

The role of (Muslim) civil society in resisting the Anti-terrorism bill

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INTRODUCTION

The South African civil society response to the Protection of Constitutional Democracy against Terrorist and Related Activities Bill (2004), known initially as the Anti-Terrorism Bill (ATB), raises a number of critical questions around the effectiveness of a minority sector of this civil society, i.e. the Muslim community acting in concert with broad based civil society, in resisting the implementation of a controversial bill. The outcomes of this particular process arguably have implications for how Muslim civil society may respond to similarly proposed legislation in future. It is thus useful to reflect on the dynamics of how this minority community is responding to a multitude of evolving political situations that impact on them, in post-apartheid South Africa.

This paper attempts to analyse the nature and context of, primarily the Muslim public's engagement with the ATB, by firstly tracing very briefly, its history, and then examining the levels of resistance to the bill. While not the focus of this paper, it must be noted that broader civil society played a significant role in resisting the ATB, resulting in participation in the process being broadly divided into two categories; i.e. involvement by sectors of the Muslim community and a loose coalition of journalists, unionists, NGOs and activists. This distinction does not reflect the view that there was no confluence of engagement between these groupings, rather that submissions on the bill were generally made along specific group interests.

It could be argued that the attacks on the United States on September 11, 2001 served as a catalyst for many countries, particularly the US and the United Kingdom, and South Africa at a later stage, to consider introducing additional legislation to deal with terrorism. In the case of SA, the government's argument that the then ATB would bring the country in line with similar international legislation was met with public anger and discontent from the time of the introduction of the draft bill in 2002. The resistance stemmed primarily from the fact that draconian powers would be given to law enforcement agencies to investigate and deal with acts of terror. This in itself

recalls the dark days of apartheid where state repression in South Africa resulted in liberation movements being labelled as terrorist groups, and being persecuted through the various organs of the state. The vague description of 'terrorism' further fanned fears that the ATB would seriously impact on civil liberties such as the freedom of association, expression, assembly and demonstration.

Given also the experiences of the Muslim and other minority communities in the US, in the wake of such legislation being introduced, illustrated the dangers of these laws being effected. The South African public was understandably nervous about having its own civil liberties curtailed yet again, after years of such treatment under apartheid.

These incidents in the US and elsewhere, clearly provided sufficient motivation for those groups feeling potentially most affected, to act. As a result, South African Muslims, together with a range of other interest groups such as COSATU, one of the country's largest labour union federations, were propelled to undertake a sustained campaign to challenge and engage the government on this bill.

BRIEF CHRONOLOGY OF THE BILL

In September 2002, the Department of Safety and Security introduced the draft ATB for comment and scrutiny. At this point a number of human rights organisations opposed the bill, arguing that it was fundamentally flawed. What was at issue, were the many archaic provisions that would significantly curtail civil liberties guaranteed in our Bill of Rights. The initial demand by some, including the Muslim community, was that the bill be completely shelved, which the government did not deem feasible. The next course of action for detractors was to actively engage around demanding changes to technical aspects of the bill.

A revised bill, with shortened content and a removal of some problematic clauses, was then placed before parliament in March 2003. However, as the excerpt from the Freedom of Expression Institute (FXI) below indicates, the revised version was not without problems:

“The Freedom of Expression Institute in concert with a range of other Human Rights organisations opposes the introduction of this legislation in South Africa. Firstly, the bill itself is fundamentally flawed and the logic behind its motivation curious. Furthermore, the process followed in drafting this legislation is highly questionable as no discussion document was published neither was there proper consultation done by the South African Law Commission with the various stakeholders. Because terrorism is an offence that attracts some of the severest penalties known in law, it would have been thought that the bill would at least attempt to provide a simple, clean and unambiguous definition of the term ‘terrorism’. Unfortunately this has not been done and on the contrary the bill presents a vague and incomprehensible definition of what it means by ‘terrorist act’, which it defines as “ ... an unlawful act ... that is likely to intimidate the public or a segment of the public.”¹

Interestingly, a number of organisations also argued that the State had 22 pieces of existing legislation to cover crimes and activities covered by the ATB.² This was one of the more significant arguments raised by the various groups and it effectively informed and shaped the foundation of the objections to the introduction of the bill.

