The ongoing terrorist menace has led to the recalibration of criminal law norms that mainly aims at curtailing terrorism. New anti-terror law such as Prevention of Terrorism Act 2015 (‘the POTA 2015’) has been introduced alongside with Chapter VIA of the Penal Code to deal with the terrorism offence. These new laws to address terrorism threats have been criticised because the law right now punishes not only terrorist acts but those considered being in the preparatory stage to commit those acts. This article further observes there are justifications for the conception of these new anti-terror laws. First, some suspected terror activities cannot get caught by the substantive offences provided under the law. Second, the explanation for the creation of this extraordinary terrorism offences is that the government wish to make it much simpler to secure convictions against the terrorists, and finally, the third reason is that terrorist offences may call for extraordinary approach and treatment, unlike ordinary crimes. Meanwhile, critics are concerned and worried about the relaxation of criminal law standards such as the burdens of proof which may lead to possible unlawful convictions. This article will investigate a prevailing inclination to enlarge the ability of anti-terror laws by disregarding the traditional criminal law standards and procedures in order to curb terrorism.

Keywords: Anti-terrorism law, Criminal Law and Policy, POTA 2015

INTRODUCTION

In the global scene, we have witnessed military deployments, changes in diplomatic relationships, and momentous shifts in the international legal structure in tackling terrorism threats. A country with a commitment to the rule of law and democratic governance like Malaysia is among the many that have implemented these changes. Such changes have led to introducing new legislations such as the Prevention of Terrorism Act 2015 (‘the POTA 2015’) and Chapter VIA of the Penal Code particularly aim at curtailing terrorism. The new anti-terror laws right now penalise not only terrorist acts but also those found to be in the
planning stage or attempting to commit those terror acts. Following the changes made to the criminal law and procedure to curb terrorism threats, some scholars have opined that terrorism offences have gone further than what the criminal law needs to proscribe ‘by adding

inchoate liability on top of inchoate crimes risk creating atrocities such as attempting conspiracies’.4

For the government, new anti-terror laws enable them to track and capture individuals whose actions would probably not get caught within the traditional criminal law provisions. In essence, terrorism offences are targeted at apprehending potential culprits at an initial stage of their preparation or planning. If a serious threat is coming from terrorist attacks, the prompt intervention could bring down the probability of severe harm to civilians. This is seen as the best defensive strategy preferred by the government. However, there are concerns by critics about the use of the new terrorism laws to penalise individuals for acts they may or may not commit rather than for acts they have done. This is indiscernible because the new terrorism offence appears to look more at the future of non-terrorism instances. Critics are also concerned with the relaxation of the burden of proof which eventually will lead to more unlawful prosecutions and convictions.

The sacrifices of the liberty of the people that the Malaysian government is willing to make merely to tackle the security problem raises alarm bells on the constitutionality of the state. In fact, scholars and non-governmental organisation including human rights groups have pointed out these unprecedented efforts in countering terrorism have become a ‘normal’ part of the legal and political framework of most democratic states. Therefore, the central question is: how have this ‘extraordinary’ legal measures in the ‘war’ against terrorism influenced the traditional fabric of criminal law and justice? As observed, the chief purpose of having this extraordinary legal measure is for the state to avail itself of liberty-depriving powers without the need to comply with the standards of proof and evidence which apply to the criminal justice model as traditionally conceived. Thus, the inception of this new extraordinary legal measures in responding to terrorism has been identified as departing from the criminal law norms.

**CRIMINALISING INCOHATE ACTS AS A TERRORIST OFFENCE**

Central to Malaysia’s legislative answer to terrorism has been an emphasis on the pre-emption of such conduct from taking place. While this is one of the extraordinary features of those laws, it is crucial to know the need of pre-emption as a strategy for handling with criminal activity well before the 9/11 tragedy. According to Lucia Zedner, legislative regimes set up in this atmosphere was a transformation from a ‘post-crime’ society, in which crime is taken primarily as harm or wrong caused to a ‘pre-crime’ society in which the outlook is changing to predict and prevent that which has yet to happen’.5 Benjamin Goold and Liora Lazarus on the other hand noted that the impact of 9/11 was to prompt states ‘with a novel opportunity to develop new and powerful rhetorical arguments, in particular, the claim to exceptionalism, in favour of increased state power’.6

