

FEAR IN THE CITY

URBAN TERRORISM IN SOUTH AFRICA

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EXECUTIVE SUMMARY

This monograph explores the only significant series of terrorist acts that has occurred in South Africa's post-1994 history — that of urban terrorism in the greater Cape Town area — and the state's response to these acts.

Between 1994 and the end of 2000 over 400 criminal detonations and explosions occurred in South Africa. Most occurred in the context of internecine gang warfare and vigilante action against criminal gangs and suspected drug dealers in the Western Cape.

After mid-1996 an increasing number of bombings and assassinations were motivated by a desire to create a climate of fear as urban terrorism inflicted death and destruction on the citizens of Cape Town. The bombers began to target central Cape Town and popular tourist spots, as well as the state in the form of police stations, court buildings and personnel of the justice system.

This study begins with the question: 'What is terrorism?' This is an important question to ask when looking at urban terrorism in a South African context where it can be difficult to distinguish between terrorist as opposed to criminally motivated bombings and assassinations.

At the time of writing no group has claimed responsibility for the bombing campaign in Cape Town. Government ministers responsible for security and justice have laid the blame for the bombings firmly at the door of People Against Gangsterism and Drugs (Pagad). This study looks at Pagad, its history, objectives and changing aims between 1996 and 2000 to establish whether the available evidence justifies the ministers' allegations.

Operationally the state responded effectively in stabilising the internal security situation in the Western Cape. Through special intelligence-driven joint police and defence force operations the security forces contributed to a significant reduction in terrorist-related incidents by the end of 2000. The study evaluates the successes of four operations launched by the security forces to combat urban terrorism in the Western Cape.

The final section of the monograph looks at the state's legislative response to terrorism in South Africa. More than 30 pieces of legislation are still on the statute books to be used to combat terrorism and related criminal behaviour. South African legal precedent has also created a

number of common law crimes that can be used against people engaging in terrorist activities. These, and relevant international conventions that seek to combat terrorism and crimes committed by terrorists, are discussed.

In mid-2000 the South African Law Commission published a draft anti-terrorism bill. The draft bill seeks to address the issue of terrorism and related crimes in one piece of legislation. The draft bill contains some controversial provisions, notably proposals that suspects can be detained without charge or trial for up to 14 days, and an excessively broad definition of terrorism. These contentious provisions are analysed in some detail.

Even the best legislation is ineffective if it is not properly implemented and used by the personnel of the criminal justice system. Many of the existing laws designed to combat terrorism, and strengthen the hands of the security forces against terror groups are not being used fully. This is because of a variety of operational weaknesses in the criminal justice system such as a lack of detective and prosecution skills, resource constraints, a weak intelligence capacity and insufficient public co-operation with law enforcement agencies.

INTRODUCTION

South Africa is a violent country. According to Interpol, the International Criminal Police Organisation, South Africa has one of the highest murder rates in the world. The South African Police Service records some 25 000 murders a year — almost 70 during an average day. A similar number of attempted murders are recorded by the police, while a quarter of a million assaults with the intent to commit grievous bodily harm are recorded per year. During a typical year more than 300 000 South Africans are murdered or seriously assaulted.

Between 1994 and the end of 2000 over 400 criminal detonations and explosions occurred in South Africa. These were caused by improvised explosive devices, commercial explosives, pipe bombs, hand grenades, petrol bombs, as well as stun grenades, capped fuses and even thunder flashes. Most of the explosions occurred in the context of internecine gang warfare and vigilante action against criminal gangs in the greater Cape Town area.

After mid-1996 the motive for some acts of violence in the form of bombings, drive-by shootings and assassinations changed. It would appear that the violence was no longer solely committed by gangs battling for territory and markets, or by vigilantes in their attempts to eliminate suspected drug dealers. This new violence sought to create a climate of fear and terror among the citizens of Cape Town. Moreover, after mid-1998, bomb attacks and assassinations occurred not only in the gang-ravaged areas of the Cape Flats but also in the city centre and tourist destinations of Cape Town itself. The violence increasingly began to target the state in the form of police stations, courts and personnel of the justice system, as well as popular tourist and entertainment areas, restaurants and the Cape Town international airport.

Compared to the criminally motivated crime and violence in South Africa, these acts of terrorism exacted mercifully few victims. The two-dozen bomb blasts that occurred in Cape Town between mid-1998 and the end of 2000 caused five fatalities (of which two fatalities involved the suspected bombers themselves) and about 120 injuries. The impact of terrorism should, however, not be measured in terms of its actual victims. Terrorism seeks to achieve precisely what the term implies: terror. With the right publicity one bomb brutally mutilating an unlucky restaurant patron instils more fear and insecurity in the general public than the 70 murders recorded on an average day.

In South Africa the majority of murders and assaults are committed by people who are known to their victims. By avoiding dangerous places and situations and choosing the right acquaintances most people are able to minimise their risk of becoming victims of violent crime. This is not the case with victims of terrorist acts of violence, however. Terrorist violence is random and arbitrary. A female cleaner, a male security guard, a young shop assistant, or a wealthy elderly shopper are all equally likely to be killed by the explosion of a bomb inside a shopping mall. Moreover, as acts of terror receive high levels of publicity the average person is more aware of a terrorist bomb explosion on the other side of the country than a murder in the same suburb.

A sustained terrorist campaign can rapidly undermine public trust in the state's ability to protect its citizens. In liberal democratic states terrorist acts have the effect of eroding public confidence in the rule of law, the courts and the police. This leads to public pressure on policy makers to deal harshly with suspected terrorists and their sympathisers. In their desire to appease public opinion and to combat terrorist threats more effectively, governments are easily swayed to compromise on upholding certain fundamental freedoms and the rule of law. This frequently evokes an overreaction by states against suspected terrorists and the communities in which they live. This overreaction plays into the terrorists' hands by escalating the cycle of violence in such societies.

In an interconnected world, pictures of terrorist atrocities are flashed across television screens across the globe. This detrimentally affects investor confidence in the victimised country — something a developing country such as South Africa can ill afford. Terrorist acts can also have a significant impact on tourism, a lucrative industry for many developing countries. Cape Town is South Africa's premier tourist destination for hard-currency visitors from Western Europe and North America. The tourist market is sensitive, and indications of terrorist activities in a country quickly lead to cancellations. In Cape Town's case this has serious repercussions for the local economy and employment levels. It is estimated that one job is created for every eight foreign tourists who spend their money in the country.

To illustrate the nature of urban terrorism and the state's response as a case in point, this monograph explores the only significant series of terrorist acts that South Africa has known since 1994 — acts of urban terrorism in the greater Cape Town area.

This monograph begins with an explanation of what terrorism is. This is important in a South African context where it can be difficult to distinguish between terrorist as opposed to criminally motivated bombings and assassinations. The South African government defines terrorism as "an incident of violence, or the threat thereof, against a person, a group of persons or property not necessarily related to the aim of the incident, to coerce the government or civil population to act or not to act according to certain principles". Terrorists are motivated by a variety of factors. These factors, which are explored in this study, often determine the level of fanaticism and degree of persistence terrorists and terrorist groups show in their nefarious activities.

At the time of writing no group has claimed responsibility for the urban bombing campaign in Cape Town. Although some arrests have been made, few have resulted in successful convictions. Government ministers responsible for security and justice have laid the blame for the bombings firmly at the door of People Against Gangsterism and Drugs (Pagad), a vigilante group that originated as a response to high levels of crime, particularly those associated with drug trafficking on the Cape Flats. The second chapter of the monograph looks at Pagad, its history, objectives and changing aims between 1996 and 2000 to establish whether the ministers' allegations are justifiable from the available evidence.

Operationally the state responded effectively in stabilising the internal security situation in the Western Cape. Through special intelligence-driven joint police and defence force operations the security forces contributed to a significant reduction in terrorist-related incidents by the end of 2000. The third chapter of the monograph evaluates the successes of four distinct operations — Operations Recoil, Saladin, Good Hope and Crackdown — launched by the security forces to combat urban terrorism, criminal gangs and other forms of crime in the Western Cape.

The final chapter of the study looks at the state's legislative response to terrorism in South Africa. An historic account is given of how previous South African governments between the 1950s and the 1980s promulgated a set of tough anti-terrorism laws. The heavy-handed application of these laws by the security forces saw an increase rather than a decrease in insecurity and acts of political violence. More than 30 pieces of legislation, still on the statute books, are discussed. This legislation can be used at any time to combat terrorism and related criminal behaviour. The chapter analyses the draft anti-terrorism bill, which seeks to create an omnibus statute to address the issue of terrorism and a variety of related crimes in one piece of legislation. Finally, operational weaknesses in the criminal justice system are identified as the source of what many view as the state's inability to effectively combat terrorist activities.

CHAPTER 1

THE MULTI-HEADED MONSTER: DIFFERENT FORMS OF TERRORISM

Introduction

Given the number of definitions of terrorism available in academic resources, it is almost inconceivable that there should be a lack of any unified definition of terrorism. The following discussion will focus on the different dimensions of terrorism, in order to establish a framework of understanding.

Considering the basic elements of terrorism, Schmid and Jongman's definition of terrorism seems to be the most comprehensive. They write:

"Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-) clandestine individual, group, or state actors, for idiosyncratic, criminal, or political response, whereby — in contrast to assassinations — the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorists (organisations), (imperilled) victims, and main targets are used to manipulate the main target (audience), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought."¹

Apart from Schmid and Jongman's definition, numerous other definitions of terrorism are useful. In terms of the present analysis, the following definition is particularly relevant:

"Terrorism is the deliberate employment of violence or the threat to use violence by sub-national groups and sovereign states to attain strategic and political objectives. Terrorists seek to create overwhelming fear in a target population larger than the civilian or military victims attacked or threatened. Acts of individual and collective terrorism committed in modern times have introduced a new breed of extralegal

'warfare' in terms of threats, technology, targets and impact."²

South Africa has, since 1994, adopted internationally acknowledged definitions and categories of terrorism. According to Schönteich, the South African government's official policy on terrorism defines terrorism as:

"An incident of violence, or the threat thereof, against a person, a group of persons or property not necessarily related to the aim of the incident, to coerce a government or civil population to act or not to act according to certain principles."³

The draft anti-terrorism bill of 2000 defines terrorism as:

"Any act which does or may endanger the life, physical integrity or freedom of any person or persons, or causes or may cause damage to property and is calculated or intended to:

- intimidate, coerce or induce any government or persons, the general public or any section thereof; or
- disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- create unrest or general insurrection in any state."⁴

Elements of terrorism

Despite the numerous definitions of terrorism, the international community and academics have, to date, been unable to provide one definition of terrorism. Instead of deciding on a single definition, the following elements of terrorism are presented in the existing definitions:

Nature of the act

This usually takes the form of violence or the threat of violence; other criminal, unlawful, politically subversive, or anarchic acts; piracy; hijacking of aircraft; and taking of hostages. According to Crenshaw, terrorism is an attractive method to use because it is relatively inexpensive.⁵ This point is also discussed under *modus operandi*, below.

Perpetrators

Terrorism is a form of warfare and can be perpetrated either by individuals or by governments.⁶ Hanle differentiates between state terrorists (state terror to control the domestic population) and revolutionary terrorists (who seek nothing less than the total destruction of the targeted regime).⁷ These two groups may demand different levels of response to achieve their goals. Issue-motivated groups and criminal syndicates also use terrorism as their *modus operandi*, driven by the success of revolutionary terrorist groups.

Motivation

The best known motivational factors of terrorists include:

Rational motivation

The rational terrorist thinks through his goals and options, making a cost-benefit analysis. He seeks to determine whether there are less costly and more effective ways to achieve his objective than terrorism. To assess the risk, he weighs the target's defensive capabilities against his own capabilities to attack. He measures his group's capabilities to sustain the effort. The essential question is whether terrorism will work for the desired purpose, given societal conditions at the time.

Psychological motivation

Psychological motivation for terrorism derives from the terrorist's personal dissatisfaction with his life and accomplishments. Terrorists tend to project their own antisocial motivations onto others, creating a polarised "we versus they" outlook. According to Mazrui, the "us versus them" confrontation is the most persistent theme in world-order perceptions. "There is a tendency in monotheism to divide the human race between believers and unbelievers, between the virtuous and the sinful, between good and evil, between 'us' and 'them'."⁸

Culture and religion

Cultural differences create a feeling of belonging even across borders. Muslims all over the world, for example, belong to a universal ummah (Islamic community). "The ummah is not founded on race, nationality, locality, occupation, kinship or special interest. It does not take its name after the name of a leader or a founder or an event. It transcends national borders and political boundaries. The foundation of the community in Islam is the principle, which designates submission to the will of Allah, obedience to His law and commitment to His cause. What is required of the community at large is likewise required of every individual member."⁹

Terrorism in the name of religion can be especially violent. Like all terrorists, those who are religiously motivated view their acts with moral certainty, and religiously motivated terrorists even consider their acts to have divine sanction. What would otherwise be extraordinary acts of desperation, become a religious duty in the mind of the religiously motivated terrorist. This helps explain the high level of commitment and willingness to risk death among religious extremists.

Acts of religious terrorism are primarily committed in the belief that complete knowledge can be achieved (in the human world). Religiously motivated terrorist groups believe that they know which is the 'good' (or what is sanctioned by God or by their beliefs) and that this knowledge obligates them to destroy the evil and the unjust, according to their own perceptions of good and evil.

Religion has re-emerged as a major component in the understanding of contemporary political development, especially in the Middle East, Asia and Africa. The return to religious roots and the mobilisation of religious faith to reform societies is far from being limited to Third World countries. The manifestation of this phenomenon and its symbolism varies from religion to religion and culture to culture but there are some parallels in the organisation of religious groups and in the methods used by activists to arouse a popular response.¹⁰

Objectives

Most often fear, extortion and radical change are the objectives of terrorist acts. Terrorism is a process that has three elements:

- the act or threat of violence;

- the emotional reaction or extreme fear on the part of the potential or future victim; and
- the social effects that follow the violence.

The desired effect of terrorism is not the physical hurt to the victim, but the psychological impact on the target. As a consequence, the terrorist's victims must be carefully selected to assure the maximum possible psychological impact on the target.¹¹ The subjects of terrorist attacks generally have little intrinsic value to the terrorist group but represent a larger human audience whose reaction the terrorists seek. The objectives that terrorists have in mind may be classified as long-term objectives (that differentiate terrorist groups) and short-term or proximate objectives (that unite all terrorist groups over the whole spectrum of ideologies). The latter are defined in terms of the reactions that terrorists want to achieve in their different audiences. The most basic reason for terrorism is to gain recognition or attention. Violence and bloodshed always excite human curiosity, and the theatricality, suspense and threat of danger inherent in terrorism enhance its attention-drawing qualities. In fact, publicity may be the highest goal of some groups; international recognition encourages transnational terrorist activities in escalation, and destructive power. The larger the audience grows, the greater the extremes to which terrorists will go. Terrorism is also used to disrupt and discredit the processes of government: terrorism as a direct attack on a regime aims to promote the insecurity and demoralisation of government officials, independent of any impact on public opinion.¹²

Hidden or concealed agendas

Certain states sponsor terrorism as part of a campaign of geographic expansion of political control at the expense of existing state structures. According to Crenshaw, terrorism also serves as an internal organisational function of control, discipline and morale building within the terrorist group, and may even become an instrument of rivalry among factions within a resistance movement.¹³ Through counter-reaction against specific individuals from the targeted government, terrorists increase publicity and demonstrate to the people that their charges against the regime are well founded. Through these martyrs, recruitment follows and more funds are collected, especially under state-sponsored terrorism. For example, Hizbollah make use of video recordings of their attacks. These recordings are then sent to Iran, from where they receive their financial backing and instructions.

Targets

Terrorists often direct their violence and threats at a target group that is not directly involved in the political decision-making process that the terrorists seek to influence.¹⁴ Hanle distinguishes between direct terrorism (where the target of influence and the target of terror are one and the same) and indirect terrorism (where the entity targeted to receive the terror and the entity targeted to be influenced are separate).¹⁵ According to Crenshaw, different forms of terrorism involve various degrees of selectivity in the choice of victims.¹⁶ Some acts of terrorism discriminate precisely, while others are broadly indiscriminate. Schbley, after interviewing 26 Lebanese Shi'a Muslims, listed the most likely targets of Shi'a religious terrorist groups.¹⁷ Topping the list of preferred hostages are diplomats, and civilian and military intelligence officers. Other targets include national symbols of state, namely heads of state, public officials, airlines and national security key points.

