount to charging people with a criminal offence and convicting them without a trial.

Consequently, Amnesty International considers that, inasmuch as it may allow for long-term detention without trial, the act violates the presumption of innocence and other due process guarantees.

The presumption of innocence is a recognised standard in democratic criminal justice systems which Guyana remains obliged to respect under Article 14 of the ICCPR.³² Amnesty International has noted that, in many countries which have introduced similar security legislation, laws eroding the presumption of innocence lead to the erosion of the right not to be forced to incriminate oneself.³³

Lack of judicial control and the risk of ill treatment

Effective judicial oversight is a fundamental safeguard against arbitrary detention and torture and has been deemed non-derogable at all times. If an individual deemed to be subject to “police supervision” under the Act was detained, it would be imperative that a court could determine speedily the lawfulness of detention and order release if necessary.

³¹ General comment on Article 4 of the ICCPR, UN Document CCPR/C/21/Rev/Add.11, 24 July 2001, paragraph 11. The Inter-American Commission considers that the definition of a criminal offence based merely on suspicion or association should be eliminated as it shifts the burden of proof and violates the presumption of innocence.

³² Article 14(2.) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

³³ See further, *AI Rights at Risk*, ACT 30/001/2002, pp. 24. In India for example, the Prevention of Terrorism Ordinance Act 2001 provides that no person accused of an offence should be released on bail if the public prosecutor opposes bail, unless “the court is satisfied that there are grounds for believing that the accused is not guilty of committing such an offence.” Prevention of Terrorism Ordinance Act 2001, ss 48(6) and (7).

Amnesty International notes that some measure of judicial intervention is provided for under the PCAA under section 3(A) (3).³⁴ However, the organisation is concerned that the measure provided for is insufficient. In the absence of effective judicial control, Amnesty International would consider that arrest or detention under the PCAA would be *de facto* administrative and therefore arbitrary and unlawful.

Amnesty International is concerned that the law does not make it explicitly clear that a person detained under an order has the right to challenge the lawfulness of the detention at any moment before a court. Consequently, Amnesty International fears that section 3(A) (3) will contribute to a situation where, in practice, it will be difficult for those detained to approach the High Court to determine the lawfulness of their detention.

Experience has shown that the use of administrative detention is often accompanied by the development of a shadow system of justice, lacking the crucial safeguards of other types of detention.³⁵ (Administrative detention is detention carried out upon the orders of the executive, rather than a court or judicial authority. Often there is no intention of charging the detainee or bringing the detainee to trial.) Changes to the strict standards applicable to the criminal justice system for people deemed to constitute a threat to security frequently breach the internationally recognised right to a fair trial and may violate the internationally recognised of all persons to be treated equally before the courts.

The justification given by governments for administrative detention is often that the normal safeguards are too stringent to permit successful prosecutions leading to imprisonment for criminal offences. However the rules of evidence and standard of proof in the criminal justice system have been prescribed in order to reduce the risk of innocent individuals being convicted and punished.

As a form of arbitrary detention, administrative detention can in turn facilitate other human rights violations, including ill-treatment, torture and execution.³⁶ Amnesty International has existing concerns around these violations and considers that it is unacceptable for the

³⁴ Under section 3A.(2): “the Police Commissioner shall apply ex parte to a judge in the High Court before making such an order, giving reasons.” Under section 3A.(3): “a judge will issue a certificate if satisfied with Commissioner's reasons.”

³⁵ For further information see *A Human Rights Framework for the Protection of Security: Submission by AI to the Group of Specialists on Human Rights and the Fight Against Terrorism, established by the Steering Committee on Human Rights of the Council of Europe's Committee of Ministers*, IOR 61/005/2001, November 2002, <http://web.amnesty.org/802568F7005C4453/0/6C516E50D6E8FDF180256B1900409AB1?Open>

³⁶ The UN Commission on Human Rights has expressed its concern about the rise in cases in which violations, including arbitrary detention, long-term detention and extrajudicial killing, persecution and harassment, are aggravated by factors including the vague definition of offences against state security and the exercise of powers specific to states of emergency without formal declaration. See, Commission on Human Rights Resolution 1999/36; Right to freedom of opinion and expression; paragraph 4.

