

**Report of the Commonwealth Human Rights Initiative Seminar
on
Anti Terror Legislation in the Commonwealth**

Dominic Bascombe

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INTRODUCTION

“In war, whichever side may call itself the victor,” stated Neville Chamberlain in 1938 “there are no winners, but all are losers”. Perhaps today more than ever, the world has to face the reality that the ‘war on terror’ is making losers of us all. As the global community strives to prevent terrorist acts and to fight terrorist networks, we all in turn lose out on the civil liberties and human rights that were once taken for granted.

On June 5th and 6th, the London office of the Commonwealth Human Rights Initiative hosted a two day seminar on Anti terror Legislation in the Commonwealth to examine and address the impact of such anti terror laws on human rights. The seminar brought together representatives from the various regions of the Commonwealth, including the United Kingdom, Zimbabwe, India, Australia, Ghana Canada, and the Caribbean. The audience and participants included parliamentarians, lawyers, human rights activists, and members of civil society. Armed with a brief on anti terror laws implemented across the Commonwealth, they were charged with the task of examining the limits and threats that these laws presented to the community.

The seminar offered the opportunity to develop an understanding of how anti terror laws have been implemented and received across the Commonwealth, as well as highlighting the challenges and justifications for such legislation. This report aims to present a brief overview of the contributions from the participants, highlight some of the points that were debated and put forward a future plan of action. It is a first step in an attempt to recognise the threats that civil liberties and human rights face the world over and is intended to present a brief synopsis of issues raised in the seminar. It also intends to provoke debate, and to prompt a desire to recognise that it is all too easy to give up one’s freedoms when faced with horrendous, frightening terrorist acts.

RECURRING THEMES

Before governments hastily react to terrorism, they need to seriously consider the circumstances and context of the acts that face them. In examining the raft of anti terror laws introduced across the Commonwealth, it quickly became apparent that there were a number of recurring themes to face.

How does one define terrorism? Should terrorism be defined by the act itself or by the intention behind attacks? If the international community is unable to arrive at a unanimous definition, how are individual states supposed to do so? Besides problems of definition, attention needs to be paid to other practical considerations. Should a proportion of resources be geared towards tackling the root causes of terrorism? Or should the focus be solely upon dealing with the present day difficulties?

And what about international human rights standards? Should there be a balance between implementing security measures and still maintaining international human rights standards? Or does the all-pervasive and rapidly evolving nature of terrorism provide governments with the legitimate right to use 'all necessary means' in this indefinable war? Does introducing stricter laws and limiting the rights of suspects and ultimately the entire society reduce the threat of terrorism?

While the answers to these questions remain open for discussion, some extremely valuable reminders were raised as to the role of the Commonwealth in tackling terrorism.

DISCUSSION

Following the adoption of United Nations Security Council Resolution 1373, the **Commonwealth Secretariat** presented member countries with a model form of legislation towards implementing anti terror laws. This was further enhanced with a series of workshops designed to assist states in determining the extent to which they wanted to implement anti terror laws and the specific aspects – whether it be financing or the actual causing of harm – of terrorism that they wished to tackle.

Kim Prost expounded on the difficulties involved in doing this, pointing out that even though it was impossible for member states to adopt a ‘one size fits all’ approach, members were facing a situation where they had to implement legislation to fulfil the demands of UN Security Council resolution 1373. Implementing legislation was therefore becoming not a choice of the individual state, but an international obligation that had to be fulfilled even as an international definition could not be reached.

Difficulty in adequately combating terrorism without attacking legitimate claims of self-determination and the recognition of freedom fighters could potentially pose a problem for some states. Another source of concern was the breadth of police investigative powers and it was felt that more attention should be paid to maintaining guidelines to ensure proper implementation rather than introducing even further reaching investigative powers.

The thrust for many countries has been to introduce measures to limit the financing of terrorist groups, often at the risk of interfering in innocent financial transactions and invading financial privacy. The impact of these threats to financial transactions was well placed by **H.E Sir Ronald Sanders, High Commissioner for Antigua and Barbuda**.