Terrorism against key economic targets is another trend. In Turkey, Egypt and Spain, terrorist groups have systematically targeted the tourist sector in order to inflict economic damage. In Latin America, South Asia and the former Soviet Union, terrorism has become increasingly interwoven with organised crime and drug trafficking, undermining the viability of the fragile and

corrupt governments in those areas.¹⁸ In Colombia, for example, 43% of the targets of terrorism represent the commercial sector. Here, attacks are directed against oil pipelines and mines owned by multinational corporations. In a single Revolutionary Armed Forces of Colombia (FARC) attack in September 1997, Exxon suffered an estimated US\$3 million in losses.¹⁹ With reference to the situation in South Africa, especially in the Western Cape (as will be discussed in the following chapters), it could be argued that the alleged target selection of People Against Gangsterism and Drugs (Pagad) changed from drug and gang leaders to restaurants associated with the United States (for example, Planet Hollywood, Kentucky Fried Chicken and McDonalds).

According to Laqueur: "the terrorist of the future will be less ideological, more likely to harbour ethnic grievances, harder to distinguish from other criminals, and a particular threat to technologically advanced societies".²⁰ Ethnic terrorism draws on greater public support than ideologically motivated terrorism does. Organisations that adhere to a nationalist or separatist ideology — such as Muslim extremists, the Provisional Irish Republican Army (PIRA) and the Basque Fatherland and Liberty (ETA) — have a larger constituency of potential recruits, supporters and more political clout and resources than the extreme ideological groups (for example, the Red Brigades in Italy) whose activities are on the decline.

Modus operandi

The most common weapons of terrorists are threats, as well as sabotage, assassination, hostage taking, murder, kidnapping and bombing. According to Crenshaw, terrorists use whatever means are available to further their objectives — the technological advances of the modern era have made this possible and have created opportunities and vulnerabilities.²¹

Professional terrorists have become increasingly ruthless, sophisticated and operationally competent. Although most terrorist groups remain technologically conservative, using off-the-shelf weaponry, some groups adapt or improvise their weaponry. For example, terrorists used readily available fertiliser as the main component of their device to bomb the World Trade Centre in New York in February 1993.²²

Although the modus operandi of international terrorist groups is to a large extent static, the first use of chemical weapons by terrorists occurred in March 1995 when members of the Japanese cult, Aum Shinrikyo, placed sarin gas on five trains in Tokyo. Bombings still characterise most international terrorist incidents.

Between 1968 and 1999, more than 7 000 terrorist bombings were recorded.²³ Bombing, armed assault, firebombing, sabotage, kidnapping and hijacking were the main methods used in order of prevalence. Business facilities were first on the hit list, followed by diplomatic representatives, government facilities and armed forces. The trend is a shift away from attacking specific targets towards indiscriminate killings. The dividing line between urban terrorism and other forms of terrorism has become less distinct, while it is often impossible to draw a line between politically motivated terrorism and the operation of national and international crime syndicates.²⁴ The most serious concern is that terrorists are seeking to kill and injure more and more people.

Bombing

This has been the most common tactic used by terrorists since the manifestation of international terrorism in the 1960s. The objectives have changed from symbolic bombings, not intended to produce casualties (especially in the 1970s), to incidents where the ultimate objective is to

cause as many casualties as possible. The latter objective emerged in the 1980s, especially with the suicide bombings used by religious extremists in the Middle East and North Africa. The most obvious reason for the popularity of bombing as a *modus operandi* is that explosives can be easily purchased, stolen or manufactured from commercially available materials. Knowledge of how to build a bomb and explosives can be obtained from books and the Internet. Individuals have access to conventional as well as unconventional bomb-building material through mail order catalogues. Iranian President Ali Akbar Hashemi Rafsanjani refers to this access as "the poor man's nuclear bomb".²⁵ The Internet is also being used by terrorist groups to gather information on weaponry and techniques, and to spread propaganda.²⁶

Terrorists are further exploring advanced technologies and are utilising more imaginative ways of operating explosives, detonators, communications, and concealed devices. Bombings require little organisation and can easily be one-man operations. As diplomatic and military targets have become better protected, terrorists have focused their attacks on soft targets. Terrorists are also exhibiting a lack of discrimination in target selection with the trend towards huge truck bombs in urban centres such as, for example, Buenos Aires and Moscow.²⁷

In December 1988, a bomb exploded on flight Pan Am 103. Pieces of the plane fell onto the Scottish town of Lockerbie, killing 259 people on the plane and 11 people on the ground. This incident is regarded as the worst air-disaster of the 20th century. The Popular Front for the Liberation of Palestine-General Command (PFLP-GC) was suspected of being responsible for planting the bomb. Despite the threat of economic sanctions Libya initially refused to deliver two of its nationals, who were the main suspects of the bombing — Abdel Basset al-Megrahi and Al-Amin Khalifa Fhimah — after they were charged with murder, conspiracy to murder and contravention of airline security.²⁸ In April 1999, with the contribution of former South African president Nelson Mandela, Libya extradited the two suspects to stand trial in the Netherlands according to Scottish law. The trial commenced in May 2000.

Al-Amin Khalifa Fhimah was alleged to belong to Libyan intelligence and to have been the station officer of Libyan Arab Airlines in Malta at the time of the bombing. In January 2001 Fhimah was acquitted of the charges against him.

Abdel Basset al-Megrahi was alleged to have been a senior officer of the Libyan Intelligence Services and head of Libyan Arab Airlines security in Malta in December 1988. Al-Megrahi bought clothes from a Maltese store that were contained in the suitcase bomb on board flight Pan Am 103. Al-Megrahi was convicted and sentenced to life imprisonment.

Terrorists use computers, cellular phones and encryption software to evade detection. These methods of evading detection, as well as the forging of documents and passports, were used extensively by Ramzi Ahmed Yousef and his gang, who were convicted of a plot to blow up 12 US airliners over the Pacific in 1995.²⁹ Yousef was arrested in Islamabad, Pakistan, in February 1995, after fleeing from the United States and was sentenced to 240 years imprisonment in November 1997.³⁰ Yousef was convicted of the explosion at the World Trade Centre in New York in which six people died and more than 1 000 were injured, and of planting a bomb that killed one person on a Philippines Airlines flight to Tokyo in 1994.

Another example of the use of technology in the planning of terrorism is illustrated by Osama Bin Laden, who uses computers and cellular phones to co-ordinate the activities of his international network of operatives. (Bin Laden is also linked to Yousef. Three years before Yousef was charged for the World Trade Centre bombing, he lived in a Pakistan guest house paid for by Bin Laden.³¹) After the Afghan war, Osama Bin Laden emerged as one of the

primary role-players in exporting transnational terrorism. During the Afghan war, close co-operation was established with Muslims from different nationalities that form part of the current network of Islamic extremist elements. Bin Laden heads the large Islamic organisation Al-Qaeda. Most of the groups that participate in his front remain independent, although the organisational barriers between them are fluid. In the centre of Al-Qaeda is Bin Laden's own inner group, which conducts missions on its own. The best-known terrorist act with which Osama Bin Laden is connected is the bombing of the US embassy in Nairobi, Kenya, in August 1998, which killed more than 200 people. Ten minutes after the Nairobi blast, a bomb placed in a refrigerator truck exploded outside the US embassy in suburban Dar es Salaam, Tanzania, killing 11 people.

Hostage taking

Hostage taking, whether by kidnapping individuals, hijacking airlines or storming buildings, has always been a popular tactic due to its demonstrated effectiveness. Although Jenkins argued in 1987 that the seizing of embassies would decrease because of an increase in their security measures, the left-wing Tupac Amaru Revolutionary Movement seized the Japanese embassy in Peru in 1997.³² Hostage situations are on the increase among desperate groups in many Third World countries. In fact, there was a 33% rise in the kidnapping of foreigners in the 1990s.³³

Assassination

In modern times, types of assassination have included:

- diplomatic assassination (group or state);
- murder involving religious issues (individual, group or state);
- murder where the driving motive is nationalism (individual, group or state);
- murder where the driving motive is class struggle (individual or group); and
- murder committed for reasons of state (state).

A recent example of this type of international terrorism took place in June 1995, when gunmen attempted to assassinate Egyptian president Hosni Mubarak during a visit to Ethiopia. Ethiopian counter-terrorist forces and Egyptian security forces foiled the attempt. Al-Gama'a al-Islamiyya (Islamic Group or IG), masterminded by Egyptian citizen Mustafa Hamza, claimed responsibility. According to Egypt's security forces, Khartoum's Islamist junta was involved in the attack. Hamza took refuge in Khartoum and holds a Sudanese diplomatic passport.³⁴

With reference to the situation in South Africa, the most prominent examples were the assassinations of:

- Captain Bennie Lategan, a member of the SAPS' Pagad Investigation Team, in January 1999. Captain Lategan was investigating cases of urban terrorism in the Western Cape. He was shot 10 times at point blank range. Ismail Edwards and Ebrahim Jeneker, both members of Pagad's G-Force, have been implicated in this assassination. Ismail Edwards was convicted in May 2000 for his part in a pipe bomb attack on Lansdowne police station in January 1998 and for the attempted murder of Nazeem Smith, an alleged drug dealer. Ebrahim Jeneker is facing 124 charges including, nine for murder, 12 for attempted murder, ten for armed robbery, eight for the possession of unlicensed firearms and one for the possession of explosives. Jeneker is also implicated in attacks on the police and businessmen.³⁵

- Magistrate Piet Theron, in September 2000. Theron, who was presiding over urban terrorism cases, was assassinated in front of his house. He was shot five times in the head and chest.³⁶

Support

Oots identifies the following types of support given to the whole spectrum of terrorist organisations:³⁷

- financial support;
- training;
- weapons;
- organisational support: groups and friendly regimes supply terrorists with passports, documents or propaganda support (the recognition of their cause and sympathy); and
- operational support: terrorist organisations may support other terrorist organisations because of ideological compatibility, or a shared ideology of revolution

Zones of public action³⁸

The first level of the zones of public action reflects the constitutional order, with a basic level of stability within a democratic society.

The second level is the comfort zone of usual activity, involving legitimate dissent and protest, both within and outside parliament. Legitimate protest is regarded as a valuable mode of political communication, criticism and democratic consultation. In a liberal democratic society, peaceful protest and agitation should be regarded as legitimate and vital aspects of social reform. Political and moral pressure includes the mass campaign of marches, processions, demonstrations and mass meetings, inevitably coupled with massive media publicity and pressure on the government and political parties.

The third level encompasses the zone of ambiguity. This could be defined as a 'grey' area where contentious issues in society and the behaviour of individuals and groups result in disorderly conduct and acts of civil disobedience and conscientious objection, although the initial objective leading to these acts does not involve a comprehensive rejection of the state's legal authority. Although it is a non-violent means of individual resistance to authority, it may, on occasion, provoke a repressive response by the authorities or by members of the community hostile to the objector's position. Peaceful acts of civil disobedience may on occasion be infiltrated or may even be taken over by those who have no inhibitions about the use of violence, or who have an ulterior motive. In other cases, the demonstration, however peaceful in intent, may provoke a violent counter-demonstration of response. Therefore, a peaceful campaign of civil disobedience can result in violent confrontation, especially if 'protesters' are swept up into more dangerous and destructive emotions and actions. There is a tendency for such demonstrations to become more aggressive, partly because of the rising threshold of shock needed to attract media attention, and partly because, when peaceful demonstrations fail to achieve results, frustration usually leads to more violence.³⁹

The fourth level of the zones of public action is the security zone, a level of disorder where the potential or actual occurrence of crime, conflict, violence and subversion poses a threat to society or the state. An escalation of the problem could lead to conditions of anarchy, militarisation and social collapse. Internal violence can be divided into two groups based upon the prime objectives. The first directly endangers the survival and stability of the constitution itself; the second indirectly and cumulatively undermines the state's authority and support by major defiance of law and order and by endangering the lives of citizens to the point where confidence in the state's authority is eroded.

Legitimate public dissent may lead to violence associated with terrorism, inter-communal violence and crime for a number of reasons.

- According to Leventhal and Chellaney, the longer terrorists are involved in underground campaigns, the more brutal and hardened they tend to become, and the greater is their desperation to attract national and international attention to their cause.⁴⁰ It is also possible to detect a shift inside terrorist organisations, away from the more pragmatic 'politically-minded' terrorist leaders to individuals obsessed with vengeance and violence.
- In order to keep the public's attention and to recover coercive power lost as governments become more resistant to their demands, terrorist groups are 'forced' to use more coercive tactics.⁴¹
- The longer individuals and groups are involved in illegitimate dissent, the more resources and technical know-how needed to operate at a higher, more lethal level become available.
- Terrorist movements have political as well as military wings. Through this dual strategy the political arm is able to conduct overt operations, while the military or covert structure is engaged in ambushes and assassinations. The strategy enables the political leadership to dissociate itself publicly from the operations of the military wing. In some cases this strategy has become flawed as armed wings have begun to operate independently, rather than remain under the control of their political wings. In fact, individuals have begun to lose sight of the aims and objectives of the larger movement.⁴²

The above-mentioned factors listed as contributing to the potential escalation from legitimate dissent to violence and terrorism do not imply that all protest actions develop into violence. Instead, the possibility of violence is presented. For example, when discussing the activities of Pagad, it is useful to bear in mind that although the initial objectives of Pagad were to rid the community of drugs and gangs and to let the government know that something would be done about its lack of response to crime, Pagad as a pressure group has developed into a vigilante group that seems to be associated with acts of terrorism.

Categories of terrorism

Table 1 distinguishes between the four main categories of terrorism based on the level of government and individual involvement in terrorism.

Table 1: Government and individual involvement in terrorism

	Government controlled	Nationals of more than one state
Domestic terrorism	Yes	No

International terrorism	Yes	Yes
State-sponsored terrorism	Yes	No
Transnational terrorism	No	Yes

Since the 1960s, the threat posed by terrorism has changed. The changing nature of this threat and changes in the primary character of terrorism are represented schematically in Table 2. The different forms of terrorism may, however, occur in different periods and are not necessarily exclusive to one period.

Table 2: Eras of terrorism

Period	1960 – 1979	1980 – 1989	1990s
Type	Revolutionary terrorism	State-sponsored terrorism	Transnational terrorism
Threat	National stability	Regional stability	International stability
Character	Instrument to combat colonial rule Domestic terrorism	Cold War instrument used by the former super-powers and their allies	Instrument in the hands of individuals in an international network

Domestic terrorism

Domestic terrorism occurs when the violence and terror associated with it are confined to national territories and do not involve targets abroad. In practice, it is, however, very difficult to find any intensive terrorist campaign that remains purely internal as the terrorists eventually look across their national borders for support, weapons, financial assistance and a safe haven.⁴³ The use of domestic terrorism is not limited to non-governmental groups as state terrorism forms an integral part of domestic terrorism. Governments, their armies, secret police and intelligence services may be labelled as terrorists when they are involved in terrorist activities. Autocratic governments often resort to violence (associated with terrorism) to limit legitimate dissent.

Political terrorism

Political terrorism can be defined as the use or threat of terror by a state or a group outside government in pursuit of a set of ideological objectives that ignore the objectives of domestic and international law. "The intimate connection between terrorism and ideological politics is vital for present purposes, since it is precisely this connection that distinguishes modern terrorism from earlier forms of political violence."⁴⁴ This form of terrorism is used primarily for political ends. Terrorism used as a *modus operandi* by political groups reflects their inability to achieve their political objectives through legitimate means. Political terrorism cannot be understood outside the context of the development of terrorist, or potentially terrorist, ideologies, beliefs and lifestyles. Thus, political terrorism embodies violence or the threat of violence against non-combatants in order to achieve political goals. In fact, as is argued by Stohl and Lopez, there is no clear classification for political terrorism across regional and ideological lines.⁴⁵ The use of violence by states has been accepted as a standard operating procedure since the 1960s, in response to liberation struggles.