authorities to seek to circumvent the safeguards of the criminal justice system in such a manner. The UN Human Rights Committee has expressed concern about long periods of pre-trial detention, police brutality and poor prison conditions, amongst other issues.³⁷

Concerns over the effect of the Act are also exacerbated by concerns regarding the potential pressures placed on the judiciary in the current political climate. Comments made by M.P.s during the debate on the legislation highlighted concerns about what appeared to be political pressures exerted on the judiciary. The former Attorney General and M.P., Bernard Dos Santos, stated that “he trusted the judiciary wholly to give the bill, once it engaged their attention, a true and correct interpretation once it was challenged.” He also noted that “extreme measures were justified on account of the “dangerous and extraordinary times””.³⁸

Amnesty International fears that such comments may contribute towards a climate of hostility which may serve to undermine the independence of the judiciary and thus further inhibit constitutional protections for human rights of Guyanese citizens.³⁹

³⁷ CCPR/C/79/Add.121, 25 April 2000, paras. 8, 15 and 17.

³⁸ See Starbroek News, November 24 2002.

³⁹ Previous interventions by government have been interpreted as attacks on the independence of the judiciary. See for example US State Department, Country report on human rights practices 2002 – Guyana, which stated, “The Constitution provides for an independent judiciary; however, law enforcement officials and prominent lawyers questioned the independence of the judiciary and accused the Government of intervening in certain criminal and civil cases. In most human rights cases, the Government generally respects the independence of the judiciary.”

<http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8337.htm>

Requirements of international law

Both the Criminal Law (Offences) Amendment Act 2002 and the Prevention of Crimes (Amendment) Act 2002 thus violate recognised human rights standards contained in treaties ratified by Guyana, such as the International Covenant on Civil and Political Rights (ICCPR).

The Minister of Home Affairs stated during the parliamentary debate on the legislation that any concerns around the infringement of human rights were unnecessary because of protection provided for rights such as freedom from torture and freedom of expression under the Constitution. Amnesty International is concerned however that the laws allow for practices which violated constitutional guarantees. As long as such legislation remains on the statute books and has not been struck down by the courts as unconstitutional, it can be enforced.

As a state party to the ICCPR, Guyana is bound by the Covenant's provisions. Guyana cannot derogate from rights set out within the treaty without officially declaring a state of emergency. This is a measure which can only be taken in very limited circumstances.⁴⁰ The obligations that Guyana must abide by include:

- Article 9 (prohibition of arbitrary detention);
- Article 15 (the right not to be found guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed);
- Article 18 (freedom of thought, conscience and religion);
- Article 19 (right to hold opinions without interference) and
- Article 22 (right to freedom of association).

⁴⁰ Article 4(1) of the ICCPR states that "In times of public emergency which threatens the life of the nation and the existence of what is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of their situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin."

Article 4(2) clarifies that no derogation from articles 6,7,8 (paragraphs 1 and 2), 11,15, 16 and 18 may be made. The General Comments of the UN Human Rights Commission stress that measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature, and must be limited to the extent strictly required by the exigencies of the situation, including duration, geographical coverage and material scope of the state of emergency. No measure derogating from the provisions of the Covenant may be inconsistent with the State party's other obligations under international law, particularly the rules of international humanitarian law. See International Covenant on Civil and Political Rights, UN Commission on Human Rights, *General Comment on Article 4*, adopted at 1950th meeting on 24 July 2001, CCPR/C/21/Rev.1/Add.11: paragraphs 2, 4-5, 9.

Conclusion: Effective crime control incorporates respect for human rights

“The Caribbean region’s deeply entrenched respect for the rule of law, human rights and democratic values and traditions is well known. We re-affirm our commitment to work with the international community in the multifaceted fight against terrorism in accordance with international law and conventions.” Nassau Declaration on International Terrorism, CARICOM, October 2001.

Human rights are not an obstacle to national security – they are the key to achieving this goal.

This is not to say that we should feel no anger at those who kill, rob and maim, nor that such persons should not be held accountable before the law. Rather, we must be vigilant about the methods used to bring them to justice, or risk debasing values essential for a society to live free from fear.

This report has outlined Amnesty International’s concerns with “anti-terrorism” legislation. It has noted the fact that Guyana is struggling with a high crime rate amongst other issues and has also acknowledged that governments have a responsibility to protect people within their jurisdictions from acts of violence.