In his presentation, Sir Ronald emphasised the danger that blacklisting by the Financial Action Task Force (FATF) could have on fragile Caribbean economies. Highlighting the case of Antigua and Barbuda, which relies heavily on the off shore financial industry, he pointed out that they have seen a rapid decline in the number of banks locating there. This economic drought forces the island to be held ‘hostage to the vagaries of tourism’. As if that was not bad enough, Western tourists have become an easy target for terrorists. “It would be an absolute nightmare for us,” he said, “if there was an attack on the many cruise ships that dock in Antigua”. The need to protect the various interests of the United Kingdom and the United States in the region has provided much of the impetus for the implementation of anti terror laws. Indeed, Caribbean states have been forced to collectively lobby against the inclusion of anti terrorism concerns in their financial appraisals by the International Monetary Fund.

But what excuse does a large Commonwealth member such as Canada have for implementing repressive anti terror laws? It turns out that the answer is chillingly similar. **Canadian Senator the Hon. Raynell Andreychuk**, pointed out that when concerns were raised about Canada’s anti terror legislation, they were answered with the claim that “the UK has them!”

Although Canada has an entrenched Charter of Rights against which all legislation is to be compatible, the anti terror law raises questions as its definition remains broad and far reaching – does driving someone to the bank constitute supporting terrorism? The extent of its compatibility with the Charter of Rights also remains to be seen as it is yet to be tested in court.

The United Kingdom, however, has already seen cases involving the anti terror laws challenged in the courts. According to **Colin Nicholls**, chair of the **Commonwealth Lawyers Association**, “the UK has the toughest anti terror laws in any advanced democracy”. This even though it should have learnt lessons from history: “Any country that has experienced a state of war recognises rights ...the qualifications of rights...and the need to strike a balance between freedoms and rights...”.

The UK has a history of introducing draconian anti terror laws, particularly in the context of the Northern Ireland dispute. The Terrorism Act 2000 (TA 2000), like its follow up the Anti Terrorism, Crime and Security Act 2001 (ACTS 2001), was criticised for its broad definition of terrorism, list of proscribed organisations, and onus on suspects to prove they were not involved in acts for terrorist purposes. “People should be prosecuted for what they’ve done, not who they’ve been in association with,” said **John Wadham** of **Liberty**.

The discriminatory nature of the ACTS 2001 raises serious moral and legal questions. While the UK government would have found it difficult to justify interning UK nationals, they have had no problems in detaining foreigners. According to **Dr Rhiannon Talbot** of the **University of Newcastle upon Tyne**, this discrimination is becoming increasingly evident in the international community’s attempts to tackle terrorism.

The assumption that asylum and immigration will cause problems in confronting the terrorist threat represents a developing pattern of international legal thinking that countries face threats posed externally rather than from nationals internally. A list of UN resolutions from 1989 onwards highlighted the shift in attitudes as the international community no longer addressed the possible root causes of terrorism – racism, colonialism, human rights abuses – but instead focused on a more repressive system of anti terror enforcement.

The **First Deputy Speaker of Parliament in Ghana, the Hon Freddie Blay** took the opportunity to highlight the position of Ghana’s planned anti terror laws. Although Ghana, “has been free of any involvement in terrorism,” the United States recently placed Ghana on a list of ‘terror alert’ countries warning US citizens living there to be extra vigilant. This has prompted the country’s parliament to consider a specific anti terrorism bill cognisant of Ghana’s political history. “In Ghana, we have decided to tread carefully in implementing anti terror legislation,” said Mr Blay.

Ghana’s position highlighted the need for member states to have a united approach in tackling terrorism. As Ghana becomes increasingly pressured to introduce specific anti terror laws, Mr Blay remained adamant that attention would be paid to addressing the root causes of terrorism rather than simply cracking down on the human rights and civil liberties of its citizens.

Conversely, the **Attorney General of India, the Hon. Soli Sorabjee** provided a traditionally governmental emphasis on the justifications for anti terror laws. India's Prevention of Terrorism Act (POTA) has been fiercely criticised by international human rights organisations for being too repressive and discriminatory against minority groups. The Attorney General strongly advocated that it was not enough for the government to have to work alone in combating terrorism, but that it required the help of all citizens. Drawing criticism from other participants, he pointed out that it was a duty of all citizens to pass on any terrorism related information to the police. This, he argued, was a legitimate means for the police and government to eliminate terrorist activities. With reference to POTA, he pointed out that "it was not perfect legislation but it's a necessary evil" especially in light of the fact that India has been a victim of terrorism for a number of years. He maintained that there were effective safeguards within the judicial system to ensure that it was not abused by the State.

