

TERRORISM, PUBLIC POLICY AND DEMOCRACY IN SOUTH AFRICA

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ABSTRACT

The democratic government of South Africa, after 1994, formulated a new official policy on terrorism. Stemming from this policy it undertook an overall review of security legislation, and promulgated a comprehensive counter-terrorism law, namely, the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004* (Act No 33 of 2004). The legislative process took an entire decade to conclude and was met with stiff opposition from human rights and civil society groupings. The critical engagement between legislators and organs of civil society ensured that a delicate balance was struck in legislation between respect for human rights and civil liberties and the effective prevention and combating of terrorism.

1. INTRODUCTION

Shortly after coming into power in 1994, the democratic government in South Africa spelt out a new official policy on terrorism. Based on this policy it undertook an overall review of security legislation, and promulgated a comprehensive counter-terrorism law entitled, the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004* (Act No 33 of 2004). The legislative processes took an entire decade to conclude. It was fraught with difficulties and was met with active opposition from human rights and civil society groupings. The process had begun in November 1995, when the former Minister of Safety and Security, Steve Tshwete, requested the

*Based on a mini-dissertation for the Masters of Security Studies Degree, completed in the Department of Political Sciences, University of Pretoria, under the supervision of Prof M Hough, Director of the Institute for Strategic Studies, during 2006.

South African Law Commission (SALC) to undertake a comprehensive review and rationalisation of security legislation.¹⁾ Subsequently, the SALC appointed in 1998 the Project 105 Committee to undertake this task.²⁾

By this time, however, the South African Police Services (SAPS) had conducted initial research on the matter and had already prepared a draft *Anti-Terrorism Bill*. This became the basis of the SALC's *Discussion Paper 92* which was released in August 2000 for public comment.³⁾ This was followed by the publication by the SALC of its research findings entitled, *Report on the Review of Security Legislation — Terrorism: Section 54 of the Internal Security Act, 1982 (Act No.74 of 1982)*. Subsequently, the *Anti-Terrorism Bill* (12B-2003) was introduced in Parliament. After a lengthy parliamentary procedure, the *Protection of Constitutional Democracy against Terrorist and Related Activities Bill* (12F-2003) was adopted by Parliament in 2004. The President finally assented to the Act in March 2005.

This article outlines the official policy on terrorism of the government of South Africa; lists security legislation of the previous era that remained on the statute books after 1994, which could be utilised to counter terrorism; highlights the SALC's review of security legislation and legislative proposals relating to terrorism; discusses the role of Parliament in processing the *Anti-Terrorism Bill* (12B-2003) after receiving extensive public responses to the Bill; and evaluates the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004* (Act No 33 of 2004).

2. POST-1994 OFFICIAL POLICY ON TERRORISM

Shortly after coming to power in 1994, the South African government adopted a new policy on terrorism. It condemns all forms of terrorism. It would take all lawful measures to prevent acts of terror and to bring to justice those who are involved in terrorism.⁴⁾ In countering terrorism it is committed to upholding the rule of law; never resorting to any form of general and indiscriminate repression; defending and upholding the freedom and security of all its citizens; and acknowledging and respecting its international obligations in respect of com-

bating terrorism.⁵⁾ The Government also declared its intention to introduce new legislation to counter terrorism.⁶⁾ It undertook to protect foreign citizens from acts of terror in South Africa. In the event of a terrorist incident occurring in a foreign country and involving a South African citizen, it would co-operate with the host government to investigate the incident. It is emphatic about not making any concessions that could encourage extortion by terrorists and not to allow its territory to be used as a haven to plan, direct or support acts of terror. It declared its willingness to support and to co-operate with the international community in its efforts to prevent and combat acts of terror; use all appropriate measures to combat terrorism; and support its citizens who are victims of terrorism.⁷⁾

This policy is based on the fundamental principle that terrorism should be countered without sacrificing or unduly impinging on the civil liberties of its citizens. In the aftermath of the 9/11 attacks in the United States (US), President Thabo Mbeki reiterated the Government's policy on terrorism in Parliament, claiming that the country's principled opposition to terrorism was inspired by the South African struggle for national liberation and the core values of the country's Constitution. Mbeki pledged South Africa's co-operation in the fight against international terrorism, but rejected acts of vengeance directed against individuals, communities or nations, simply because of their faith, language or colour.⁸⁾

3. RATIONALISATION OF INTERNAL SECURITY LEGISLATION

The pre-1994 government had developed an arsenal of security legislation to combat the armed and political activities of the national liberation movements. In its attempt to curb legitimate political opposition, it had promulgated laws which ultimately eroded the rule of law.⁹⁾ The new democratic government initially sought to rationalise these laws and to amend those provisions that were overtly unconstitutional. In 1996, Parliament passed the *Safety Matters Rationalisation Act, 1996* (Act No 90 of 1996), which repealed a total of 34 previous era security laws, including those of the former homelands. It allowed for the collection of information on terrorist activities and controlling the flow of funds to terrorist groups.¹⁰⁾ The Act extended

the validity of the *Riotous Assembly Act* (1956), the *Explosives Act* (1956) and the *Intimidation Act* (1982) throughout South Africa.¹¹⁾

Similarly, the *Internal Security Act* (1982) was also not entirely repealed. In terms of this Act, a person was guilty of terrorism if s/he committed or threatened to commit an act of violence; or incited, aided, advised or encouraged an act of violence with the intent to overthrow or endanger state authority; achieve or bring about constitutional, political, industrial, social or economic change in the country; or induce the South African government to do or to abstain from an act or abandon a particular standpoint.¹²⁾ It was also a criminal offence to harbour, conceal or fail to report to the police any person who had committed, or intends to commit, an act of terrorism or sabotage.¹³⁾ The *Criminal Law Second Amendment Act* (1992) prohibited the organisation of military, paramilitary and other similar operations with the aim of usurping the functions of the SAPS and the South African National Defence Force (SANDF).¹⁴⁾

A number of other laws remained on the statute books that could be used to combat terrorist related activities. For example, the *Armaments Development and Production Act* (1968), the *Arms and Ammunition Act* (1969), and the *Non-Proliferation of Weapons of Mass Destruction Act* (1993) could be used to target the tools of terrorism.¹⁵⁾ The *National Key Points Act* (1980), the *Control of Access to Public Premises and Vehicles Act* (1985), and the *Diplomatic Immunities and Privileges Act* (1989) were aimed at protecting specific places and persons.¹⁶⁾ The above laws, *inter alia*, indicate that on the eve of a democratic dispensation, the new government had an armoury of legislative tools to combat terrorism. However, these were open to future constitutional challenges and did not cover incidents relating to international terrorism and the financing of terrorism.

