

# LEGISLATION AGAINST TERRORISM AND VIOLENT EXTREMISM

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# PURPOSE OF SUCH CT/CVE LEGISLATION

- 1000% increase in terrorist attacks since 2006
- 22 African countries targeted by terrorists
- Terrorist groups not confined to territorial boundaries of nation-state but are operating regionally and internationally as well
- Nigeria's Boko Haram not just a national threat but a regional one as its has struck at several West African countries
- Somalia's Al Shabaab has attacked Kampala, Uganda and also posed a grave threat to World Cup Soccer tournament in SA in 2010
- Lebanese Hezbollah – 5 paramilitary camps in SA in 1990s
- Legislation essential for setting basis of national, regional and international cooperation – harmonizing approach to terrorism, setting basis for mutual legal assistance and extradition

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# IMPORTANCE OF SUCH LEGISLATION

- Law, based on regional and international legal frameworks, is a key part of any legitimate and effective counter-terrorism strategy
- Ultimately, compliance with the rule of law expressed through internationally and regionally agreed instruments, and in national laws, is what distinguishes legitimate actors from terrorists
- Such legislation is imperative if counter-terrorism justice is to be perceived as not only firm but just
- Where CT is pursued outside of the rule of law, it is generally counter-productive. The extrajudicial killing of Boko Haram's founder and former leader Mohammed Yusuf, detracted from the state legitimacy and served to fuel the insurgency, citing unlawful state actions as a primary basis for rejecting state authority and for the use of fresh violence

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# THE GLOBAL IMPERATIVE

- In a globalizing world, insecurity anywhere threatens security everywhere
- UNSC Resolution 1373 calls on all states to pass comprehensive counter-terrorism laws and measures, including by ratifying various international instruments and complying with internationally legally binding UNSC resolutions
- Overall objective is to harmonize all national laws to create a seamless web of preventive, punitive and international cooperative legal measures
- Basing national laws on international instruments minimizes the risk of overly broad definitions of terrorism that can have negative human rights and political consequences
- But the global legislation should be tailored to fit local conditions too

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# SOME INTERNATIONAL INSTRUMENTS

- UN Global counter-terrorism strategy
- Algiers Convention on the Prevention and Combating of Terrorism of July 1999
- AU Plan of Action on the Prevention and Combating of Terrorism of 2002
- The Global Counter-Terrorism Forum's 2012 Rabat Memorandum (specifically the Good practices for effective counter-terrorism practice in the Criminal Justice Sector)
- The African Model Anti-Terrorism Law as endorsed by the 17<sup>th</sup> ordinary session of the Assembly of the AU in Malabo, 30 June – 1 July 2011
- Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa of the African Commission on Human and Peoples' Rights
- Africa focus – why?

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# CHALLENGES

- Laws must be perceived as legitimate – for this reason inputs from all political parties and civil society is key
- Kenyan experience of December 2014, parliament passed CT legislation but opposition political parties viewed it as a means for the ruling party to consolidate political power especially with provisions focusing on limiting freedom of assembly and restricting media freedom
- Kenyan Muslims were opposed to it - was concerned that it would target Muslim communities collectively as well as ethnic Somalis
- The fact that the bill's passage was taking place at the time of indiscriminate arrests and assassinations of Muslim clerics served to heighten the suspicion
- Dialogue, consultation and seeking inputs from otherwise marginalized communities are essential for the legitimacy of these laws

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# SA: THE PROBLEM OF IMPLEMENTATION

- SA has good CT legislation but has been terrible when it has come to implementing it
- Example 1: 25 January 2008 SA police raid two Muizenberg homes of Mustafa Jonker, Omar Hartley, and Sedick Achmat – men were preparing to attack various targets with ammunition, explosives and IEDs found at their homes. Charges of high treason, terrorism, conspiracy to commit murder
- Two months later case dropped, material seized returned to men and two of them left the country
- Examples 2: Abd al-Muhsin al-Libi (aka Ibrahim Tantouche) given refugee status, lied, bribed and fraudulently obtained a South African passport (also in possession of passports from Pakistan, Morocco, Indonesia, and Malaysia, set up two Al Qaeda financing fronts: the Afghan Support Committee and the Revival of Islamic Society – both operated as charities for orphans but orphans did not exist – no action taken

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# SA: THE PROBLEM OF IMPLEMENTATION

- Example 3: Hezbollah established the Karbala Liberation Front in Johannesburg which sent money to Hezbollah in Lebanon
- Example 4: Al -Aqsa International Foundation (AIF), controlled by Hamas' political wing established in 1992. By 1997 AIF was running paramilitary camps in SA – the first of these was established Mpumulanga in July 1997
- So what accounts for the absence of implementation?
- Lack of political will – one's man terrorist, is another man's freedom fighter
- In June 2003, then Deputy Foreign Minister Aziz Pahad meets with the chief of Hezbollah's Political Bureau in Beirut. Then Intelligence Minister Ronnie Kasrils invited Hamas leader Ismail Haniyeh to lead a delegation to SA

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# SA: THE PROBLEM OF IMPLEMENTATION

- Kasrils: “...we guard against a rising international hysteria which serves to portray all Muslims as potential targets. The cry of a terrorist in every Madrassah echoes the `red under the bed’ and `swart gevaar’ [black danger] phobia of the Cold War and the apartheid era. We must never repeat such witch hunts in our country”
- Aziz Pahad: “Everybody who has any sense would know that South Africa had taken consistently correct positions on issues like the Middle East and the war on Iraq, and there was no reason why anyone would want to attack us”
- But not only issues of political will – also issue of capacity

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# SA: PROBLEM OF IMPLEMENTATION

- Financial Intelligence Control Act (FICA) adopted partly as an attempt to disrupt terrorist financing but frustrated because of corrupt officials
- May 2010, discovery of a major terrorist funding vehicle through the Companies and Intellectual Property Registration Office (CIPRO)
- Legitimate company cloned and the fake company opens up a bank account with the legitimate company's name – money meant for the legitimate company is siphoned off to the fake company's bank account
- 285,000 fake companies created – with the help of 60 corrupt CIPRO officials – tens of millions of rand sent to terrorist organizations
- Also issue of nepotism (people being appointed on the basis of who they know as opposed to what they know) and problem of the politicization of the intelligence services frustration implementation of legislation

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