Crime-related terrorism

Criminal terrorism is defined as "the systematic use of terror for ends of material gain".⁴⁶ The primary manifestations of force in this form of terrorism include kidnapping, extortion, assassination and murder. Targets are selected primarily on considerations of personal and

material gain. If a member of a state structure is selected at all, it is either for direct personal gain or to reduce interference by governmental authorities in their efforts to put an end to criminal activity. For example, with the dissolution of the Soviet Union, 15 independent states came into being. Poor socio-economic conditions contributed to a deterioration of law enforcement, border forces and to general unemployment. Control over weapons and explosives (conventional and unconventional) weakened, which threatened not only national, but also regional and international security. The national security of states in the region was threatened by the escalation of criminal gangs and organised crime syndicates. Political and criminal terrorism are regarded as a major threat to security within the territory of the former Soviet Union. Criminal terrorism has taken the form of contract assassinations, kidnappings and intimidation bombings. Targets include business people, politicians, government officials, government buildings, military personnel, trains and border guards.⁴⁷

In South Africa, the best example of crime-related terrorism is the phenomenon of taxi violence. Taxi violence is especially prevalent around Cape Town, Johannesburg and East London. Taxi violence occurs mainly between owners and operators of minibus taxis, between members of opposing taxi associations, and between minibus taxi operators and operators of other modes of transport such as buses. Competition for routes, licences and passengers exacerbates the problem. An emerging phenomenon in taxi violence is that of professional hit squads hired by operators to attack rivals in drive-by shootings.⁴⁸ According to Swindells, nearly 1 500 people were killed in taxi-related violence between 1996 and January 2000.⁴⁹ Many were victims of contract killers hired by rival taxi operators specifically to kill taxi drivers, for as little as R5 000 per driver. Taxi owners have attacked and murdered several bus drivers in a war over who gets to transport thousands of commuters.

In the Western Cape, violence in the transport industry escalated in April 2000 when a bus owned by the Golden Arrow Bus Company was shot at near the Nyanga bus terminus. This attack unleashed 57 violent incidents between April and August 2000, during which two commuters and 11 bus drivers were killed, and 42 commuters were injured. In these attacks, buses were shot at with pistols and automatic rifles from passing taxis and vehicles. In some instances, persons on foot, hiding behind shacks and walls, fired shots at buses on the bus routes in the townships and on highways.⁵⁰ In July 2000 alone, there were 13 attacks by independent minibus owners and drivers, against buses of the Golden Arrow Bus Company. These attacks started in late May 2000. At the time of writing more than 60 attacks had occurred resulting in seven fatalities and dozens of injured people. The Golden Arrow Bus Company has suffered losses of hundreds of thousands of rands.

Narco-terrorism

Narco-terrorism can be described as terrorism conducted to further the aims of drug traffickers. It may take the form of assassination, extortion, hijacking, bombing, and kidnapping directed at judges, prosecutors, elected officials, or law enforcement agents, and the general disruption of government, to divert attention from drug operations.

Although narco-terrorism is a sub-element of crime-related terrorism, it is significant enough to be considered in its own right. Narco-terrorism, in the first instance, includes narcotics trafficking by terrorist groups in return for the funds with which to conduct terror. In the Asia/Pacific region, narco-terrorism is linked to political terrorism. The objective is to force governments or their agents (such as law enforcement agencies) to scale down their activities against drug syndicates.⁵¹

In other words, narco-terrorism refers to the use of extreme pressure and violence by the growers, producers, or distributors of narcotics to force a government agency to modify its opinion with regard to curtailing the sale and the use of narcotics. Although violence has always been an inevitable part of the drug trade, narco-battles have increasingly spilled over into the non-criminal world. Today's narco-terrorism involves the assassination of political leaders, the bombing of civilian aeroplanes, alliances between armed guerrillas and narco-traffickers, widespread gunrunning, and may even involve attempts to overthrow a government that is attempting to curtail the drug trade.⁵²

Colombia is one of the best examples of a state where narcotics introduced not only terrorism, but also an illegal international arms-trade network. State-sponsored terrorism also plays a role as a destabilisation factor. For example, all four major terrorist groups in Colombia have received arms and training from Cuba and aid from Libya. The involvement of Cuba and Libya (although indirectly) supports the conclusion that an international network exists, linking terrorist groups and individual role-players. Colombia has historical ties with Cuba, organised crime organisations (which are active in drugs, guns and illegal alien smuggling in Panama) and the Russian Mafia responsible for supplying weapons to Colombian narco-terrorist forces. China's flagship commercial shipping fleet, China Ocean Shipping Company (COSCO), is directly connected to the Chinese armed forces, the People's Liberation Army, and the Chinese government. COSCO ships have served as carriers for massive smuggling operations of weapons, drugs and illegal aliens around the world. In addition, the Chinese government has used COSCO in undertakings to ship missiles — and components of weapons of mass destruction — to rogue nations such as Pakistan and Iran.⁵³

Issue-motivated terrorism

Groups that coalesce around various social issues (such as racial equality, pro- and anti-abortion, animal rights, and nuclear issues), environmental concerns, land and economic rights, and other matters impinging on the public conscience, generally operate within the bounds of legitimate democratic dissent. However, in certain cases these pressure groups exceed the bounds of legitimate protest. This form of terrorism can be considered as the least serious form of random violence against the public. In some cases issue-motivated terrorism may also include elements of religiously motivated terrorism, with reference to fundamental interpretations of religious doctrines (for example, the debate about the 'right' to take a life).⁵⁴

Eco-terrorism

Many developed countries have experienced forms of eco-terrorism. For example, multinational corporations such as Tarmac, Costain and ARC (a unit of the Hanson conglomerate) have been targeted by ecological activists. Companies not only face financial threats from highly sophisticated, well organised eco-organisations, but are also subjected to terrorist tactics, such as bomb threats, and the intimidation of their staff. British police are, for example, investigating the tactics used by underground eco-groups, which distribute leaflets with instructions on how to assemble home-made explosives. In the United States 'Earth First' was established in the 1980s, focusing on nuclear facilities and associated electrical systems. In 1986, this group was responsible for a successful attack on the Palo Verdes nuclear facility transmission lines in the United States. Radical environmental movements, and acts of terrorism associated with them, are on the increase.⁵⁵

International terrorism

Alexander and Gleason make a distinction between domestic and international terrorism: "Terrorist activities may be regarded as international when the interests of more than one state are involved, for example, when the perpetrator or the victim is a foreigner in the country where the act is done or the perpetrator has fled to another country [in contrast to domestic terrorism]." ⁵⁶ The international character is highlighted with the participation of foreign nationals in "international terrorist organisations", such as the activities of the Abu Nidal Organisation in the United States. The activities of this group (as well as others with the same *modus operandi*) include the smuggling and transfer of currency, and providing information and intelligence to other members inside the United States and throughout the world. The Abu Nidal group has also obstructed investigations, fraudulently obtained passports, bought weapons, recruited new members and collected information in a clandestine manner.

The international political system has contributed to the increase in international terrorism in a number of ways.

- During the Cold War unconventional modes of warfare, such as terrorism, became more attractive as instruments of policy for states and non-state organisations such as national liberation movements. "Such methods are low-cost, relatively low-risk and yet afford the possibilities of high yield in terms of weakening, penetrating or even gaining control through covert means. State-sponsored international terrorism carries the added attraction for its perpetrators that it can be carried out secretly, and, if suspicions are voiced, plausibly denied." ⁵⁷
- Israel's occupation of the West Bank and the Gaza Strip contributed to religiously motivated terrorism and the establishment of several terrorist organisations with a network all over the world. The Middle East problem has never been purely local since its original cause — the creation of the state of Israel — was an act of the international community rather than an outcome of the domestic balance of forces between local Jews and Arabs. ⁵⁸
- Socio-economic problems, which are sometimes aggravated by a government's action or inaction, contribute to communities' feelings of frustration with and alienation from the government. Unattended grievances of various ethnic and religious minorities have led to the establishment of terrorist groups set up to counter the inadequacies of regimes. ⁵⁹ For example, the division between the rich northern hemisphere and poor southern hemisphere has contributed to the development of terrorist groups. Islamic revivalism and extremism go hand in hand with poor socio-economic conditions. Since the 18th century periods of Islamic revivalism, religio-political movements have developed in response to political fragmentation and economic, social and moral decline.

International terrorism, in other words, comprises acts that have clear international consequences. These acts include incidents where terrorists cross national borders to strike foreign targets, select victims or targets because of their connections to a foreign country (for example, diplomats, local executives), attack airliners on international flights, or force airliners to fly to other countries. International terrorism does not include the activities of dissident groups when carried out against a local government or citizens in their own country if no foreign connection is involved.

State-sponsored terrorism

State-sponsored terrorism involves the employment of lethal force across international borders

for the purpose of destroying or weakening the political cohesion of a targeted political entity. The state that resorts to terrorism does not use its own military instruments to deliver the lethal force, but harnesses social elements within the targeted entity to do so. States sponsor terrorism for three basic reasons:

- it is safer for the agent state;
- it is cheap; and
- the current interstate infrastructure enhances and supports the use of terrorism for political goals through modern technology.

Within state-sponsored terrorism, Hanle has identified three basic types of terrorism employed by social forces that lend themselves to outside sponsorship:⁶⁰

- National revolutionary terrorism (so-called 'homo-fighters', or terrorists operating against their fellow countrymen). For example, both sides during the anti-apartheid struggle used terror tactics against fellow South Africans.
- International revolutionary terrorism ('xeno-fighters' who employ terrorism against targets controlled and operated by persons other than the terrorists' fellow countrymen, including colonial terrorist organisations). These organisations include, for example, the Palestine Liberation Organisation (PLO) fighting those who control their homelands and those who are allied with them; and ideologically motivated terrorists that have widespread popular support, for example, Islamic Jihad and other radical Islamic terrorist groups. International terrorists need and receive more support from the outside than do domestic terrorist groups. This, in turn, gives them a greater technical ability to operate at a higher level of violence than their domestic counterparts. State sponsorship puts resources such as intelligence, money, sophisticated munitions and technical expertise at the disposal of the terrorists, thus reducing the constraints on the terrorists. States supporting international revolutionary terrorists are usually those with the same ideology as the terrorists or those wishing to destabilise and weaken the targeted entity politically.

The difference between homo-fighters and xeno-fighters is that the latter tend to adopt more indiscriminate tactics. This explains the indiscriminate nature of force used by international terrorists as opposed to national revolutionary terrorists.

- Minute, political terrorist gangs or so-called micro-political terrorist gangs that seldom have a membership of more than a dozen people (including the Baader-Meinhof gang and the Japanese Red Army of the 1970s).

State-sponsored terrorism may be expected to continue as a form of limited conflict used by marginalised states. State-sponsored international terrorism can also be used as a tool of domestic or foreign policy.⁶¹

- Iran, even with US sanctions, continues to use terrorism as a weapon of foreign policy to kill dissidents and to disrupt peace processes through its support for Hamas, the Palestinian Islamic Jihad (PIJ) and the Popular Front for the Liberation of Palestine — General Command (PFLP-GC). It also provides a safe haven for the Kurdistan Workers Party (PKK).

- Sudan supports the armed opposition groups of all its neighbouring countries and was even involved in the planning and training of the assailants involved in the attempted assassination of president Hosni Mubarak in Addis Ababa. Thus, Sudan could be considered to be a destabilising factor in Northern Africa. Before the assassination attempt, the Egyptian government accused the fundamentalist government in Khartoum of instigating militant Islamic violence inside Egypt.⁶² In addition, Sudan also harboured Osama Bin Laden and members of the world's most violent groups such as the Abu Nidal Organisation, Hizbollah and Hamas. Khartoum is known as a major transit point and base for a number of terrorist groups.⁶³

The growth of international terrorist movements has been linked to the willingness of some nations to sponsor campaigns of terror directly or indirectly, often through proxies and other means.⁶⁴ States sponsor terrorism by providing funding, training, a safe haven, weapons and logistical support to terrorists. State sponsorship increases the danger of terrorism because it provides the client group with far greater firepower than they would ever be likely to obtain in the normal arms-market.⁶⁵

Transnational terrorism

A shift has been detected since the 1990s from state-sponsored international terrorism, that is generally more structured with well-established hierarchies and infrastructure, towards international radical terrorists that operate in a decentralised fashion. This trend is regarded as a significant internationalisation of terrorist activities. In the past, it would have been correct to say that in general terms most terrorist organisations were readily identifiable from their constitution, which was often organised on quasi-military lines, with a definable command structure, a strategy and an identifiable political aim.

According to Anderson, transnational terrorism is "... the use, or threat of use, of anxiety — including, extra normal violence for political purposes by any individual or group, whether acting for or in opposition to established governmental authority, when such action is intended to influence the attitudes and behaviour of a target group wider than the immediate victims and when, through the nationality or foreign ties of its perpetrators, through its location, through the nature of its institutional or human victims, or through the mechanics of its resolution, its ramifications transcend national boundaries".⁶⁶

The Central Intelligence Agency (CIA) distinguishes between international terrorism and transnational terrorism, stating that the latter is terrorism "carried out by basically autonomous non-state actors, whether or not they enjoy some degree of support from sympathetic states", as opposed to "international terrorism, which is terrorism carried out by individuals or groups controlled by a sovereign state".⁶⁷

Transnational terrorism refers to groups comprised of individuals of various nationalities, all united under the dual banner of religion and violence. According to Mickolus: "terror is transnational when, through the nationality or foreign ties of its perpetrators, its location, the nature of its institutional or human victims, or the mechanics of its resolution and its ramifications transcend national boundaries".⁶⁸ In other words, adherents of international radical terrorism generally overcome traditional national differences by concentrating on a common goal of achieving social change, under the banner of personal beliefs, through violence. These individuals may not consider themselves to be citizens of any particular country, but instead seek common political, social, economic or personal objectives that transcend nation-state boundaries. The World Trade Centre bombing may be considered as an act of transnational

terrorism, because of the different nationalities of the terrorists involved. The suspected bombers include Egyptians, Iraqis, Jordanians, Palestinians and US citizens.

Conclusion

Although not all of the above-mentioned categories of terrorism exist in South Africa, terrorism is an international phenomenon. The implication for South Africa is that transnational terrorism, in association with transnational crime, presents a real threat to national, regional and international security. South Africa is an open society with a large number of illegal immigrants and a well-established infrastructure. This presents a fertile ground for individuals and groups who want to engage in terrorist activities.

South Africa is regarded as the gateway to the rest of Africa, especially to southern Africa. However, as with other African countries, the threat presented by terrorism is on the increase. The threat can be seen to exist on two levels, namely as an external threat and as an internal threat.

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CHAPTER 2

THE PRIME SUSPECTS? THE METAMORPHOSIS OF PAGAD

Introduction

The greater Cape Town area has been plagued by numerous incidents of urban terrorism. Starting in the late-1990s, the targets of the bombing campaign have shifted from the Cape Flats to central Cape Town, including many of the city's most popular tourist destinations.

The bombing campaign is shrouded in mystery. No group has claimed responsibility, and while arrests have been made, few have resulted in successful convictions. Government ministers responsible for security and justice have laid the blame firmly at the door of People Against Gangsterism and Drugs (Pagad), a vigilante group that originated as a response to high levels of

crime, particularly wide-scale drug trafficking on the Cape Flats.¹

In September 2000, safety and security minister Steve Tshwete and justice minister Penuell Maduna spoke at a special parliamentary debate on bombings in the Western Cape. Both ministers said that their intelligence had identified Pagad as being responsible for the bombings. Maduna said that 42 cases involving acts of urban terror involved Pagad members, but that the government did not have the "necessary evidence that will bear up to judicial scrutiny".² Tshwete was even more categorical, saying the police "are not looking anywhere apart from Pagad... there is no evidence pointing anywhere else".³

In response, an editorial in one of the country's national dailies urged caution in jumping to hasty conclusions about the identity of those responsible for the bombings. The editorial conceded that there is circumstantial evidence to justify the inference that many of the bombings are the work of militant extremists of the sort who have found a home in Pagad. This evidence includes targets such as American-linked firms or bars frequented by gay people, messages phoned into public radio stations and public statements. Moreover, a number of Pagad members have been convicted of offences ranging from murder to possession of explosives and illegal weapons. However, the editorial warned, it "would be shortsighted for the police to take their eyes off other possible perpetrators of criminal violence in the region".⁴

Should caution be exercised when seeking to identify those responsible for the bombings? Or, are the ministers correct in their views that the evidence leading from the blown up cars, restaurants and police stations point in one direction only? What real evidence is there to link Pagad, and the people associated with it, to the acts of urban terror in the Western Cape? By exploring the events that led to Pagad's formation, Pagad's links to other organisations, its aims and organisational structure, and the activities of some of its members, this chapter seeks to answer these questions.