The offence regime under the Malaysian Penal Code highlights the centrality of pre-emption by Malaysia’s legislative response to terrorism. The Malaysian Penal Code already has several inchoate crimes such as attempt,7 abetment8 and conspiracy.9 Such crimes operate by attaching to substantive offences and punishing conduct that has worked towards, but not in fact occasioned, the commission of one or more of those substantive offences. ‘Attempt’ applies where a person intends to commit a particular offence and he or she has taken steps towards it and performed in a manner that is ‘more than merely preparatory’ to the commission of that offence.10 For example, Person A would not be guilty of an attempt to murder Person B if he or she merely bought a gun intending, at the later date, to shoot Person B. But, Person A would be guilty of an attempt to murder Person B if the gun jammed while Person A sought to fire it at Person B. Person C would be guilty of ‘incitement’ if he or she had encouraged Person A to commit the offence of murder with the intention that the offence would be committed (regardless of whether Person A in fact engaged in any conduct in furtherance of the offence). As for conspiracy, it covers an even broader range of action than either ‘attempt’ or ‘incitement’. It applies where a person agrees with at least one other person to achieve a common aim which is unlawful. There is no need to have a direct communication between all the parties to the agreement, or even knowledge on the part of each party to the identities and precise activities of the
other parties. Furthermore, nothing need be done in furtherance of the agreement.

A series of preparatory terrorism offences were introduced into the Malaysian Penal Code that stretched far away from the purview of the current inchoate crimes. These offences expressly criminalise acts carried out to prepare the groundworks for terrorism. For instance, if an individual has the intention to 'provide training or gives instruction to terrorist groups and persons' or 'recruiting persons to be a member of terrorist group' or 'soliciting and giving support to terrorist groups' that is 'connected with terrorist act' will be caught under the Code. It does not matter if an individual either has the knowledge or is reckless as to the circumstance that the relevant act is connected to a terrorist act. Section 130C has a wider catch-all provision for committing 'any terrorist act directly or indirectly by any means'. Under Chapter VIA of the Penal Code, it is unnecessary for the prosecution to prove that a decision had been made by the offender as to how, when, where or by whom a specific terrorist act might be carried out. Suffice for the prosecution if they can prove any of the offence that falls within any limb under s 130B(2). Chapter VIA of the Penal Code that deals with crimes related to terrorism have been criticised for distorting the traditional focus of the criminal law by punishing activities preliminary to the commission of a substantive offence. Although as highlighted above, the Penal Code has long recognised 'inchoate' crimes that expose individuals to punishment for attempting the commission of a criminal act or conspiring with others to do so, and yet, Chapter VIA was introduced into the Malaysian Penal Code. A major rationale for each of these offences like the preparatory terrorism offence themselves is to prevent the act of terrorism from being ignited into something bigger and harmful. They can be used by the law enforcement agencies to intervene before a substantive offence is committed or any harm to anyone turns out.

In the Malaysian Penal Code, individual attempts to commit a crime whenever he or she intends to and yet do not follow through the related act for the offence. Conspiracy arises wherein two or more individuals agree to commit a crime together, and one of them does an act under the agreed plan. The importance that the criminal law places upon prevention is reflected in the applicable penalties for each of these offences. An individual who conspires or attempts to commit a crime is liable to be penalised with the same degree as if he or she committed the offence (for instance, if the principal offence has life imprisonment as punishment, then the attempt or conspiracy to commit that particular offence carries the same penalty). Even though these existing inchoate offences are not indisputable, it has long been debated whether it is proper to allow the state to preventively charge and penalise any individual who plans to bring (but has not caused) harm. However, the preparatory terrorism offences go even further by explicitly penalised conducts or acts done to prepare for a terrorist act. This may be directly contrasted with the requirement for an attempt that the actions of the defendant must be more than preparatory to the commission of the offence. Hence, terrorism offences have been described as creating another new level of 'pre-inchoate liability'. In criminalising at the very early formative stage would make people vulnerable to very severe punishment regardless of the absence of any clear criminal intention. The mental elements of the preparatory terrorism offences compound the above problems. Such crimes potentially capture a broad range of behaviour that has only a very tenuous connection with the commission of a terrorist act. In particular, the fault elements allow for the possibility of charges being laid where a person is simply reckless as to whether the relevant activity is in preparation for, or planning or is connected with terrorist activity. This involves a much lower standard of personal culpability than the alternative fault elements of either intention or knowledge that apply to serious criminal offences. Furthermore, recklessness requires that a person knows of a significant risk and that it is unjustifiable, in the circumstances, for him or her to take that risk. It is, therefore, conceivable that people who are foolish or fail to conduct rigorous and comprehensive investigations might find themselves the subject of prosecution. As an illustration, s 130JB of the Penal Code criminalises the act of possessing items that are associated with terrorist groups or terrorist acts. The effect of the open-ended drafting of this provision is to expose to liability a person who, for example, downloads from the internet a document providing Islamic State's ideology and their propaganda. Since there is an ample risk that others may make use of the downloaded materials related to this terrorist group to plot harm, the person will be liable regardless of whether his or her reason for getting the document is entirely innocent (such as for academic paper or mere curiosity). Unfortunately, people have been charged under this section of the Penal Code in Malaysia.
Another problem with the offence of possessing items associated with terrorism is that the law places the burden of proof on the accused to show he or she has no intention to facilitate or help in committing any acts of terrorism. This means that the accused has to produce evidence that there is a reasonable possibility that no such intention existed before the prosecution will be called on to prove it. Only at that point does the onus of proof shift to require the prosecution to rebut the defence's claims beyond a reasonable doubt. The fact that the accused has to claim his or her innocence first is a significant withdrawal from the established concept in the traditional criminal law principle that an accused is presumed to be innocent, and the prosecution must show all the essential ingredients of a criminal charge before an accused mounting his or her defence.

