

AMNESTY INTERNATIONAL PUBLIC STATEMENT

AI Index: AFR 55/002/2009
8 January 2009

Swaziland: Suppression of terrorism act undermines human rights

Today Amnesty International and the International Bar Association's Human Rights Institute (IBA-HRI) published a report calling for the repeal or immediate amendment of Swaziland's Suppression of Terrorism Act. The government began to implement the new law in November 2008, following an attempted bombing of the Lozitha Bridge on 20 September.

A number of provisions in this Act are sweeping and imprecise. In conjunction with government warnings of heavy penalties for "associating" with certain groups, which were declared on 14 November to be terrorist "entities" under the law, they are contributing to an atmosphere of uncertainty and of intimidation amongst a wide range of civil society organizations.

Amnesty International and the IBA-HRI are gravely concerned that key provisions in this anti-terrorism law are inherently repressive, breach Swaziland's obligations under international and regional human rights law and are already leading to the violation of the right to freedom of expression, association and assembly.

States have a duty to protect all those under their jurisdiction, including taking measures to prevent and protect against attacks on civilians. Swaziland participated in the adoption by the UN General Assembly of the Global Counter-Terrorism Strategy in which all forms of terrorism were strongly condemned. The attempted bombing of the Lozitha Bridge, during which two of the men involved died, must be of concern to the government and would lawfully require a full investigation and other aspects of a criminal justice response.

Amnesty International and the IBA-HRI emphasised that there is also an absolute necessity for states to ensure that all anti-terrorism measures are implemented in accordance with international human rights law. This requirement has been stressed in declarations and reports of the UN Security Council and UN human rights bodies.

Today's report analyses certain provisions of the Suppression of Terrorism Act in the context of Swaziland's international and regional human rights obligations. The organizations have concluded that the legislation is incompatible with the country's human rights obligations on the following grounds:

- The failure to restrict the definition of 'terrorist act' to the threatened or actual use of violence against civilians, as well as to restrict it to acts taken in pursuit of an underlying political or ideological goal, a failure which affects most of the other provisions of the law as they depend on the definition;
- The related failure of the definition of a terrorist act to meet the requirements of legality, that is accessibility, precision, applicability to counter-terrorism alone, non-discrimination and non-retroactivity;
- The offences are defined with such over-breadth and imprecision that they place excessive restrictions on a wide range of human rights – such as freedom of thought, conscience and religion, freedom of opinion and expression, freedom of association and freedom of assembly – without adhering to the requirements of demonstrable proportionality and necessity;
- The reversal of the onus of proof with respect to allegations of membership of a terrorist group;

- The lack of access to effective legal remedies and procedural safeguards in response to actions of the Executive, consequently infringing the rights of due process in a fair hearing;
- The limitations placed on the role of the courts in relation to the review of the proscription of organizations;
- The provision allowing for up to seven days incommunicado detention without charge or trial, with the attendant risks of torture, or other cruel, inhuman or degrading treatment or punishment, or enforced disappearances;
- The absence of effective safeguards in the law to prevent these human rights violations; and
- The provision of the power to order the removal from Swaziland of someone suspected of an offence under the law, without procedural safeguards.

In view of these findings, the two organizations have urged the Government of Swaziland to repeal or immediately amend the Suppression of Terrorism Act, and to fully protect and uphold human rights in its responses to any acts of violence, including suspected acts of terrorism.

They have also recommended that the authorities take measures to improve the capacity of the pre-existing criminal justice system to bring to justice suspected perpetrators of all acts of violence, within a framework of respect for human rights. If there remains a demonstrated need for specific counter-terrorism legislation, the government should ensure that a redrafted law includes only measures necessary and proportionate to that specific need and which are consistent with Swaziland's human rights obligations. They should be enacted only after wider public consultation and debate.

Finally, they encouraged the government to consider seeking the cooperation, advice and technical assistance of the UN Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, the African Commission on Human and Peoples' Rights and similar bodies, to ensure that Swaziland complies with its human rights obligations while fulfilling other obligations under the UN Global Counter-Terrorism Strategy.

Amnesty International and the IBA-HRI had sent their report to the Government of Swaziland for information and response prior to publication. In a reply sent on 7 January, the government stated that the Suppression of Terrorism Act was based on model legislative provisions developed by the Commonwealth Secretariat with the agreement of the Counter-Terrorism Committee of the UN Security Council. Amnesty International and the IBA-HRI, however, stand by their findings that Swaziland's anti-terrorism law is not in compliance with the country's obligations under international human rights law. As emphasised in the UN's Global Counter-Terrorism Strategy, "measures to ensure the respect for human rights for all and the rule of law [are] the fundamental basis for the fight against terrorism".

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