Pagad was established in Cape Town in November 1995, in response to popular dissatisfaction with high levels of crime. Pagad's initial stated primary objective was to serve as a broad anti-crime front. Under its banner a variety of organisations and concerned citizens of diverse ideological, political and religious persuasions sought to combat the criminal gangs and drug dealers who had for many years plagued the impoverished communities of the Cape Flats area on the outskirts of Cape Town. Moreover, the organisation also appealed to the middle class by proposing to reverse the perceived moral decline that was argued to lie at the root of much of the gang activity and crime plaguing the greater Cape Town area.

Pagad was thus initially established by a group of anti-crime activists with militant tendencies, although it also included members of existing neighbourhood watch structures. The aim was to rigorously oppose suspected criminal gangs and drug dealers under the banner of a popular anti-crime sentiment in the Cape Peninsula in and around Cape Town. It was only in mid-1996 that the Pagad campaign established a formal organisational structure and began to promote itself as Pagad, with Farouk Jaffer as co-ordinator, Nadthmie Edries as organiser and Ali 'Phantom' Parker as head of operations.⁵ Pagad's support base was initially located in Athlone, but rapidly spread to other areas in the Cape Peninsula such as the Bo-Kaap, Heideveld, Retreat, Mitchell's Plain, Lansdowne, Salt River, Kensington, Pelican Park and Manenberg. In time, Pagad also managed to attract support in areas further removed from the Cape Town metropolis, such as the Strand, Clanwilliam, Worcester, George, Paarl and Beaufort West.

From the outset, Pagad must be distinguished from other anti-crime structures such as community police forums. First, many of Pagad's actions are a form of organised vigilantism and

are illegal. Second, the organisation adopts a policy of non co-operation with the law enforcement agencies of the state. Third, it rejects community police forums and anti-crime forums as being ineffectual. Finally, it perceives the government to be unwilling and unable to effectively curb crime.

This chapter will begin by exploring the historical context that made the sudden appearance of an organisation such as Pagad possible. Pagad's initial objectives and how these changed, causing divisions within the organisation, will be analysed. These divisions ultimately led to the formation of two different factions within the organisation: a 'moderate Pagad' faction and a 'Pagad — Qibla', or militant faction.

This chapter will also deal with Pagad's *modus operandi*, which provides an insight into the organisation's dual strategy: the first being that of an overt mass movement which is open to all who want to fight crime and gangsterism, and the second being that of a covert organisation within a structure that adopts a hard-line approach, including the use of violence. A supplementary objective of this chapter is to analyse the possible involvement of Islamic extremist elements in Pagad.

Historical background

Pagad was not the first formal anti-crime structure in the Western Cape, nor was it an organisation that appeared unexpectedly as a reaction to rising levels of crime in the region. The involvement of ordinary citizens in an anti-crime structure in the Western Cape began with the Salt River Co-ordinating Council against drug abuse (SRCC).

Cape Town's first mass anti-drug march took place in April 1990 under the leadership of the SRCC. This spawned similar community-based anti-drug initiatives in Cape Town suburbs such as the Bo-Kaap, Wynberg, Surrey Estate and on the Cape Flats. Pagad emerged only in 1995 and did not have any organic link with these earlier anti-crime movements, either in respect of the individuals involved or the strategy used.⁶ However, organisations such as Qibla and other Muslim organisations played a significant role in the establishment of Pagad.

Although Pagad is not an exclusively Muslim organisation, it is significant that the majority of its members are Muslims. Muslims make up approximately 2.5% of the South African population, and an estimated 33% of the population in the Western Cape. According to Sheikh Ebrahim Gabriel of the Muslim Judicial Council (MJC) in the Western Cape, Muslims are divided into two groups. The majority of Muslims in the Western Cape and South Africa as a whole are Sunni Muslims (99% of Muslims in the Western Cape), while Shi'a Muslims make up only some 1% of the Muslim community in the Western Cape.⁷

With its establishment in 1995, Pagad members and supporters represented diverse backgrounds and interests. The main identifiable groups within Pagad at the time were:

- citizens (mainly but not exclusively from the Muslim community) concerned about the high levels of crime and criminal gang activity;
- populist moderate Muslim community leaders (such as Nadthmie Edries and Farouk Jaffer);
- Islamic extremists, usually members or supporters of the older organisation, Qibla, and

- populist militants who later became involved in Pagad's inner core of G-force members.

There is also a possibility that a small group of members were themselves drug dealers and used Pagad to eliminate competitors.

Pagad and Qibla

Qibla (initially called the Qibla Mass Movement) emerged in South Africa in the 1980s as a militant pro-Shi'ite fundamentalist force, inspired by the 1979 Iranian revolution. Qibla (which means 'the true direction of prayer towards Mecca') was created to promote the aims and ideals of the Iranian revolution in South Africa. Qibla sought to propagate, defend and implement the strict Islamic principles associated with the Iranian revolution among Muslims in South Africa and to transform South Africa into a fully-fledged Muslim state (theocracy), under the slogan "One Solution, Islamic Revolution".⁸

Since the establishment of Pagad in 1995, numerous allegations have been made by the media and by elements in the Cape Muslim community, that Qibla has infiltrated Pagad and is using Pagad as a vanguard organisation for mobilising the Muslim community to achieve the aims of Qibla.⁹ Qibla is a secretive organisation and is not prepared to divulge information on its structure and membership, or on its connection with Pagad. Allegations that Abdus Salaam Ebrahim and other leading Pagad figures are also members of Qibla could not be substantiated at the time of writing. However, through interviews with members of the Muslim Judicial Council (MJC), statements made by Qibla leader Achmat Cassiem during Pagad marches, and statements in the media, it would appear that the relationship between Pagad and Qibla is stronger than it at first glance appears.

During the anti-apartheid struggle Qibla simultaneously supported the black consciousness movement in South Africa — in particular Pan Africanism — and the notion of an Islamic revolution in South Africa. A symbiotic relationship developed between Qibla and the Pan Africanist Congress (PAC). Qibla supported PAC insurgents inside South Africa in return for PAC-sponsored military training for Qibla members.¹⁰ At the time the PAC had ties with groups in Libya who were instrumental in arranging military training for Qibla members in several Islamic countries, including Libya, Iran and the Sudan.¹¹

In April 1986, 12 Libyan-trained PAC guerrillas were arrested at Athens airport carrying Scorpion machine pistols, AK-47 rifles, TNT explosives, detonators and ammunition. According to the minister of law and order at the time, Adriaan Vlok, those arrested included members of Qibla. In December 1986, two Qibla members were arrested in Cape Town. The two members — Achmat Cassiem and Yusuf Patel — together with five PAC members were charged with 24 counts of terrorism, membership of a banned organisation, attempted murder and possession of arms and ammunition.¹² Achmat Cassiem was incarcerated on Robben Island, and was later to become the driving force in extending Qibla's influence over Pagad.

In the 1990s, Cassiem had become the Amir (Arabic for 'leader') of Qibla and the organisation continued its close relationship with militants in the PAC and the Azanian People's Organisation (AZAPO), with the intention of broadening its support base among local Muslims. The objectives of Qibla are not clearly spelled out, due to a lack of information. However, under the banner of "One Solution, Islamic Revolution" the possibility of an Islamic revolution in South Africa as a long-term objective needs to be seen as the primary goal. The influence of Qibla on Pagad was possibly established when Pagad formed an informal alliance with the PAC in 1996.¹³ Allegedly, the reason for this alliance can be attributed to the relationship Qibla had had with the PAC's

military wing, the Azanian People's, Liberation Army (APLA) and with the PAC during the armed struggle against apartheid. According to Brümmer: "Qibla has strong relations with Pagad, among them the fact that the two bodies share a number of their top leaders."¹⁴ Sheikh Sedick, the secretary-general of the Muslim Judicial Council, is of the opinion that ideologically, Pagad's establishment in 1995 was directly linked to the inability of Qibla to develop into a mass-based organisation for the promotion of an Islamic revolution.¹⁵

It is interesting to note that after the establishment of Pagad, other structures were formed with similar aims: People Against Prostitutes and Sodomites (Papas), Muslims Against Global Oppression (Mago), and Muslims Against Illegitimate Leaders (Mail). It appears that the leadership of these organisations consists of the same people, all with links to Qibla. Each of these organisations represents a different challenge or problem faced by Muslims in the Western Cape. Each organisation thus has a specific target market from which small numbers of extremists can be recruited. Qibla's connections with Mago were demonstrated during a Qibla march in January 2000 to the Russian embassy in Cape Town in protest against the killing of Muslims in Chechnya. Mago members participated in the march. Qibla leader Achmat Cassiem led the delegation.¹⁶

In September 2000, members of Mago marched to the US embassy to voice their dissatisfaction with the South African government's proposed anti-terrorism bill. According to Yusuf Abrahams, spokesperson for Mago, the bill was nothing more than a reincarnation of the terrorism legislation of the apartheid era that had resulted in state-sponsored oppression. Mago members shouted slogans in support of the release of Pagad supporter Dawood Osman, who was convicted on charges relating to the killing of alleged gangsters at the entrance to the V & A Waterfront shopping complex in Cape Town.¹⁷

In the mid-1990s, Cassiem was instrumental in forming the Islamic Unity Convention (IUC) — an umbrella organisation that seeks to represent South Africa's Muslim community. The first president of the IUC was Sheikh Toffar, a moderate cleric. A year later, after the IUC-launched moratorium on the election of office bearers had elapsed, Cassiem was elected president. The IUC has a community radio licence for Radio 786, which broadcasts in the Cape Town area. Radio 786 routinely adopts a pro-Pagad stance in its broadcasts.

Qibla's influence on Pagad was further demonstrated in March 1996 when the IUC initiated a protest march against crime, drugs and gangsterism, in collaboration with the Surrey Estate and Athlone neighbourhood watches. The march turned into a threatening confrontation with the then justice minister, Dullah Omar, at the latter's home in Athlone. Some of the armed marchers were identified as members of Qibla and Pagad's militant wing, G-force. In May 1996, members of the IUC, together with neighbourhood watch members, marched to parliament under the auspices of Pagad to protest against the availability of drugs in the community.

Although Qibla and the IUC have publicly distanced themselves from Pagad (as, for example, Sheikh Achmat Sidique, the director of the Muslim Judicial Council), there are many in the Muslim community who believe that Pagad is fully under the control of Qibla. As one commentator noted: "Whatever Cassiem's involvement with Pagad, he remains — as the South African originator of a radical agenda based upon a revolutionary reading of the Qur'an — the movement's ideological father."¹⁸ Such accusations of Qibla's alleged involvement with Pagad contributed to a split in the ranks of Pagad.

September 1996 Pagad split

During September 1996, Pagad was split by an apparent power struggle between Nadthmie Edries (Pagad Western Cape leader), Farouk Jaffer (Pagad Western Cape spokesman) and Ali 'Phantom' Parker (Pagad operational commander) on the one hand; and the militant Pagad populists and the fundamentalist and political extremist Qibla faction on the other. The split came about when Pagad members began to question whether the fight against drugs deserved to be called a 'jihad' (holy war). According to Jaffer, the original Pagad vision for fighting crime and drugs was more moderate and intended to restore community values "through planning and constructive action such as the building of rehabilitation centres".¹⁹ According to Sheikh Sedick of the MJC, who was involved in negotiations between these two Pagad factions, "Parker, Jaffer and Edries came out strongly against elements within Pagad who they said were not interested in dealing with the authorities in the fight against crime. They claimed Qibla had an anti-state rather than an anti-crime agenda."²⁰

The divisions within Pagad resulted in a flurry of contradictory and confusing statements from the organisation's leadership. The moderate and militant populist groups issued public statements to the effect that Pagad had severed all ties with Qibla. Moreover, statements made by the Pagad leadership that they were "willing to die" for the "One Solution, Islamic Revolution", were contradicted by subsequent statements that they were "sensible, ordinary people who are fed up with drugs", and who dismissed the idea of an Islamic state as "laughable". According to Esack: "... this reflects the tension between a leadership position being exercised from a safe distance, and the ostensible one which is exposed to the public and, incidentally, one which has not had a historical or ideological relationship with Qibla".²¹ Although the Pagad leader is called 'Amir', the followers of Pagad do not display the ideological coherence characteristic of Qibla supporters. On the other hand, Pagad's core leadership are individuals who have a long-standing commitment to Qibla and who play an active role in the Islamic Unity Convention.²²

The final break between the two factions came when Ali 'Phantom' Parker claimed on 20 September 1996 that Qibla was in control of Pagad. Parker released a statement that would lead to his suspension, as well as that of Jaffer and Edries from Pagad, effectively neutralising the moderate faction of the Pagad leadership corps. Parker's statement alleged that:

- Qibla members within Pagad were trying to assassinate him;
- Qibla was responsible for hijacking Pagad to promote their "hidden agenda";
- Qibla members used blackmail and extortion on businessmen to raise funds for Pagad; and
- Qibla was trying to overthrow the government.

A broader split also emerged among Pagad members over the means used when dealing with gangsterism and drug dealers. The radical faction coalesced under the leadership of Abdus Salaam Ebrahim, who advocated confronting gang leaders in a violent manner, and even eliminating some of them. The moderate faction sought to co-operate with the police in crime prevention functions and rejected militant strategies.²³ It would appear that the Pagad leadership was aware of the covert and violent activities of the former faction, and condoned its activities.²⁴

After September 1996, Achmat Cassiem began to attend and participate openly in Pagad meetings. Moreover, it became apparent that the post-September 1996 period saw a shift in Pagad's emphasis. The emphasis shifted from the inability of the state to deal with crime, to the necessity to establish an Islamic state by way of revolution.

While Pagad began to adopt a more radical position, it still managed to attract support from members of the public. This was so for essentially two reasons. First, Pagad's ability to focus

international attention on the escalating crime situation in South Africa and highlight the government's inability to deal with the situation. Second, although moderate and progressive Muslim organisations such as the Call of Islam and the Muslim Youth Movement play an important role in the wider Muslim community in South Africa, they are losing their influence for a variety of reasons, the most important of which are a lack of funding and the inability to develop a theology of reconstruction after liberation.

Objectives of Pagad

The objectives of Pagad are clearly encapsulated in a memorandum that the organisation delivered to the minister of correctional services in September 1996:

- "One of the most important functions of government is to see to the safety of all its citizens and non-citizens. Unfortunately, this is not the case... We, the People Against Gangsterism and Drugs, have embarked on this mass demonstration to:
- inform the people of South Africa of the escalation of drug addiction and gangsterism;
- make the people of South Africa aware that something is being done about the cancerous growths of drug addicts and gangsterism;
- alert the government that urgent and drastic steps must be taken to curb, stop and eradicate the upsurge of gangsterism and drug addiction;
- galvanise the entire population to be prepared to take alternative steps if the situation does not improve in the near future; and
- inform the entire population of the extent of corruption within the police and judiciary."

In March 1997, Pagad's national body approved the following aims and objectives for the organisation:

- to propagate the eradication of drugs and gangsterism from society, in accordance with the divine will of The Creator;
- to co-operate with and to co-ordinate the activities of people and people's organisations which have similar aims and objectives [to those of Pagad];
- to make every effort to invite/motivate/activate and to include those people and peoples' organisations who are not yet part of Pagad; and
- to raise funds for the aforementioned aims.

It was also agreed that Pagad is a non-profit-making movement. Its assets, income and donations shall be used to carry out the aims and objectives of Pagad.²⁵

In May 1998, Dr Allie of the Pagad secretariat was asked whether Pagad was a vigilante or pressure group. According to Allie:

"Pagad could be regarded as both a pressure group by putting pressure on the government and the police during marches and meetings to comply with its

demands, and as a vigilante group. My understanding of a vigilante group is a person who reacts to a situation, and whose legitimate right it is to react to a situation because nobody else wants to. The latter is based upon the fact that Pagad members as individuals and members of a structure stand up to crime and drugs within the community. I will use my legitimate right to defend myself and by whatever means possible, whatever it takes... We need to mobilise all the people of South Africa to stand up and address crime in South Africa. We want to get rid of crime, totally."²⁶

Pagad's primarily overt function is that of an anti-crime structure to combat and eradicate crime, gangsterism and drugs. According to Pagad, its actions are the natural responses of citizens who daily experience the failure of the state to protect them — a fundamental right in any society and upon which a state's legitimacy depends. According to Father Clohessy, a Pagad founding member, the community's frustration is based on the fact that it realises that "a non-confrontational approach to this particular problem [the activities of gangsters and drug dealers] is no longer a viable route — and that those who are empowered by law to confront these social evils are simply not able to function in a way that bears real fruit. There is no doubt; therefore, that Pagad arose with an agenda that included both confrontation and force. In itself, force can be classified as extreme pressure, and is not necessarily violent."²⁷ Pagad has a two-pronged strategy to combat crime: confrontation directed at government, and confrontation directed at those who perpetrate crime.