As Guyana’s Ambassador to the Organisation of American States (OAS) Odeen Ishmael recently noted, “crime undermines society by establishing a state of instability which can lead to the destabilisation of democratic governments.”⁴¹

Far from solving the crime situation in Guyana, Amnesty International fears that the laws described in this report will in fact aggravate the situation further by increasing the likelihood that state agents can abuse their powers with impunity.

In countries which have enacted similar legislation, human rights bodies have suggested that the solution to the problem of effectively securing convictions for “terrorists” or those committing violent offences under the criminal justice system are to be solved – not through the promulgation of new laws restricting human rights – but through the strengthening of the criminal justice system in line with human rights standards.⁴²

⁴¹ See Starbroek News, “Threats to national security also endanger democracy – Ambassador Ishmael”, 11 November 2002.

⁴² In India for example – the country from where the government appears to have taken its inspiration for this legislation -- the National Human Rights Commission recommended a three-tier approach to securing convictions, involving improvements to investigations, efficient prosecution and reducing delay in hearing cases. See further, INDIA: *Briefing on the Prevention of Terrorism Ordinance*, op cit., pp. 16-17.

Amnesty International is calling on all elected representatives to work together to produce a national plan on crime with the protection of human rights for all at its heart.

Amnesty International urges the government of Guyana:

- 1) To revise the Criminal Law (Offences) Amendment Act 2002 and the Prevention of Crimes (Amendment) Act 2002 to ensure that they comply fully with Guyana's binding obligations under international law and are implemented within a framework of protection for all rights.
- 2) To strengthen measures designed to provide protection and reparations to the victims of crime, in accordance with guidelines and standards such as the United Nations Basic Principles of Justice for Victims of Crime and Abuse of Power

Recommendations

Amnesty International urges the government of Guyana to ensure that the following measures are implemented with immediate effect:

Definition of "terrorism"

Any definition of "terrorism" should ensure:

- clear definition of the conduct that is proscribed and;
- should not unduly or inadvertently restrict rights such as those of freedom of association, expression and peaceful assembly.

Death Penalty

The death penalty should be abolished permanently, for all crimes.

Pending abolition, the State should:

- implement Guyana's binding obligations under international law, with immediate effect, including;
- ensure with immediate effect implementation of the United Nations safeguards guaranteeing the protection of the rights of those facing the death penalty, which guarantee adequate opportunity for defence, appeal and prohibits the imposition of

the death penalty when there is room for alternative interpretation of the evidence. (ECOSOC resolution 1984/50 of 25 May 1984).

Arrest and detention

Arrest and detention should not be permitted unless:

- people are charged with recognizable criminal offences promptly and tried within a reasonable period in proceedings that comply fully with international fair trial standards; or
- action is being taken to deport within a reasonable period to another country where they would not risk being subjected to an unfair trial, the imposition of the death penalty, torture or other cruel, inhuman or degrading treatment or punishment, or serious human rights abuses by non-state actors. There must be a realistic possibility of deportation being effected.

Safeguards

In all cases, systems of detention should be subjected to human rights standards including:

- a detained person must be entitled to challenge the lawfulness of detention [*habeas corpus*];
- the fact and location of detention must not be secret;
- a detained person must be notified of the reasons for their detention and of their rights, in a language that they understand;
- a detained person must without delay be given access to and assistance of a lawyer, assigned free of charge if necessary,
- a detained person must have the right to confidential communication with their lawyer;
- a detained person must be brought before a judicial authority to determine necessity for and lawfulness of detention;
- there must be periodic review of the necessity for and lawfulness of continuing the detention by a judicial authority;
- a detained person's family must be notified and be permitted to have access;

- foreign nationals must be given all reasonable facilities to communicate with and receive visits from representatives of their government and an appropriate international organization devoted to human rights protection;
- a detained person must have the right to be examined by a doctor and, when necessary, to receive medical treatment;
- the conditions of detention must comply with all international standards, for example as set out in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly through its resolution 43/173, 9 December 1988;
- a detained person must have an enforceable and effective right to redress and reparation if unlawfully detained;
- people who are detained without charge should not be detained with people convicted of criminal offences.

Fair trial rights

All judicial and administrative proceedings should be conducted in accordance with internationally recognised fair trial rights.