Further, a new offence of inciting or promoting terrorism was introduced under s 130G of the Penal Code. The offence applies to a person who incites or encourages the doing of a terrorist act or the commission of a terrorism offence. Although inciting or promoting towards committing an act of terrorism is not defined, it is understood as encouraging or urging terrorism even though Chapter V of the Penal Code already contained the offence of abetment that urges another person to commit a substantive crime. There is a critical difference on the mental element of the new incitement offence and abetment. Under the Penal Code, the abetment offence is limited by the need for the prosecution to prove that the accused intended (or meant) to urge another person to commit the substantive offence. The offence of inciting under s 130G however, is substantially broader because the requirement is that the accused was reckless as to whether another person would do a terrorist act or commit a crime of terrorism. Therefore, it has the potential to criminalise a wide selection of genuine actions. For example, the offence might apply to any person who declares support for fighters opposing the Assad government in Syria and supports the continual resistance by these groups which some may regard it as a legitimate act. Thus, the broad definition of incitement and the lack of a limit on the offence by ignoring the accused's intention makes the potential operation of s 130G hard to predict. The debate on preparatory terrorism offences has been criticised for going too far in criminalising action engaged before the commission of any terrorist act. There is, however, a strong case to be made that the nature of terrorism and the gravity of the potential harm justifies an extraordinary response. The law enforcement and intelligence agencies should not be hampered by the need to wait until a terrorist act occurs before being able to step in and protect the population. Hence, if special offences with extraordinary measures for terrorism-related activities are indeed necessary, what is the best form in which these should be drafted? What level of personal culpability -- in the sense of a particular intention or state of mind should be required? These are difficult questions that stay unanswered.

THE PREVENTIVE SCHEME UNDER THE POTA 2015

Conceivably, the most widely known debates on the working of the Malaysian criminal law procedures are those connected to the detention of a suspect under the preventive law without trial. Under the Malaysian POTA 2015, the police were empowered to hold terror suspects for an initial 21 days with the sanction of a magistrate and an extended detention of another further 38 days if the public prosecutor can provide adequate evidence to justify it. Under ordinary situations, art 5(4) of the Federal Constitution requires that an individual arrested and detained by the police must be produced immediately before a sitting magistrate within 24 hours from the time of his arrest. Police must then apply to the magistrate for extension and assuming that the latter deems further detention is needed, the suspect can be further remanded to enable the police to complete their investigation. During this initial period of detention, usually, the suspect is not given permission to have access to anyone. The POTA 2015 saw the introduction of detention without trial scheme for terror suspects which came into force on 1 September 2015 which evoked fundamental challenges to the law. During the initial detention period, the suspect will appear before an inquiry officer as soon as possible. The rules of evidence do not apply during the inquiry as the officer is empowered with broad discretionary power to decide the admissibility of evidence. The Inquiry Officer shall thereupon investigate and recommend to the Prevention of Terrorism Board (PTB) whether there exist reasonable grounds for suspecting that the suspect is engaged in the commission or support of terrorist acts. The PTB after looking at the complete report submitted by the Inquiry Officer, if it is satisfied that it is expedient in the interest of the country's security, could issue a detention order for the suspect not exceeding two-year period.
in a place of detention as the Board may order. Provisions under the POTA 2015 induced heavy criticisms among human rights due to the ousting of judicial controls under the scheme which raised concern as to where the principled criminal procedure and justice is heading when there is no check and balance available. It is well observed that the POTA 2015 defines the meaning of ‘terrorist act’ as ‘act’. It implies that individuals can be easily found guilty of preparing or organising terror acts and punished under Chapter VIA of the Penal Code or POTA 2015 without the need of the authorities showing any satisfactory proof of a particular period, day, place or process of the purported crime. The law enforcement just requires finding out the suspect’s actions has linked to ‘an act’ -- even though it may be a potential act. Anyone could be found guilty even though the terror acts fail to transpire. The provisions contribute to the police extensive authorities to detain a suspect on the unclear potential charges for instance, ‘engaging’, ‘promoting’ or ‘supporting’ an unknown terrorist act that would never happen. The vague provision of law runs counter to the demand that strong evidence should be available to prepare the ground for a criminal prosecution before any loss of liberty can be enforced on a particular person. This fundamental position has since been drastically changed; because of the threat presented by terrorists to Malaysia and the introduction of the POTA 2015.

