

AN ATMOSPHERE OF INTIMIDATION

COUNTER-TERRORISM LEGISLATION USED TO SILENCE DISSENT IN SWAZILAND

“The Act has been successful in creating a climate of fear. All those who were vocal are quieter now because of the Act.”

AMNESTY INTERNATIONAL INTERVIEW, NAME WITHHELD, MARCH 2009

The Suppression of Terrorism Act (STA), which was signed into law in August 2008, gravely threatens freedom of expression, association and peaceful assembly, rights which were already compromised under Swaziland's legal system. The new law's sweeping and imprecise provisions render a wide range of organizations and individuals who are critical of the government potentially open to prosecution.

The implementation of the law has led to arbitrary arrests, ill-treatment of detainees and the prosecution of an opposition leader on a charge which fails to meet international human rights standards. The law's intimidating and silencing effects are also being felt by human rights defenders campaigning to address the country's dire humanitarian situation and by political activists calling for democratic reforms.

In September 2008, two men died when allegedly attempting to bomb a bridge near the residence of the King. A third man was subsequently



© Anna Hosking, August 2008

Despite severe socio-economic problems in Swaziland, the activities of civil society organizations campaigning for economic and social justice are being restricted by the Suppression of Terrorism Act.

arrested. Many of the circumstances surrounding this serious incident still remain unclear. All governments have a clear duty to protect their population from deliberate violent attack – incidents of this nature should be investigated, those

responsible brought to justice, and steps taken to protect the public. However all governments, including Swaziland's, must adhere to their obligations under international human rights law in responding to incidents or threats of violent attacks.



GOVERNMENT DEFENCE OF THE ACT

In January 2009 the government responded to a detailed critique of the STA prepared by Amnesty International and the International Bar Association's Human Rights Institute. (See *Suppression of Terrorism Act Undermines Human Rights in Swaziland*, 2009.) The government's response relied heavily on the claim that the STA was based on technical advice from the Commonwealth Secretariat with the agreement of the Counter-Terrorism Committee of the UN Security Council, given in 2002 and 2003. Swazi officials reconfirmed this position to Amnesty International during a meeting in March 2009. Their argument fails, however, to address the specific inconsistencies between the STA and Swaziland's international human rights obligations. It also ignores the resolutions of the UN Security Council, General Assembly and human rights bodies since 2003 that have repeatedly emphasized that states must comply fully with their human rights obligations while implementing measures to counter terrorism.

SWAZILAND: CONTEXT

While Swaziland is classified as a middle income country, two thirds of its population live on less than US\$1 a day and life expectancy is less than 41 years. Swaziland has the world's highest known HIV prevalence rate, and 42 per cent of women attending ante-natal clinics are HIV-positive.

Swaziland's Constitution, which came into force in 2006, has an enforceable Bill of Rights. However, extensive limitation clauses potentially restrict the rights of freedom of expression, assembly and association. Since 2006 the legal status of political parties has remained unclear, pending the final outcome of a legal challenge brought by civil society organizations.

The ability of civil society organizations to effect change is limited by the country's electoral and political system. The King, as Head of State and also traditional head (Ngwenyama) of the Swazi nation, has extensive powers. These include appointing the Prime Minister, the

heads of the security forces, some members of parliament and the judiciary.

The King also appoints Chiefs and establishes the groupings of chiefdoms (tinkhundlas), which function as constituencies for parliamentary elections. The Commonwealth election observer mission to the September 2008 elections expressed concern about the credibility of the process, in which political parties could not participate and the powers of parliament were limited.



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SWEEPING AND IMPRECISE

A number of provisions in the STA are sweeping and imprecise while the penalties for breaches are severe.

The definition of a "terrorist act" in the STA is not limited to the threatened or actual use of violence or to acts committed in pursuit of an underlying political or ideological goal. In addition, many key provisions of the STA rely on the Act's definition of "terrorist act", so that the breadth and vagueness of that definition also renders them excessively broad in their effects.

The STA gives the government wide discretion to declare an organization a "terrorist group". The law limits the role of the courts in reviewing such decisions, and effectively requires the organization to persuade the court that the government's decision was "not reasonable".

Being designated a "terrorist group" by the government carries grave consequences. Not only is the property of the group subject to seizure and forfeiture, but membership of the group also becomes a criminal offence. Other organizations and individuals who have virtually any kind of contact with the group risk being caught up in very broadly defined criminal offences. For example, "giving support" is an offence, even where the support is unrelated to any particular "terrorist act". As all such offences are defined by the STA as "terrorist acts", the range of people potentially liable to criminal prosecution is virtually unlimited.

'ROUGHER AND MORE UNPREDICTABLE'

"The terrain is getting rougher and more unpredictable. You just don't know what is going to come next", an NGO activist told Amnesty International in March 2009. "[The STA] is creating panic. It is so broad that anything you do can be interpreted as aiding terrorists... [There are] powerful sectors that would like to silence this organization. The STA gives them an opportunity to do this... Now when I am going home and I am followed [by the police] I don't just think, why are they wasting their time, they won't find anything on me, instead I panic and I drive past my gate."

THE ACT IN PRACTICE

The STA is being implemented to "totally silence the anti-corruption, anti-nepotism, anti-poverty... and anti-inappropriate allocation of taxpayers funds dissidents – for that is what we are, and not terrorists".

