

Prolonged SOEs, ZOSOs Threaten Human Rights

Richard Lynch | December 11, 2019



'Earth a Run Red' by Richie Spice, released in 2000, is certainly relevant to 2019. For the past few years, the state of violent crimes in our country is at a record high. The need, therefore, to protect our people is not just obvious but urgent and of the utmost importance. Whereas, upholding the right to life, enabling people to live, move and to do business freely are all tasks in the purview of the Government.

Such tasks should not be achieved by any means. There must be a balancing exercise – the provision of security of person, property and family, on the one hand, and the restriction of those same rights to give such security on the other hand.

The Constitution provides for a state of public emergency (SOE). It is a temporary measure. It should be applied in exceptional circumstances such as natural disasters, or times of war or other circumstances threatening public safety. It essentially should be used as a shield and not a sword. It is a reactive tool rather than proactive. During an SOE, only three of the fundamental rights guaranteed by the Constitution may be suspended – freedom of movement, freedom of person and the right to due process.

A prime example of an SOE which was implemented in our nation's history is the 2010 extradition of Christopher 'Dudus' Coke. Three days' worth of mayhem reigned across the island but was concentrated in a particular area. There were brazen attacks on police stations and several lives were lost. The SOE implemented by the government during that time was therefore clearly for a legitimate and exceptional purpose. It lasted for only one month.

This was unlike the SOE imposed by the government from 1976-1977, at which time the then prime minister, Michael Manley, advised the governor general to declare an SOE because of reports that there were attempts to overthrow the government. The ongoing political violence was also used to justify the extension of the SOE for months. However, as time went on, it then became clear to some persons, particularly supporters of the opposition party, that they were being arbitrarily detained under the SOE.

It is against that background that we must ensure that the threshold for the triggering and extension of emergency measures is not significantly lowered. We do not want a repeat of 1976. Ironically, some of those who now sit in power would have had first-hand experience with being unduly treated in an SOE. Hopefully, experience shall teach wisdom.

DETENTIONS ARE RANDOM

It has been two years now since the declaration of the SOE coupled with the zones of special operations (ZOSOs). There has been an implementation of the emergency measures in particular geographic areas in response to high incidents of crime. However, isolated acts of violence cannot be considered a threat to the nation's public safety so as to justify the use of emergency measures.

It, therefore, begs the question: are the emergency measures being implemented as they ought to be and in keeping with our Constitution?

What also cannot be ignored is the abuse or potential abuse of the power by the security forces under the SOE and ZOSO. During the SOE, numerous persons have been detained for relatively long periods of time but only a small percentage of those persons have been charged. This suggests that detentions are random and not guided by any credible information. Prolonged detention without charge or trial violates the right to be free from arbitrary detention and other fair trial rights, such as the presumption of innocence. Persons detained and released should have prompt access to remedies for damages or hardships resulting from arbitrary arrest.

To the Government's credit, it can be argued that there is value in the implementation of the SOE and ZOSO. The suddenness of its impact disrupts criminal activity. However, the danger is that criminal elements will become accustomed to it. Familiarity breeds contempt. The prolonged implementation of the SOE therefore dilutes its effect to the point where it becomes a norm. It is simply a short-term solution that brings short-term resolutions.