

The Impact of the Implementation of Security Acts on Physical and General Psychological Well-being of Travellers within South African Borders

Alexius Amtaika¹ and Thenjiwe Meyiwa^{2*}

¹*Department of Political Science, University of the Free State, PO Box 339, Bloemfontein 9300, South Africa*

²*Human Sciences Research Council & University of KwaZulu-Natal, Durban, South Africa
E-mail: thenjiwemeyiwa@yahoo.com*

KEYWORDS Well-being of Travellers. Terrorism. Individual Human Rights

ABSTRACT When the democratic South African government came into power in 1994 it adopted a new policy on terrorism, which regarded acts of terrorism unacceptable. The establishment of new anti-terrorism legislation was, however, justified by the September 11 attacks. Government officials decried the fact that the absence of such legislation put the nation under pressure. The researchers studied archived data from both scholarly and mass media records, which had substantiation bearing evidence and discussions on the establishment of various legislations and its impact on ordinary citizens. It was found that while security check routines are carried out as precautionary safety measures; they are not only an inconvenience for travellers but have also been responsible for causing psychological and mental trauma. The anti-terrorism legislation has led to many untoward procedures by security officials and impacted negatively on the health of some travellers.

INTRODUCTION

Hardly fifteen years ago, that is, about 1997, travelling was hugely different. No one would believe that travelling within and outside South Africa would require bodily inspection, including being inspected almost naked. The passing of the *Homeland Security Act* in the aftermath of the 9 September (9/11) 2001 in the United States of America has resulted in the passing of the replica legislation in most countries in different parts of the globe with the aim of enforcing common security against terrorism (Ismail 2007; Piazza 2012). The South African government passed its own anti-terrorist legislation, namely, the *Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No 33 of 2004)*, as a precautionary measure in the combat against global terrorism. The implementation of this Act and the subjection of individuals to bodily searches, detention, arbitrary arrests and torture, to mention but four examples of human rights violation though have however, resulted not only in the cases of psychological and mental trauma among the people but also embarrassment on invasion of their privacy. Silverman and Thomas (2012) argue that such acts are a form of humiliation and often impede freedom of movement at ports of entry, border posts, roads/freeways and airports.

This has equally been the case in South Africa. There have been cases of mistaken identity where individual are detained for longer hours for interrogation on suspicion of being terrorists based on their ethnic backgrounds, names, appearance and religion. Shamir (2005:147) argues that the cause of such acts is suspicion and “global mobility regime that actively seeks to contain social movement both within and across borders”. In turn, many South Africans have lost their lives in police custody and through police brutality. Living with such loses does not only devastate and haunt ones life, but also ruin those families that depend on those killed by the police for their livelihood (Sandler 2011; Enders et al. 2011).

While these routines are carried out as precautionary safely measures for all citizens at large, they are not only an inconvenience for individuals but have also been responsible for causing stress and high blood pressure among some individuals, resulting in hospitalization, counselling and taking medication. Mental and psychological torture have potential to slow down individual’s mind to function properly resulting in poor production at work which in turn affect their contributions towards economic development of the state (Sutherland 2008; Matlou and Mutanga 2010). More importantly, the anti-terrorists laws and their implementation in South

Africa are in many ways reminiscent of apartheid anti-communist laws (Sandler 2011; Smith 2011), which subjected many individuals especially, the Black South Africans to arbitrary detention, torture and harassment by security services merely for being Black (Strumpf and Dawes 2009). Sandler (2011) submits that such acts have potential of resurrecting posttraumatic disorders especially among the victims of apartheid regimes. The arrest and deportation of some foreign nationals in South Africa by the security forces without following proper procedures also highlight the controversies surrounding the Security Act, which tantamount to abrogation of freedoms and rights. While the National Key Points Act 102 of 1980 empowers the police to take oversight of the security at the places which are declared national key points, it is clear that at most national key points in South Africa, for example, airports, private security plays a vital role. This has created confusion and added-on extra cautionary measures for travellers.

Objective of the Study

The study set out to investigate the manner in which security acts have been implemented in South Africa and effects that the law enforcement has had on civilians and travellers within the country. To achieve this objective the researchers studied archived data from both scholarly, governmental and mass media records, which had substantiation bearing evidence and discussions on the establishment of the legislations and its impact on ordinary citizens.

RESULTS

This study found that while the issue of security is paramount and that governments have the obligation to ensure the security of the state and their citizens, the security acts have also impacted negative on mental and psychological wellbeing of individuals through detention, torture, brutal killing of the suspects, indiscriminate and forced body checks, finger printing, taking photographs at ports of entry, interrogation and detention. At airports in particular, patients on chronically illnesses are denied to carry their medication on board the flights in so doing threatening their medical conditions. Security forces also confiscate items, such as cell-phones, computers (laptops), passports, identi-

ty documents, driver licences and some other materials from suspects in search of information and evidence for commission of crimes.

DISCUSSION

It is against the backdrop of these results that the discussion of this article analyses the manner in which security acts have been implemented in South Africa. The discussion makes extensive reference to various international and South African legislation as well as processes carried out by the organs of state that are mandated to ensure security. The citations are equally referenced through the use of notes.