4. INVESTIGATION OF THE SOUTH AFRICAN LAW COMMISSION INTO SECURITY LEGISLATION

In its review of security legislation, the Project 105 Committee focused on terrorism and sabotage; South Africa's obligations to the international community; and the protection of classified information in the possession of the state. It also reviewed the *Interception and*

Monitoring Prohibition Act (1992) with a view to granting the state wider powers in intercepting and monitoring. It further examined economic espionage and the protection of property and personnel of foreign governments and international organisations.¹⁷⁾ In August 2000, the Project 105 Committee released a *Discussion Paper 92*, including an amended draft *Anti-Terrorism Bill*, for public comment.¹⁸⁾

4.1 *Discussion Paper 92*

Discussion Paper 92 noted that any act of terrorism in South Africa could be prosecuted in terms of existing law. However, the offence of terrorism as it existed in the legislation was deemed to be inadequate as it did not cover international terrorism that often targeted foreign officials, embassies and the interests of foreign states.¹⁹⁾ It argued that the worldwide trend is to create specific legislation based on international instruments relating to terrorism. It advocated that terrorist acts should under no circumstances be justifiable, "whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them".²⁰⁾ It recommended that the South African government should promulgate specific legislation on terrorism which would: (i) broaden the normal jurisdiction of the courts to deal with all forms of terrorism, especially those committed outside South Africa; and (ii) prescribe stiff sentences in respect of terrorist acts. Consequently, it published a revised *Anti-Terrorism Bill* for public comment.²¹⁾

4.2 The South African Law Commission's *Anti-Terrorism Bill (2000)*

The Project 105 Committee proposed that on a substantive level the crime of terrorism should be redefined to include international terrorism. On a procedural level, it proposed that the jurisdiction of the courts should be broadened in order for them to be able to impose more severe sentences that befit the crimes committed both domestically and internationally.²²⁾ Section 1 of the Bill, defined a terrorist act as:²³⁾

- a) 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 property and is calculated or intended to:

- i) intimidate, coerce or induce any government or persons, the general public or any section thereof, or
- ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- iii) create unrest or general insurrection in any State.

A terrorist organisation was defined as an organisation which had carried out, was carrying out or had planned to carry out terrorist acts.²⁴⁾ Membership of a terrorist organisation was criminalised and any person who provided material, organisational and logistical support to a terrorist organisation committed an offence.²⁵⁾ The Bill controversially enabled the state to use pre-trial detention of 14 days authorised by a judge. The detainee could have access to a lawyer, spouse, religious counsellor and doctor. The detainee was deprived of the right to apply for bail.²⁶⁾ The Bill criminalised violations of United Nations (UN) Conventions dealing with international terrorism, such as the hijacking of an aircraft, the endangering of maritime navigation, the taking of hostage of internationally protected persons, nuclear terrorism, terrorist bombings and the financing of terrorism.²⁷⁾ It imposed a duty on people possessing information which may be essential for investigating any terrorist act to report such information, and it empowered the Director of Public Prosecution to indemnify such persons from being prosecuted.²⁸⁾ Finally, the Bill empowered the police to stop and search vehicles and persons to prevent acts of terrorism.²⁹⁾

4.3 The South African Law Commission's Review Report

After considering a total of 62 written representations on *Discussion Paper 92* and the *Anti-Terrorism Bill* (2000) from civil society and human rights groups, including government departments, the SALC published an extensive, final report in August 2002 on its review of security legislation. It concluded that a new law on terrorism should be adopted by the South African government. The revised *Anti-Terrorism Bill* (2002) which the SALC proposed differed in several fundamental respects from the one proposed earlier. The clause allowing for detention for interrogation purposes was omitted and in

its place provision was made for investigative hearings. This would allow a police officer to obtain information from a person suspected of being in possession of information on terrorist acts. Provision was also made for preventive measures. For instance, a person suspected of committing or intending to carry out a terrorist act can be brought before a court to enter into an undertaking to refrain from certain activities and the court may impose certain conditions to ensure compliance.³⁰⁾

The Bill provided an expanded definition of a terrorist act. It defined a terrorist act as an act that is committed:³¹⁾

- (a) i) in whole or in part for a political, religious or ideological purpose, objective or cause, and
- ii) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organisation to do or to refrain from doing any act, whether the person, government or organisation is inside or outside the Republic, and
- (b) that intentionally –
 - i) causes death or serious bodily harm to a person by the use of violence;
 - ii) endangers a person's life;
 - iii) causes a serious risk to the health or safety of the public or any segment of the public;
 - iv) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any sub-paragraphs (i) to (iii); or
 - v) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, including, but not limited to an information system, or a telecommunication system; or a financial system; or a system used for delivery of essential government services; or a system used for, or by, an essential public utility; or a system used for, or by, a transport system, other than as a result of lawful advocacy, protest, dissent or stoppage of work that does not involve an activity that is intended to result in the conduct or harm re-

ferred to in any sub-paragraphs (i) to (iii), but, for greater certainty, does not include conventional military action in accordance with customary international law or conventional international law.

The Bill clarified that support for a terrorist organisation included:

- facilitating, collecting, providing or making available funds and property or inviting a person to make available property or financial or other services on behalf of a terrorist organisation;
- providing, receiving or recruiting a person to receive military training;
- providing or offering to provide a skill or expertise for the benefit of a terrorist organisation;
- recruiting a person in order to commit a terrorist act inside or outside South Africa;
- entering in or remaining in any country for the benefit of a terrorist organisation; and
- making oneself available to a terrorist organisation to commit a terrorist act.