Dr A.T. Dlamini, President of the Ngwane National Liberatory Congress (NNLC), a political organization established in the 1960s (*The Times of Swaziland*, 11 April 2009)

On 14 November 2008, the government declared four organizations to be terrorist "entities". Among them were two long-standing political groupings: the Peoples United Democratic Movement (PUDEMO) and the Swaziland Youth Congress (SWAYOCO). The following day, the President of PUDEMO, Mario Masuku, was arrested. He was remanded in custody after being charged under the STA with giving "support to the commission of a terrorist act", based on comments

allegedly made at a funeral in September 2008. On 8 December 2008 the prosecution added a second charge of sedition. Other members of these proscribed organizations have been harassed and several have been arbitrarily detained and ill-treated in custody.

The potentially indiscriminate effect of declaring the four organizations as terrorist "entities" was underscored in November 2008 by the reported comments of the Attorney-General, who warned members of the public of possible serious repercussions if they contravened the STA by associating themselves with these organizations. Police harassment of civil society organizations has since increased, with organizations reporting more surveillance, including monitoring of their emails

and telephone calls. The police have sometimes insisted on being present at closed civil society meetings, which has led to meetings being cancelled out of concern for the security of participants. The authorities have prevented some marches from going ahead.

In an environment made increasingly tense by this draconian law, violence erupted during a march on 16 April 2009 to call for free education. The church and labour union organizers had to end the march abruptly after a breakaway group damaged property and assaulted a police officer. The security services used disproportionate force against some demonstrators, including a man whom they beat with batons, kicked, strangled and stamped on apparently because he had insulted the national flag.

GROWING PRESSURES

"The Prime Minister has the power to call charities terrorist. They are looking at us to close us down."

Siphiwe Hlophe, director of Swaziland For Positive Living (SWAPOL)

SWAPOL is a membership-based advocacy and service-providing NGO that supports women infected and affected by HIV, predominantly in rural areas. In August 2008, SWAPOL mobilized hundreds of rural women to protest against the government's alleged financing of a shopping trip abroad by some of the wives of the King.

They questioned how public money could be spent in such a manner when the country faced shortages of medicines

including anti-retroviral treatment for AIDS, and demanded to know who was paying for the trip. SWAPOL is concerned that such advocacy work has left it vulnerable to being labelled as terrorist under the wide definition in the STA.

SWAPOL is also concerned that the STA has contributed to an environment where "the police feel free to suppress any activity that could be considered subversive". They believe that this more hostile atmosphere encouraged the police to stop their World AIDS Day commemoration and advocacy event in December 2008. Participants collected at a primary school in a rural community but were then told to go home.

THE MEDIA

The STA has increased the pressure on journalists and editors in a climate already characterized by state monopoly over media ownership, arbitrary administration of registration procedures and self-censorship.

Under the STA, any assistance in arranging a meeting of three or more people, public or private, that is to be addressed by someone who belongs to a “terrorist group” is a criminal offence. This broad provision leaves unclear whether, for instance, it is a “terrorist act” under the STA to report that a meeting is being planned, or to arrange for two or more journalists to interview a member of an organization designated as a “terrorist group”.

One journalist told Amnesty International:

“We only have two [print] media houses and one of them is state owned... Journalists get scared... It is not uncommon for the editor to put an article aside and not dare to publish it [due to fear of reprisals]... This is a pattern that did exist before the new law, but now the situation is even worse and the law has made it official.”

Journalists also expressed concern that the STA provides police with further powers to force journalists to name their sources, placing them under pressure to violate their code of ethics.

OPPOSITION TO THE ACT

“We will shout and shout about what they are doing to us because if we stop shouting they will say that everything is in order.”

Political party activist, name withheld, March 2009

In late November 2008, religious leaders in Swaziland appealed to the authorities to participate in a “real and serious dialogue... [to] bring to the centre all those who have for a long time felt that they were at the margins of... political and economic life”. Accordingly they called on “all people of goodwill and Parliament, to reject the terrorism act”. At the opening of the High Court in January 2009, the Law Society of Swaziland read a statement which declared that the STA fell short of the government’s obligations under international human rights law and the country’s own Constitution.

In April a coalition of NGOs appealed to the Prime Minister to have the STA reviewed. Other organizations are conducting educational workshops and planning campaigns to highlight the need for a review of the law and to increase protection for fundamental freedoms and human rights.

ACTION NEEDED NOW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF SWAZILAND TO:

- Amend the Suppression of Terrorism Act, to meet Swaziland’s obligations under international human rights law, including the African Charter on Human and Peoples’ Rights and the International Covenant on Civil and Political Rights.

- Seek the assistance of human rights bodies of the UN and other intergovernmental organizations in changing the legislation.

- State publicly that the Suppression of Terrorism Act will not be used against human rights defenders, civil society organizations and political activists exercising the rights to freedom of expression, association and peaceful assembly.

PLEASE SEND APPEALS TO:

Dr Barnabas Sibusiso Dlamini,
Prime Minister, P.O. Box 395,
Mbabane, Swaziland
Salutation: Dear Prime Minister

Mr Ndumiso Mamba,
Minister of Justice and
Constitutional Affairs,
P.O. Box 924, Mbabane, Swaziland
Salutation: Dear Minister of Justice

COUNTER TERROR
WITH JUSTICE
AMNESTY
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