The first prong of Pagad's strategy of confrontation is directed at government incompetence — it is believed that if the government is not fulfilling the mandate of the people and is unwilling to be challenged or criticised, then people have a moral right and obligation to defend their lives and property.²⁸

Pagad has consistently alleged that the government has failed to effectively curtail gangsterism and drug trafficking. During a Pagad protest march to Cape Town International Airport in December 1996, Pagad's commander-in-chief Aslam Toefy said the march had been organised because Pagad wanted to put pressure on the authorities to step up security checks at the airport to prevent drugs from entering the country. "Pagad is a pressure group and will continue to apply pressure to rid this country of gangsters and drugs," Toefy said. He also accused the authorities of being swift in their action against Pagad but of doing very little to arrest the drug lords and to deal with the high crime rate in the country.

The second prong of Pagad's strategy of confrontation is directed against those who perpetrate crime. The Pagad leadership believed that as pressure on the government was insufficient to combat crime, they would have to deal with the crime situation in the Western Cape themselves. As a result, Pagad members began to 'visit' drug dealers and gang leaders. During these 'visits', ultimatums were issued to the drug dealers and gang leaders to stop their illegal activities or "face the consequences". In interviews, Pagad members would not provide direct answers to questions regarding the way in which drug dealers and gang leaders would be dealt with by the community if such ultimatums were not complied with.²⁹

In 1996, Pagad initiated a programme of petitioning the government and the police to take action against gangs that had targeted Muslim youths as buyers of their drugs. The programme also incorporated campaigns in the form of 'ultimatum marches'. That is, Pagad would hold a public meeting to discuss the problems of gangs and drugs in the community. At the meeting, members of the public were asked to identify known gang leaders in the community. Pagad would then organise a march to the house of an identified gang leader in the community to

deliver a 24-hour ultimatum stating: "We are giving you 24 hours to clean up your act, or we will come back for you". Posters carried by the marchers emphasised the seriousness of their threats by declaring: "Kill the merchant. One bullet, one peddler". The ultimatums generally demanded that all illegal activities by the 'identified' gang leaders had to stop or they would have to face the consequences. Pagad conducted 54 such protest marches between August and December 1996. Thereafter, fewer protest marches were held and subsequently Pagad's actions tended to become more violent.³⁰ This was due to a cycle of violence and the formation of cell structures with ulterior motives. A lack of control over more militant elements by Pagad's leadership also contributed to more acts of violence.

Pagad's organisational structure

Pagad's activities in the Western Cape contributed to the establishment of similar organisations in Port Elizabeth (People Against Drugs and Violence — Padav), Johannesburg (People Against Crime and Drugs — Pacad) and Kimberley (Pagad). Pagad formed a national structure known as Pagad United in December 1996, under the chairmanship of Abdus Salaam Ebrahim. Aslam Toefy was elected as the national chief commander of Pagad United. During the Pagad national conference it was decided that Pagad's national executive would consist of a representative from each of the regions. The most important feature of the conference was to set up a command substructure, which would report to the executive.³¹

In reaction to the initial success of Pagad in the Western Cape, similar independent structures were formed in other parts of the country. To enhance its effectiveness, Pagad Western Cape became more involved in the other organisations, to broaden its support base and influence. During the Pagad national conference, Pagad Western Cape established its control over the other similar organisations in the rest of the country. Pagad Western Cape leadership figures were elected into key positions. For example, Abdus Salaam Ebrahim was elected as the national Pagad co-ordinator.

The national office of Pagad United is in Cape Town. Although Pagad has a strong national identity, most of its supporters are based in Cape Town, as most of the national executive is originally from Pagad Western Cape.³² Furthermore, Pagad Western Cape is better structured than elsewhere. Each regional structure has an executive member serving on the national body, although each region maintains its autonomy to carry on with its anti-drug and anti-crime operations as it did before the conference.³³ While all the different Pagad-related structures have equal rights, Pagad Western Cape dominates them all.

It would seem that the new national structure enabled Pagad Western Cape to access new sources of explosives and armaments from Pagad branches in other parts of the country. In August 1999 members of the police found a M26 hand grenade, 96 fuses used for setting off explosive devices (including pipe bombs), seven R1 magazines filled with ammunition, 25 pentelite boosters used to boost detonator charges and 11 pipe bomb caps in Gauteng.³⁴ This assumed link between Pagad and the cache was borne out in the trial following the arrest of Ayob Mungalee (Pagad's Gauteng co-ordinator), Nizaam Sheikh, Yassiem Adjouhaart, Jacob Jacobs and Afzal Karriem in February 1999 for being in possession of illegal firearms, explosives and a bullet-proof vest in a roadblock near Beaufort West in the Karoo. They also had in their possession a manual on how to manufacture explosive devices. Ayob Mungalee, during testimony at his trial held later that year, revealed that he had delivered 2.5kg of explosives to the Pagad structure in the Western Cape. All of these men were members of the Pagad structure in Johannesburg and were on their way to Cape Town when they were arrested. Although they were acquitted for being in possession of detonators, they were

sentenced to eight years imprisonment in November 2000 for the possession of illegal firearms and explosives.

The formation of Pagad United extended its influence more widely so it was able to deal more effectively with its campaign against gangsterism and drugs. The national executive was also in a position to negotiate with the SAPS and government at national level rather than at a regional level. The national structure enabled Pagad to present a stronger and larger front against drug lords and gangsters who would attack the organisation or its members.³⁵ According to Spannenberg and Holtzhausen the national executive co-ordinated the activities of the various Pagad-related structures throughout the country and used its national base to raise funds on a national level.³⁶

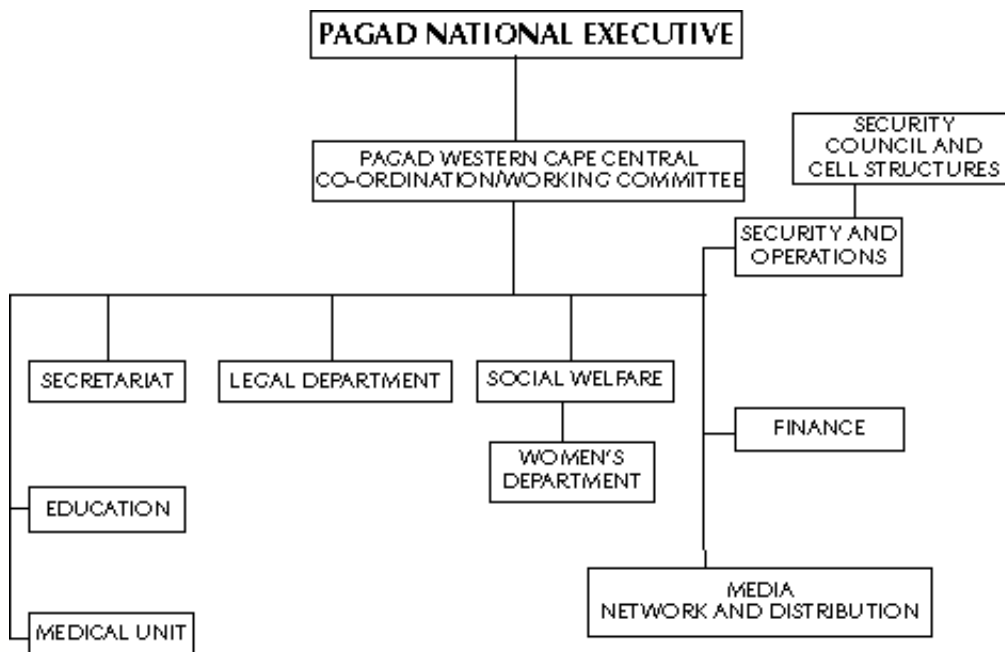
Pagad's Western Cape structure

Although Pagad has a national structure, it is in its traditional home base in the Western Cape that the organisation is strongest, and it is from here that Pagad's national organisation is controlled. What follows in this chapter will focus almost exclusively on Pagad's activities and structure in the Western Cape.

Pagad's working committee and other substructures are engaged in the organisation's overt anti-crime activities, while its security council conceptualises and plans the organisation's more covert and illegal activities. It would thus appear that Pagad has adopted a dual strategy to achieve one objective: to combat, intimidate and violently oppose suspected drug dealers and gangsters.

After the split in September 1996, Pagad began to develop more formal internal organisational structures. Pagad Western Cape consists of a working committee and eight substructures (Figure 1). The working committee is responsible for the entire campaign against gangsterism and drugs. This committee consists of approximately 30 members, including a chief co-ordinator, a chief commander, a chief of security, and the co-ordinators and secretaries of the various subcommittees. It is the responsibility of the working committee "to see to it that all substructures fulfil their duties to the community. At the same time they are collectively responsible to the people. Similarly they are directly answerable to the people."³⁷ Each substructure is responsible for its own field of operations but is directly answerable to the working committee. "All decisions which affect policy or Pagad strategy must be put before the working committee to be scrutinised and subsequently authorised or not."³⁸ Eight of the Pagad substructures are listed below.³⁹

Figure 1: Organisational structure of Pagad⁴⁰



Secretariat

The secretariat primarily has an administrative function, dealing with the co-ordination of all activities within Pagad, including organising meetings, marches, mass rallies, prayer-meetings, conventions, and advertising, in addition to community notices. It is also responsible for all correspondence to and from the organisation.⁴¹

Legal department

The legal department deals with all legal matters that involve Pagad and its members. In 1997, Pagad's legal expenses came to about R500 000. According to Pagad's national secretary, Abidah Roberts, stringent bail conditions and harassment by state law enforcement agencies, such as regular raids conducted by the police on Pagad members and their homes, have contributed to high legal fees for the organisation.⁴²

Social welfare department

The social welfare department deals with educating the community about drugs and gangsterism. This is done in the schools at pre-school, primary and secondary level, and among workers in factories. The department also organises recreation opportunities for Pagad members and the community in the form of prayer meetings, outings and sporting events. The department further assists in the rehabilitation of drug addicts and provides support to their families. A support group exists which provides social support to Pagad members injured or maimed during Pagad activities.

Finance department

The finance department is responsible for controlling and managing Pagad's finances. The department invests Pagad funds, organises fundraising projects, and collects money at Pagad meetings and mass rallies.

Security department

The members of the security department operate in 'cell' structures. The department and its cells are responsible for protecting the areas where Pagad members live. Every cell has a commander who is accountable to the security department.⁴³ Each geographic area thus has its own structure and co-ordinator. The security department also has a 'special unit' consisting of the most disciplined and well-trained members of every cell. Senior members of the SAPS and members of parliament are of the opinion that the security department and its cell structures are responsible for violent attacks on suspected drug dealers and gangsters.⁴⁴

Jeremy Vearey, the commander of police intelligence co-ordination in the Western Cape, had the following to say about Pagad's security structure:

"Pagad formed its 'paramilitary wing', also called the G-force, into small cell structures at neighbourhood level, which have the capacity to operate undetected and independently from central organisational control. Some cell members are said to be veterans of armed Islamic campaigns in hot spots like Bosnia, Lebanon and Afghanistan. Pagad seems not to be in any position to control the actions of its members. There is very little centralised control... and the energy unleashed by the Pagad cause could reproduce itself in a pattern of militancy with a life of its own independent of direct structural ties to Pagad."⁴⁵

Media and public relations department

The department deals with all Pagad newsletters, bulletins, pamphlets, memoranda, and press statements and media liaison.

Medical unit

The team is responsible for assisting Pagad supporters who sustain injuries during Pagad operations and events. The medical unit also looks after the medical needs of detained and imprisoned Pagad members.

Education department

The education department is responsible for developing a syllabus on the subject of gangsterism and drugs. The department is also responsible for assisting educators by providing additional classes on subjects such as biology, science and mathematics.⁴⁶

Support for Pagad

According to Pagad's national secretary, Abidah Roberts, Pagad's support grew from 6 000 in May 1996 to an estimated 100 000 during 1997.⁴⁷ It is possible to distinguish between active and passive support. Active support is given by individuals who are directly involved in the various activities of Pagad, such as participation in Pagad protest marches. Passive support or 'in-principle support' is not translated into physical action. In interviews with members of the Muslim Judicial Council and senior police officers in the Western Cape, the consensus emerged that large parts of the community identified with the objectives of Pagad during the initial phase of the organisation's existence. However, as Pagad's image changed from an anti-crime organisation to one that engaged in illegal activities the majority of community members began to distance themselves from Pagad. One way to calculate the changing support of Pagad in the community is to analyse the support Pagad received during its protest marches. In 1995 and 1996 it was, for example, not unusual for Pagad to attract between 2 000 and 5 000 supporters to its protest marches and rallies. By the late 1990s, attendance figures at Pagad marches and

rallies had declined considerably — attracting at most a few hundred people at a time.

An Institute for Democracy in South Africa (IDASA) survey on public support for Pagad on the Cape Flats between September 1996 and April 1997 revealed that public support for Pagad decreased as the organisation's actions became more forceful and violent. This decline in support could be because the majority of ordinary Pagad supporters were opposed to the violent tactics of Pagad's G-force. Many members also became dissatisfied with the organisation's shift away from its original purpose: the combating and eradicating of drug- and gang-related activity.

According to the IDASA survey, support for Pagad ranged from 88% in respect of petitions demanding action on crime, to 55% for the use of violence against criminals. Nevertheless a majority of respondents in the IDASA survey supported the use of intimidation (70%) or violence (55%) to rid their neighbourhoods of suspected criminals. Only one-quarter (24%) of the respondents opposed the use of marches to pressure or intimidate undesirable elements in the community, and slightly more than one-third (38%) opposed the use of violence and force, and activities that are clearly illegal, dangerous and a serious threat to the rule of law and the democratic state's monopoly on the legitimate use of force.⁴⁸

Pagad's modus operandi

Throughout its existence, Pagad has adopted a militant approach to achieve its objectives. This is evident from the organisation's paramilitary style attacks on the homes of suspected drug dealers — primarily by Pagad G—force members, and mass marches by Pagad supporters. The marches are intended to serve as a popular show of force, and to present suspected drug dealers with threatening ultimatums to cease their 'nefarious' activities.

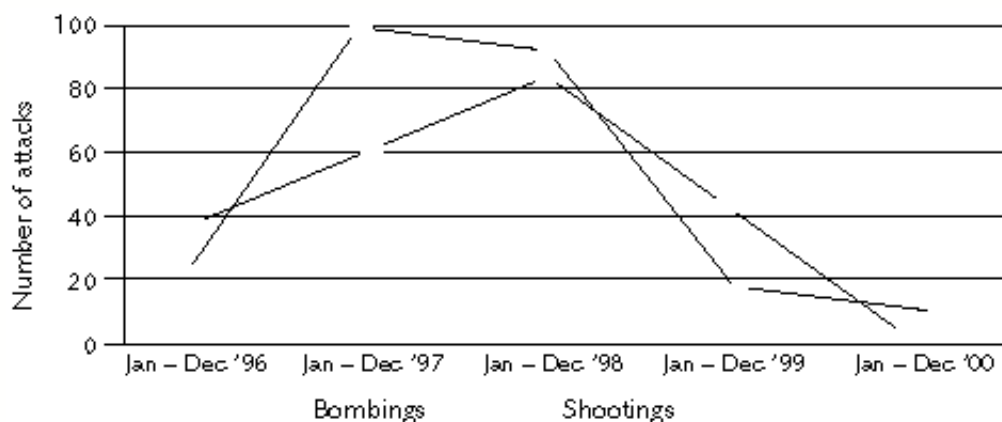
Pagad employs a dual strategy, and so it is hardly surprising that it has also developed an organisational structure in line with its strategy. On the one hand Pagad engages in a number of 'overt' and largely legal activities. At the same time some members of the organisation engage in 'covert' activities that are violent and illegal. Such a dual strategy allows Pagad's overt leadership to publicly dissociate itself from the illegal activities of its 'covert' members. A danger inherent to this strategy is that the 'covert wing' of the organisation could attempt to operate independently and beyond the control of the organisation's formal and 'overt' leadership. That is, individuals in the organisation's 'covert wing' could lose sight of the aims and objectives of the larger movement and develop their own agenda for action.⁴⁹

The leadership of Pagad denies the involvement of Pagad members in cases of violence and intimidation perpetrated by members of the organisation's cell structures. According to the Pagad secretariat: "It is not the policy of Pagad to attack people such as drug lords and gangsters, but if people act beyond the command or the intention of the working committee, one cannot take responsibility for those actions."⁵⁰ The question is — who is responsible for these attacks? According to Pagad's working committee, Pagad is not responsible, but they will not condemn people within the organisation who commit such acts of violence: "By whatever it takes they will get rid of crime; by every means necessary. If the people should decide to take the law into their own hands, we wish them the best of luck."⁵¹ According to the Pagad leadership, one of the reasons for the organisation's success is the fact that it "took the fear that the community had of gangsters and drug dealers and placed it back into the hands of the criminals".⁵²

Figure 2 indicates the involvement of suspected Pagad members in shootings and bombings

between 1996 and 2000. Between 1996 and 1998, Pagad's cell structures limited most of their attacks to drug dealers. While a decline in the number of Pagad-related incidents was recorded after 1998, innocent civilians increasingly became the targets as the violence took on the form of urban terrorism. The different phases of suspected Pagad activities are described below.

