

Reflections on South Africa's Approach to Terrorism

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September 11th was a clear reminder of how vulnerable even the most powerful and rich nations are, and how insecure nations can be when there are no clear institutional and normative principles guiding world peace. The attacks furthered the case for a global security framework in which nations adopt collective measures to deal with security threats.

Governments the world over can not afford to be complacent about the security of their citizens nor that of their resources. A common morality for establishing new means of stability has found expression in numerous legislative and policy trends adopted as affirmations of commitment to dealing with situations that provide fertile grounds for terrorism. Nations immediately recommitted themselves to assembling both military and intelligence resources to collectively eliminate the threat of terrorism and has perhaps indicated more clearly to a reluctant United States that international forms of co-operation are an imperative to global security. A brighter case was made for a world criminal court with the jurisdiction to prosecute international crimes like terrorism as defined in international conventions.

Post-apartheid South Africa's approach to terrorism has both mirrored the international stance and been designed to respond to the numerous instances of urban terrorism. Whilst South Africa is a signatory to international conventions dealing with terrorism, the focus of this article is to provide a cursory survey of some of the legislative measures adopted by South Africa to tackle the terrorism threat.

In the increased crime scenario in South Africa in the late 90s; pipe and petrol bombings, drive by shootings and rape have come to be reported as terror related.

The government in desperation responded with legislative measures aimed at strengthening the investigative and prosecution capacity of its agencies. At that time, with a view to clearing legal impediments that compromised the investigative capacity of law enforcement agencies some politicians called for the suspension of constitutional guarantees such as the right of the arrested person to remain silent and the right to be released after a 48-hour detention if not charged and even a further call to restrict legal representation during the period of detention. None of these public declarations were adopted by the Government, not only because of possible illegality of such action but also because of the opposition to amending the Constitution that would result in undermining the fundamental rights guaranteed by the Constitution. Instead, creative and constitutionally compliant legislative and policy approaches to terror-related crimes were conceived, and existing mechanisms strengthened.

Section 37 of the Constitution permits a presidential declaration of a state of emergency, where 'the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency'. This power is exercised in terms of the State of Emergency Act, which permits the President by proclamation to declare a state of emergency. In post-apartheid South Africa, this power has not been used for purposes of combating terrorism. The power is regarded as a last resort after all other legal means have been exhausted and it is clear that it should only be utilised where a threat to state security is of such proportion as to be disastrous to normal life.

In 1998, the South African government approved a new official policy in which terrorism is defined as: "An incident of violence, or the threat thereof, against a person, a group of persons or property not necessarily related to the aim of the incident, to coerce a government or civil population to act or not to act according to certain principles."

The government committed itself to taking lawful measures to prevent terror acts, to bring to justice those involved in acts of terror, to protect foreign citizens from terror attacks, to co-operate with the international community in the investigation and deterrence of acts of terror and to protect its citizens both internally and externally from terrorism. Nevertheless, the policy stays within the bounds of the Constitution, guaranteeing the rule of law and the protection of human rights whilst tackling terrorism, unless under a state of emergency.

This approach, propagates constitutionalism as a cardinal feature of state and security, and is valuable for its underlying view that civil liberty must remain on the agenda of anti-terrorism campaigns. In the same year the South African Law Commission undertook to align security legislations such as The Interception and Monitoring Act (IMA) and the Explosives Act (EA) with international obligations of South Africa to counter terrorism. The IMA was reviewed with the aim to grant additional powers to the state to intercept and monitor communications relating to suspected terrorist activities and economic espionage considered a threat to state security. The amended IMA permits a judge to direct that postal articles, communications and conversations by, to or from a person or organisation be intercepted or monitored wherever there is evidence of a crime being committed. The amended EA does not allow anyone to manufacture, import, possess, sell, supply or export any plastic explosive, which is not marked with a detection agent. Taken together, these legislations provide the South African government with the legal framework necessary to counter threats of terrorism.

In addition to this, institutional reforms have led to the creation of elite police units, superior intelligence gathering and investigative tactics and more efficient prosecutions of alleged criminals. However, much more is needed, so that South Africa can effectively deal with threats without compromising human rights protection.

The message is loud and clear - despite the devastating effects of terrorism both internationally and domestically, basic tenants of good and effective governance must be retained, viz, rule of law, appropriate safeguards for the accused and adherence to procedural requirements of fair process. The non-negotiables of a constitutional state do not weaken the capacity of states to deal with terrorism threats, and to abrogate them is to generate state terror and to compromise freedom.

Human Rights Unit - 'Moving Ahead'

CHRI has long been calling for the strengthening of the Human Rights Unit [HRU] at the Commonwealth Secretariat. In its 1999 report, *Rights Must Come First:-The Commonwealth Human rights Unit: A Chequered History* CHRI had deplored the consistent down sizing of the HRU; called for concrete systems for mainstreaming human rights; and made practical recommendations for strengthening the ability of the Secretariat to promote human rights vigorously throughout the Commonwealth and to demonstrate proactively its commitment to such values in its internal structure and processes. Its recommendations included that the HRU: be brought directly under the Secretary- General; be staffed by human rights specialists and have at least two programme officers and secretary.

Following recommendations from the Beyani Report which evaluated how the Secretariat in fact promotes human rights, the HRU has been placed under the wing of the Deputy Secretary General for Political Affairs and is now strategically placed to mainstream human rights across the Secretariat. Its sanctioned staff has been increased to a director, two programme officers and two administrative staff who should all be in place by March. CHRI welcomes the recent appointment of Mr. Hanif Vally as the new Director. Mr Vally originally from South Africa has been working at the secretariat for three years and comes from an NGO background in South Africa that litigated cases of human rights abuse.