

Latimer House Guidelines for Parliamentary Supremacy and Judicial Independence: a necessity after 11 September 2001.

Dr Karen Brewer

Secretary General, CMJA and Secretary to the Latimer House Guidelines Working Group

Following the events of 11 September 2001, the Secretary General of the Commonwealth, Don McKinnon, said that: *"Terrorism strikes at the heart of what the Commonwealth is about - our fundamental values are, above all else, about freedom and democracy, which have been seriously threatened by the events of September 11. The Commonwealth is determined to act to defend these values."*¹ This sentiment echoes the views of the United Nations General Assembly which condemned *"all acts, methods and practices of terrorism which constitute a grave violation of the purposes and principles of the United Nations ...and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society"*².

Unlike the USA, which has only recently experienced the consequences of international terrorism on its own territory, Commonwealth countries have been required to deal with terrorist activities for decades. The Commonwealth does not have a Peacekeeping force it can call on but it has other tools it can use. In the ten years since the Harare Declaration was adopted at the 1991 Commonwealth Heads of Government Meeting the Commonwealth has been in the vanguard of promoting good governance, human rights, the rule of law and democracy to avoid terrorist activities whether on the part of a group of individuals or by the state itself.

In 1998, with the support of the Commonwealth Secretariat, Commonwealth Foundation and British Foreign and Commonwealth Office, four Commonwealth Associations (CLA, CLEA, CMJA, CPA³) came together to draft the "Latimer House Guidelines on Parliamentary Supremacy and Judicial Independence"⁴ (here after referred to as The Guidelines). Although it has been recognised that it is impossible to draft a document which would meet the unconditional endorsement of all stakeholders, the Guidelines have gained broad acceptance and have been referred to with approval throughout the Commonwealth.

The Guidelines can be powerful force in the fight against terrorism by providing the essential building blocks for the construction and sustenance of democratic societies and fostering understanding in a multicultural, multi-religious Commonwealth. Conflicts arise, as in so many cases, within countries because of the disrespect for the separation of powers as well as the indifference to political and civil rights of individuals (see the current situation in Zimbabwe).

Respect for the Separation of Powers

Events since the adoption of the Guidelines have underlined the need to enhance the implementation of the Harare Principles and Millbrook Plan of Action. In a number of instances the independence and personal safety of judicial officers and parliamentarians has been threatened. The situations in Fiji, Sierra Leone and Pakistan continue to give rise to grave concern. Of even more concern is the

¹ 25 October 2001

² I (2) Declaration on Measures to Eliminate International Terrorism (84th Plenary Meeting/9 December 1994)

³ Commonwealth Lawyers' Association, Commonwealth Legal Education Association, Commonwealth Magistrates and Judges Association and Commonwealth Parliamentary Association

⁴ Copies of the Guidelines and footnotes, adopted in 1998, are available from the CMJA, CLA, CLEA or CPA and on the web at: <http://www.cpahq.org>

overwhelming evidence of breaches of the Harare Principles in Commonwealth which are not under military rule jurisdictions but which ostensibly maintain a democratic system under the rule of law (for example, recently the Gambia, Sri Lanka, and Zimbabwe). *"Each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitution functions by the other institutions"*.⁵

The Latimer House" system is designed to provide positive support for the achievement and maintenance of good practice in implementing the Harare Declaration. The Guidelines are not intended to be another high-sounding declaration of good intentions but an operational manual of good practice which should be implemented in every Commonwealth jurisdiction.

If we agree with the UK Terrorism Act 2000's definition of terrorism, i.e: *"the use or threat of action⁶ wherethe use or threat is designed to influence the government or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious or ideological cause"*, respect for the separation of powers should be one of the cornerstones of democracy used to combat such threats.

The endorsement of the Guidelines by the Heads of Government of the Commonwealth and the greater regard for the Harare principles would unequivocally assist in the fight against intolerance, bigotry and fanaticism, all common roots to terrorism.

Respect for Human Rights

In the aftermath of 11 September, many governments took more stringent initiatives to combat terrorism. No one can object to sensible measures to combat terrorism. However, to echo the sentiments of the Lord Chief Justice of England and Wales, Lord Woolf, the attack on USA must not deflect us from protecting "the liberty of the individual"⁷. Legislation aimed at curbing terrorism should take account of the constitutional role of each national institution, in particular parliament, the executive and the judiciary. The Guidelines call for Commonwealth parliaments to *"take speedy and effective steps to implement their countries' international human rights obligations by enacting appropriate human rights legislation"*. These objectives should not be lost in the panic that followed the events of 11 September 2001

Acceptance of the Guidelines together with their proposals for evaluating good and bad practice will eliminate a major weakness of the current Millbrook Plan of Action and broaden the existing CMAG mandate by including a statement of best practice in order to measure compliance with the Harare Principles.

The Commonwealth Statement on Terrorism issued by 52 Commonwealth Heads of Government on 25 October says *"Terrorism threatens the peace, development, security and stability of the entire world..... and is aimed at the destruction of human rights, fundamental freedoms and democracy."* With over two billion people living in the Commonwealth, we are in a strong position to foster understanding and co-operation: *"Our diversity is our strength and binds us together"*⁸ and the Latimer House Guidelines can provide a way for Commonwealth Heads of Government to promote the implementation of the Harare Principles and Millbrook Plan of Action.

⁵ Latimer House Guidelines: Principles

⁶ Article 1(2) states "Action falls within this subsection if it- (a) involves serious violence against a person,(b) involves serious damage to property,(c) endangers a person's life, other than that of the person committing the action,(d) creates a serious risk to the health or safety of the public or a section of the public, or(e) is designed seriously to interfere with or seriously to disrupt an electronic system. of I don't intend to use any particular definition but in the context

⁷"The war on human rights" by Robert Verkaik, The Independent 2 October 2001

⁸ Commonwealth Statement on Terrorism, 25 October 2001.