Collective Security in the Wake of Terrorist Threats

The adoption of and the implementation of the *Protection of Constitution Democracy against Terrorism and Related Act, 2004 (Act No 33 of 2004)* by the government of South Africa was to a greater extent in line with the anti-terrorist legislation that other countries, notable Canada, the United States of America, Britain and Australia, to mention but four, adopted in the wake of the terrorist attacks on the US in September 2001. This attack prompted states to adopt a common approach in the fight against terrorism through the passing and adoption of Resolution 1373 by the United Nations Security Council in 2001. Resolution 1373 compels United Nations member states to adopt and include anti-terrorist laws in their national laws and institutions, and to work together globally. Its preamble affirms:

The Principle established by the General Assembly in its declaration of October 1970 (Resolution 2625 (XXV)) and reiterated by the Security Council in its 1189 (1998) of 13 August 1998, that every state has a duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts¹.

Part One of Resolution 1373 in particular states: (i) to introduce border controls and other measures to fast-track the exchange of intelligence information; (ii) criminalize the financing and other acts of support for terrorism; and (iii) to freeze bank accounts of terrorist suspects or

organizations². This Resolution complements other instruments adopted by the United Nations in the fight against terrorism. These include *The International Convention on the Suppression of Financing of Terrorism*³ which was adopted on December 9, 1999 and *The International Convention for Suppression of Terrorist Bombing*⁴, which was adopted on 15th December, 1997. These laws coexist with other laws especially those relating to aviation, whose monitoring and implementation intensified after 9/11. Cardinal among these are the *Protocol for Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*,⁵ which was adopted at Montreal on 24th February 1988; and the *International Convention against the Taking of Hostages*⁶ which was adopted by the General Assembly on 17 December 1979. But more importantly states are coordinating and implementing Resolution 1373, with the *Convention on Making of Plastic Explosives for Purpose of Detection*⁷, signed at Montreal, Canada on the 1st of March, 1991. This legislation became significant and its enforcement became imperative after 9/11, since explosives are some of the items that terrorists use in terror attacks. Thus, the adoption of Resolution 1373 made it imperative that other laws that were adopted and ratified by states before 9/11, be implemented concurrently and their monitoring be intensified in the fight against terrorism.

In line with this Resolution, the US government adopted its *Homeland Security Acts of 2002*, which describes the following as its aim: (i) preventing terrorist attacks within the United States; (ii) reducing the vulnerability of the United States to terrorism; and (iii) minimising the damage and assist in the recovery, from terrorist attacks that occur within the United States⁸. Likewise, South Africa adopted its own anti-terrorist laws in the form of the *Protection of Constitution Democracy against Terrorism and Related Act, 2004 (Act No 33 of 2004)*. This legislation describes the following as its objectives: (i) protecting foreign citizens from acts of terror; (ii) supporting and co-operating with the international community in its effort to prevent and combat terror; (iii) use appropriate measures to combat terrorism; (iv) support its citizens who fall victims of terrorism; protects its territory from being a safe haven for terrorists; and (v) cooperate with host countries when its citizens are involved in terrorist acts⁹. Although the South

African legislation differs considerably from the *Homeland Security Act* of the US (the South Africa anti-terrorist Act being far more liberal than that of the US), they are convergent in their determination and objectives in fighting terrorist. Both legislations also, in one way or the other compromise certain basic human rights. There have been reports of abuse of the legislation by government and security officials, leading to a negative impact on individuals' health, as in the case of where the court ordered immediate release of Somali refugees (Snyman 2010). Infante (2005) refers to this kind of treatment as a form of attacking the trait of a person, a form of humiliation that instils negative feelings about the self and compromises general well-being.

Certainly, this is not the first time that states were compelled to adopt common approaches towards achieving collective security. Actually, the principle of collective security can be traced back to the period after the end of the First World War where the objective was to relegate war through preventive collective action (Kegley Jr and Wittkopf 1995). It was first adopted by the League of Nations, the predecessor of the United Nations in 1919, after the end of the First World War, as a way of collectively deter military action by member states. The objective of collective security, then, was to relegate war to the domain of the "unthinkable" through preventive collective action; retaliation against any aggressive acts within the global system; and involvement or the participation of all states in acting against aggression¹⁰. More importantly, collective security involved the establishment of an international organization which would identify such acts and organize actions¹¹. The United Nations (UN) Charter formalised this concept, giving the Security Council the primary responsibility for maintaining peace and security in the world and outlawed aggression except in self-defence or as part of a United Nations or regional peacekeeping effort. However, the principle of self-defence or preventative measures in the fight against terrorism raises serious concerns since terrorists operate secretly and cannot be easily identified without proper investigation and without the use of intelligence and security services. These bodies though, sometimes cross the line and encroach on human rights violation when undertaking their duties. As a result, many states including South Africa and the US are currently being accused by hu-

man rights organizations, namely, Amnesty International, the Commonwealth Human Rights Initiative and the Human Rights Commission of South Africa, to mention but three, of using unlawful methods in the fight against terrorism and on the basis of the preservation of national security. Human rights violation by security services are being justified as “legitimate violence or force”. Of course, in political theory, a state has power and authority to use force or violence over its territory, in what Max Weber calls “monopoly of on violence”. However, the current states’ activities in the war against terrorism make it difficult to distinguish between legitimate violence against terrorist suspects and the actions of the terrorists themselves. This is so, according to Weber (1947), because “the state’s monopoly could only take place through a process of legitimation wherein a claim is laid to legitimise the state’s use of violence” (Weber 1947:154). Such abuses have led to calls for reforms of policing and laws in compliance with acceptable universal human rights principles and standards.