It is imaginable that criminal justice systems have experienced their capabilities enlarged to make it possible for this kind of preventive detention scheme, though it is hard to comprehend precisely how any legal process can assert to demand the detention of 21 plus 38 days (in total 59 days) in police custody just to establish the offense under the POTA 2015. The basic procedures and the guidelines of criminal procedure make available at least for some measure of protection afforded to the accused considering the weaknesses of his or her position, but when the suspects are not produced to court as soon as possible, the courts are powerless to provide any strict scrutiny of the police conduct. Though it appears to depart from the basic demand for a good valid reason for the continued holding of terror suspects, the methods and the procedural aspects set up in the POTA 2015 breaks the spirit of the established criminal rules and procedures. As laid out in the POTA 2015, it deprives an innocent individual of his or her freedom which can be for 59 days which is seen as a long-term breach of criminal law principle. Furthermore, the POTA 2015 overturns the well accepted criminal law principle on the presumption of innocence. The law will enable the governing bodies or the police to arrest anyone based entirely on what they claim the ‘suspect’ may plan or proposing to take in the future. Hence, the laws set the stage for the creation of tyrannical regimes as individuals could just ‘disappear’ while under police detention with no one knowing it.

**DISPARITY IN SENTENCING TERRORISM CASES**

It is to be noted that apart from the preventive detention without charge as discussed earlier, terror suspects can be punished under the Penal Code. The predominant concern in sentencing terror suspects is that of imposing severe penalty including capital punishment which is perceived to be disproportionate in the circumstances. Although terrorism offences could be expected to attract heavy sentences, terrorism offenders have slightly better prior records (if we were to discount their involvement in terrorism acts) than other criminal offenders. They are some people of relatively good character, but because of the law, they are penalised. Those charged with terrorism offences may be hard-pressed to argue other mitigating factors, such as remorse but with limited success. The heavy maximum sentences that apply even in relation to preparatory offences also mean that sentences determined according to the common sentencing principles may be substantial, even for middle-level examples of terrorism-related offence. Still, the Legislatures evidently do not consider this to be adequate in tackling terrorism threat. The following are brief examples of recent terrorism-related cases brought to court in Malaysia which had received sentences meted out by the court.

(a) In March 2016, two men, Muhammad Armie Fatihah and Mohammad Hafiz Zahri pleaded guilty to charges under ss 130J(1)(a) and 130G(a) of the Penal Code respectively for promoting terrorism and supporting the IS. They were both of them were handed down with three years and six months of imprisonment by the court. Muhammad Armie was guilty under s 130J(1)(a) for ‘promoting the commission of a terrorist act with intention to propagate an ideology to incite the
masses in Syria in Taiping' in April 2014, whereas Mohammad Hafiz was guilty of supporting a
terrorist group under s 130G(a). He had incited people to become a member of a group known
as 'Daulah Islamiah' to go to Syria and had also planned to set up a 'jihad' camp in Malaysia. It
is noteworthy that the offence under s 130G warrants an imprisonment term for up to thirty
years;

