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South Africa: Preserving the gains for human rights in the "war against crime"

Shortly before International Human Rights Day, 10 December, Amnesty International is raising with the South African Government its concerns about the proposed Anti-Terrorism Bill. "If the law in its present form is enacted, it will place South Africa in breach of its international and regional obligations and may lead to human rights violations", the organization said. It will grant the authorities "what are in effect emergency powers, without any of the safeguards provided for under national and international law when there is a formal declaration of a state of emergency."

In a report released today by Amnesty International, based on a memorandum submitted to the South African Law Commission, the organization expressed concern that certain provisions in the draft law, particularly those allowing for detention without charge or trial, carry a risk of a repetition of part of South Africa's past pattern of human rights violations.

Amnesty International shares the Law Commission's concern that "South Africa has a terrible history of abuse in detention" in the apartheid era and that this history has to be kept in view in considering any "measures to be implemented in combating terrorism".

In its memorandum the organization emphasised that the likelihood of repetition is increased by the reality that torture still occurs in post-apartheid South Africa, primarily in the context of criminal investigation.

Amnesty International acknowledges that the present South African Government is faced with a very serious security situation, primarily in the Western Cape province where the government has accused an anti-crime vigilante organization, PAGAD (People against Gangsterism and Drugs), of responsibility for a wave of "urban terror", including bombings and the targeted killings of officials involved in investigating or hearing cases against alleged PAGAD members.

While Amnesty International condemns deliberate and arbitrary killings or threats of violence by armed opposition groups, the solution to the problems in the Western Cape should not involve passing new laws which would seriously affect fundamental human rights guaranteed under South Africa's own Constitution and the international human rights treaties ratified by South Africa, including most recently the Rome Treaty for the International Criminal Court.

The Law Commission itself noted with concern that the government has not provided it with "compelling evidence of justification" for the measures for the detention of persons for interrogation, nor why "conventional policing methods are inadequate" to address the security problems. Civil society organizations in South Africa have also argued that practical measures to strengthen the skills, resources and capacity of law enforcement agencies would be a more appropriate response to the violence in the Western Cape.

Among other detailed comments on the provisions in the draft law, Amnesty International criticized the definition of a “terrorist act” as being too widely drawn, leaving open the possibility of the use of the law against non-violent protest activities. The sweeping “stop and search” powers, contain the risk of arbitrary or discriminatory searches.

The provision allowing for detention without charge establishes grounds so widely phrased that it could encompass journalists, lawyers or others with privileged information. The grounds for extension of the detention period include the failure of the detainee to answer questions “satisfactorily”, and police requests for more time to enable them to complete their investigations.

“The provisions restricting access to the detainee risk legitimising incommunicado detention, which can increase the danger of torture, ill-treatment and disappearances,” said Amnesty International.

Amnesty International urges President Thabo Mbeki's Government to ensure that any legislative initiatives taken to address persistent high levels of criminal violence in the Western Cape or other parts of the country preserve the gains made for human rights since the political transition in 1994, and are consistent with South Africa's regional and international human rights obligations.

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