The Bottom Line of Anti-Terrorist Laws in the US and South Africa

While the 9/11 terrorist attacks in the US propelled and catapulted states to adopting anti-terrorist legislations, the actual processes of adopting these laws started earlier before the 9/11. This was not only the case in the US, but also in South Africa. Was this coincidental that states began drafting anti-terrorist laws before 9/11? Did they foresee or anticipate terror attacks in the 21st Century? While many might find these questions puzzling, others may invoke the predictions of Samuel Huntington, a Harvard University Professor. In his famous essay entitled “The Clash of Civilizations”, Huntington (1993) argues that the end of the ideological war between the West and Eastern European blocs ushered in a new era of conflict between cultures. Contrary to the idea of a universal global community that began emerging in the aftermath of the Cold War, Huntington argues that individuals and societies are conscious and concerned about the survival of their own identities, cultures, beliefs, values and traditions. The consequence of this is the resistance which has taken the form of nationalism and fundamentalism; hence, ‘the clash of civili-

zations’. Thus, Huntington’s ‘Clash of Civilizations’ gives us a pessimistic picture of the global community – a community in conflict. The rise of global terrorism instigated by Islamic fundamentalists and the rearrangement of global security architectures can no doubt be understood in this context. It is no surprising therefore that states began reviewing their anti-terrorist laws in the 1990s, even before the 9/11.

The foundation and the conception of the idea of *Homeland Security Act* in the US, was laid down during the Bill Clinton administration in 1998¹². The Clinton administration ordered the setting up of the commission of inquiry known as the Hart-Rudman Commission alias “the US Commission on National Security for the 21st Century” which drew the blue print for what became the *Homeland Security Act*, and published in a report called the “Road Map for National Security: Imperative for Change”. Accordingly, the Hart-Rudman Commission recommended the establishment of the National Homeland Security Agency which would integrate more than 20 existing federal agencies into a single Homeland Security Department. Cardinal among these agencies, were the Federal Emergency Management Agency (FEMA), the U.S. Secret Service, the U.S. Customs Service, the U.S. Coast Guard and the Immigration and Naturalization Service (INS), to mention but five.¹³ These recommendations finally came to fruition after 9/11 when George W. Bush gave the executive order 13228 creating the Office of Homeland Security, along with the Homeland Security Council consisting of the President, Vice President, and several cabinet officials.¹⁴

The establishment of the Department of Homeland Security and the passage of the *Homeland Security Act* on 25th November in 2002 fundamentally changed the structure of the US government since the passage of the *National Security Act* which led to the establishment of the Department of Defence in 1947 under President Harry Truman.¹⁵

In South Africa the process of establishing *The Protection of Constitution Democracy against Terrorism and Related Act, 2004 (Act No. 33 of 2004)* started earlier than in the US. It began in 1995 and took almost a decade to complete. Two factors led to this consideration. First the end of apartheid necessitated a review and overhaul of the security legislation in line with the demands of the democratic order. Second,

South Africa like any global countries needed to be alert and prepared for terrorist attacks, since such attacks take place unexpectedly without any warning. Although some of the old laws which were operational during the era of apartheid, such as the *Armaments Development and Production Act of 1968*¹⁶; the *Arms and Ammunition Act of 1969*¹⁷; the *Non-Proliferation of Weapons of Mass Destruction Act of 1993*¹⁸; the *National Key Points Act of 1980*¹⁹; the *Control Access to Public Premises and Vehicles Act of 1985*²⁰; and the *Diplomatic Immunities and Privilege Act of 1989*²¹, were already in place, they were not adequate enough to provide the much needed legitimacy in the fight against international terrorism under a democratic government. The government needed a legislation that could integrate instruments for combating terrorist activities with respect for human rights and precepts of democracy as reflected in the *1996 Constitution of the Republic of South Africa*.

To kick start the process of reviewing of old security laws, the National Assembly in Parliament passed the *Safety Matters Rationalization Act, 1996 (Act 90 of 1996)*²² in order to repeal a total of 34 security legislation which were used during the era of apartheid. Not all legislations though were repealed. The National Assembly extended the validity of other security laws such as the *Riotous Act of 1956*²³; the *Explosive Act of 1956*²⁴; the *Internal Security Act of 1982*²⁵ and the *Intimidation Act of 1982*²⁶. Just like in the US, the South African government under Nelson Mandela set up the South African Law Commission to review and rationalise the security laws in the country. It was the recommendations of this Commission that led to the establishment of anti-terrorist legislation in 2004 under the presidency of Thabo Mbeki. It became operational in 2005 after Mbeki assented to the Act. According to Ismail Vadi, Mbeki pointed out in Parliament 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 (Ismail 2007). However, the author rejected the acts of vengeance directed against individuals, community or nations, simply because of their faith, language or colour (Ismail 2007). Mbeki's moderate remarks stand in stark contrast with the ruling of the US Congress on the Homeland Security Act, in that, while Mbeki was mindful of the traps of human rights viola-

tion in the implementation of the Act, the US Congress gave the US Security Services a green light to mount surveillance programs and install data mining technologies to gather information from both the public and private sources (Ismail 2007). These included detailed information on transactions, finances, education, medical history, personal communication, and public records from every branch of government, including the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI)²⁷. Thus, the US Homeland Security Act in many ways reduces privacy legally; it increased government's secrecy and power; and it strengthened government protection of special interest. Just like the Department of Homeland Security in the US, the South Africa anti-terrorist law pulls together and fosters greater cooperation among several security agencies and departments (Warby 2010) such as the National Intelligence, the South African Police, the South African National Defence Force, the South Africa Customs Services, the Airport Company of South Africa, Department of Home Affairs and Immigration Services.

