The Anti-Terrorism Act, 2002 (Uganda): Human Rights Concerns and Implications- a paper presented by Judge S. B. Bossa and Titus Mulindwa on September 15, 2004 to the International Commission of Jurists

Terrorism legislation in Uganda is quite recent. The Anti-Terrorism Act, 2002 was assented to by the President on 21st May 2002 and came into force on 7th June 2002. This Act brought Uganda into line with many other countries which have passed similar legislation since the terrorist attacks on America on September 11, 2001.

Apart from playing its part in the international 'war against terror', Uganda also seeks to curtail domestic terrorism that has plagued the country over the last 18 or so years. The Anti-Terrorism Act, 2002 is therefore aimed at suppressing acts of terrorism and generally to provide for the punishment of persons who plan, instigate, support, finance or execute acts of terrorism; to prescribe terrorist organizations and to provide for the punishment of persons who are members of, or who profess in public to be members of, or who convene or associate with or facilitate the activities of terrorist organizations. The Act also provides for the investigation of acts of terrorism and the surveillance of persons suspected to be planning or involved in acts of terrorism.

Major Features of the Act

1. Definition of terrorism

Section 7 of the Act defines terrorism. It provides that 'Terrorism' equals any act which involves serious violence against a person or serious, damage to property, endangers a person's life (but not just the life of the person committing the act), creates a serious risk to the health or safety of the public. Any such act must furthermore be

"designed to influence the Government or to intimidate the public or a section of the public", and to further the advancement of a "political, religious, social or economic aim" indiscriminately without due regard to the safety of others or property. It then gives a list of acts which constitute terrorism as follows:

a) Intentional and unlawful manufacture, delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or Government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss;

b) Direct involvement or complicity in the murder, kidnapping, maiming or attack, whether actual, attempted or threatened, or a person or groups of persons, in public or private institutions;

c) Direct involvement or complicity in the murder, kidnapping, abducting, maiming or attack, whether actual, attempted or threatened on the person, official premises, private accommodation, or means of transport or diplomatic agents or other internationally protected persons.

d) Intentional and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that any part of the funds may be used to carry out any of the funds may be used to carry out any of the terrorist activities under this Act;

e) Direct involvement or complicity in the seizure or detention of and threat to kill, injure or continue to detain a hostage whether actual or attempted in order to compel a State, an international inter-governmental organization, a person or group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage;

f) Unlawful seizure of an aircraft or public transport or the hijacking of passengers or group of persons for ransom;

g) Serious interference with or disruption of an electronic system;

h) Unlawful importation, sale, making, manufacture or distribution of any firearms, explosive ammunition or bomb;
i) Intentional development or production or use of, or complicity in the development or production or use of a biological weapon,
j) Unlawful possession of explosive, ammunition, bomb or any materials for making of any of the foregoing.

2. Offence of Terrorism

Section 7(1) defines the offence of terrorism which consists in; "Engaging in or carrying out any act of terrorism…" It is an offence punishable, on conviction, by death if the offence directly results in the death of any person".

3. Other terrorist offences

These include aiding, abetting, financing, harbouring or rendering support to any person, knowing or having reason to believe that the support will be applied or used for or in connection with the preparation or commission or instigation of acts of terrorism (section 8).

More specific offences are listed as follows;

- Establishing, running or supporting any institution for
  (a) Promoting terrorism;
  (b) Publishing and dissemination news or materials that promote terrorism; or
  (c) Training or mobilizing any group of persons or recruiting persons for carrying out terrorism or mobilizing funds for the purpose of terrorism [Section 9[1]].

- (without establishing or running an institution for the purpose) training any person for carrying out terrorism, publishing or disseminating materials that promote terrorism (Section 9 (2)).

Conviction on the above offences carries a penalty of death.

4. Terrorist Organizations

Part IV of the Act deals with (prescribed) terrorist organizations. Being a member of such an organization is an offence punishable by up to 10 years' imprisonment [Section 11(3). Schedule 2 to the Act lists four such organizations and section 10 (5) of the Act gives the Minister power to make a statutory instrument declaring any terrorist organization dissolved or providing for the sending up of the terrorist organization and providing for the forfeiture to the State of

the property and assets of the terrorist organization. Section 11(3) of the Act also applies to those who, though not members of the organization, support or further the activities of the organization in any way (see section 11(1) (c) (iii)].

The Act does not provide for any appeal procedure to challenge prescription as a terrorist organization under the Act.

5. Part V – Financial Assistance for Terrorism
   Any, form of financial contribution or assistance towards acts of terrorism is an offence (S.12). Contributions to resources of terrorist organizations, or assistance, or retention, or control of terrorism funds, are an offence (Sections 13 & 14).