Furthermore, the Bill stated that it was an offence to conceal or harbour a person who had carried out or was likely to carry out a terrorist act. It explicitly provided that it was not an offence to provide or collect funds intended for the purpose of advocating democratic government or the protection of human rights.³²⁾ The Bill provided for extra-territorial jurisdiction.³³⁾ Finally, it established a procedure for the forfeiture of property of persons convicted of terrorist acts, and for preservation orders in respect of property earmarked for seizure by the state.³⁴⁾ The Minister of Safety and Security used this Bill as a basis for drafting an *Anti-Terrorism Bill* (12B-2003), which was tabled in Parliament a year later.

5. THE *ANTI-TERRORISM BILL* (12B-2003)

Early in 2003, the government tabled the *Anti-Terrorism Bill* (12B-2003) in Parliament. The Preamble to the Bill stated that legislation was necessary to "prevent and combat terrorism, to criminalise ter-

rorist acts, the financing of terrorist acts and the giving of support to terrorists, and to ensure that the jurisdiction of South African courts enables it to bring to trial the perpetrators of terrorist acts".³⁵⁾ The most controversial aspect of the Bill was its surprisingly cryptic and vague definition of a terrorist act, particularly when considered against the background of the detailed proposal of the SALC. It simply defined a terrorist act as "an unlawful act, committed in or outside the Republic — (a) which is a convention offence; or (b) which is likely to intimidate the public or a segment of the public".³⁶⁾ The very wide application of sub-section (b) meant that any unlawful act, whether violent or not, that served to intimidate the public could be construed as a terrorist act.

The Bill enabled the Minister of Safety and Security to declare an organisation as a terrorist organisation by a notice in the *Gazette*, if that organisation was listed as an international terrorist entity in terms of a resolution of the UN Security Council. It also empowered the Minister to classify any other organisation as a terrorist organisation if that organisation or its members had committed a terrorist act, claimed responsibility for such an act or endangered the security and territorial integrity of South Africa or any other country. It further set out a procedure by which the Minister could issue a declaration of a terrorist organisation. The Minister had to publish a notice in the *Gazette* stating that he/she intended to declare a said organisation as a terrorist entity and the grounds for the proposed decision. The listed organisation or any of its members had the right to apply within 60 days to the High Court for an interdict prohibiting the proposed declaration. If the Court granted the interdict, the Minister may, on notice to the person who obtained the interdict, apply to the High Court for an order revoking the interdict so as to empower the Minister to declare an organisation as a terrorist organisation.³⁷⁾

In terms of the Bill, any person who conspired, threatened, incited, commanded, aided, advised, encouraged or recruited to commit a terrorist act; or, who committed a terrorist act was guilty of an offence and liable on conviction to imprisonment, which may include life imprisonment. Continued membership of an organisation after it was declared as a terrorist organisation was also an offence carrying a jail sentence of 15 years. It broadened the offence relating to harbouring and concealment of a suspected terrorist, by including furnishing weapons, food, drink, transport or clothing to a member of a

terrorist organisation, including receiving any benefit from and carrying out an instruction or request by a terrorist organisation.³⁸⁾

The Bill provided for investigative hearings. On the order of a judge, any person may be questioned to gather information relating to a terrorist act. Such a person was obliged to answer all questions, even where the answers were self-incriminatory. There was, however, a safeguard provided; the answers to such questions, and the evidence derived from such answers, could not be used in criminal proceedings against such a person.³⁹⁾

In respect of the funding of a terrorist organisation, the Bill invoked provisions of the *Financial Intelligence Centre Act, 2001* (Act No 38 of 2001) and the *Prevention of Organised Crime Act, 1998* (Act No 121 of 1998). It imposed an obligation on an 'accountable institution' — such as a bank — to determine whether or not it is in possession or control of property on behalf of a declared terrorist organisation and report the fact to the Financial Intelligence Centre, including the submission of regular reports on the matter as determined by the Director of the Centre.⁴⁰⁾ The Bill provided for the seizure of assets of a terrorist organisation in terms of the *Prevention of Organised Crime Act, 1998* (Act No 121 of 1998).⁴¹⁾

In view of extensive public interest in the Bill, the Portfolio Committee on Safety and Security scheduled public hearings on the proposed legislation. By June 2003, it had received a total of 39 written submissions and requests for oral presentation before the Committee from individuals, religious organisations, human rights groups, organisations representing the legal fraternity, media groups and trade unions.⁴²⁾ The views of these organs of civil society and the basis for their objections to the proposed legislation are discussed below.

6. CIVIL SOCIETY RESPONSES TO THE *ANTI-TERRORISM BILL (12B -2003)*

South African civil society organisations had reacted vigorously and vociferously to the draft legislation. There was widespread opposition to the promulgation of an omnibus counter-terrorism law. The submissions can be classified into three broad categories, namely the 'rejectionists', the 'reservationists' and the 'supporters'.

The 'rejectionists' charged that it was "anathema to human rights, threatened press freedom and harked back to apartheid legislation".⁴³⁾ They argued that the Bill would seriously impact on individual civil and political liberties; that South Africa had a successful history of using existing legislation to counter urban terrorism; and, that the Bill was part of the global 'war on Islam'.⁴⁴⁾ They also contended that since it effectively sought to limit constitutionally enshrined rights in order to counter the threat of terrorism, it should also protect against state abuse.⁴⁵⁾ These criticisms were coupled with recommendations on various sections of the Bill. The 'reservationists' were not convinced that there was a need for counter-terrorism legislation. They believed that the Bill did not conform to international human rights standards and could lead to the violation of individual human rights. Furthermore, they advocated that in countering terrorism within the framework of international instruments, South Africa should not ignore its own historical and socio-political context. Lastly, the 'supporters', while endorsing the proposed counter-terror legislation, recommended specific amendments to the definition of a terrorist act and to the financial provisions of the Bill so that it complied with the demands of the Financial Action Task Force, an international standards-setting body on countering money laundering and terrorist financing.⁴⁶⁾

What follows is a selection of submissions made by various organisations of civil society to Parliament. These include, *inter alia*, the Legal Resources Centre (LRC), Cape Bar Council, Muslim Lawyers' Association (MLA), Congress of South African Trade Unions (COSATU), Banking Council (BC), Freedom of Expression Institute (FXI), South African National Editors' Forum (SANEF), Media Institute of Southern Africa (MISA), Media Review Network (MRN), Institute for Democracy in South Africa (IDASA), Institute for Security Studies (ISS), South African Council of Churches (SACC), Southern African Catholic Bishops' Conference (SACBC), United *Ulama* (Theological) Council of South Africa (UUCSA) and the Islamic Forum (IF).