Figure 2: Pagad's violent modus operandi, 1996 — 2000



1996 — 1997: The fight against drug dealers

It is a widespread perception within communities in the Western Cape that Pagad's campaign against drug dealers led to a decrease in crime in the Western Cape. According to Farouk Jaffer, (Pagad's spokesman before the 1996 split) during Pagad's anti-drug campaign between November 1995 and November 1996, crime in the Western Cape decreased by 23%.⁵³

Between July 1996 and December 1997, Pagad's covert structures were allegedly implicated in 222 acts of violence against suspected drug dealers and their property. Explosives were used in 124 of these incidents in comparison to firearms that were used in only 98 incidents.⁵⁴ According to an IDASA study, community support on the Cape Flats for the use of aggressive and violent forms of collective action increased over this period.⁵⁵

During this period the more militant faction within Pagad targeted mosques to gain support from the Muslim community. In 1997, the militant Qibla supporters within Pagad began to target Muslims who opposed Qibla. At the behest of the Pagad leadership, attacks by members of Pagad's G-force were allegedly carried out not only against gangsters and drug dealers but also against former Pagad members.⁵⁶

1998: Reaction or outspoken opposition?

Up to and including May 1998, targets for alleged Pagad attacks focused largely on suspected drug dealers, gangsters and shebeens (illegal taverns). In June 1998, Muslim-owned businesses became the targets of attacks, while in July, academics and clerics critical of the tactics of Pagad's G-force were attacked. Over the same period, the personnel and facilities of the state's security and intelligence community were identified by elements within Pagad as the 'enemy' and were subjected to threats and physical attacks. Before the August explosion in Bellville in front of the office of the SAPS special task team on Pagad, two other police stations were targeted by pipe bombs: in February 1998 the Lansdowne police station was targeted, and in June 1998 Mowbray police station. These three pipe bomb attacks on police stations were preceded by the arrest of key members of Pagad's G-force. Since June 1998, a number of police stations have received anonymous telephonic threats suggesting they were to be similarly

attacked. In detonating the explosion outside the offices of the police special investigation task team on 6 August 1998, the nature of Pagad's activities developed, indicating that Pagad was no longer a vigilante group or even a pressure group within the boundaries of legitimate dissent. The increasing selectivity of targets by perpetrators of these acts of urban terrorism reflected a noteworthy qualitative shift in strategic objectives.

In August 1998, the United States launched missile strikes against a suspected bomb-making installation and the bases of Osama Bin Laden in both Sudan and Afghanistan, in revenge for the bombings of American embassies in Nairobi and Dar es Salaam. The US government claimed that Osama Bin Laden was the mastermind behind the embassy bombings. In response to the US missile strikes, militant Pagad members allegedly began to target businesses in the Cape Town area that were in some way linked to the United States — even if it was in name or image only, such as the bombing of the 'Planet Hollywood' restaurant.

1999 — 2000: Restaurants and public places

There was a significant change in suspected Pagad-related acts of violence after 1998. The number of bombing incidents declined from 93 in 1998, to 16 in 1999, and the number of shootings decreased from 86 in 1998, to 44 in 1999. While fewer in number, the bombings and shootings took on a more serious form during 1999. Attacks were no longer focused on drug dealers and gangsters but tended to target public places and places of entertainment.

The change in target selection was accompanied by changes in the explosive devices used in attacks on police stations and restaurants during this period. For example, the use of cell-phones as remote controlled detonators for explosive devices introduced a new level of sophistication into the bombing campaign. Car bombs hidden in cars parked along busy public streets were also used increasingly during 1999. Unlike the pipe bombs that were used before in a targeted manner to intimidate drug dealers, the new form of bombings in 1999 was nothing less than indiscriminate acts of terrorism against the public at large. The level of violence and destruction unleashed by acts of terrorism during 1999 was much higher than that produced by pipe bomb attacks and drive-by shootings popular between 1996 and 1998. Between January and August 1999, six bomb explosions injured 81 people, while 17 armed attacks killed 17. Acts of terrorism committed during 1999 included, among others, eight incidents. These are listed below.

- **1 January:** a car bomb exploded at the V & A Waterfront shopping and entertainment complex, injuring two people. It is possible that the bombing coincided with the screening of the Hollywood produced film 'The Siege'. The explosive device detonated while the film was showing at a cinema in the shopping complex. Prior to the screening of the film, members of the Muslim community protested against the showing of it because it portrayed Muslims as terrorists.
- **8 January:** a Kentucky Fried Chicken outlet was petrol-bombed in Athlone.
- **28 January:** a car bomb exploded outside Caledon Square police headquarters injuring 11.
- **30 January:** a woman was injured and a police car destroyed in a blast at the Woodstock police station (the explosive device was thrown).
- **9 May:** a car bomb exploded outside the Athlone police station.

- **6 November:** nine people were injured in a bomb explosion outside a bar patronised by Cape Town's gay community, the Blah Bar.
- **28 November:** 48 people were injured in a powerful bomb blast in St Elmo's pizzeria, a popular tourist place in Camps Bay.
- **24 December:** seven police officers were injured when a bomb exploded in a refuse container outside a restaurant in Greenpoint. The officers had responded to an anonymous call and were ambushed at the restaurant when the bomb was triggered remotely by cell-phone as the officers came within metres of the refuse container

An organisation by the name of People Against Prostitutes and Sodomy (Papas) claimed responsibility for attacks on gay bars in 2000. Although Pagad denied any links with Papas, the explosive devices used in the attacks on gay bars were similar to those used in other explosions where the suspects were Pagad members.

During 2000, a new development in terrorist bombings was the repeated use of domestic fertiliser (ammonium nitrate) as a component in the explosive material of the bombs. According to the police, traces of fertiliser were found at the Constantia shopping centre, the Bronx night club, Heerengracht Street near the US consulate in Cape Town, and in the Obz Café bombings. This shift in explosive mixture from gunpowder to fertiliser could be because the latter is, in large quantities, a potentially devastating explosive, and the bombers had the intention of causing greater damage than in the past. Fortunately, the bombers did not manage to get sufficient chemical mixture to maximise the explosive impact of the bombs. (The April 1995 Oklahoma City bomb in the United States contained the right mixture of ammonium nitrate fertiliser and racing fuel. The massive bomb destroyed a multi-story building and killed 168 people.) However, it is possible that the Cape bombers shifted to the use of fertiliser as an explosive because the law enforcement agencies were investigating the buyers of larger quantities of gunpowder at the time.

In 2000, at least 14 prominent acts of terrorism, listed below, took place.

- **12 January:** a bomb attached to a motorbike exploded in front of the Wynberg magistrates' court, injuring one person. The explosive device was detonated by remote control by means of a cell-phone. The explosion occurred as a bail application for two Pagad members, who were arrested in December 1999 for being in possession of explosive devices, was taking place inside the court centre. Two Pagad supporters, Faizel Felix and Ashraf Saban were arrested in January 2000, in connection with the theft of the motorbike that was used in the bombing.⁵⁷
- **14 May:** Ebrahim Gollie, a key witness to the explosion on 12 January (above) was shot and killed when four gunmen stormed into his house and started shooting.⁵⁸
- **22 May:** police deactivated a pipe bomb outside the New York Bagels restaurant in Sea Point.
- **10 June:** a car bomb was detonated outside the New York Bagels restaurant, injuring three people.
- **18 July:** a small explosive device placed in a dustbin detonated at Cape Town

International Airport, causing minor damage. The explosion coincided with the court appearances of two prominent Pagad members.

- **11 August:** an explosive device in a motor vehicle detonated outside the Zanzibar coffee shop at the up-market Constantia Village shopping centre, injuring two people.
- **19 August:** a car bomb exploded outside the Bronx nightclub, injuring five people. After this incident, Juan Uys, the national leader of the executive board of the Gay and Lesbian Alliance (GLA), stated that the GLA had been threatened by Papas in the past. However, Pagad's legal co-ordinator, Cassiem Parker, claimed that he had never heard of Papas. "Pagad has no affiliation with Papas," Parker said.⁵⁹
- **29 August:** a car bomb was detonated near the United States consulate in Cape Town, injuring seven people.
- **7 September:** regional court magistrate, Piet Theron, who was the presiding officer in a number of Pagad trials, was assassinated outside his home.
- **8 September:** a car bomb exploded outside the Obz Café, a popular student bar in the Cape Town suburb of Observatory. No one was injured.
- **12 September:** a bomb placed in a tree exploded a few hundred metres from the Samaj Community Centre in Gatesville where, moments before, the premier of the Western Cape, Gerald Morkel, had arrived to address a public meeting.⁶⁰
- **18 October:** a bomb exploded near the offices of the Democratic Alliance, South Africa's official opposition party.
- **3 November:** a bomb was defused at the Keg and Swan Pub in Bellville. A staff member found the explosive device among the chairs and tables outside the pub at 06h30.⁶¹
- **26 December:** Yusuf and Fahiem Enous, enrolled in the witness protection programme, were assassinated. Both were key state witnesses in the trial of alleged Pagad members Faizel Waggie and Nazeem Davids, who were charged with terrorism and attempted murder for placing an explosive device at the Keg and Swan pub in Bellville.

A question of Pagad's involvement

The question needs to be asked if the above acts of terrorism are the work of Pagad members. Circumstantial evidence tends to indicate that Pagad members and supporters were involved in a number of illegal acts of violence. What other evidence is there to link Pagad to these acts of violence and terrorism?

A continuation of Pagad's modus operandi since 1996?

From 1996 onwards, numerous suspected drug dealers and members of criminal gangs were warned by Pagad, in the form of ultimatums, to cease their suspected illegal activities. When the ultimatums were not complied with, violent assaults and attacks on the homes and vehicles of such suspected drug dealers and gang members followed. Some of the victims of such attacks have identified their attackers as active Pagad members.⁶²

Moreover, the following former members of Pagad have alleged that Pagad was responsible for the following attacks:

- The residence of Mr F Meyer was attacked on 7 August 1997 when gunmen opened fire on his residence in Hanover Park. Mr Meyer was a former member of Pagad.⁶³
- On 7 August 1997 a petrol-bomb was thrown at the residence of Mr Shamiel Mohammed in Rocklands, Mitchell's Plain. Mr Mohammed was a former G-force commander.⁶⁴
- On 10 August 1997 a case of attempted murder was opened at Manenberg, after suspected Pagad supporters threw a petrol-bomb and fired shots at the residence of Mr Jubayda Venos, in Surrey Estate, Manenberg.⁶⁵
- On 21 September 1997 a case of attempted murder was opened at Bishop Lavis, after suspected Pagad supporters threw a petrol-bomb and fired shots at the residence of Mr Ismail Stevens, a former member of Pagad.⁶⁶

In the following three cases, Pagad members were identified as being involved in the attacks.

- Two Pagad members were identified as responsible for a kidnapping and assault on 7 January 1997.⁶⁷ Anton Julies, Clint Delmarcus, Sabastian Delmarcus and Donovan Olivier were kidnapped by eight individuals and assaulted. Mustapha Jacobs and Faizel Kossain (Pagad members) were identified as two of the perpetrators.
- A case of attempted murder was registered at Manenberg police station on 14 March 1997 after a drive-by shooting at the residence of Mr G van der Heide. Mr Van der Heide was previously warned by Pagad and one of the attackers was identified as a member of Pagad.⁶⁸
- The residence of Moegamat Madat, leader of the 'Americans' gang was attacked by Abdullah Salie, Ebrahim Davids, Kamaldien Basardien, Rashaad Salie, Sulayiman Sieed, Ismail Sieed, Moegamat Sieed and Abdullah Sieed on 25 August 1997. Eyewitnesses identified the attackers as being members of Pagad.⁶⁹

Explosions associated with Pagad

In July 1998, a pipe bomb exploded in the passenger compartment of a vehicle driven by three Pagad members, killing two and injuring one. The police later recovered a .38 revolver, a 9mm pistol and a two-way radio inside the badly damaged vehicle.⁷⁰ It appears that the occupants of the vehicle were on their way to detonate the pipe bomb at a predetermined target and that the bomb was mistakenly activated by one of the occupants of the vehicle. On 30 July 1998, at 12h45, a pipe-bomb exploded in the passenger compartment of a vehicle being driven by four Pagad members, killing two (Faizel Hendricks and Nululla Allie), and injuring one (Moegamat Anwar Francis). Yusuf Salie was not injured. According to the police, the bakkie was used in earlier pipe-bomb attacks recorded by eyewitnesses.⁷¹ Francis and Salie were charged with being in possession of explosives. The fact that the number plates were inside the vehicle was regarded by police as 'sinister'. Although the two accused denied being members of Pagad, Francis had been seen at several Pagad meetings and Pagad posters and pamphlets were found inside the vehicle.⁷² A similar explosive device detonated in the hands of Abubakar Desai, a member of People Against Drugs and Violence (Padav) in April 1997, killing Desai. The Padav co-ordinator, Wasief Lagerdien, and Yusef Ahmed, a Padav member, were present when the

explosion occurred.⁷³ (Padav has close links with Pagad, and the two organisations share similar aims.)

Since its establishment, Pagad has been implicated in a number of pipe bomb explosions. For example, Pagad members Moegsien Barends, Riedewaan Hendricks and Faried Mohammed were arrested on 30 September 1998, after two pipe bombs were found.⁷⁴ They were charged with being in possession of explosives.

Bomb-making materials

In December 1999, Pagad members Said and Nazier Mhatey were charged with being in possession of a pipe bomb and a grenade. According to the investigating officer in the case, information from informers revealed that the accused were involved in the manufacture of pipe bombs and were active members of Pagad. The investigating officer also revealed that the Blah Bar, St Elmo's and Mano's restaurant, and Wynberg magistrates' court bombs were all detonated with the use of cell-phones. Forensic tests revealed that the explosive devices in these cases were made up of a combination of pipe and petrol bombs, bound together with cable ties. Similar shrapnel, consisting of triangular bits of metal and chopped-off nails, was also found at the scene of all these bombings. Forensic testing conducted on the pipe bomb found in the Mhateys' garage concluded that its metallurgy matched that of other pipe bombs used in attacks in the Western Cape.⁷⁵

However, the Mhatey brothers were not convicted as the state could not prove beyond a reasonable doubt that the pipe bombs belonged to them. It is interesting to note that Said and Nazier Mhatey were convicted in 1987 for murder, robbery and attempted murder, after they shot and killed a security guard at a tavern in Athlone and robbed him of his firearm. They were sentenced to 29 years in prison, but were released in 1992 as part of an amnesty granted to political prisoners.⁷⁶

Bombs at court appearances of Pagad members

On 12 January 2000, a bomb exploded before two Pagad members, Said and Nazier Mhatey, were to appear on charges of possession of a hand grenade and pipe bomb.⁷⁷ According to safety and security minister Steve Tshwete, the car bomb explosion on 11 August 2000 occurred in retaliation for the arrest of four suspected Pagad members.⁷⁸ On 18 July 2000, with the second court appearance of Said and Nazier Mhatey, an explosive device detonated in a dustbin in the parking lot at the Cape Town International Airport.⁷⁹

Charges against Pagad members

Between July 1996 and December 1997, some 296 criminal cases were recorded by the police in which the suspects were members of Pagad. These resulted in 153 arrests.

Up to 11 October 2000, some 14 members and supporters of Pagad had been acquitted of terror-related crimes, while 16 had been convicted of such crimes.⁸⁰ The convictions are listed below.