(b) a 38-year-old carpenter known as Muhammad Kasyfullah Kasim pleaded guilty at the Kuala
Lumpur High Court for supporting terrorist acts and was given five years jail term. Muhammad Kasyfullah pleaded guilty under s 130J(1)(b) of supporting terrorism involving the
use of firearms to further a religious struggle that can endanger public safety. He had allegedly
committed the offence by entering Syria by departing from the Kuala Lumpur International
Airport (KLIA). Under s 130J(1)(b), he can be sentenced for life or up to 30 years’ jail. The
prosecution, not satisfied with the prison term imposed by the High Court, had appealed to the
Court of Appeal to increase the sentence. The appeal was allowed, and the court enhanced the
jail term from five years to 12 years; and

(c) on 21 June 2016, the Appeal Court enhanced the sentences of Rohaimi Abd Rahim and
Muhamad Fauzi who were both found guilty under s 130G(c). The charge under s 130G(c)
carries an imprisonment term up to thirty years if a person is found to be ‘inciting, promoting,
and soliciting property for the commission of terrorist acts’. At the Kuala Lumpur High Court in
February 2016, both the accused pleaded guilty and received three years imprisonment term.
Unsatisfied with the lighter sentence given, the prosecution then filed an appeal. The appeal
was allowed and the court enhanced the prison term to 15 years. What is interesting to note
was the Court of Appeal judge in enhancing the imprisonment term has remarked that the short
imprisonment term given out by the High Court did not match the gravity of the offence
committed.

Over and above the examples cited, many peoples have also been hauled up by the police for committing
preparatory terrorism-related crimes that can trigger harsh sentences even though; it is uncertain whether
such preparatory terrorism acts will culminate into substantial terror
attacks. As observed, the sentencing trend favoured by the Malaysian court as far as terrorism-related
offences are concerned is to take a stern approach. According to a report published, from the year 2016
onwards, it saw an enhanced sentences meted out by the court for terrorism-related cases. Thus, it is
posited in this article that the harsh punishment handed down by the court is, therefore, disproportionate
comparatively with other ordinary criminal offences.

IS THERE A SUBSTITUTE FOR CRIMINAL LAW IN COUNTERING TERRORISM MENACE?

It has conclusively been set out from the preceding discussion, challenges to the traditional principle of the
criminal law are one aspect of it, but, they are significant to call for a deep thinking if they threaten the
legitimacy of the law. In the struggle against terrorism, the criminal law is questioned not only by
transformations from inside but at the same time; there is a clear yearning to come up with substitutes to the
existing system. The Malaysian counter-terrorism policy appears to be strongly marked by a desire to put
forth alternate paths to the criminal law to deal with the terrorism menace as was pointed out above. If the
legislative body prefers to select a different method to inflict punishments on those arrested for the cruellest
crimes, inevitably one need to remember that they doubt the criminal law, either by rejecting its validity or
proclaiming it inadequate or unacceptable. One scholar describes the problem of not remaining inside the
criminal justice domain as the greatest danger to human rights values.

Even though the discourse of preventive detention without charge to handle terror suspects is commonly
brought up within the framework of the criminal law as presented above, it is interesting to see that they are
meant intentionally by the government to depart away from the criminal procedure set up. Without a doubt,
preventive detentions are tailored to manage an occurrence not wholly matched to the operation of the
traditional criminal law system. The state persistently calls for the need to have a mechanism by which the
investigative bodies could easily take out high-risk suspects away from the general public and to give
protection to the community. Due to its destructive nature, an act of terrorism the courts have demonstrated great compassion by recognising the authority's assertion that they have no choice but to act preventively. Such approach has already been adopted by the court in the United Kingdom.\textsuperscript{30} The demand for having preventive detention, in particular, is to target would-be suicide bombers who must be restrained and the government cannot wait around for particular terror acts to be fully committed before taking any action against the offender. One may dispute the authority's measures taken by arguing that, the moment the suspects have accomplished the specific terrorist acts, the authority can charge those perpetrators under the traditional criminal law system. But, in hindsight, this approach will expose the public to too much danger.

 Granted that the substantive law in countering terrorism has become widened to the point of weakening the procedural guidelines and the principles of criminal law, the government's inability to successfully put forward a criminal charge turns out to be particularly unpalatable. If discussion focused solely on a very short term systems targeting to get very dangerous terror suspects off the streets and to put these people under preventive detention while the investigative agency prepares the charge against them, this could be contentious although, arguably, it may be an acceptable case. The discussion has not, however, been only of that nature, unfortunately.