6.1 Legal organisations

Three organisations representing the legal fraternity and human rights activists made oral representations on the Bill, namely, the Cape Bar Council, the LRC and the MLA. The Cape Bar Council was scathing

in its criticisms of the Bill. It asserted that Convention offences in the Bill are no more than desultory examples of prohibited components of terror listed in various UN Conventions.⁴⁷⁾ It proposed that for the purpose of South Africa's compliance with international obligations, a terrorist act should mean what is expressly defined in various UN Conventions relating to the combating of international terrorism.⁴⁸⁾ It described the definition of a terrorist act as unconstitutional.⁴⁹⁾ It pointed out that the offence of furnishing food, drink and clothing to a member of a terrorist organisation is so draconian that it does not even receive the recognition of the Israeli High Court of Justice in relation to 'terrorism' in Israeli-occupied territories.⁵⁰⁾ It stated that Section 11, which obliges a person to answer questions and produce things during an investigative hearing, offended against the sense of justice of any legal practitioner in a constitutional democracy.⁵¹⁾ It rejected the procedure to be followed by the Minister when declaring an organisation a terrorist organisation and recommended the holding of an expeditious enquiry with *vive voce* evidence presented by both parties to the court.⁵²⁾

The LRC argued that the limitation of fundamental rights in the Bill was not reasonable and justifiable in a democracy. It noted that the acts of terrorism which the Bill purported to deal with were already punishable under existing criminal legislation and did not warrant any further limitation of the rights contained in the *Bill of Rights*.⁵³⁾ The definition of a terrorist act was so unclear that it was difficult to ascertain exactly what activities were prohibited, and it could realistically apply to legitimate protest. The provisions relating to the supply of food, drink and clothes should be excluded from the Bill as it would lead to the proscription of humanitarian support to oppressed people.⁵⁴⁾ The LRC expressed reservations about the procedures set out to conduct investigative hearings, as they infringed on the fundamental rights of a person who was not being arrested for criminal prosecution, but solely for gathering information.⁵⁵⁾ Similarly, the power of the Minister to proscribe an organisation was too wide in two respects. Firstly, the Bill provided for an almost automatic declaration of an organisation as a terrorist organisation in South Africa upon a decision of the UN Security Council. It did not require the Minister to be satisfied on reasonable grounds. Secondly, it effectively shifted the onus to the potentially proscribed organisation and called upon it to defend itself after it had already been found

guilty, which was not logical.⁵⁶⁾

The MLA rejected the Bill. It argued that the reach of the Bill was far wider than tackling the perpetrators of terrorist acts. It included conspirers, accessories, those with a common purpose and in broad terms those who assist or support terrorists or terrorist organisations.⁵⁷⁾ It opposed the definition of a terrorist act on the grounds that it included any unlawful act of intimidation for whatever purpose, political or non-political.⁵⁸⁾ The MLA contended that Minister's power to declare an organisation a terrorist organisation was far-reaching as this power was not restricted to organisations that threatened the security of South Africa, but extended to any organisation jeopardising the territorial integrity of any other country.⁵⁹⁾ The attempts to ensure *audi alteram partem* in instances where the Minister declared an organisation a terrorist organisation was wholly impractical as the reach of the Minister's power extended both to domestic and international organisations. It recommended that before the Minister declared an organisation as a terrorist organisation, s/he should be obliged to convene a formal hearing where evidence could be led. The state must have the onus of showing that the organisation was a terrorist organisation.⁶⁰⁾ It further argued that while the Bill protected against terrorist acts emanating from non-state actors, it failed to protect civilians against state terrorism.⁶¹⁾ The MLA highlighted that the Bill was a matter of deep concern for charitable organisations, which might hold views that the funding of a liberation movement was morally praiseworthy because the government that it opposed committed acts of terrorism against its citizens and was oppressive. This activity could now be criminalised.⁶²⁾

The three legal organisations responded to the Bill in different ways. While all three were extremely harsh in their criticisms of the Bill, they arrived at different conclusions about its necessity. The MLA rejected the Bill and called for its total withdrawal. This foreshadowed the responses of all Muslim organisations in South Africa, as discussed below. The Cape Bar Council and the LRC recommended that it should be significantly re-drafted in order for it to pass the constitutional muster. In contrast, business and labour groups addressed issues relating to the right to strike and the proper regulation of the financial sector to limit the scope for terrorist financing.

6.2 Business and labour

COSATU and the BC were the only labour union and business organisation to comment substantively on the Bill. Both expressed serious reservations over specific sections of the Bill, but supported its passage through Parliament. COSATU submitted a written submission to the Portfolio Committee on Safety and Security, highlighting its concerns over the broad definition of a terrorist act and its undermining of hard-fought for labour rights. It argued that the definition of a terrorist act effectively included unprotected strikes and ordinary criminal offences occurring during strike action. It further raised concerns about the implications of the Bill for extending the definition of "essential services" in respect of which strikes are prohibited under the *Labour Relations Act, 1995* (Act No 66 of 1995).⁶³⁾ COSATU's engagement with the Bill must be seen against the background of the struggle for the right to strike. The former National Party (NP) government suppressed labour actions, including imposing restrictions on the right to strike and declaring unprocedural strikes as unlawful. In COSATU's view, the constitutional protection of the right to strike was an important labour victory, which the Bill tended to limit.

COSATU intervened rather belatedly during the processing of the Bill by the Select Committee on Safety and Security in the National Council of Provinces and secured support for its amendments. These were later rejected by the Portfolio Committee on Safety and Security when the Bill was returned to the National Assembly for assent. In reaction, COSATU resolved in February 2004 to embark on a programme of action against the Bill, including a general strike; initiating a Constitutional Court challenge; and, lodging a complaint with the International Labour Organisation. In response to this action and the failure to conclude discussions between the ANC Study Group on Safety and Security and COSATU before the end of the parliamentary term in April 2004, the Bill was withdrawn by Parliament. The Bill was later re-introduced after the general elections of 2004.

