

Australia: Tamils face 10 years jail on revised terrorism charges

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On March 5, the federal Director of Public Prosecutions (DPP) abandoned nine terrorism charges against three prominent members of Australia's Tamil community. They had been accused of being members of the separatist Liberation Tigers of Tamil Eelam (LTTE) and providing funds to the LTTE, knowing it to be "a terrorist organisation".

However, the DPP said the three men—who have all pleaded not guilty—would still be tried on five remaining charges of breaching the little-known Charter of the United Nations Act 1945 by making money available to a "proscribed organisation". As a result, the men still face sentences of up to 10 years for each offence, compared to up to 25 years each on the terrorism charges.

The *Australian* newspaper described the DPP's decision as "another blow" to Australia's counter-terrorism laws, following the debacle over the aborted prosecution of Indian-born Muslim doctor Mohamed Haneef in 2007. While the dropping of some charges is certainly a back down, the continued prosecution of the Tamil men sets a dangerous precedent for the use of an alternative set of so-called anti-terrorism provisions to violate basic democratic rights.

The UN laws—being used for the first time in a criminal prosecution against supporters of an overseas organisation—provide a convenient pretext for taking action against groups for foreign policy reasons. In this case, the prosecution is in line with the Rudd government's support for the Sri Lankan government's criminal war against the minority Tamil population, even as it produces a humanitarian disaster in the island's north.

Aruran Vinayagamoorthy, Sivarajah Yathavan and Arumugam Rajeevan were arrested in early May 2007 as part of a series of police raids in Sydney and Melbourne following a wave of similar arrests in the United States and

France of alleged LTTE supporters. They were incarcerated as terrorists amid highly prejudicial declarations by members of the previous Howard government, the police and the media that the LTTE was a terrorist organisation, despite not being listed as one under the Australian anti-terrorism laws introduced since 2002.

From the outset, the police admitted there was no evidence of any involvement in, or planning for, terrorist activity within Australia. Instead, they accused the three men of raising money for relief projects, including for victims of the 2004 Boxing Day tsunami, with the knowledge that some funds were going to the LTTE, which at that time controlled parts of the tsunami-affected north and east of Sri Lanka.

The Sri Lankan government immediately welcomed the arrests, which were a clear sign of support for President Mahinda Rajapakse's decision, in July 2006, to resume the war against the LTTE in violation of a 2002 ceasefire. While the Howard government insisted that the arrests and charges were purely a matter for the federal police and prosecution authorities, the case was part of an international operation against LTTE supporters. Similar police investigations were launched in Canada, Britain, the Netherlands, Germany and Italy.

The three men were detained for 11 weeks but released on \$100,000 bail each in July 2007 after Justice Bernard Bongiorno of the Victorian Supreme Court expressed doubt that they would be convicted under the anti-terrorism laws because the LTTE had not been legally classified as terrorist in Australia or Sri Lanka. Bongiorno specifically questioned the prosecution's plans to call two political scientists to testify at the trial that the LTTE was terrorist, saying the evidence might not be admissible before a jury.

Twenty months later—without any explanation for the delay—the DPP has decided to try to sidestep the legal problem by pursuing the charges under the UN Charter Act,

which provides a backdoor method for outlawing organisations via ministerial regulations.

Like the Howard government before it, the Rudd government has not followed the US and the European Union in branding the LTTE as terrorist under the counter-terrorism laws. Instead, it has exploited the UN legislation, which was amended in 2002 to allow the government to prohibit the giving of financial assistance to any group named as a terrorist entity or subjected to sanctions by the Sanctions Committee of the UN Security Council.

The UN committee, which is dominated by the US and other permanent members of the Security Council, can classify groups as terrorist depending on the strategic, diplomatic and economic interests of the major powers. At the same time, the Australian legislation permits the federal government to vary or adjust the list depending on its own political considerations, without any public or even parliamentary debate.

An examination of the "consolidated list" of "proscribed entities" maintained by the Australian Department of Foreign Affairs and Trade provides a picture of just how sweeping this power has become since the declaration of the "war on terrorism" in 2001. By 2004, the list had mushroomed to more than 400 names, and it currently runs to 1,065 organisations, companies and individuals. In addition to all the entities named by the UN committee, the foreign affairs minister has nominated 89 others.

Apart from Taliban- and Al Qaeda-linked entities, the UN list now covers a host of separatist, resistance and guerilla movements, including Hamas in Palestine, Hezbollah in Lebanon and many other Palestinian, Iraqi, Afghani, Kurdish, Irish, Peruvian, Balkan and Spanish organisations. Any individual or aid group who raises, or even donates, money for a relief fund linked to one of these organisations can be arrested and face years in jail.

This danger is all the more serious because Australia's diverse population features people who have relatives and humanitarian concerns all over the world. In addition to prominent political organisations such as the Kurdistan Workers Party, the Palestine Liberation Front and the Communist Parties of Peru and the Philippines, the entities list includes many ostensibly charitable groups, such as the Irish Republican Prisoners Welfare, the Wafa Humanitarian Organisation and the Society of Islamic Cooperation.

Anyone approached to support or donate to any overseas

organisation must find and check the ever-expanding list, of which few people are even aware, and which runs to more than 800 pages of often obscure names of groups, businesses and individuals. Whether or not people are prosecuted will depend entirely on the political needs and calculations of the world powers and the Australian government of the day. If similar laws had existed in the past, people could have been jailed for giving money to the anti-apartheid movement in South Africa, Irish republican causes or East Timorese independence groups.

The LTTE has been on the list since 2001, even though from 2002 until 2009 it was not outlawed in Sri Lanka itself because of a ceasefire agreement with the Sri Lankan government. In January this year, the Rajapakse government re-banned the LTTE as part of a wider suppression of all criticism and resistance to its military offensive. The LTTE is a guerrilla movement whose demand for a separate capitalist statelet for Tamils in the North and East represents the interests of sections of the Tamil bourgeoisie.

The DPP's announcement of the continued charges came just four weeks after Rudd government's foreign minister Stephen Smith issued a February 5 statement on the situation in Sri Lanka. His statement welcomed a call issued days earlier by the so-called Tokyo Co-Chairs of the defunct Sri Lankan peace process (Norway, Japan, the United States and the European Union) for the LTTE to surrender. A renewed crackdown on the LTTE's overseas sources of funding is part of this effort.

For six years, the Howard government stoked fears of terrorism to provide a pretext for draconian anti-terrorism laws and justify its participation in the US-led invasions of Afghanistan and Iraq. The Rudd government is maintaining a similar course. The prosecution of the three Tamil men highlights the vast scope for the terrorist powers to provide a convenient foreign policy tool, with immense implications for fundamental legal and civil rights.



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