South Africa: ANC government pushes through draconian anti-terrorism legislation

Barbara Slaughter
9 November 2001

The South African government has used the September 11 attacks in the US in order to push through new anti-terrorism legislation reminiscent of the draconian laws of the apartheid era. Ministry of Safety and Security spokesman Andre Martin stated, "We have offered our support to the Americans in the global fight against terrorism and the fact we do not yet have an anti-terrorism law has put us under pressure."

Earlier this year, Safety and Security Minister Steve Tshwete argued that the new legislation was necessary because the lack of specific anti-terrorism laws made South Africa a "safe haven" for international terrorists and fugitives. But the legislation had been under discussion for the past two years and its significance goes far beyond any threat from terrorism.

At Tshwete's request, the hated South African Police (SAP) drafted the Anti-Terrorism Bill more than a year ago. It was then submitted for discussion to the South African Law Commission, which initially questioned whether the new legislation was necessary. However they justified the proposals by claiming the government was following an international trend to create specific laws to deal with terrorism.

In an attempt to make the Bill more palatable, the Commission proposed certain amendments, but the amended legislation still recalls the draconian laws of the apartheid era.

The new definition of a "terrorist act" covers a huge area of activity, including any that may "cause damage to property... or disrupt any public service [or] the delivery of any essential service to the public [or] create unrest." This means that strike action that results in damage to property or the disruption of essential services could be defined as a terrorist act. The "creation of unrest" could include any political activity in opposition to the government. Anyone convicted of a terrorist act could face imprisonment of up to 20 years.

A terrorist organisation is defined as "an organisation that has carried out, is carrying out or plans to carry out terrorist acts". Martin Schonteich, a senior researcher at the Institute of Security Studies has pointed out, "Given the broad definition, such a provision could be used to criminalise the actions of a wide range of people. It could apply to all members of a taxi organisation that organised a street blockade, whether the members were involved in the blockade or not. Moreover, to secure a conviction, the state would not have to prove that an accused knew that he was a member of a terrorist organisation. The state would merely have to prove membership of such an organisation." The penalty will be five years imprisonment.

The police will have new powers to stop and search "any vehicle or person" for any "article that could be used in connection with terrorist activity". The bill specifically states that a police official may exercise these powers "whether or not he or she has any grounds for suspecting the presence of such articles." Failure to stop will carry the penalty of six months imprisonment.

The original police draft contained a section on sabotage, which the Law Commission wants to strike out. If it is retained, "sabotage" would include any act that "interrupts or impedes" the manufacture or distribution of fuel, energy, light, power or water. Similarly it would be sabotage to "cripple... or interrupt... the supply or distribution of commodities or foodstuffs". This will make any effective industrial action an offence under the anti-terrorism laws. Conviction carries a penalty of up to 20 years imprisonment.

The Bill "imposes a duty on people possessing information which may be essential for investigating any terrorist act to report such information to the police." Failure to do so could mean up to five years imprisonment.

One of the Bill's most ominous provisions is that a judge can order 14 days' detention of any individual who is believed to "possess, or is withholding, information regarding any offence in terms of the Bill". An individual's right to silence, which is at present protected under South African law, will be removed. A suspect may be interrogated "until he has satisfactorily replied to all questions under interrogation". The original proposal from the SAP went

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even further, calling for a period of up to 30 days detention without charge.

Under South Africa's present constitution, nobody can be detained without charge for longer than 48 hours. Tshwete has called on parliament to amend the constitution to extend the 48-hour rule and to restrict a suspected terrorist's access to legal representation.

The Law Commission report comments, "Tshwete's aim appears to be to increase the ability of the police to take action against suspects against whom they have little or no proof in the hope of 'breaking them down' and extracting confessions...

"Breaking down someone's defences requires a long time—perhaps a week, perhaps a month, perhaps, as was the case under the states of emergency in the '80s, six months or more. And even then, breaking someone down will not happen by isolation alone. There must be menace, and the threat of the use of force.

"Lawyers buzzing in and out of police cells will not be useful while this form of detective work is under way, so Tshwete has proposed that the legal access of suspects be limited."

The Bill has unleashed widespread concerns in South Africa. Human rights groups are particularly worried about the proposal for detention without charge. Human rights lawyer George Bizos told the *Sunday Times*, "I would oppose any detention for the purposes of interrogation."

Detention was one of the chief weapons used by the apartheid state against the ANC and other opposition groups. In 1966, the General Laws Amendment Act enabled "suspected terrorists" to be detained for 14 days for interrogation purposes. This was increased to 90 days, then to 180 days and finally to an indefinite period. The final report of the Truth and Reconciliation Commission demonstrated that there was a definite link between these detention-without-trial provisions and the systematic use of torture to extract information and false confessions.

The Law Commission's report on the new Bill includes warnings about the use of horrifying torture under apartheid. It lists the various techniques used by the police, including beatings, sleep deprivation, maintenance of forced posture, suffocation, hanging by the arms, as well as sexual abuse and solitary confinement. It points out that "torture as practised by member of the SAP constituted a systematic pattern of abuse which entailed deliberate planning by senior members of the SAP and was a gross human rights violation." Joint cooperation agreements were organised with the repressive regimes in Chile, Argentina and Taiwan, which led to further training and exchange of ideas and experience.

The Truth and Reconciliation Commission, led by Archbishop Tutu, preached forgiveness, but the police force that carried out institutionalised torture under apartheid remains in place today. The Tutu Commission was used to provide a safety valve for the anger of the working class against the police, and left the majority of the perpetrators in office.

There is evidence of torture being practised by the SAP today, even before the introduction of the new measures. The annual report of the Independent Complaints Directory (ICD) for 1999-2000 reported 28 allegations of police torture between April 1999 and March 2000. The ICD received 4,380 complaints against the police, including 209 relating to the death of suspects in police custody.

In a press statement in April 1999, Amnesty International drew attention to the involvement of the South African security forces in human rights abuses. These included "beatings during raids on homes or after arrest, the infliction of cigarette burns, electric shocks and suffocation torture on detained suspects, and the indiscriminate use of police dogs to inflict serious injuries on arrested or fleeing suspects."

In its warnings about the new law, Amnesty International has stated, "the depth and persistence of abuses in the past strongly suggest that the reintroduction of the power to detain without charge carries the grave risk of a repetition of the past pattern of human rights violation. The likelihood of repetition is increased by the reality that torture still occurs in South Africa, primarily in the context of criminal investigations."

Whilst there have been bombings over the past three years in the Western Cape region of South Africa, even the Law Commission was forced to point out that such acts of terrorism could be adequately prosecuted under existing law. But the ANC government is aware of the rising tide of opposition to its rule amongst the South African working class. Seven years of ANC government have resulted in the enrichment of a small elite of black businessmen and politicians, accompanied by increased poverty and unemployment for millions of workers and their families.

During the past year there have been widespread strikes and protests against the assault on jobs and working conditions, and against the government's privatisation policies. The new anti-terrorism legislation is an attack on the hard-won democratic rights of the working class, in order to strengthen the powers of the state and defend the rule of capital.

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