Following a series of engagements with the Minister of Safety and Security and the ANC Study Group on Safety and Security, COSATU's amendments removing provisions that allowed unprotected strikes, industrial action and illegal protest action to be classi-

fied within the ambit of terrorist acts were eventually incorporated in the *Protection of Constitutional Democracy against Terrorist and Related Activities Bill*. Hence the definition of terrorist activity excluded any act committed in pursuance of any advocacy, protest, dissent or industrial action and which did not intend physical harm or death to any person and serious damage to private or public property, natural resources or environmental or cultural heritage.⁶⁴⁾ COSATU viewed this amendment as a massive gain for workers and the protection of hard won constitutional rights.⁶⁵⁾

The BC stated that the 9/11 terror attacks in the US had changed the international focus regarding the combating of terrorism and that a number of international norms applied to the financial sector to identify and to restrict the financing of terrorism. As South Africa was a signatory to the *International Convention on the Suppression of the Financing of Terrorism*, it was critical that the Bill be passed speedily, so that the financial sector could comply with international requirements. It suggested that South Africa was in a particularly sensitive situation as it had formal diplomatic and trade relationships with many countries which the US deemed to be 'terrorist states'.⁶⁶⁾ Hence, local banks with international branches required legal certainty in the legislation in respect of the financing of terrorism.

The BC considered the Bill to be oversimplified and subject to conflicting interpretations. The definition of terrorist activity was seriously defective and the definition of 'property' was inconsistent with the *Prevention of Organised Crime Act, 1998* (Act No 121 of 1998). It recommended that in addition to the power of a Minister to declare an organisation as a terrorist organisation, the Bill should also enable the Minister to declare specified members of the organisation or individuals as terrorists.⁶⁷⁾ It pointed out that in the Bill the reporting duty on financial institutions was limited to that of terrorist organisations. In this regard, one of the difficulties in combating the financing of terrorism was that monies were raised legitimately from public sources for future use by individuals and terrorist organisations. As such, this money was not the proceeds of crime or an unlawful act. As the Bill failed to deal with this practical complexity, it would be difficult to prosecute specified individuals. The BC supported the Bill and called for amendments which would empower 'accountable institutions' to meet the international expectations relating to the combat-

ing of the financing of terrorism.⁶⁸⁾ Consequently, new sections relating to court declarations of forfeiture on conviction and freezing orders were included in the final Bill.⁶⁹⁾

Labour and business organisations that responded to the Bill adopted vastly differing positions. While supporting the Bill in principle, COSATU had reservations largely about the definition of a terrorist act which tended to include spontaneous strike activity. The BC supported the Bill and called for the inclusion of a section dealing specifically with measures to counter the financing of terrorism.

6.3 Media networks

Media networks in South Africa presented a well-co-ordinated, critical response to the Bill. The FXI, SANEF, MISA and the MRN collectively rejected the Bill and argued that current legislation was adequate to deal with the threat of terrorism in South Africa. They declared that it limited the rights to the freedom of the press and the freedom of expression. The Bill also threatened media independence and jeopardised the professional integrity of journalists. The concerns raised in respect of investigative hearings were well-heeded and that particular section of the Bill was substantially amended. The judiciary was excluded from proceedings relating to investigative hearings and the power was vested in the National Director of Public Prosecutions to authorise an investigation in terms of Chapter 5 of the *National Prosecuting Authority Act, 1998* (Act No 32 of 1998).⁷⁰⁾

6.4 Research institutions

Two research institutions, namely, IDASA and the ISS, supported the intention and purpose of the Bill, but expressed serious reservations regarding a wide range of its provisions. The ISS proposed an alternative "Counter-Terrorism Bill" altogether, indicating its dissatisfaction with the overall structure of the Bill. IDASA supported the Bill as it aimed to give effect to relevant international instruments relating to terrorism as well as prevent South Africa from becoming a stage for planning, organising and the execution of terrorism. It acknowledged the increased necessity for legislation to deal with terrorism domestically and globally.⁷¹⁾

IDASA argued that the definition of a terrorist act was ex-

tremely broad and failed to clarify which acts constituted terrorism. It was so wide that any unlawful act could be construed as a terrorist act.⁷²⁾ It argued that the Bill contravened Section 18 of the Constitution by severely limiting the right to freedom of association. It viewed freedom of association as essential in that it made participatory politics meaningful and genuinely representative politics possible.⁷³⁾ The Bill unjustifiably restricted the freedom of association and placed at risk individuals who joined an organisation in the interest of advancing their religious, social or political ideas, but who were not aware of, and did not support, any of its criminal and unlawful activities. Section 11 violated the right to silence. IDASA emphasised that the right to remain silent is a fundamental right as an accused person may be emotional, inarticulate, easily influenced or confused when arrested or detained. It was, therefore, well-advised that people faced with the accusation that they committed a terrorist act consider their situation carefully before making any disclosure. Failure to remain silent may lead to self-incrimination even if a person was innocent, purely because of the emotions evoked by being accused and questioned by police.⁷⁴⁾ IDASA insisted that the Bill should strike a balance between combating the threat of national and international terrorism and the hard-won rights enshrined in the Constitution.⁷⁵⁾

The ISS indicated that in the aftermath of 9/11 attacks in the US, pressure grew on the South African government to counteract global terrorism. UN Security Council resolution 1373 compelled member states to implement the operative provisions of the resolution. This included the criminalisation of the financing of terrorism, the freezing of bank accounts, introduction of effective border controls, and measures to fast-track the exchange of operational information.⁷⁶⁾ The ISS recognised the threat of transnational and domestic terrorism to the internal stability of South Africa, the African continent and against foreign interests in the country, and called for a regional holistic approach to countering these threats.⁷⁷⁾ It noted that the Bill honoured international obligations by adopting the necessary domestic legislation, but it cautioned against an overzealous approach that did not assure legal certainty.⁷⁸⁾ It offered an extensively detailed critique of the Bill, all of which cannot be discussed in this article. Suffice to say that the ISS proposed a re-conceptualised "Counter-Terrorism Bill" with a definition of a terrorist act that included the detailed offences listed in UN counter-terrorism instru-

ments. Finally, the ISS called for a strategic balance between the perceived security threat and legislation. It warned against promulgating tough counter-terrorism legislation as it had the dual effect of driving terrorist groups and terrorists underground and encouraging them to find alternative methods of operating. Experiences in other countries have shown that extensive measures and a 'hard approach' to combating terrorism, foster rather than prevent insecurity, acts of political violence and terrorism.⁷⁹⁾

Interestingly, while IDASA and the ISS supported the Bill in principle, both cautioned Parliament neither to diminish fundamental human rights enshrined in the Constitution nor to adopt an overtly aggressive strategy to combat terrorism. Both emphasised the need to maintain a careful balance between the actual nature of the security threat and the legislation to counter it. It does appear that by suggesting an extensive revision of the Bill, both signalled a considered disapproval of the underlying counter-terrorism policy suggested by government. In contrast to the above, the religious sector broadly rejected the Bill.