The South African anti-terrorist laws are, however, also riddled with controversy, and that some of its loopholes have opened up doors for human rights abuses by the security services, as discussed below. These legal instruments have led to disquiet among South African citizens and people travelling within the country owing to negative health effects brought about by the manner in which security officials and managers treat detainees.

Loopholes in South Africa's Anti-Terrorism Law

Theoretically, the South African anti-terrorist laws balance between the respect for human rights on the one hand, and the need to combat terrorist activities without corroding on the democratic rights of individuals on the other. To ensure this balance, The *Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No. 33 of 2004)* contains six chapters which provide details on combating terrorism. Chapter 1 of the *Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No. 33 of 2004)* for instance, offers definitions of terrorists and terrorist activities. Chapter 2

outlines offences that may be deemed as terrorist activities, and the penalties thereof. Chapter 3 outlines other terrorist offences, especially focusing on individuals who aid or lend a hand to terrorists. Chapter 4 outlines investigating powers and freezing orders. Chapter 5 outlines a host of new offences and penalties as set out in Chapter VII of the United Nations and African Union Conventions. And Chapter 6 outlines general provisions. However, a critical look at the provisions though, gives an impression that this legislation was not necessarily meant to deter terrorism from taking place in South Africa; but rather to be used in the prosecution of the terrorists in the aftermath of the terrorist attacks.

The broadness of the definitions of terrorist activities given in Section (XXV) of Chapter 1 of the Acts also complicates the notion of “terrorist activities”. Section (XXV) (vii) for instance states that any activity that may “cause any major economic loss or extensive destabilization of an economic system or substantial devastation of the national economy of the country²⁸” is a terrorist activity. This definition begs a question as to whether general industrial strikes by trade unions which hurt economy of the country could be defined or termed as terrorism. Again, Section (XXV) (v) of Chapter 1 of the Act defines as terrorist activity, any action that causes the destruction of or substantial damage to any property, natural resources, or the environmental or cultural heritage whether public or private²⁹. Could violent service delivery protests that have rocked the South African townships and cause damage to public and private properties be defined as terrorist activities? Such complication in definitions has resulted in unnecessary arrests and detention of many people who committed petty crimes that have no connections to terrorist organizations and had no intention of embarking on terrorist activities during municipal service delivery demonstrations and labour industrial strikes. Such arrests increase the number of people detained by the security services unnecessarily as was the case with the torture endured by Somali nationals and disappearance of a Pakistani national, Khalid Rashid (see the Commonwealth Human Rights Initiative: www.humanrightsinitiative.org).

Furthermore, two other sections of the Act, namely Chapters 3 and 4 are problematic. Chapter 2, Part 3, Section 12 of the Act demands co-

operation of people and the citizens in reporting the presence of a person or people suspected of committing terrorist acts, and Chapter 3 Section 18 (e) states that the failure to do so is punishable by a prison sentence of 5 years. The problem with this section though is that a person or individuals can be arrested and be held by the security personnel as a suspect for crimes he or she did not commit, or for being in the vicinity of the crime scene. This is exemplified in the case of Somali nationals that were wrongfully detained (Mdletshe et al. 2010). Furthermore, the legislation places the onus on the person suspected of aiding or funding terrorist activities to disapprove that he or she did so. This negates and dilutes the principle of being innocent until proven guilty as provided for in the Constitution. Section 18 of Chapter 3 of *The Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No 33 of 2004)* therefore contradict the provisions made in Sections 35 (b) (i) of the Chapter 2 of Bill of Rights of the *1996 Constitution of the Republic of South Africa* which guarantees “the right to remain silent” and Section (35) (c) which guarantees the right “not to be compelled to make any confession or admission that could be used in evidence against that person”³⁰.

Another section of the Act which raises eyebrows is Section 19 (1) of Chapter 3 of the Act, which authorises confiscation of the properties used in terrorist activities. It states that “Whenever any person is convicted of an offence under this Act, the Court in passing sentence must, in addition to punishment which that court may impose in respect of the offence, declare any property which is reasonably believed to have been used in the commission of the offence or for the purpose of or in connection with the commission of the offence”³¹. This provision could easily open up legal contestations in the court of law, since Chapter 2 Section, 25(2)(a)(b) of the *Constitution of the Republic of South Africa*, guarantees the right to property. It states that “property may be expropriated only in terms of law of general application for the purpose or in the public interest and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court” (Constitution of the Republic of South Africa 1996: 11).

The implementation of the provisions in Chapter 4 of *The Protection of Constitutional*

Democracy against Terrorism and Related Activities Act, 2004 (Act No 33 of 2004) have come into the lime light, due to violation of human rights by the security officials and the police. Section 24 of Chapter 4 of the Act gives power to police officials to cordon off, stop and search of vehicles and persons. Under this section, the police have powers to seize any article or items which are thought could have been used for or in connection with preparation for or the commission or instigation of any terrorist or related activity. Failure to stop or comply with the police may carry the penalty of six months imprisonment. But again, this Section also contradicts the Bill of Rights of the Constitution of the Republic of South Africa, as contained in Chapter 2, Section 12(a) which states that “everyone has the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause” and “the right not to be detained without trial” (see p.7 of Constitution of the Republic of South Africa 1996) as in Section 12(b). Section 14 of Chapter 2 of the Constitution also safeguards the privacy of individuals and states that “Everyone has the right to privacy, which include: (a) their person or home searched; (b) their property searched; (c) their possession seized; or (d) the privacy of their communications infringed (Constitution of the Republic of South Africa: 8).

