



**South Asia Regional Workshop on
Security and Liberty: Linking Counter-
Terrorism and Human Rights**

**March 15-16, 2007
New Delhi**

On March 15 and 16, 2007, Observer Research Foundation, New Delhi, and the Center on Global Counter-Terrorism Cooperation of the Fourth Freedom Forum, USA, convened a two-day workshop, "Security and Liberty," which examined the relationship between human rights and counter-terrorism. The workshop included approximately 25-30 participants, drawn principally from India, Bangladesh, Sri Lanka, Pakistan and Nepal. Participants included counter-terrorism practitioners and former security officials, judicial experts and officers, experts and former officials experienced in human rights training and/or monitoring, and representatives of the media.

The workshop explored the inherent linkages between respect for human rights and effectively combating terrorism as well as the tensions which frequently emerge between these two concepts in practice. It used the United Nations Global Counter-Terrorism Strategy (Strategy), adopted in September 2006, as a basis for the discussions. The Strategy not only reaffirms that counter-terrorism efforts must respect human rights and the rule of law but declares that the promotion of those principles in their own right is a critical element in effectively addressing terrorism. The discussions centered on the practical implementation of those concepts and focused largely on the lessons learned by India and its South Asian neighbors in their long history of dealing with both internal and cross border political violence. The participants emphasized that there is no contradiction between respecting human rights and the rule of law, and effectively combating terrorism. Rather, the consensus was that good governance and respect for human rights are key to effectively combating terrorism. The workshop addressed four broad aspects of human rights/counter-terrorism policy: i) police and security force practices, ii) legislation and judicial practice, iii) human rights monitoring, and iv) role of the media.

This Chairmen's Report highlights some of the themes and recommendations put forward during the workshop, without representing the official views of any individual participant.

Chairmen's Report

I. Police and Security Forces

1. Former security officials present stressed the commitment of the Indian security services to protecting human rights and promoting the rule of law. Lessons have been learned and applied to encourage greater restraint in the use of force. Human rights training and awareness programs have been established.

2. Counter-terrorism operations can impose severe burdens on the security services and may place military forces in roles for which they have not been properly trained and equipped. At times, poor leadership, combat stress and taxing conditions (such as long deployments), political pressures, the fog of war, and provocations from extremists can create difficult operating conditions.

3. Human rights training should be reinforced down the chain of command and particularly so for military and security forces being deployed in counter-terrorism/counter-insurgency roles. Participants cited several examples from the Indian experience of how this is being achieved, including:

- the establishment of human rights cells with the military;
- the issuance to service members of a “ten commandments” code of conduct with best practices for operating against armed insurgents and terrorists; and
- specialized and ‘local social and combat environment orientation training’ of forces deployed in counter-terrorism/counter-insurgency roles.

4. The primary response to terrorism should come from the law enforcement and criminal justice systems, rather than the armed services. Efforts should be made to strengthen the capacity of law enforcement and the criminal justice systems, including by providing training and increased financial and human resources, as well as protection for witnesses and other individuals involved in terrorism prosecutions. When military and security forces are required to intervene, they should do so only with appropriate legal authority.

5. Human rights aberrations and violations of the law have a negative impact on counter-terrorism operations. When they occur, they must be acknowledged and dealt with swiftly and transparently, according to the law, and without any attempt at cover up.

6. Rigorous efforts to respect human rights and the rule of law at times may constrain tactical operations, but at the strategic level these efforts are essential for the effectiveness of counter-terrorism programs.

7. Participants agreed that combating terrorism necessarily involves the security services but that other key elements of effective counter-terrorism include:

- winning hearts and minds, e.g., building community support and “people friendly operations;”
- employing ‘use of minimum force’ principle in the rules of engagement ;
- ensuring respect for human rights and the rule of law; and
- addressing social, political, and economic conditions conducive to the spread of terrorism.

II. Legislative and Judicial Practices

8. International humanitarian and human rights law provides the general framework within which states must strike their own balance between security and liberty. Domestic counter-terrorism legislation must be consistent with the global counter-terrorism framework embodied in the UN Strategy. Participants also noted that where domestic legislation may be lacking, the international counter-terrorism framework can help to fill legislative gaps.

9. Most participants agreed that dealing with terrorism requires ‘special’ legislation beyond normal criminal law to provide the military and security forces with necessary legal authority and investigative tools and ensure the prosecution of terrorist suspects.

10. Certain participants argued that basic criminal law should be sufficient to combat terrorism and that the authority granted by ‘special’ counter-terrorism legislation has been abused by some governments.

11. All participants agreed that any ‘special’ anti-terrorism legislation must provide for transparency and accountability and comport with international standards and obligations, in particular international humanitarian and human rights law. “Sunset” clauses should be provided to ensure that special measures do not become permanent.

12. The judiciary provides the most effective check on potential abuses of authority granted under counter-terrorism legislation. Although legal traditions

differ on the specifics, common characteristics include the right to a fair trial in civilian courts, an independent judiciary, the absence of intimidation, and the right to legal representation.

III. Human Rights Monitoring

13. Human rights monitoring mechanisms, both governmental and nongovernmental, have critical roles to play in conducting oversight at the local, regional and international levels to ensure that counter-terrorism efforts uphold human rights and the rule of law.

14. Participants with military backgrounds observed a correlation between effective oversight, good leadership, respect for human rights and the overall effectiveness of forces involved in counter-terrorism operations.

15. Internal monitoring mechanisms within the military and security services can be effective in ensuring respect for human rights and the rule of law. Peer monitoring has a degree of credibility within the military that outside groups do not possess and can help to build a culture of respect for human rights.

16. External monitoring mechanisms, such as national human rights commissions and other governmental and nongovernmental groups, are also essential and offer greater credibility than internal monitoring mechanisms.

17. Civil society and NGOs also have an important, independent monitoring role to play, although it is important that they avoid frivolous and unjustified allegations of human rights abuses.

18. Monitoring mechanisms should look not just at the actions of the military, law enforcement and other security services, but should also lay down guidelines, conduct investigations, award compensation for victims of abuse, scrutinize counter-terrorism legislation, and generate awareness of human rights issues generally.

19. Human rights monitors can help draw attention to underlying grievances which can contribute to terrorism and provide a constructive outlet for the expression and redress of those grievances.

IV. Media

20. The media has been instrumental in volatile areas throughout South Asia both in drawing attention to insurgent and other violent political movements as well as shedding light on abuses by government forces in their efforts to counter those movements. The primary role of the media should be to provide accurate, objective information to the public, though many participants cautioned that this does not mean giving equal play to terrorist perspectives.

21. Terrorist groups have proven relatively adept at exploiting the media, particularly new media such as the Internet, as means for communicating, recruiting and disseminating propaganda. Most participants agreed that government officials have been slow to react to terrorist exploitation of new media and even slower in their own efforts to make use of those technologies.

22. It was agreed that a freer flow of information between the media and the military would benefit both by improving the quality of reporting on counter-terrorism efforts and enhancing the public credibility of the military and security services.