6. (Duty) to disclose information
   A duty is imposed on anyone who has suspicion or actual knowledge that another person is making funding for terrorist purposes, to disclose such information (S.15).

7. Forfeiture of tainted money or property
   This is to be done under court supervision (section 16)

8. Part VI – Terrorist Investigations
   This part covers investigations into the commission, preparation or instigation of acts of terrorism.

9. Part VII – Interception of Communications and Surveillance
   - Powers of authorized officers
     They are authorized to intercept the communication any person and otherwise conduct surveillance of a person under this Act (S.19 (1)).
   - Scope of interception and surveillance
     This is limited to –

   a) Interception of letters and postal packages of any person;
   b) Interception of the telephone calls, faxes, emails and other communications made or issued by or received by or addressed to a person;
   c) Monitoring meetings of any group of persons;
   d) Surveillance of the movements and activities of any person;
   e) Electronic surveillance of any person;
   f) Access to bank accounts of any person;
   g) Searching of the premises of any person.

10. Stop & Search Powers

Section 17 & Third Schedule) – permit unlimited stop and search powers of premises specified in a warrant or any person found there, in order to search for articles which could be used in connection with terrorism. Authorization for the use of such powers must be given by a Magistrate on the application of an investigating officer. The grounds for such authorization are that the use of such powers must be considered expedient for the prevention of acts of terrorism.

Summary of Human Rights Concerns regarding the Anti-Terrorism Act, 2002 (Uganda)

Limitations on human rights and fundamental freedoms

The promotion and protection of human rights is central to an effective strategy to counter terrorism. Inherent in this statement are two important and inter-related dimensions. Firstly, the need to ensure that measures deigned to combat terrorism do not impermissibly limit human rights and fundamental freedoms and, secondly, the recognition that terrorism puts under threat the full enjoyment of civil liberties and human rights.

Democracy under threat

Nothing in the recent past has posed a greater challenge to human rights than the war on terrorism. Governments of all political stripes are now freer to pursue more muscular policies towards their dissenters.

Anti-terrorism legislation across the world threatens to undermine democracy. Anti-terrorism legislation can easily be used to suppress or undermine democratic opposition and human rights. At best, even if not put to immediate use against civil society, such laws are likely to be a *sword of Damocles* dangling over the neck of anyone overly keen on exercising democratic rights even in the most peaceful and law abiding way possible.

It may be argued that rather than enact an anti-terrorism legislation, the legislature should focus on defining the activity that constitutes a crime; no new laws may be necessary because virtually all evident activity commonly associated with terrorism is already a crime.

The rationale for the Act notwithstanding, it must be pointed out that the Act raises a number of controversial issues.

- **The definition of terrorism or terrorist activities**.

This definition appears to cover a wide range of activities and overlaps significantly with other existing common law or statutory crimes. The only difference seems to be the motivation for the action. For instance, causing injury of damage to someone is an offence under the criminal law but causing injury or damage to someone with the intention of compelling government to do or refrain from doing something is a terrorist act. Such a broad definition runs contrary to the principle of legality. By virtue of this principle, all measures taken by States must be prescribed by law and set sufficient precision so as to preclude arbitrary or discriminatory enforcement. A basic tenet of the principle of legality is that legislation should not be vague and should define with reasonable precision the ambit of prohibited conduct.

The definition of terrorism around which the legislation is constructed is so broad that it could be used to prosecute trade unionist involved in an illegal strike or those engaged in civil disobedience. This is so because the definition does not specifically exclude legal strikes and protests that do not aim to seriously disrupt an essential service.

The expanded definition of terrorism is important because it determines the scope of the legislation. Falling under the terrorist legislation severely limits the rights of a defendant, and therefore, such measures as prescribed should be narrowly tailored so that they only apply where necessary. It should also be noted that the Act does not limit the definition of the act to the means used, more specifically, the use of violent means. The Act does not define terms like "influencing the Government", "intimidating the public or a section of the public" and also does not state the level of damage resulting that would render the act a crime of terrorism. Without clear definitions in the law of terms used, there is an outright justifiable concern that acts of freedom of expression advocating change of public policies, which are totally consistent with international law, would be considered acts of "terrorism" under this law. Further, without clear definition of terms used, acts that should be punishable under regular criminal law would under this law be punishable as acts of "terrorism"' therefore attracting much higher sentences that are grossly unfair.

- **Rights of the child could be undermined**:

Although the law imposes the highest punishment of a death sentence if the crime of "terrorism" was committed, the law does not expressly state that it does not apply to children who might be involved in such criminal activities themselves. This is an outright human rights concern in light of the (very) low age of criminal responsibility in Uganda.

