

Submission by JUSTICE on United Nations (Anti-Terrorism
Measures) (Amendment) Bill 2003,
Committee Stage Amendments

1. The Committee Stage Amendments have made improvements on the egregiously objectionable provisions in the Ordinance and the Bill but the following objections remain.
2. Although Section 10 is improved, bearing in mind that this is not an offence of recruiting persons to become terrorists but simply an offence of recruiting for a body specified in a notice published in the Gazette or in an order or being a member of such body, proof that the person knows that the body is specified is simple. As a matter of common sense and practicality, how can one be reckless as to whether a body is or is not specified in a notice or order? The person either knows or does not know. There is simply no necessity to have a lower threshold than proof of knowledge. Still less is there any requirement to criminalise the act of remaining a member of such body unless it comes to the person's knowledge that the body of which he has always been a member has suddenly become specified. Again, one assumes that

practical steps will be taken to notify members that the organisation has suddenly been specified. Where is the necessity to criminalise someone if objectively speaking there may be reasonable grounds for him to believe that the body has been specified but the person is of deficient understanding? Therefore, in subsection (1), the words "*or being reckless as to whether*" should be deleted and in subsection (2), the words "*or he has reasonable grounds to believe*". Also, the penalties are too severe; after all, this is a person who is guilty of recruiting or being a member of a body who someone else believes to be a terrorist organisation. If he is involved with terrorist activities, no doubt, he can be charged and convicted of that offence.

3. Section 11 was not required by FATF nor by the UN Resolution. It should be deleted, particularly now that the definition of "*terrorist act*" has been tightened. Our objection to the Court's role in specification under section 5 and in the forfeiture of property under section 13 remains.
4. The reporting obligation is still based on the defective provision, section 25A of OSCO. If there is to be an offence, it should be based on knowledge that the

property is or has been used in connection with terrorism. The words in subsection (1) "*or suspects*" and "*or suspicion* " should be deleted and the words "*as defined in section 2(b) of this Ordinance* " should be added after the words "*is terrorist property* ".

5. It is anomalous and inconsistent for information obtained under section 12 to be capable of being passed on under subsection (6) to persons outside the HKSAR without the same safeguards as apply to information and material obtained under the stricter requirements of sections 12A-12C of section 12D(2)(b). The same requirements should apply to all information and material whether obtained under section 12 or sections 12A-C. The same safeguards should also apply under the proposed amendments to section 25A of OSCO and section 25A of the Drug Trafficking (Recovery of Proceeds) Ordinance.

Chairman, JUSTICE

20 May 2004

(ICJ, Hong Kong Section)