Contrary to the provisions of the Constitution in pursuit of the provisions of anti-terrorist legislation, the South Africa Police regularly mount road-blocks indiscriminately and randomly on major road in the cities and on the free ways, to search cars and people without warrants authorizing them to do so and without any grounds for suspecting the presence of any item that can be used in terrorist attacks. Such searches are also carried out in homes and properties of the citizens. Such raids accompany unlawful detentions and the use of other methods or techniques of torture which range from beatings, sleep deprivation, maintenance of forced posture, suffocation, hanging by the arms, as well as sexual abuse to solitary confinement. These techniques form part of systematic pattern of abuse deliberately planned by senior members of the South Africa Police to extract information from the suspects. People are normally detained without bail, as they are deemed flight risks. Such police activities contradict Section 35 (d) (i) (ii) of the *Constitution of the Republic of South*

Africa which outlaws detention without being charged within 48 hours (1996: 16). Although in some cases the South African Police arrest people and charge them within the required period, they often deny them bail and keep them in custody for longer period for the purpose of interrogation. Such tactics are reminiscent of detention laws of the apartheid laws under the *Terrorism Act No. 83 of 1967*³², which permitted detention of suspects for more than 180 days, and denied the public any information about people held, including their identity. Such deprivation was justified under the *Criminal Procedures Amendment Act No 96 of 1965*³³. Such deprivation made it easy for the suspects to disappear without trace. The point here is that while the new anti-terrorist laws were supposed to operate within the parameters of the *Constitution of the Republic of Africa*, security services abuse and violate its provisions through the use of illegal techniques in the name of safeguarding national security. Such acts have led to bodily harm as was reported by Martin (2010) in a recent complicated case of a Nigerian terror suspect Henry Okab.

The police brutality came to the fore in 2010, when shocking data was revealed in Parliament in November 2010, showing details of deaths of suspects in police detention. The *Sowetan Newspaper* article of November 23, 2010 published those figures and indicated that 566 people died in the first ten months of 2010 alone. This figure was seven times more than the number of people who died in detention during the entire period of apartheid rule in South between 1963 and 1985. In fact 74 people died in detention (between 1963 and 1985) or during the 25 years of apartheid regime dating back to 1963, when detention without trial was first adopted by the apartheid government (Smith 2010) making the average of 3 people per year. This is far less than the number of people who died in detention in 2010 alone under the democratic government, with an average of 56 deaths per month.

Statistical data collected by the Independent Complaints Directorate³⁴ in its annual reports, shows the increase in death of individuals in police custody, since the passing of the anti-terrorist Act in 2004. According to the 2002/2003 Independent Complaints Directorate Annual Reports, 528 people died in police custody in 2002/2003 financial year³⁵. Seven hundred and fourteen died in police custody in the 2003/2004

financial year³⁶; 652 people died in police custody in 2004/2005 financial year; 696 people died in the 2006/2007 financial year³⁷, and 779 people died in police custody in the 2007/2008 financial year. In the financial year 2008/2009, 912 people died in police custody, the highest number of deaths in police custody since 2002, marking an average of 2 deaths per day³⁸. In the financial year 2009/2010 a total number of 860 died in police custody, marking a drop in numbers killed by the police in custody by 5.7%³⁹. This number includes 34 innocent bystanders and 43 children⁴⁰. The death of suspects in custody in 2009/2010 financial year constitutes 34% of the total murders cases in South Africa, while deaths as a result of the actions by the police in general constituted 66% of the total murder cases in South Africa. Five per cent of the victims who died in custody were women (Warby 2010). Figure 1 shows the number of people who died in police custody between 2002 and 2010.

Figure 1 shows the steady increase of deaths in police custody since 2002. More than 5,200 people died in police custody between 2002 and 2010. Ten per cent of these died in 2002/2003 financial year, the lowest number so far before the passing of the anti-terrorist Act. Eighteen per cent of these died in the 2008/2009 financial year, the highest number of deaths since 2002. Although deaths in police custody dropped to 17% in 2009/2010 financial year compared to 18%

in 2008/2009 financial year, number of people dying in police custody still remains high. This shows the difficulty in addressing police brutality and implementation of the anti-terrorist activities. More importantly, the number of people who died in police custody reflects the number of people that are arrested on daily basis by the police since the introduction of anti-terrorist legislation. Prior to adoption of anti-terrorist laws in South Africa, deaths in police custody were relatively very low. In 1994 for instance, there were 379 deaths in police custody of which 69 deaths occurred as a result of injuries inflicted by the police during arrests (Bruce 2007). Between April and June in 1997, the Independent Complaints Directorate (ICD) recoded 191 deaths. Of these 56 occurred in police custody and 135 as a result of police action (Bruce 2007). A comparison of these figures with those of 2010, when 566 people died within the first ten months of that year, clearly shows that deaths in police custody has doubled and tripled over the years after the adoption of anti-terrorist laws in 2004.