- **Prescribed Terrorist Organizations** –

The wide scope of the offence relating to these organizations damages freedom of expression and freedom of assembly – as it subjects political activities to criminal sanctions, even when there has been no criminal activity.

It could be argued also that this particular section of the law imposes guilt by association, rather on the basis of one's acts. The Act makes it a crime, for instance, to send blankets to a refugee relief center, not because doing so is wrong, but because the law has designated the "organization" or "association" "or combination of persons" that runs the center as terrorist .This is guilt by association !.

The law authorizes the establishment of a government blacklist of terrorist organizations (Section 10 (2) & Schedule 2 to the Act). This measure has two possible implications: to permit the state to seize all such organizations' assets and to facilitate the use of the legal sanctions in the Act (section 10(5), & 11) against their members and supporters.
Moreover, the Act does not provide for an appeal procedure challenging the designation of the organization or association as a terrorist organization.

- **Interception of Communications and other expanded surveillance**

The potential for abuse under this part of the law is substantial. Applications are not readily available to the public and there is no requirement in the law targets be notified that they have been under surveillance.
The phrase "… articles of a kind which could be used in connection with terrorism…" is so vague that it could be used to search for almost any object.

- **No safeguards for extraditions**

The law permits extradition in cases of "terrorist" crimes. The Act, however, does not include any safeguards in relation to surrender of individuals or extradition. Surrender and extradition must not be carried out to a jurisdiction where an extradited person would become a prisoner of conscience, be subjected to the imposition of the death penalty, torture, cruel, inhuman or degrading treatment or punishment. There should also be guarantees that alleged perpetrators should have a fair trial.

It is important to note that terrorism, which literally means causing death or injury to civilians in order to intimidate a population or to compel a government to act in a particular way, is itself a massive violation of human rights. By definition, terrorists target non-combatants to achieve political or ideological ends or purposes and thus violate the rights to life and security of innocent people.

Terrorism is a very complex phenomenon and it is crucial to understand this to be able to work effectively against it. The word "terrorism" can very easily be used in an omnibus way to mean any activities that we do not approve of, or the activities associated with particular cultures and religions.

When an anti-terrorist law and practices target particular groups such as political activities, asylum seekers, refugees and religious and ethnic minorities, the presumption of innocence, the right to privacy, freedom of speech, respect for human dignity, tolerance, discrimination, torture, justice and rule of law which are unalienable universal rights are particularly threatened and may be easily breached in the name of counter – terrorism. Leaders around the world – dictators and democrats alike – are telling their citizens to choose between security and freedom. But the real choice is between a world in which human rights are universally respected and one in which no one is safe.

The idea appears to be that human rights are some kind of fancy optional extra, and that, in times of crisis, we should forget such frills and allow our police and security agencies to be able to operate unfettered by the troublesome guarantees of human rights.

The notion of the **death penalty** as appropriate for terrorists tends to brush aside human rights in the name of a stern

stance on terrorism. The irony is that terrorists themselves take a parallel approach to human rights: human rights are seen as utterly dispensable in the pursuit of a greater political goal.

We should be much more conscious of the human rights implications of steps taken in the name of combating terrorism. As Kofi Annan said in August 2003, "If we compromise on human rights in seeking to fight terrorism, we hand terrorists a victory they cannot achieve on their own".

- **Checks and Balances under the Anti-Terrorism Act, No.14/2002 (Uganda)**

The tough legislative proposals in the Anti- Terrorism Act target at terrorist and terrorist organizations in general and strengthen investigation, prosecution and prevention of terrorist activities at home and abroad. These necessary measures will assist the Government of Uganda to meet the extra ordinary challenges that terrorism poses. The following safeguards are evident in the law:

- The scope of the provisions is clearly defined so that they are targeted at terrorists and terrorist groups. Legitimate political activism and protests can be better protected through the precise definition of terrorist activities (cf. discussion, supra.).

- Under the participation and contribution offences, the burden of proof will be on the state to establish that there was intent on the part of the accused that the activities were "for the purpose of facilitating or carrying out terrorist activity".

- The process of amending Schedule 2 to the Act or adding a group to the list of terrorists incorporates a number of protections including the requirement of cabinet and parliamentary approval (Section 10 (2) & (3)).

- There are procedural safeguards in the Third schedule to the Act pertaining to Information and Investigation relating to terrorism.

- The Director of Public Prosecutions must consent to prosecute for an offence under the Act. The State must establish that the accused knew or intended

that the accused is actually guilty of the relevant terrorist offence.

When all is said and done, it should be appreciated that the Anti-Terrorism Act, 2002 (Uganda) was put in place to protect the national security of country and to ensure that Uganda meets its international obligations with respect to counter –terrorism.