 As to why the executive is adamant to create a preventive system which appears to be a substitute for the criminal justice system and positioned it out from the system is a concern which calls into question. The government should come out with other better solutions which might maintain the reliability of the criminal law especially in its procedure which is better than deploying the preventive detention scheme. Unfortunately, when the government's move to look for an alternate to the criminal law in the form of preventive strategies is a clear desertion from the established rules of criminal procedure. Although the criminal law is supposed to penalise people who commit crimes, the notion that criminal law cannot be applied effectively in counter-terrorism appears to be unprincipled. Undoubtedly, someone responsible for having committed terrorist acts is worthy of severe punishment just like those who committed any other heinous criminal offences. However, when it comes to terrorism offences, one will find there is disparity and/or disproportionate punishment meted out as highlighted earlier. Where such breach of the laws have taken place, the notion of the rule of law always requires that the state guarantee the law is practised impartially. This can happen by making sure penalties through the accepted criminal law system, and its procedure is applied instead of having another set of 'new' punishment set out. This called into question the legitimacy of the criminal law system whereby it's used to pursue the robbers but regarded as immaterial for terrorists? Therefore, it is postulated in this article that the move to utilise alternative system, for example, the preventive detention scheme as a substitute for the criminal law in countering terrorism menace is a direct doubting of the efficacy of criminal laws to handle crimes committed by the terrorists.

**CLOSING REMARKS**

One of the significant issues that emerge from the above observation is the Malaysian government is wary of the power and influence of the criminal law in countering terrorism. Criminal trials of this nature will require the need for a full disclosure of state secrets; and there is a risk of inadvertently revealing government secrets, which it ought to be preserved. Hence, there will be obstacles in getting convictions against terror suspects. The government remains apprehensive of the fact that under the criminal justice system, the standard of proof beyond a reasonable doubt may suggest that some guilty people occasionally will be acquitted. This suspicion is, however, open to debate. In fact, the decision by the Malaysian government to enact the POTA 2015 can lead to a paradox. The demand for proof of guilt beyond a reasonable doubt means people can only be detained as terrorists if the government can prove beyond reasonable doubt they have carried out terror acts including inchoate terrorism offence.

 Other claims put forward by the government to justify the introduction of the exceptional measures as part of the new counter-terrorism laws are that such measures would be confined to terrorism context only. They were not to be used elsewhere in the criminal law. However, there are examples which can refute such a claim. For example, the expansion of the police power to conduct covert searches already restrict
fundamental human rights and derogate from accepted principles of criminal justice including the preventive
detention scheme under the POTA 2015 where individuals can be incarcerated without being accorded due
process of the court. It is now clear that counter-terrorism laws and procedures can provide a precedent, and
even a template, for the use of extraordinary powers in other criminal contexts. Over time, what had been
seen as extraordinary are becoming a normal part of the broader criminal law system. While this article has
focused primarily on Malaysia's context, it is important to note that the normalisation of this extraordinary
measures is a trend which is becoming apparent in nations across the world. However, the grave concern of
many is this new extraordinary counter-terror measure has sidelined many human rights consideration. Thus,
the perceived effectiveness of this 'extraordinary' anti-terror laws and procedures have become rhetorical for
the authority. To sum up, what had been seen as extraordinary measures focusing on counter terrorism by
the government are becoming a normal process of the broader criminal law system.

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7 Section 511 of the Penal Code.
8 Ibid, s 107.
9 Ibid, s 120A.
10 See the illustrations provided under s 511 of the Penal Code.
11 Section 130F of the Penal Code.
12 Ibid, s 130E.
13 Ibid, s 130J.
14 See the definition of what constitutes 'terrorist act' under s 130B(2) of the Penal Code.
16 Section 107 of the Penal Code states:
'A person abets the doing of a thing who -- (a) instigates any person to do that thing; (aa) commands any person to do that
thing; (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal
omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (c) intentionally aids, by any act
or illegal omission, the doing of that thing.'
17 Section 4(1)(a) of the POTA 2015.
20 Section 5 of the POTA 2015.
21 Ibid, s 10(3)(a).

22 Ibid, s 13(1).

23 Section 19 of the POTA 2015.

24 Section 130C of the Penal Code provides that: '(1) Whoever, by any means, directly or indirectly, commits a terrorist act shall be punished -- (a) if the act results in death, with death; and (b) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine'.


30 See for example the judgment in the United Kingdom's case of Secretary of State for the Home Department v MB [2008] 1 All ER 657; [2007] UKHL 46, where it was accepted by the UK Law Lords that control order system do not expose the controlled person to a risk of punishment -- see paras 16-24, 48-50, and 90.