6.5 Religious sector

A large number of religious formations from the Christian and Muslim faiths reacted to the Bill. The most strident opposition to the Bill came from this sector and they were unanimous in their rejection of the Bill. A noticeable silence, however, was evident from the Jewish and Hindu/Tamil communities, particularly in view of the Israeli-Palestinian conflict and the communal and terror attacks in India and Sri Lanka.

The SACC expressed its concern with the way in which the US and its allies had dominated the UN in the wake of threats to their national security, and the manner in which counter-terrorist measures had been abused by some nations.⁸⁰⁾ Its greatest concern was the definition of a terrorist act, which was vague and sinister to the extreme. It levelled the criticism that such vagueness would lead to the stereotyping of people of Arabic and Eastern descent, as was the case in the US. It saw investigative hearings as being similar to detention without trial and a violation of the constitutional rights of arrested, detained and accused persons.⁸¹⁾ It objected to the limitations on association imposed upon persons suspected of terrorist

acts and possibly linked to a terrorist organisation. Its harshest criticisms of the Bill were reserved for the possible breach of confidentiality between priest and lay person, and the limits this placed on freedom of association and on freedom of expression.⁸²⁾

The SACBC accepted that government had a duty to ensure the safety of all, but it questioned the reasons why extraordinary measures were needed to combat terrorism. It viewed acts of terror as pre-existing criminal acts with political motives and held the view that existing legislation could be amended to combat terrorism.⁸³⁾ It argued that the definition of terrorist activity offended the requirements of legal certainty, since it was possible to conceive of any number of acts, which, while being unlawful and intimidating at least a segment of the public, would not ordinarily be considered as terrorist acts. Such a definition could stifle political dissent, protest, illegal strikes and civil disobedience campaigns. It objected to investigative hearings on the grounds that it forced whistle-blowing.⁸⁴⁾ It rejected the Bill on the grounds that sections of it were unconstitutional, that it posed a threat to fundamental rights, and that it was unnecessary in view of existing legislation.⁸⁵⁾

Muslim groups adopted a principled opposition to the Bill. Due to the duplicitous nature of most submissions from this sector, only two are discussed below, namely, that of UUCSA and the Islamic Forum. UUCSA stated that the Bill required a single response of unmitigated rejection. The proposed legislation would result in the erosion of civil liberties, arbitrary property seizures, imprisonment without trial and guilt by association. It further served to indict all liberation movements, particularly in Palestine, and was designed to subdue freedom of speech and freedom of association.⁸⁶⁾ UUCSA argued that the enactment of the Bill would foster the seeds of unfair discrimination against the Muslim population. Muslims would be targeted and prejudiced by the security services. It stated that the definition of a terrorist act was extremely broad and at odds with the Constitution. The provisions relating to searches invaded the right to privacy, and investigative hearings contravened the right to remain silent.

UUCSA objected to the absence of an administrative procedure before an organisation was declared a terrorist organisation. It rejected the view that UN Security Council resolution 1373 obliged member state to pass specific anti-terror legislation. UUCSA argued

that resolution 1373 simply urged member states to co-operate in such a manner that they had appropriate domestic legislation in place in order to prevent criminal acts, and refrained from using the term 'terrorist act', as it did not know what its definition entailed.⁸⁷⁾

UUCSA noted that while the Bill did not state that it was directed at Muslims, it made reference to an international terrorist list, presumably released by the US Department of State. It pointed out that more than 80 per cent of the organisations in that list consisted of Muslim organisations. Therefore, it would be engagingly naïve of Muslims to think that the core target group of the Bill was some other group of persons.⁸⁸⁾

The IF argued that the Bill needed to draw the distinction between a terrorist and a terrorist organisation on the one hand, and legitimate freedom fighters and liberation movements on the other. In its current form, the Bill would deem every person or organisation that participated in the liberation struggle in South Africa a terrorist. Hence, the adoption of a Bill that purported such a position was certainly against the founding values upon which the South African nation achieved its liberation. At the same time, the IF emphasised that South Africa's need for compliance with international instruments to counter terrorism must not compromise its principles and values. The IF believed that the Bill conferred an unjust balance of power between the state and its organs, and the accused terrorist or terrorist organisation. It failed to balance the burden of the proof of innocence by the accused with a corresponding burden of proof of guilt by the state.⁸⁹⁾ It further called for an official policy on counter-terrorism that would be applicable to all forms of terrorism, including state terrorism.⁹⁰⁾

Muslim organisations generally saw the Bill through the prism of the global 'War on Terror'. Much of their commentary focussed on international developments in the post-9/11 era, and expressed their fears that Muslims would be unfairly victimised if the new counter-terrorism policy was approved by government. These views were not dissimilar to those articulated by their Christian counterparts. Although the views of religious organisations tended to be polemical in nature, with very little in the way of recommendations, their objections with regard to the definition of terrorist activity, the possible limitation on the right to support liberation movements, investigative hearings and the declaration of an organisation as a terrorist organ-

isation, did not go unnoticed as significant amendments on these issues were introduced in the final Bill.

The *Anti-Terrorism Bill* (12B-2003) was highly controversial and evoked strong negative reactions from a variety of organs of civil society. Supporters of the Bill were few and far between, while the 'rejectionists' held sway at the parliamentary public hearings. From the range of groups that participated in the process, human rights groups, media organisations and religious formations, including important law societies, expressed outright rejection of the proposed policy. Instead, they called upon government not to be overly hasty in promulgating new counter-terrorism legislation, but to amend existing legislation to ensure its greater efficacy domestically, and to meet South Africa's international obligations. Even those groups that supported the principle of an omnibus counter-terrorism law expressed disquiet about a significant number of sections of the Bill, and proposed amendments. There was almost 'universal' rejection of the crux of the Bill, namely, the definition of terrorist activity. The Bill threatened a person's right to privacy and free association. It potentially imposed unjustifiable limitations to the freedom of expression and to the freedom of the media. In this respect it jeopardised the professional integrity of journalists. It tended to unfairly curb the democratic rights of an accused person. It raised profound ethical questions for religious leaders and lay persons about their roles in combating the threat of domestic and international terrorism in a democratic society. It proposed an awkward administrative procedure when the Minister intended to declare an organisation a terrorist organisation. The gravest danger, though, was that it undermined several fundamental human rights.