There have been over 50,000 complaints laid down by the public at Independent Complaints Directorate against the police between 1997 and 2010. According to the 2003/2004 ICD Annual Reports, in 2004 the year when anti-terrorist laws were adopted, the Independent Complaints Directorate received 5,903 complaints from the

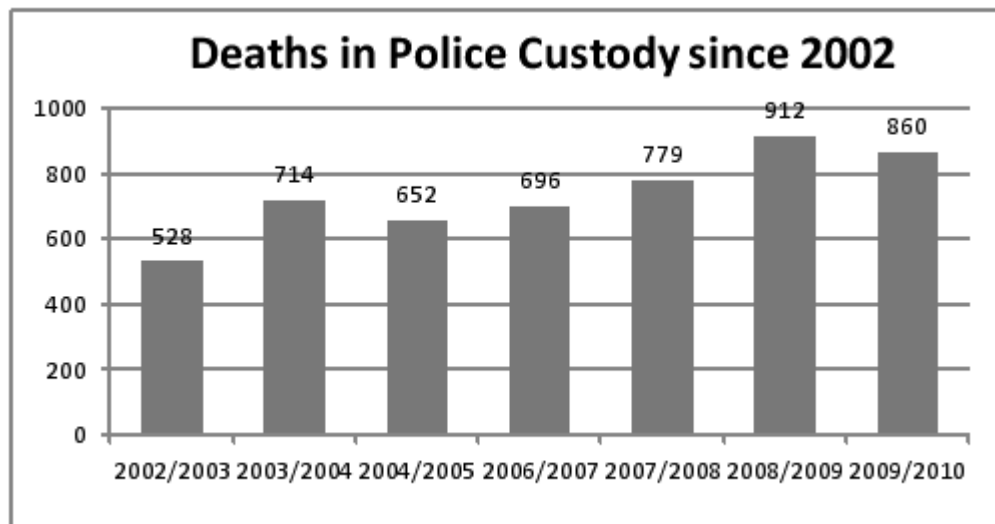


Fig. 1. Deaths in police custody since 2002

Statistics Sources: Independent Complaints Directorate Annual Reports from 2002 -2010

public. In 2006/2007 financial year it received 5412 complaints. In 2007/2008 financial year, the Independent Complaints Directorate received 5822 complaints⁴¹, and in the 2009/2010 financial year, the Independent Complaints Directorate received 6,375 complaints⁴². The Independent Complaints Directorate annual report also shows that the number of alleged police criminal conduct cases has also increased from 1643 in 2005/2006 financial year to 2462 cases in the 2009/2010 financial year⁴³.

CONCLUSION

In this paper, the researchers have demonstrated that whilst widespread panic about terror-attacks have strengthened security measures, reports and incidents torture amongst civilians have led to negative impacts of their wellbeing. Expressing concern regarding these statistics, political parties in parliament called for swift investigation. The Commonwealth Human Rights Initiative also voiced its concerns about human rights abuses by the South African Police forces in custody. These include disappearance, illegal detention and arrests extrajudicial killings, extortion, torture, atrocities on scheduled caste and tribes, and crimes against women.⁴⁴ Numerous abuses such as beatings during of suspects and innocent people during raids on homes or after arrest, the infliction of cigarette burns, electric shocks and suffocation torture on detained suspects, and the indiscriminate use of police dogs to inflict serious injuries on arrested or fleeing suspects are also often reported in the media. The depth and persistence of abuses by security services strongly indicatessimilar patterns of human rights violation which were used in the past by the apartheid regime. Such similarities have increased by the reality that torture still occurs in South Africa in the context of criminal investigations. Some anecdotal evidence point to the fact that a number of these cases are not reported as many travellers decide not to come forward. This decision is common among people who travel and indicates a sense of being insecure. He says that some people, when travelling and are away from their comfort zone they tend to choose to conform to some degree of torture.

RECOMMENDATIONS

It is recommended that the state and its officials review implementation of legislation and

practices that have a negative impact on travellers. As it has been demonstrated by the main concern raised by this article, it is imperative to pose questions when security legislation is appraised. The question raised by this article is: what are the psychological impacts and effects of the implementation of anti-terrorists laws on ordinary citizens, especially those that go through ordeals of human rights violation by the law enforcers? How does the implementation of security laws affect their general wellbeing?

NOTES

1. The United Nations Resolution 1373. [http://www.coe.int/t/dlapil/codexter/4_Theme_Files/UN%20SC%20Res%201373%20\(2001\)%20E.pdf](http://www.coe.int/t/dlapil/codexter/4_Theme_Files/UN%20SC%20Res%201373%20(2001)%20E.pdf).
2. See The United Nations Resolution 1373.
3. *The International Convention on the Suppression of Financing of Terrorism*. <http://www.un.org/law/cod/finterr.html>.
4. *The International Convention for Suppression of Terrorist Bombing*. <http://www.un.org/law/cod/terrorism.html>.
5. *The Protocol for Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*. http://www.ciaonet.org/cbr/cbr00/video/cbr_ctd/cbr_ctd_35.html.
6. *The International Convention against the Taking of Hostages*. <http://www1.umn.edu/humanrts/in-stree/takinghostages.html>.
7. *The Convention on Making of Plastic Explosives for Purpose of Detection*. http://www.nti.org/e_research/official_docs/inventory/pdfs/pexplo.pdf.
8. *The Homeland Security Acts of 2002*. http://www.dhs.gov/xabout/laws/law_regulation_rule_0011.shtm.
9. *The Protection of Constitution Democracy against Terrorism and Related Act, 2004 (Act No 33 of 2004)*. <http://www.info.gov.za/view/DownloadFileAction?id=67972>.
10. Charles W Kegley Jr, and E.R. Wittkopf, 1995. *World Politics: Trends and Transformation, 5th Edition*. New York: St Martin's Press. P.427.
11. See 10 above.
12. *The Homeland Security Act, 2002*. <http://911research.wtc7.net/post911/legislation/hsa.html>.
13. See 12 above.
14. *The Homeland Security Act, 2002*. <http://www.answers.com/topic/homeland-security>
15. See 14 above.
16. *The Armaments Development and Production Act of 1968*. <http://www.polity.org.za/polity/govdocs/commissions/cameron3.html>.
17. *The Arms and Ammunition Act of 1969*. http://www.saga.org.za/Act_75_of_1969.html.
18. *The Non-Proliferation of Weapons of Mass Destruction Act of 1993*. <http://www.info.gov.za/view/DownloadFileAction?id=68029>.
19. *The National Key Points Act of 1980*. http://www.saps.gov.za/docs_pubs/legislation/juta/a102of1980.pdf.