In the latter part of 2003, indications were that the bill would be fast-tracked through parliament. However, COSATU’s intervention disrupted the process, arguing that strike action would be seen as “terrorist action” in terms of the construction of the bill. The April 2004 elections halted any progress on the bill, but thereafter it was once again revised, taking into account COSATU’s concerns, and reintroduced to parliament. A compromise was reached with COSATU, and the bill was renamed and unanimously passed in November 2004.

MUSLIM RESISTANCE OF THE BILL AT NATIONAL LEVEL

The most prominent faith based group in the coalition resisting the bill, was the Muslim community. The horror of the experiences of the Muslim community in the US and in other parts of the world, was clearly an indication to South African based Muslims, that they could not allow such legislation to be passed without challenging its proposed draconian measures, which would put them first in line as targets, should the bill be passed in its original form. No doubt the stereotyping of all Muslims who participate in legitimate resistance struggles and campaigns, as terrorists, has become the single most politically sensitive issue of the day, and challenging this idea remains an ongoing ideological battle.

The extreme measures with which the US based Immigration and Naturalisation Service (INS) authorities dealt with minority individuals after September 11, were daunting. US residents from minority groups, particularly men of Arab, Muslim and South Asian origin were simply detained, without being charged, or allowed access to legal counsel. No explanation was given in many instances; many were arrested and refused trial. It was only after sustained protests from the public and human rights groups that the authorities relented, but there are still some individuals incarcerated unjustly, simply because they are Muslim, or of Arab or South Asian descent. If any of these individuals were found to have sent money to the Middle East or Asia, even for charitable causes, they were immediately suspected of channelling money to 'terrorist' organisations. These incidents arguably galvanised the South African Muslim community's engagement on this issue, producing a somewhat unprecedented level of political involvement by Muslim citizens at a national level.

The South African Muslim initiative drew from a broad spectrum of the Muslim community. A range of Muslim organisations played an active role in making submissions and supporting the national initiative around the bill. These included the following organisations based across the country;

Islamic Medical Association (IMA)

Jamiatul Ulama (KZN)

Muslim Judicial Council (MJC)

Sunni Jamiatul Ulama (SA)
Muslim Youth Movement (MYM)
Jamaitul Ulama, (Gauteng)
Council of Ulama Eastern Cape
Association of Muslim Accountants and Lawyers (AMAL)
South African National Zakaah Fund (SANZAF)
Human Rights Foundation
Institute for Islamic Services
Red Crescent Society of South Africa
Media Review Network (MRN)

A cursory glance at the above list reveals that these are primarily religious organisations, with IMA and AMAL also representing professional interests. It would seem that as faith based groups, the level of public participation by Muslim organisations is (expectedly) located within a predominantly religious framework.

Jeppie and Vawda (2004) point to the fact that the ATB was a major area of concern for Muslim civil society, and they urged the President not to pass the bill.³

A submission made by the above organisations to President Mbeki in November 2003, noted that;

“There is no place for such legislation in the new, democratic South Africa. Our government should be the first to OPPOSE a bill of this type because it goes against everything that the freedom struggle stood for. If the liberation movements, during the apartheid days, were judged today under this bill all would be condemned as terrorist organizations. If the ATB is passed here, no South African will be able to support in ANY way ANY of the liberation struggles presently being waged in many parts of the world. This is hugely ironical because virtually the entire world supported the South African freedom struggle. We are told that the ATB is needed here in order to deal with groups like Pagad and the Boeremag. Both these groups have been apprehended without the bill. It took good police work, not new laws to achieve this. However, we must

emphasize that if measures are contemplated to tighten up domestic security we will certainly be supportive of such moves provided they don't infringe on civil liberties.”⁴

The letter clearly indicates the concerns felt by the Muslim community; that supporting genuine liberation struggles globally would be severely hampered by such a bill, as would the undertaking of local protests, which had effectively been the hallmark of the anti-apartheid movement.