- Moegamat Fakier was convicted on 15 February 1999, and sentenced to 18 months' imprisonment.
- Abdul Heuwel was convicted in the Mitchell's Plain regional court of intimidation. He was

fined R3 000 (or a year in jail) with two years' imprisonment suspended for five years.

- N Abrahams, M Kamaldien and S Bester were sentenced to five years' imprisonment each for the possession of an explosive device.
- Abduraghman Thebus and Moegamat Adams were convicted of the murder of Chrystal Abrahams, aged six, and two charges of attempted murder.
- Dawood Osman was convicted of the murder of Shaheem (Schubert) Daniels, a member of the 'Junior Mafia' gang, and three teenagers at the entrance to the V & A Waterfront in March 1998.
- E Hendricks was convicted of the illegal possession of ammunition and fined R3 000 in November 1998.
- Dedrick Botha paid an admission-of-guilt fine of R1 500 on charges of the possession of an unlicensed firearm.
- Nasieg Pietersen was convicted on charges of attempted murder after a pipe bomb attack and sentenced to eight years' imprisonment, three of which were suspended.
- Moegamat Fakier was convicted for the possession of an unlicensed firearm and sentenced to three years' imprisonment.
- Afzal Karriem was convicted for the illegal possession of ammunition and fined R3 000.
- Zainab Ebrahim, wife of Pagad national co-ordinator Abdus Salaam Ebrahim, was convicted of possessing an unlicensed firearm and fined R4 000.
- R Shaik was convicted of possessing an explosive device and given seven years' imprisonment suspended for two years.
- Ismail Edwards was sentenced to 25 years imprisonment after being convicted on charges of armed robbery and attempted murder.

In October 2000, criminal cases were pending against the Pagad members listed below.⁸¹

- Three members of Pagad's G-force, Ebrahim Jeneker and brothers Abdullah and Ismail Maansdorp. Collectively they were facing, inter alia, nine charges of murder and attempted murder, 19 charges of robbery, eight charges of malicious damage to property, and three charges of kidnapping.
- Moegamat Isaacs and three others, who were facing 23 charges, including three of murder arising from a drive-by shooting in June 1999.
- Moegamat Zain Cornelson and alleged G-force member Anees Adams for the murder of Sedicka Hendricks and the attempted murder of her father.
- Pagad's national co-ordinator, Abdus Salaam Ebrahim, and the Pagad chief of security, Salie Abader, for the murder of Hard Livings Gang leader Rashaad Staggie. Ebrahim was also charged with nine other crimes, including terrorism, murder and attempted murder.⁸²

- Ismail Edwards and Ebrahim Jeneker for the murder of Pagad investigator Captain Bennie Lategan in January 1999.
- Mansoer Legget and Ebrahim Salie were facing 10 charges of murder and seven of attempted murder.
- Moegsien Barendse, Riedewaan Hendricks, Lionel Jacobs and Faried Mohammed, faced two charges of attempted murder, the bombing of the Wynberg synagogue, the illegal possession of a shotgun and two charges of motor vehicle theft.
- Faizel Waggie, Nazeem Davids, Michael Snyders, Yusef Enous and two other Pagad members were arrested after a bomb was defused under a pot plant at the Keg and Swan on 3 November 2000.⁸³ They were charged with attempted murder and the illegal possession of explosives.

Conclusion

Muslim extremists in the Western Cape have used the issues of gangsterism and drugs to garner popular support for Pagad. Should the government be able to effectively combat gangsterism and drugs it is likely that such extremists — particularly in the Western Cape — will find other issues to bolster public support for their violent opposition to the liberal-democratic order in South Africa.

It is unfortunate that Pagad's actions against drugs and gangs in the Western Cape, and its initiatives to establish community centres, are overshadowed by its members' involvement in acts of terrorism and violence. Although Pagad is allegedly responsible for numerous attacks on gangsters and drug dealers, attention also needs to be given to Pagad's reasons for opposing the government, and combating certain criminals through the use of violence and intimidation. Gangsterism and drugs are prevalent in the poorer areas of greater Cape Town, fostering turf wars between rival gangs, assassinations, kidnappings, murders and general high levels of crime.

By comparison, gang violence is more responsible for instability in the Western Cape than Pagad. Drug-peddling and drug-abuse, gang violence and high levels of violent crimes are found throughout South Africa. The situation in the Western Cape is unique in the sense that gangster subcultures have proliferated throughout the entire region.

According to the police's Gang Investigation Unit, in 1998 there were between 35 000 and 80 000 active gang members in the Cape, belonging to 137 gangs.⁸⁴ For example, between July and August 2000, gang-related violence resulted in 15 deaths and six injuries in the Western Cape.⁸⁵ In comparison Pagad was allegedly responsible for seven injuries as a result of three bombings over the same period. This comparison places the violence committed in the Western Cape in a different context. Violence and crime must be considered as a manifestation of a much larger problem such as, for example, the poor socio-economic conditions in parts of the greater Cape Town area. However, in the case of Pagad it is debatable whether an ideological motivation provides another substantiation for urban terrorism.

Although the extent of Qibla's involvement of Pagad is not really known, a proxy organisation could be created as was done with Mago and Mail, closer to Qibla, if Pagad cannot be turned around to regain the popular support it once enjoyed. This may also serve to remove the stigma

that Pagad acquired as an alleged terrorist organisation. The modus operandi of such a grouping would probably follow the same path as Pagad, initially trying to garner widespread support and then embarking on terrorist type activities.

The majority of Muslims in the Western Cape do not support extremism in the form of terrorism. Islamic extremism is an international phenomenon and international developments around Palestine, Kashmir, Chechnya and other sensitive regions involving Muslims may result in protest actions and violence in South Africa.

It is debatable whether a lack of initial robust response on the part of the government and the South African Police Service contributed to the development of Pagad's violent activities. One almost feels that the government and the SAPS did not know how to deal with Pagad. During the early stages, police accompanied Pagad during its marches to the houses of drug dealers during which firearms were carried. Laws were openly broken under the supposedly watchful eyes of police members. The lack of reaction from the government and the police could have been interpreted as tacit approval of Pagad's actions.

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CHAPTER 3

FIGHTING BACK: THE STATE'S OPERATIONAL RESPONSE

Introduction

It was the much-publicised death of Rashaad Staggie on 4 August 1996 that brought the existence of urban terrorism in the Western Cape to the attention of South Africa and the world. Since that incident, various other incidents of urban terrorism have occurred, many of them involving the organisation known as 'People Against Gangsterism and Drugs' (Pagad), as well as a number of gangs. In many of these incidents, the South African security forces were called in to respond, or were themselves directly targeted.

The acts of urban terrorism since the Staggie incident include petrol bomb attacks, pipe bomb attacks, drive-by shootings and bomb explosions aimed at gangs, and later aimed at both the security forces and the public at large, as in the cases of the Planet Hollywood and Camps Bay explosions.

After August 1996, these acts of terror had taken on such large proportions that they could no longer be dealt with by normal police action. At the beginning of 1996, the South African Police Service (SAPS) and the South African National Defence Force (SANDF) jointly responded through the National Operational Co-ordinating Mechanism (NOCOC) to execute special counter-terrorism operations.¹

This chapter will detail the actions taken by the security forces in response to urban terrorism in the Western Cape during an almost four-year period from October 1997 to July 2000. This chapter will also discuss the common-sense strategy adopted by the security forces to prevent urban terrorism.

The security forces' response

The response of the security forces (SAPS/SANDF) can best be discussed against the background of a timeline indicating acts of urban terrorism and the security force action taken to counter them. The timeline clearly shows four distinct operations launched by the security forces, including, inter alia, Operations Recoil, Saladin, Good Hope and Crackdown (Figure 3). The statistics of Operation Crackdown (1 April 2000) reflect the change in strategy that was initiated during Operation Good Hope, to act against the increasing tendency of crime such as urban terrorism.

Operation Recoil

On 16 October 1997, a meeting took place between president Mandela and several cabinet ministers, as well as the national commissioner of the SAPS and the chief of the SANDF. The meeting focused its attention on the security and crime situation in the Western Cape, specifically the Cape Flats. The National Operational Co-ordinating Committee (NOCOC) and the Provincial Operational Co-ordinating Committee (POCOC) of the Western Cape subsequently held a planning session on 17 October 1997, to give effect to the directions emanating from the presidential meeting.

Operation Recoil was launched on 23 October 1997, to counter growing insecurity among the people of the Western Cape, who were also influenced by media-driven speculation about a war of gangs against Pagad. Pagad attacks for the period January to August 1997 accounted for 111 incidents, whereas gang-on-gang violence accounted for 75. Prior to the launch of Operation Recoil, the POCOC (Western Cape) had sought to integrate a number of measures into a co-ordinated operation. These measures included the efforts of normal visible policing, the intelligence process, and high-density deployment, in addition to specific investigations focused on both Pagad and gang-related criminality. The POCOC-driven effort had managed to contain both gang-on-gang violence and Pagad-related violence, to a statistical average of 7.3 and 9.9 attacks per month respectively, for the period January to July 1997.

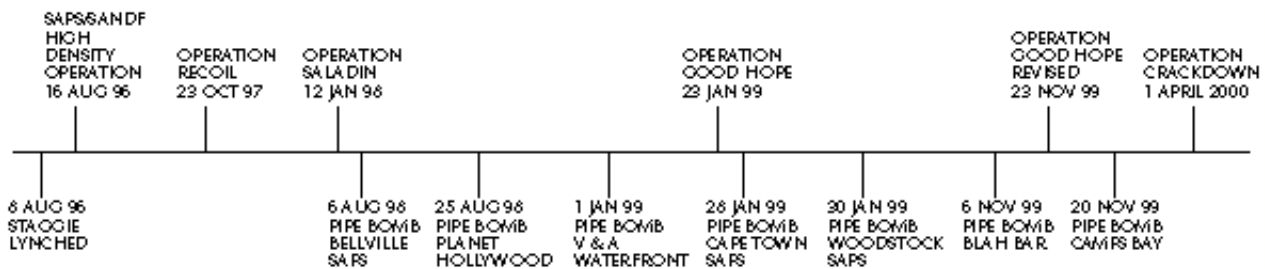
Operational concept

The operational concept that was decided upon during the joint NOCOC/POCOC Western Cape₂ planning meeting included the following: an intelligence-driven factor; a high-density crime prevention factor; investigating task groups, and co-ordination and visible force levels.

Intelligence-driven factor of Operation Recoil

The operation was intelligence-driven, and comprised the following intelligence focus areas:

Figure 3: Timeline: The operational response of the state



LEGEND
 1. SAPSSANDF High Density Operation 10 Aug 96 to 22 Oct 99
 2. Operation Recoil 23 Oct 97 to 22 Jan 99
 3. Operation Saladin 12 Jan 98 to 22 Jan 99
 4. Operation Good Hope 23 Jan 99 to 31 March 2000
 5. Operation Crackdown 1 April 2000 ongoing

- crime patterns to determine ‘hot spots’ for high-density₃ and crime-prevention₄ operations;
- tactical intelligence for the purpose of high-density and crime-prevention operations;
- intelligence for the purpose of court-directed investigations; and
- intelligence provided by specialised investigation units that could be utilised for any of the above purposes.

High-density crime prevention factor of Operation Recoil

The high-density crime prevention and visibility operations were conducted by:

- a crime prevention task team (crime prevention and visibility);
- a visible gang unit (crime prevention);
- public order policing (high-density operations); and
- the South African army (high-density operations).

Investigating task groups of Operation Recoil

The investigations of the operation were conducted by:

- a gang investigation task group (concentrating on inter-gang conflict);
- a Pagad investigation task group (concentrating on Pagad activities); and
- specialised investigation units (concentrating on areas emanating from gang activities, conflict between Pagad, gangs, and so on).

Co-ordination and visible force levels of Operational Recoil

The co-ordination of Operation Recoil was handled in the following way:

- co-ordination of the operation was conducted through the NOCOC (national level) and POCOC (provincial level);

- intelligence co-ordination was implemented by a Provincial Intelligence Co-ordinating Committee (PICOC) to co-ordinate with the POCOC structure; and
- members from NOCOC visited the POCOC for joint planning and evaluation sessions on a regular basis.

In addition, NOCOC provided the national commissioner of the SAPS and the chief of the SANDF with feedback on a weekly basis. The national commissioners of the SAPS and the SANDF would then provide feedback to the National Crime Prevention Strategy (NCPS) ministers' committee, during monthly meetings or as required.

The visible force levels required by the launching of Operation Recoil led to an integrated operational capacity that was expanded to include more than 1 000 members of:

- the South African National Defence Force;
- public order police;
- Pagad visible task team members;
- visible gang unit members;
- gang investigation unit members; and
- Pagad involvement team members.

The successes of Operation Recoil — visible high-density operations

The concept of Operation Recoil was built on the principle of flooding flashpoint areas with high-density security force deployment by way of mobile visible patrols as well as cordon and search operations, in order to flush out criminals at such flashpoint areas. This strategy also improved the SAPS's ability to synchronise and focus high-density deployment in flashpoint areas, as determined by weekly crime pattern analyses submitted by crime information managers at SAPS station and area levels, as well as strategic crime tendency analyses conducted by the intelligence co-ordinating structures. Daily crime information reports also guided operational planning on a day-to-day basis, between weekly POCOC meetings.

From 23 October 1997 to 22 January 1998, the visible high-density contingent of Operation Recoil netted a total of 7 437 arrests, inclusive of certain serious crime categories (Table 3).

Table 3: Arrests made in serious crime categories, October 1997 — January 1998

Murder	175
Robbery	269
Possession of illegal firearms	181
Hijacking of vehicles	9
Theft of motor vehicles	298
Drug-related offences	555
Housebreaking (residential and business)	623
Malicious injury to property	127
Arson	11
Crimes against women and children	1 521
Total cases of serious crime	3 769

Operation Saladin

By early January 1998, it seemed that the specific focus of Pagad had changed and that pipe

bomb attacks and drive-by shootings aimed at the police, drug dealers and Muslim businessmen were on the increase. The response of the state necessitated a more intelligence-driven operation, Operation Saladin, which was formed within Operation Recoil, and was aimed at detecting and monitoring the perpetrators of acts of urban terrorism in both gangs and Pagad.

Operation Saladin was activated on 12 January 1998, to ensure a decrease in incidents of urban terrorism in the Western Cape. The operation involved both operational and intelligence members from the SAPS, SANDF and NIA (National Intelligence Agency).

Operational concept

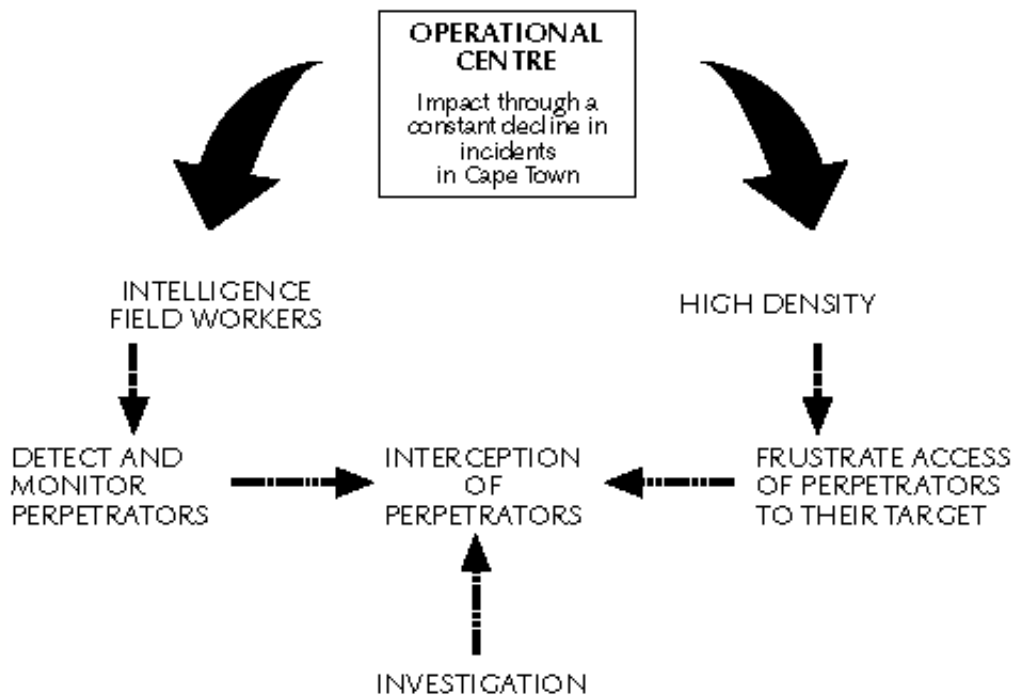
Operation Saladin was executed as a POCOC Western Cape operation, comprising a detection and monitoring element made up mainly of SAPS intelligence field workers, as well as SANDF observation teams. The aim was to monitor suspects and, once a movement indicating a possible attack was detected, to inform the Joint Operational Centre (JOC) Cape Town, which would in turn manoeuvre the deployed forces available in the area concerned. A quick reaction force would also be directed to intercept suspected potential perpetrators before they reached their target or, if that was not possible, to then intercept the perpetrators on the return from their target. A further element of the operation entailed the deployment of high-density forces of Operation Recoil in the proximity of the intended target, to act as an additional deterrent to would-be perpetrators. That is, to frustrate them, to hamper their access to intended targets, and by doing so, also deny them the opportunity of going about their illegal activity unhindered. Central to the whole concept was the JOC. The reasoning was that by centralising all the factual information at the JOC, senior officers in the JOC would be able, at any given moment, to manoeuvre available forces to try to apprehend the would-be perpetrators (Figure 4).