20. *The Control Access to Public Premises and Vehicles Act of 1985*. http://www.saps.gov.za/docs_pubs/legislation/juta/a53of1985.pdf.
21. *The Diplomatic Immunities and Privilege Act of 1989*. <http://www.dfa.gov.za/departement/diplomatic%20immunities%20and%20privileges%20act.html>
22. *The Safety Matters Rationalization Act, 1996 (Act 90 of 1996)*. http://www.saflii.org/za/legis/num_act/smra1996342/.
23. *The Riotous Act of 1956*. <http://www.sahistory.org.za/pages/chronology/thisday/1956-03-16.htm>
24. *The Explosive Act of 1956*. <http://www.acts.co.za/explosives/index.htm>
25. *The Internal Security Act of 1982*. <http://www.aluka.org/action/show Metadata?doi=10.5555/AL.SFF.DOCUMENT.leg19820609.028.020.074>.
26. *The Intimidation Act of 1982*. http://www.saps.gov.za/docs_pubs/legislation/juta/a72of1982.pdf.
27. *The Homeland Security Act, 2002*. <http://911.research.wtc7.net/post911/legislation/hsa.html>
28. *The Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No 33 of 2004)*. <http://www.info.gov.za/view/DownloadFileAction?id=67972>.
29. See 28 above.
30. See *The 1996 Constitution of the Republic of South Africa*, p. 16.
31. *The Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No 33 of 2004)*. <http://www.info.gov.za/view/DownloadFileAction?id=67972>.
32. *The Terrorism Act No. 83 of 1967*. <http://africanhistory.about.com/cs/apartheidlaws/g/No83of67.html>.
33. *The Criminal Procedures Amendment Act No 96 of 1965*. <http://www.nelsonmandela.org/omalley/index.php/site/q/031v01538/041v01828/051v01829/061v01920.html>.
34. The Independent Complaints Directorate was established in 1997 to receive complaints from the public and investigates abuses by the police.
35. The 2003/2004 ICD Annual Reports. <http://www.info.gov.za/view/Download File Action?id=68569>
36. See 35 above.
37. The 2007/2008 ICD Annual Reports. <http://www.info.gov.za/view/Download File Action?id=90292>.
38. Dianne Kohler Barnard, ICD Annual Report: Complaints against Police up; two deaths a day. <http://www.da.org.za/newsroom.htm?action=view-news-item&id=8746>.
39. See 38 above.
40. Graeme Hosken, Death in Police Custody. <http://www.highbeam.com/doc/1g1-238415275.html>.
41. South Africa: Police Brutality on the Increase: Report. <http://www.iol.co.za/news/south-africa/police-brutality-on-the-increase-report-1.364076?ot=inmsa.ArticlePrintPageLayout.ot>
42. Dianne Kohler Barnard, ICD Annual Report: Complaints against Police up; two deaths a day. <http://www.da.org.za/newsroom.htm?action=view-news-item&id=8746>.
43. See 42 above.
44. Complaints Authorities: Police Accountability in Action. http://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf.

REFERENCES

- Armaments Development and Production Act of 1968. From <http://www.polity.org.za/polity/govdocs/commissions/cameron3.html> (Retrieved March 13, 2011).
- Arms and Ammunition Act of 1969. From http://www.saga.org.za/Act_75_of_1969.html (Retrieved March 10, 2011).
- Bruce D 1997. Concern over Deaths in Custody, The Star, 15 July, 1997. From <http://www.csvr.org.za/wits/article/artdeath.htm> (Retrieved February 22, 2011).
- Commonwealth Human Rights Initiative. Police Accountability in Action. From http://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf (Retrieved March 11, 2011).
- Constitution of the Republic of South Africa*, No. 108 of 1996. Issue 38.
- Control Access to Public Premises and Vehicles Act of 1985. From http://www.saps.gov.za/docs_pubs/legislation/juta/a53of1985.pdf (Retrieved February 14, 2011).
- Convention on Making of Plastic Explosives for Purpose of Detection. From www.nti.org (Retrieved February 20, 2011).
- Criminal Procedures Amendment Act No. 96 of 1965. From <http://www.nelsonmandela.org/omalley/index.php/site/q/031v01538/041v01828/051v01829/061v01920.htm> (Retrieved February 28, 2011).
- Diplomatic Immunities and Privilege Act of 1989. From <http://www.dfa.gov.za/departement/diplomatic%20immunities%20and%20privileges%20act.html> (Retrieved March 11, 2011).
- Enders W, Sandler T, Gaibulloev K 2011. Domestic versus transnational terrorism: Data, decomposition, and dynamics. *Journal of Peace Research*, 48 (3): 319-337.
- Homeland Security Act, 2002. From <http://www.answers.com/topic/homeland-security> (Retrieved February 20, 2011).
- Homeland Security Act, 2002. From <http://911research.wtc7.net/post911/legislation/hsa.html> (Retrieved March 11, 2011).
- Hosken G 2011. Death in Police Custody. From <http://www.highbeam.com/doc/1g1-238415275.html> (Retrieved March 13, 2011).
- Huntington SP 1993. The clash of civilisations? *Foreign Affairs*, 72 (3): 22-49.
- Infante DA 2005. Corporal punishment of children in theoretical perspective. In: DA Infante (Ed.): *Corporal Punishment of Children: A Communication Theory Perspective*. London: Yale University Press, pp. 183-198.
- Internal Security Act of 1982. From <http://www.aluka.org/action/show Metadata?doi=10.5555/AL.SFF.DOCUMENT.leg19820609.028.020.074> (Retrieved March 13, 2011).