7. THE PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST AND RELATED ACTIVITIES BILL (12F - 2003)

It is no wonder then that the Portfolio Committee on Safety and Security introduced extensive amendments to the Bill. The entire process points to the vibrancy of South African parliamentary democracy, wherein organs of civil society contributed directly and meaningfully to the shape and design of a highly contentious and emotive matter, namely, terrorism and public policy to combat it. Specific

amendments to the Bill related to the Preamble, which included elements of the *OAU Convention on the Prevention and Combating of Terrorism, 1999* (Algiers Convention); the definition of a terrorist act; the detailed listing of Convention offences; the deletion of the power of the Minister to declare an organisation a terrorist organisation; measures to combat the financing of terrorism; the provision for civil and criminal asset forfeiture and the freezing of property related to terrorist activities; and provision of parliamentary supervision in respect of any notice issued by the President, pursuant to resolutions of the UN Security Council. These amendments, including COSATU's recommendations discussed earlier, were included in the *Protection of Constitutional Democracy against Terrorist and Related Activities Bill* (12F-2003). Importantly, the Bill was 'renamed' the *Protection of Constitutional Democracy against Terrorist and Related Activities Bill*, suggesting a significant shift in political thinking from an approach preoccupied with the 'War on Terror' to one aimed at defending human rights and a constitutional and democratic social order born out of the liberation struggle.⁹¹⁾

This was aptly captured in the Preamble to the Bill. It noted that South Africa is a constitutional democracy wherein fundamental human rights are guaranteed and that terrorist activities are intended to achieve political and other aims in a violent and unconstitutional manner, thereby undermining democracy. In addition to explicit references to South Africa's international obligations in giving effect to UN Conventions on terrorism, the Bill recognised that "acts committed in accordance with ... international (humanitarian) law during a struggle waged by peoples, including any action during armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, as being excluded from terrorist activities".⁹²⁾

The Portfolio Committee on Safety and Security amended the cryptic definition of terrorist activity as it appeared in the original Bill by introducing detailed specifications of such activity relating to chemical, biological or radioactive materials aimed at harming the public and the environment; the destruction of public and private property; the damage or destruction of natural resources or cultural heritage; the damage and destruction of public infrastructure; and the destabilisation of an economic system either inside or outside South Africa.

The Bill did not define terrorism, but defined terrorist activity. It created an offence of terrorism, excluding the said struggles listed above, and required proof of a specific motive as well as specific intent.⁹³⁾

Terrorist activity was defined in the Bill as:⁹⁴⁾

- (a) any act committed in or outside South Africa, which —
 - (i) involves the systematic, repeated or arbitrary use of violence by any means or method;
 - (ii) involves the systematic, repeated or arbitrary release into the environment or any part of it or distributing or exposing the public or any part of it to —
 - (aa) any dangerous, hazardous, radioactive or harmful substance or organism;
 - (bb) any toxic chemical; or
 - (cc) any microbial or other biological agent or toxin;
 - (iii) endangers the life or violates the physical integrity or physical freedom of, or causes serious bodily injury to or the death of, any person, or any number of persons;
 - (iv) causes serious risk to the health or safety of the public or any segment of the public;
 - (v) causes the destruction of or substantial damage to any property, natural resource, or the environment or cultural heritage, whether private or public;
 - (vi) is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to —
 - (aa) a system used for, or by, an electronic system, including an information system;
 - (bb) a telecommunication service or system;
 - (cc) a banking or financial service or financial system;
 - (dd) a system used for the delivery of essential government services;
 - (ee) a system used for, or by, an essential public utility or transport provider;
 - (ff) an essential infrastructure facility; or
 - (gg) any essential emergency services, such as police, medical or civil defence services;

- (vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; or
 - (viii) creates a serious public emergency situation or a general insurrection in the Republic, whether the harm contemplated in paragraphs (a) (i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to (viii) was committed by way of any means or method; and
- (b) which is intended, or by its nature and context, can reasonably be regarded as being intended, in whole or in part, directly or indirectly, to —
- (i) threaten the unity and territorial integrity of the Republic;
 - (ii) intimidate, or to induce or cause feelings of insecurity within the public, or a segment of the public, with regard to its security, including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population;
 - (iii) unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a segment of the public, or a domestic or international body, organisation or intergovernmental organisation or institution, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles, whether the public or the person, government, body, organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; and
- (c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological or philosophical motive, objective, cause or undertaking.

Any person who engaged in terrorist activity or does anything which is likely to enhance the ability of a terrorist entity was guilty of an offence.⁹⁵⁾ Offences associated with the financing of terrorist activity are listed as the acquisition, collection, use, possession and ownership of property, and, the acquisition, collection and provision of financial and economic support. A person who entered into transactional arrangements aimed at retaining, concealing, transferring or

disguising the nature, source, location, disposition or movement of property for the use of terrorist activity was also guilty of an offence.⁹⁶⁾ The collection and provision of funds for the purpose of advocating democratic government or the protection of human rights was excluded from the category of offences listed above.⁹⁷⁾

The Bill classified Convention offences such as terrorist bombings; the hijacking, destroying or endangering of fixed platforms; the taking as hostage, kidnapping and murdering of internationally protected persons; and the hijacking of an aircraft and the hijacking of a ship or endangering the safety of maritime navigation as specific offences.⁹⁸⁾ The harbouring or concealment of a person who had committed a 'specified offence' — an offence related to terrorist activities, an offence in terms of a UN Convention relating to terrorism or an offence under a law of another state and which would have constituted an offence under South African law — is an offence.⁹⁹⁾ Failure to report the presence of a person suspected of intending to commit or having committed a terrorist act is an offence. The person making such a report to a police official must be issued with a written acknowledgement of receipt of such a report.¹⁰⁰⁾ An act constituting a hoax relating to noxious substances and/or a lethal device is explicitly criminalised.¹⁰¹⁾ Any person who threatens, attempts, conspires with another person or aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person to carry out the offences listed above is guilty of an offence.¹⁰²⁾