EFFECTIVE PUBLIC PARTICIPATION IN ADDRESSING LEGISLATIVE REFORM

While a broad spectrum of Muslim civil society formations were involved in resisting the bill, it can be argued that the participation of some broad based organisations were more effective, for a wide range of reasons. de Villiers (2001) reminds us that, “public participation is about access to power and decision makers. In most systems, certain people or interests have greater access to power and decision makers than others.”⁵

The submissions made by the Muslim community were primarily informed by the kinds of harassment and unfair victimisation that Muslims face at a global level, in a post 9/ 11 context. Other groupings were not subjected to this kind of treatment, and hence their participation was located within the context of the potential compromise of certain rights guaranteed by the South African constitution, in some ways contributing to their resistance being more effective.

The crux of the ‘Muslim concern’ was the possibility of being identified as “terrorists” because of their historical support for global issues such as the liberation struggles of the Palestinians, Chechnyans, Kashmiris, and more recently, the Iraqis. Moreover the fear was that their financial contributions to organisations supporting the struggles in the above countries would be severely constrained. In addition the threat of arrest, detention without trial, and such drastic measures should, for example,

individuals be found to be in possession of materials promoting certain causes, was also seen as compromising essential rights to freedom of expression and association.

The submissions made by the second category, while alluding to some of the concerns expressed by the Muslim coalition, went further to argue that radical and progressive activities entailing criticism of neo-liberal interests could easily be labelled as 'terrorist activity'. Dale McKinley, a well-known social activist argued that; "The ANC government can easily label 'unlawful' dissent as terrorism."⁶

The effectiveness of the resistance offered by COSATU can be attributed to the fact that they are a powerful, well-organised formation, with a long history of political dissent. Moreover, the fact that COSATU is a significant part of the national tripartite alliance helps locate its critique as serious and strategic. Bearing in mind the political ramifications, the government could not afford to introduce legislation seriously at odds with a powerful trade union movement, having the support of the vast majority of organised workers in the country.

While the submissions from the Muslim community played a very significant role in resisting the bill in its original state, it soon became clear that the influence of the trade union was going to be more substantial in shaping the final version of the bill, partly because of their power to paralyse the effective functioning of the country. The fact that COSATU has broad-based support from working masses, no doubt had greater impetus in convincing government to revise technical aspects of the bill.

Essentially the non-faith based groupings engaged with the issue, largely within the context of class interests, whereas Muslim civil society did not, to any significant degree. However, it should be noted that there were individuals in Muslim civil society formations who were sensitive to the issue of class and did indeed tackle it. Habib's (2003) reference to the emergence of black civil society actors is also particularly significant in view of the role played by COSATU as a representative of majority black, working class interests.⁷

In so far as Muslims attempted to tackle a piece of national legislation that could impact on the hard fought for democratic rights of South Africans, there can be very

little doubt, that the constitution of the nation ultimately served to advance the interests of citizens and not those of the political elite. Muslim civil society proved that, despite some limitations and its minority status, it is an organised force prepared to engage the State in ensuring that Muslims continue to be located as significant role players in South Africa's democracy. This is, in itself, a powerful political commentary on how South African society has evolved ten years into a democratic dispensation, and in particular, it illustrates how certain sectors of civil society can exercise community resources at their disposal to articulate substantive outcomes.

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ENDNOTES

¹ Press statement issued by FXI, March 24, 2003

² See Saber Jhazbhay's document and COSATU's submission

³ Jeppie S & Vawda G (2004) *Multiple communities: Muslims in post apartheid South Africa*. In J Daniel, J Lutchman & R Southall (eds.) *The State of the Nation 2004-2005*. Cape Town: HSRC Press.

⁴ This was part of a letter submitted to President Mbeki, in November 2003, authored by Mr. A. Dawjee, a media personality based in Durban and written on behalf of the listed signatories

⁵ de Villiers, S, 2001: *A Peoples Government. The Peoples Voice*, Cape Town: Parliamentary Support Programme, pp 27

⁶ McKinley, D, *South Africa: Anti-Terrorism Bill to "Terrorise" Left*, Green Left Weekly, May 14 2003

⁷ Habib A (2003): *Relations between civil society and the State*. In J Daniel, A Habib & R Southall (eds.) *The State of the Nation 2003-2004*. Cape Town: HSRC Press.