- International Convention against the Taking of Hostages. From <<http://www1.umn.edu/humanrts/in-stree/takinghostages.html>> (Retrieved February 28, 2011).
- International Convention for Suppression of Terrorist Bombing. From <<http://www.un.org/law/cod/terrorist.html>> (Retrieved March 6, 2011).
- Intimidation Act of 1982. From <http://www.saps.gov.za/docs_pubs/legislation/juta/a72of1982.pdf> (Retrieved February 13, 2011).
- Ismail V 2007. Terrorism, Public Policy and Democracy. In: Strategic Review of Southern Africa, 1 May, 2007. From <<http://www.highbeam.com/doc/1G1-167107937.html>> (Retrieved February 23, 2011).
- Kegley Jr CW, Wittkopf ER 1995. *World Politics: Trends and Transformation*. 5th Edition. New York: St Martin's Press.
- Kohler Bernard D 2009. ICD Annual Report: Complaints against Police Up; Two Deaths a Day. From <<http://www.da.org.za/newsroom.htm?action=view-news-item&id=8746>> (Retrieved March 12, 2011).
- Independent Complaints Directorate Annual Report 2003/2004. From <<http://www.info.gov.za/view/DownloadFileAction?id=68569>> (Retrieved March 11, 2011).
- Independent Complaints Directorate Annual Report 2007/2008. From <<http://www.info.gov.za/view/DownloadFileAction?id=90292>> (Retrieved March 11, 2011).
- IolNews 2007. Police Brutality on the Increase: Report. From <<http://www.iol.co.za/news/south-africa/police-brutality-on-the-increase-report-1.364076>> (Retrieved January 22, 2011).
- Matlou MP, Mutanga SS 2010. The impact of migration flows: Origin, transit and receiving states. *Africa Insight*, 40(1): 128-148.
- Martin E 2011. Nigeria: Henry Oka's Trial Tests the Nation's Counter-Terrorism Act. From <<http://allafrica.com/stories/201011240382.html>> (Retrieved March 18, 2011).
- Mdletshe S, Memela M, Mashaba S 2010. Parties Urge Probe into 566 Deaths SAPS Custody Deaths. *Sowetan*, November 23, 2010, pp 1-2. National Key Points Act of 1980. From <http://www.saps.gov.za/docs_pubs/legislation/juta/a102of1980.pdf> (Retrieved February 12, 2011).
- Non-Proliferation of Weapons of Mass Destruction Act of 1993. From <<http://www.info.gov.za/view/DownloadFileAction?id=68029>> (Retrieved March 4, 2011).
- Piazza JA 2012. Types of minority discrimination and terrorism. *Conflict Management and Peace Science*, 29(5): 521-546.
- Protection of Constitutional Democracy against Terrorism and Related Activities Act, 2004 (Act No 33 of 2004). From: <<http://www.info.gov.za/view/DownloadFileAction?id=67972>> (Retrieved March 11, 2011).
- Protocol for Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. From <http://www.ciaonet.org/cbr/cbr00/video/cbr_ctd/cbr_ctd_35.html> (Retrieved March 11, 2011).
- Riotous Act of 1956. From <<http://www.sahistory.org.za/pages/chronology/thisday/1956-03-16.html>> (Retrieved March 14, 2011).
- Safety Matters Rationalization Act, 1996 (Act 90 of 1996). From <http://www.saflii.org/za/legis/num_act/smra1996342/> (Retrieved March 13, 2011).
- Sandler T 2011. New frontiers of terrorism: An introduction. *Journal of Peace Research*, 48(3): 279-286.
- Shamir R 2005. Without borders? Notes on globalization as a mobility regime. *Sociological Theory*, 23(2): 197-217.
- Silverman J, Thomas L 2012. 'I feel your pain': Terrorism, the media and the politics of response. *Crime, Media Culture*, 8(3): 279-295.
- Smith M 2011. Death in Police Custody...Then and Now. From <<http://boerboel1.wordpress.com/2010...-then-and-now>> (Retrieved March 14, 2011).
- Snyman G 2010. Court Orders Immediate Release of Somali Refugees from OR Tambo Airport. 2010 November 25. From <<http://pambazuka.org/en/category/refugees/69075>> (Retrieved February 11, 2011).
- Strumpf D, Dawes N 2009. Khalid Rashid: Government's Cover is Blown. From <www.informaworld.com> (Retrieved February 8, 2011).
- Sutherland M 2008. *Advertising and the Mind of the Consumer: What Works, What Doesn't, and Why*. 3rd Edition. Crows Nest, Australia: Allen and Unwin.
- Terrorism Act No. 83 of 1967. From <<http://africanhistory.about.com/cs/apartheidlaws/g/No83of67.htm>> (Retrieved March 15, 2011).
- United Nations Resolution 1373. From: <www.coe.int/t/dlapil/codexter/4_Theme_Files> (Retrieved March 6, 2011).
- Warby V ICD Paints Grim Cops Picture, 2010. From <<http://timesguardian.com/icd-paints-grim-cops-picture-107058.html>> (Retrieved February 23, 2011).
- Weber M 1947. *The Theory of Social and Economic Organizations*. Oxford: Oxford University Press.