Vijay Nagaraj of Amnesty International India, presented a compelling case of the extent of human rights abuses that have been justified under POTA. Under a previous anti terror law, the Terrorist and Disruptive Activities (Prevention) Act, a range of people including journalists, farmers and human rights activists were charged yet very few of the arrests actually resulted in conviction. In 2000, the government failed to pass the Prevention of Terrorism Bill but this was reintroduced as POTA after the September 11th attacks.

Like other international anti terror laws, POTA fails to define what constitutes terrorism and instead lists terrorist acts and defines terrorist groups in extremely broad terms. A list of proscribed organisations under POTA also threatens fundamental rights of expression and unfairly targets ethnic and religious minorities. This as the government stated that it would be easier to de-legitimise these organisations as they were unable to deal with their politics.

The political situation in Zimbabwe provided the backdrop for the final Commonwealth case study. **Brian Kagoro, Co-ordinator of the Crisis in Zimbabwe Coalition** brought to life the repressive aspects of the human rights situation in Zimbabwe. Placing Zimbabwe within a historical context, he pointed to the devices used in the days of colonial Zimbabwe to repress dissent – the criminalization of speech and protest, the brutal use of force, and the co-option of "compliant and obedient" citizens to become spies, reporting suspicious activities to the authorities. "Rule by law and the rule of law, whichever way you look at it, it was unacceptable in colonial Zimbabwe," he said, emphasising the separation of law from the accompanying rights of justice and equity.

This use of brutality and despotism have come full circle, and are prevalent in modern day Zimbabwe with repressive laws masquerading under the banner of anti terrorism. Following Mr Kagoro's contribution, participants were invited to sign a prepared statement of solidarity with members of civil society in Zimbabwe, in recognition of their struggle.

FUTURE ACTION

The final discussion amongst participants focused on the need to determine the next step. As the war on terrorism escalates, it was felt that it was vital for the Commonwealth to increase its own activities in monitoring anti terror laws and their effects. But just how would this be accomplished? Three areas for action were identified and agreed upon.

Participants Vijay Nagaraj and Rhiannon Talbot were firstly assigned the task of preparing a statement outlining CHRI's position on the implementation of anti terror laws across the Commonwealth. This statement would combine the issues raised in the discussion and adopt a firm position on the implementation of anti terror laws in the Commonwealth.

Secondly, the conference papers of all the participants are to be collated and published along with the briefing paper of anti terror laws that have already been introduced in the Commonwealth. This would meet the challenge of distributing the findings and issues raised within the seminar, to the widest possible audience including the sister organisations of the CHRI.

Finally, a regular, biannual follow up could take the form of an electronic newsletter that would influence the debate in the Commonwealth in terms of implementing and dealing with security measures. Such action would also stimulate a more pro-active approach amongst the Commonwealth community and positively contribute to the regional consultations of the Commonwealth Secretariat, ensuring that the monitoring of anti terror laws remains on the agenda.

CONCLUSION

In the short space of the past two years, the war on terror has claimed a number of victims, the most prominent perhaps being the erosion of the rights of peoples everywhere. There is little evidence however, to suggest that the war on terrorism is anywhere near approaching an end. The fear of terrorism seems to be constantly multiplying as the list of targets is ever expanding. Indeed, as more and more countries are pressured to adopt restrictive laws, more and more people become suspects and less seems to be done to ensure the retention of basic human rights standards.

The well-founded fear of the populace, combined with the fears of some governments, and the dictatorial tendencies of others, provides the ignition to ill-considered laws, and repressive doctrines. This war on terror has become less about reaching an effective conclusion and more about assuaging our fears. But before we begin erecting fences to protect ourselves, we need to consider the long-term effects of such developments.

In the words of the Hon Freddie Blay of Ghana, “Terrorism feeds and breeds on poverty, injustice, and periods of desperation. It is not enough to form laws in the lofty chambers of our legislature”. Parliamentarians and governments need to be swayed not by basic fears and knee jerk reactions, but by the recognition that the protection of human rights standards is the best means of tackling terrorism. Anti terror laws often seem all too necessary, but tackling their root causes, recognising the fundamental freedoms and rights that ought not to be eroded, and implementing regular periods of review, may be the best means of reaching that necessary, fine balance.