

## **WHAT IS THE NEW SOUTH AFRICA DOING WITH ANTI-TERRORISM LEGISLATION?**

Anwah Nagia

Today, almost 7 years after its adoption, we are faced with the real prospect of our celebrated new constitution being undermined by the very people who so valiantly fought and died for it. This is due to the government's rushed attempts to adopt and implement the proposed Anti-Terrorism legislation.

We will be failing in our duty not to reflect on the repressive legislation that was imposed by the previous oppressive regime on liberation movements during the era of the struggle. This period witnessed banning of organisations and persons, detention without trials, torture, maiming, disappearance of comrades, lengthy imprisonment and the suppression of freedom of expression and movement. Today we are still witnessing the exhumation of mass graves of murdered comrades at the hands of the exponents of the previous repressive regime. The world condemned these callous and inhumane deeds that were the motivation of our freedom struggle and still condemn them today. It should be noted that some of the perpetrators of these deeds still roam freely today because of the sunset clause negotiated before 1994. In spite of this, there can be no moral or ethical justification to go back to the dark old days of apartheid by trying to implement legislation that is in a way an improvement on the atrocities of the past.

What then is the justification by the government of the day to introduce anti-terrorism legislation? They assert that fundamentalism (as defined by them) must be stopped as

it poses a threat to the total security of the nation. Several examples, locally and internationally, can be cited. In America, “Islamic fundamentalism” has been branded a threat to national security - the bombing of the World trade centre was blamed on Sheikh Omar Abderrahman, who is an Egyptian Cleric. In Britain the Lockerbee Air disaster was blamed on two Libyan “fundamentalists”. In South Africa the PAGAD (People Against Gangsterism and Drugs) movement has blatantly been demonised and proclaimed to be a threat to state security as articulated by some of it’s senior cabinet ministers in portfolios such as Justice and Safety and Security.

It can be said without any fear of contradiction that the actions taken against the PAGAD movement in South Africa is unconstitutional and apes all the contents and intentions the new Anti-Terrorism Bill hopes to achieve. It must be noted that even though this bill has not been passed yet, various aspects of it have already been implemented.

Let us now visit the proposed Bill. I will outline some of its key aspects and then briefly comment on them. I will also consider the implications of the proposed international co-operation on such legislation. According to the bill, a terrorist act means: “ *any act which does or may endanger the life, physical integrity or freedom of any person or persons, or causes or may cause damage to and is calculated or intended to:*

1. *Intimidate, coerce, or induce any government or persons, the general public or any section thereof,*

2. *or disrupt any public service, the delivery of any essential service to the public or create a public emergency,*
3. *or create unrest or insurrection in any state.*

The definition by its very nature outlines all the things the liberation movement had been subjected to by a government that implemented draconian legislation against its people. The resistance of liberation movements in the past in light of such legislation was legitimate, and in my opinion, will remain so even today if the present government espouses similar practises.

According to the bill a Terrorist Organisation is:

*“ an organisation which has carried out, and is carrying out or plans on carrying out terrorist acts.”* It would appear that certain organisations have been prematurely categorised as terrorist organisations by the nature of the state’s response to them. Our concern remains that if people and organisations express their dissatisfaction, is this the repression they will be facing?

Membership to a Terrorist Organisation is treated as follows:

*“ any person who becomes or is a member of a terrorist organisation commits an offence and is liable for conviction and to imprisonment for a period not exceeding five years without the option of a fine”* The fear one has for this broad definition is that members of the oppressed community, in wanting to express their freedom of association, may be intimidated by the law not to join progressive movements.

Custody of persons suspected of committing Terrorist Acts is described as follows:

*Whenever it appears to a judge of a High Court on the ground of information*

*submitted under oath by the Director of Public Prosecution that there is reason to believe that any person possesses or is withholding from a law enforcement officer any information, regarding any offence under this act, the judge may at the request of such a Director issue a warrant for the detention of such a person subject to the conditions the judge may determine. The person will be held for 48 hours and then be brought before a judge and will be detained for a further five days without bail or any reason.*

It must be noted that the accused can be held for a total period of 14 days before being formally charged. When charged the accused must be ready for trial in a time period not exceeding 90 days, failing which, the state will commence its case against the accused. The director of Public Prosecution can obtain various warrants of arrest for persons. The warrants can hold for 28 days in which he is at liberty to arrest these particular persons. A question that must also be asked is why should people in this day and age be held for interrogation for a period of 14 days. This kind of action was always condemned by any civilised society.

Wrongful arrest is dealt with as follows:

*If a person is stopped and searched he or she is entitled to obtain a written statement as to why he or she has been arrested. The state can give a reply within a 12-month period for such wrongful arrest.*

Support for Terrorist Organisations is described as follows:

*Any person who provides material or logistic or organisational support or any resources or conceals or disguises the nature, location, source or ownership of such*

*resources participates in activities of such organisations and will be committing an offence and is liable for conviction and imprisonment for a period not exceeding 10 years without the option of a fine.*

Does this mean that the support for populace movements and movements that will take up the plight of the poor and oppressed cannot be supported? Certainly the masses in this country must decide for themselves what a terrorist organisation is.

Nuclear Terrorism is described as follows:

*Any person who unlawfully and internationally possesses radioactive material or designs or manufactures a device intent to cause death or serious bodily injury or to cause substantial damage to property or the environment or to compel a natural or juristic person of an international organisation or state to commit a terrorist act commits an offence.*

Surely, on the basis of the above, the US and Israel must be branded as nuclear terrorists as they possess weapons of mass destruction and they are forcing other nations – India / Pakistan and Russian to decommission and destroy. These double standards in our country's attitude must be questioned.

Implications of International Co-operation on the Bill:

Sadly, due to international co-operation on the bill, we will witness the following:

1. The OAU, a signatory to this agreement will not allow any exiles or political asylum to be sought by any progressive persons or movements as a consequence of their struggles for freedom. Any country in the OAU will

not give material or logistical support to any person or organisation seeking to pursue the legitimate liberation of the people of their country.

2. The signing of an Arab Anti-Terrorist Agreement. The tightening up of preventative rules and continuous exchange of information between the Arab countries i.e. no funding for terrorism and no protection for terrorists.
3. European Convention on Extradition. The Council of Europe has signed these international agreements which will oblige most European countries to block refugee and exile status into Europe.

I have only provided a very brief introduction to the proposed anti-terrorism legislation in this article. In conclusion, it is important to state that the objections raised to the proposed legislation should certainly not be interpreted as condoning the terror that our communities have been subjected to by illegitimate governments and through institutionalised violence. I most certainly condemn such actions in the strongest terms, whether they occur locally or internationally. What I fail to see and come to terms with is the timing of this proposed Bill in South Africa. Can it be the preparation for curtailing political expression that will challenge the New World order and the sustenance of capitalism? I personally see no need for this Bill, as there are sufficient laws in existence that can adequately be implemented to deal with threats against the state.