The Bill introduced stiff and severe penalties for terrorist and related activities. It provided for extended extra-territorial jurisdiction in respect of terrorist and related activities. It amended the *Extradition Act* (1962) by removing the political exception in cases of terrorist bombings and the financing of terrorist and related activities. A person convicted for terrorist activities or Convention offences could face life imprisonment or a period not exceeding 18 years, depending on whether the High Court or Regional Court respectively imposes the sanction. A person found guilty of aiding or harbouring a suspected terrorist could face a maximum sentence of 15 years if convicted by a High Court. A person who contravened the financial provisions of the legislation was liable in the case of a sentence imposed by a High Court or Regional Court, to a fine not exceeding R100 million or imprisonment not exceeding 15 years, and in the case decided by the Magistrate's Court, to a fine not exceeding

R250 000 or a maximum prison sentence of five years. For hoaxes, the penalty is a maximum of 10 years.¹⁰³⁾

In addition, it is mandatory upon the court to declare any property used in the commission of the offence or which was in the possession or control of the convicted person to be forfeited to the state.¹⁰⁴⁾ The Bill provided for investigation and freezing orders in terms of the *National Prosecuting Authority Act, 1998* (Act No 32 of 1998).¹⁰⁵⁾ Finally, the President must notify by Proclamation in the *Gazette* specific entities that have been identified by the UN Security Council as entities which commit, attempt to commit or facilitate the commission of terrorist or related activities, and specify the necessary action to be instituted against these entities in order to combat or to prevent terrorist activities. Such Proclamation must be tabled in parliament for its consideration of the matter and decision.¹⁰⁶⁾ Finally, the promulgation of the *Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004* (Act No 33 of 2004) resulted in the repeal of the *Internal Security Act* of the previous era, and introduced a new legal regime to combat and counter terrorism.

8. CONCLUSION

South Africa's commitment to fighting terrorism, emerging from its liberation history and constitutional values, resulted in the formulation of a new official policy on terrorism. The process by which this new policy was translated into legislation proved to be cumbersome and arduous. It seemed that initially the Government was torn between amending existing security legislation and introducing a new legal regime relating to terrorism. This was the case as several security analysts had argued in the past that numerous pieces of legislation designed to combat terrorism, uphold national security and strengthen the hands of the security forces against terror groups, were already on the statute books. Therefore, there was no need for the promulgation of a specific law to counter terrorism. What was needed instead was for the security services to use the existing security legislation more effectively and for the Government to address operational weaknesses in the criminal justice system and the state's intelligence agencies.¹⁰⁷⁾

In the end, the South African government opted for new and holistic legislation on terrorist and related activities. The process had

begun in a contradictory and uncoordinated fashion. Even as the Minister of Safety and Security had requested the SALC to conduct a full review of security legislation as early as 1995, the SAPS, which falls under the said Minister's political authority, had leapt ahead and produced a highly controversial draft *Anti-Terrorism Bill*. The SALC responded creatively to this development by releasing an amended draft Bill together with the *Discussion Paper 92* so as to facilitate wider public debate on the matter. Its point of departure was that it advocated the ratification and accession to the respective international instruments relating to terrorism and the promulgation of specific legislation on terrorism. It called for broadening the normal jurisdiction of the courts to deal with all forms of terrorism, especially those committed outside South Africa. It prescribed stiff penalties in respect of terrorist acts. In its final report on security legislation, it advocated, *inter alia*, the incorporation of measures to suppress the financing of terrorism both domestically and internationally, and proffered a more extensive definition of terrorist activities. It deleted the proposal for detention without trial and proposed investigative hearings against suspected terrorists.

The streamlined *Anti-Terrorism Bill* (12B-2003) tabled in Parliament by the Minister of Safety and Security confounded both parliamentarians and civil society. Coming in the wake of the extensive research report of the SALC and the global controversy relating to the 'War on Terror', the brevity and unacceptably wide scope of the definition of terrorist activity confused, rather than legally clarified, what was the essential purpose and objective of the draft legislation. The provision empowering the Minister of Safety and Security to ban organisations was vociferously opposed by organs of civil society as it brought back memories of the apartheid era. In the end, it was the parliamentary committee that was left with the difficult and unenviable task of amending the Bill, and entitling it the *Protection of Constitutional Democracy against Terrorist and Related Activities Bill* (12F-2003).

The *Protection of Constitutional Democracy against Terrorist and Related Activities Bill* (B12F-2003) was enacted into law early in 2005, after it was signed by the President. It entrenches a firm principle in the rubric of South African society that terrorist activity which is committed for the purpose of advancing political, religious, ideological or philosophical goals is wholly unacceptable. It offers a de-

tailed definition of terrorist and related activities, excludes from its ambit just armed struggles for national self-determination and freedom from oppression and occupation, proposes stiff penalties on conviction of terrorist and related offences and extends the court's jurisdiction beyond South Africa's borders. It is noteworthy that the process by which this law was enacted was inclusive. It allowed for extensive public consultations and input, thereby enabling civil society to contribute positively to the final legislative product.

The formulation of South Africa's new counter-terrorism policy in the post-1994 era has signposted a fundamental tension in democratic societies between respect for human rights and civil liberties on the one hand, and the effective prevention and combating of terrorism on the other. Any hasty and ill-considered formulation and application of counter-terror policies and measures tend to erode democratic values in society and infringe on civil and political liberties. The 21st century, faced as it is with the ever-present threat of transnational terrorism, has seen a worrisome tendency that forces a society to make a singular choice between advancing human rights and countering terrorism. This implies that the pursuit of human and national security in some societies now supersede human rights concerns and values. South Africa has rejected this false dichotomy precisely because of its authoritarian past and the infant stage of the development of its democracy. This also does not mean that stringent adherence to human rights values should be ignored in mature democracies. Countering terrorism and defending human rights and civil liberties must be seen as two sides of the same coin in any democratic society, particularly in South Africa, as this approach considerably reduces the risk of terrorism and minimises the potential support bases of terror groups.

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