Objectives

The objectives of Operation Saladin were:

- to detect and monitor perpetrators of acts of urban terrorism in both gangs and Pagad;
- to provide early warning, on-the-spot operational intelligence, visible policing, and to assist with POCOC operations;
- to frustrate the access of perpetrators of urban terrorism to their intended targets; and
- to ensure the effective interception of perpetrators of acts of terrorism both before and after attacks.

Figure 4: Operational concept: Operation Saladin



The successes of Operation Saladin

The successes of Operation Saladin were that while it acted as a deterrent to prevent acts of urban terrorism and gang-related violence, it also led to the arrest of people involved in acts of terrorism.

However, during December 1998 and January 1999, the nature of the threat of urban terrorism changed in emphasis and target. The new hazard was accompanied by threats from Pagad spokespersons against members of both the security and intelligence forces. The increasing selectivity of the perpetrators of urban terrorism became evident in a number of attacks aimed specifically at the security forces and at businesses; the pipe bomb attacks at the V & A Waterfront and the Cape Town police station being cases in point.

The shift in emphasis by perpetrators of urban terrorism to target both the security forces and the public at large was met with a change in emphasis by the security forces. The rapid response by the security forces to this new threat resulted in a modification of the operational concept, and was achieved by combining operations Recoil and Saladin into one operation, namely Operation Good Hope.

Operation Good Hope

The attacks during December 1998 and January 1999 aimed at the SAPS and also at civilians in the Western Cape resulted in a change of strategy to counter urban terrorism. Operation Good Hope was launched on 23 January 1999.

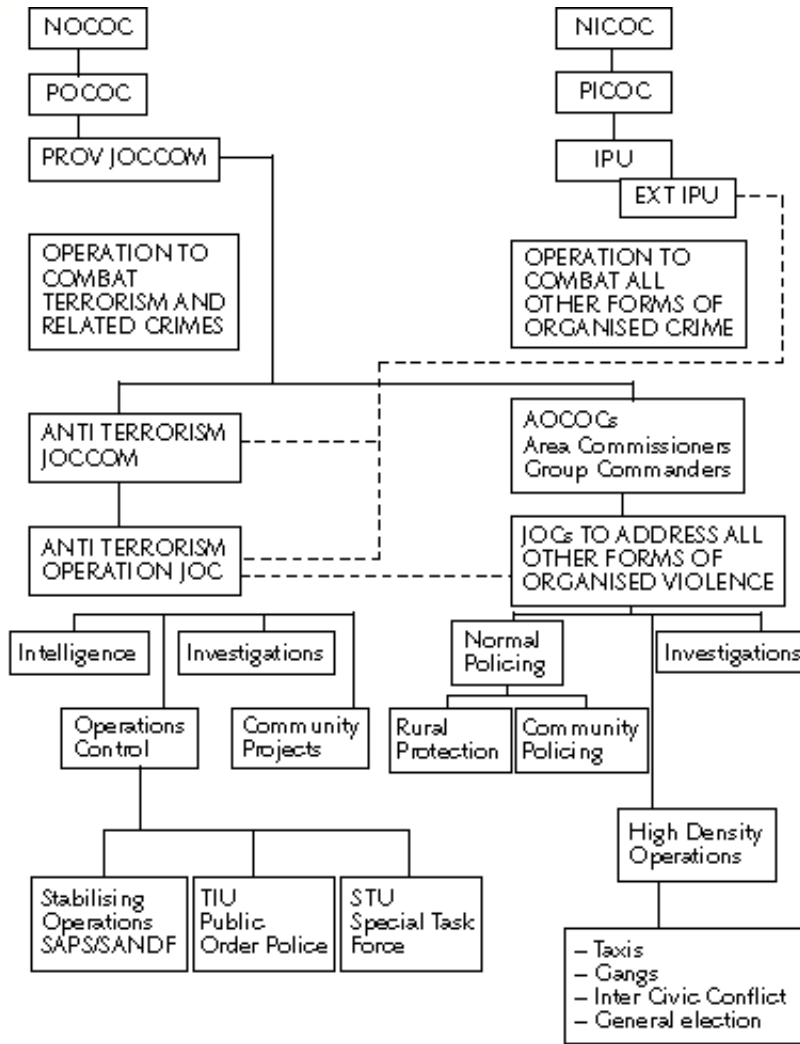
Operational concept — an integrated approach

Operation Good Hope required an immediate increase in security force levels that were extended to include more than 1 200 members, inclusive of SAPS/SANDF members but excluding the local station police in Cape Town.

The new operational concept that was decided upon during the joint NOCOC/POCOC Western

Cape planning session on 20 January 1999 was planned to be: intelligence-driven in specifically focused areas; investigative; protective of specific targets; in liaison with communities, and co-ordinated by NOCOC/POCOC Western Cape (Figure 5).

Figure 5: Operational concept: Operation Good Hope



Intelligence-driven aspect of Operation Good Hope

The intelligence-driven aspect of the operation focused on both tactical intelligence gathering, and dedicated court-directed intelligence gathering. The operation, based on this intelligence, would be executed by focusing on:

- stabilising operations regarding urban terrorism;
- tactical intervention regarding urban terrorism and crowd management; and
- high-risk actions/operations regarding urban terrorism.

Investigative aspect of Operation Good Hope

Investigations focused on:

- urban terrorism (pipe bombs, drive-by shootings, etc.);
- actions resulting from crowd management; and
- other cases regarding identified suspects.

Protection and liaison-related aspects of Operation Good Hope

Protection tasks for political and other targets (investigators, politicians and so on) were co-ordinated by the national and provincial protection services. Community liaison stemming from information gatherers within each community would initially be supported by the facilities provided by existing intelligence-gathering structures. To bolster the effectiveness of this aspect of Operation Good Hope, the national commissioner of the SAPS requested the minister of safety and security to organise a summit involving community role players in order to plan community projects with the aim of assisting security forces in gathering intelligence.

The co-ordination of Operation Good Hope was conducted through the National Operational Co-ordinating Mechanism (NOCOC/POCOC).

Successes of Operation Good Hope

It is clear from the operational concept that the new strategy was focused on tactical intelligence gathering and dedicated court-directed intelligence gathering.

This strategy subsequently resulted in a major decline in acts of urban terrorism in the Western Cape and the arrest of individuals involved in such acts. During the period January 1999 to January 2000, the forces involved in Operation Good Hope executed several operations (Table 4).

Table 4: Operations carried out by Operation Good Hope

Vehicle patrols	8 262
Foot patrols	2 561
Cordon & search	114
Road blocks	2 197
Persons searched	131 140
Buildings searched	4 551
Vehicles searched	42 063

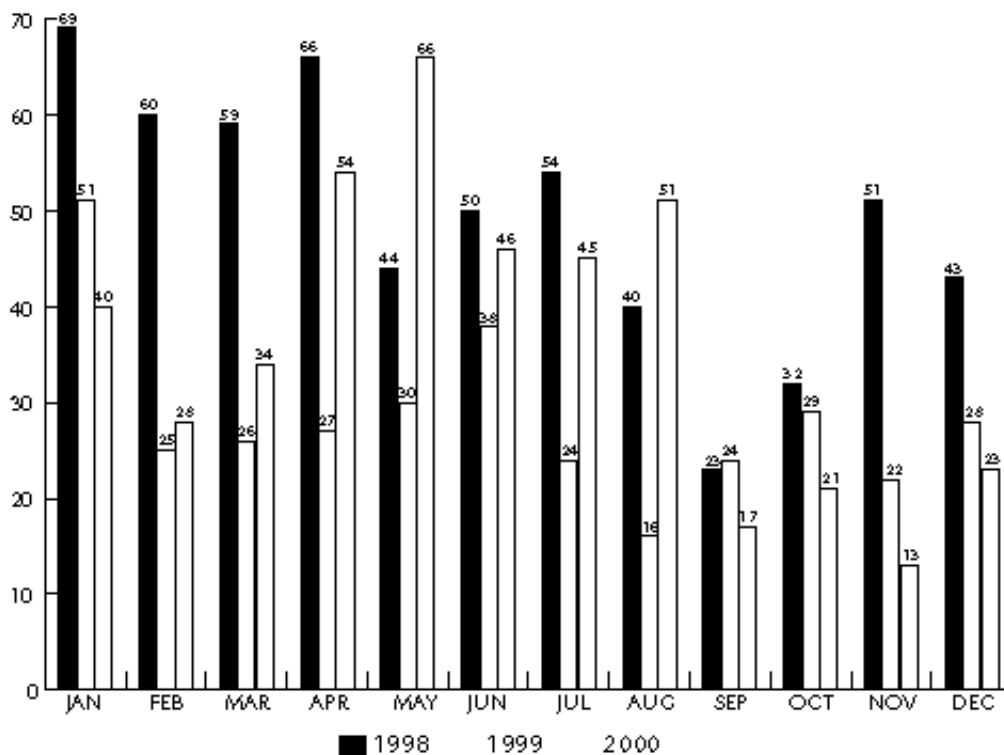
During these operations numerous successes were achieved.

Table 5: Successes achieved by Operation Good Hope

Arrests for various crimes*	4 014
Firearms recovered	489
Vehicles recovered	327
Ammunition recovered	5 803
*Operation Good Hope was an operation focused on urban terrorism, not 'crime-prevention' per se, which explains the lower figure of arrests made.	

The effect of Operation Good Hope since it started in January 1999 can be seen in Figure 6. There is a remarkable decline in acts of urban terrorism, as well as gang-related incidents, comparing 1998 with 1999, and with 2000, and also during 1999, after the start of Operation Good Hope. There was, however, again in 2000, an increase in specifically gang-related violence. In 2000, there were 437 incidents of gang violence in which 160 people were arrested. Pagad-related incidents were the lowest during 2000, with 22 incidents and 15 arrests. It is thus clear that the state's response to curb urban terrorism was successful.

Figure 6: Gang and urban terror-related incidents, 1998-2000



The biggest problems experienced during the start of Operation Good Hope were the co-ordination of tactical intelligence between the role players, as well as those of the investigation units. Although the strategic concept behind the operation depended on intelligence-driven operations, the initial drive for Operation Good Hope was based on intelligence generated by the operational personnel. As the operation proceeded, the intelligence flow also improved, resulting in positive arrests in connection with urban terrorism and gang-related crime.

The integrated approach used by the security forces from a preventive viewpoint was, and still is, very successful. As successful investigations increased and more arrests were made (of gangs and members of Pagad involved in urban terrorism), incidents of urban terrorism declined drastically, to almost none.

The security forces have learned from the operations executed in the Western Cape since 1997, and have since adopted these concepts in operations where the need is to stabilise areas ridden by high crime — such as taxi violence, bank robberies, cash-in-transit heists, and so on.

Operation Crackdown

In his speech at the opening of parliament on 25 June 1999, President Mbeki stated that "multi-disciplinary" interventions would be introduced in areas of high crime concentrations, including all crimes of violence.

All POCOCs were thereby tasked to execute integrated high-density, intelligence-driven operations in the identified crime-combating zones, from April 2000 to April 2001, in an operation known as Operation Crackdown.

Operational concept

The concept comprised two main strategies. These were the serious and violent crime stabilisation or geographical approach, and the organised-crime strategy, both of which would be supported by multi-disciplinary interventions in the cases of high crime areas.

- Serious and violent crime/geographical approach: a geographical approach was followed, concentrating on the geographical 'hot spots', clustered into crime combating zones.
- Organised crime approach: a process was implemented to identify syndicates having the highest impact on organised crime. To neutralise such syndicates, organised crime project teams were established.
- Multi-disciplinary interventions: this approach ensured that the social sector concentrated its socio-economic development and social crime prevention efforts in the same areas as the security forces. Such an integrated approach was planned to lead to the implementation of "multi-disciplinary interventions in areas of high crime concentration".

This operation then, *inter alia*, also concentrated on urban terrorism and gang violence in the Western Cape, viewing them as acts of violent crime.

The eastern and western metropolitan areas of the Western Cape were identified as two separate 'crime-combating zones'. For command and control purposes, however, and to address all the crime tendencies in the two police areas, the operation was co-ordinated from one centralised Joint Operational Centre.

The Crime Combating Task Group comprised:

- the stability component (public order police, crime prevention, air wing, special task force);
- the intelligence component (crime intelligence with the support of other intelligence agencies);
- the investigation component (detective services in co-operation with other agencies such as the Scorpions, SARS, and so on);
- the crime prevention component (crime prevention in partnership with other stakeholders);
- the communication component (SAPS Communication Services in cooperation with other role players); and
- the legal component (SAPS Legal Officers).

The operators responsible for Task Group components included intelligence, investigations, stability, reaction, crime-prevention communication, normal policing, monitoring and evaluation. The entire operation was co-ordinated by the National Operational Co-ordinating Mechanism.

Successes of Operation Crackdown

During the first three months of Operation Crackdown, from 1 April 2000 to 23 July 2000, noticeable successes were achieved in the eastern and western metropolitan areas of the Western Cape (Table 6).

Table 6: Successes of Operation Crackdown in the Western Cape

Vehicles recovered	621
Revolvers recovered	365
AK-47 assault rifles recovered	2
R1/R4/R5s recovered	3
Shotguns recovered	11
Ammunition recovered	2 928

The Task Team had to concentrate on taxi and bus violence in the Western Cape, during March and April 2000. Changing the mission from concentrating on gangs and Pagad violence, to taxi and bus violence, was easy. This is one of the advantages the Crime Combating Task Team has in addressing and stabilising any type of violent crime with terrorism-type *modus operandi*.

A common sense strategy to prevent urban terrorism

On 4 March 1998, cabinet approved the official policy on terrorism and the management of incidents of terrorism.

The policy defines terrorism as follows: "The incident or incidents of violence and the threat thereof against a person, a group of persons or property, not necessarily related to the aim of the incident to coerce a government or civil population or a segment thereof to act or not to act according to certain principles." Incidents of terrorism are by this definition visible in bombings, hi-jacking of aircraft/ships, kidnapping, hostage situations, sabotage, assassinations and indiscriminate shooting of citizens.

As examined in the sequence of events in this chapter, the security forces had experienced urban terrorism in the Western Cape, and were therefore in a position whereby they could implement and fine-tune these strategies and to conceptualise and implement effective anti-terrorism actions.

The planning of anti-terrorism actions can be executed in two phases, these being:

- pre acts-of-terrorism reduction; and
- post acts-of-terrorism recovery.

Reduction: Pre acts-of-terrorism phase

The pre acts-of-terrorism phase includes mitigation, prevention and pre-preparedness.

The most important element of the pre acts-of-terrorism phase is prevention. Prevention can be obtained if intelligence is available. Intelligence is the most important tool in the prevention of acts of terrorism. Prevention is 'targeted' if intelligence has identified the time and place of the planned attack. The steps of targeted prevention are straightforward: isolate the target from the terrorists (or the terrorists from the target), or sabotage their plans. Then arrest the terrorists as soon as all the possibilities of determining their plans, associates and supplies have been exploited. The crucial ingredient is always intelligence.

The element of mitigation is to ensure a lessening of resources: the terrorists must be denied resources and information — for training, weapons and explosives. This can be done by executing high-density and targeted operations aimed at weapon caches. Terrorists must also be denied the support they need, such as safe houses, money, materials, and so on.

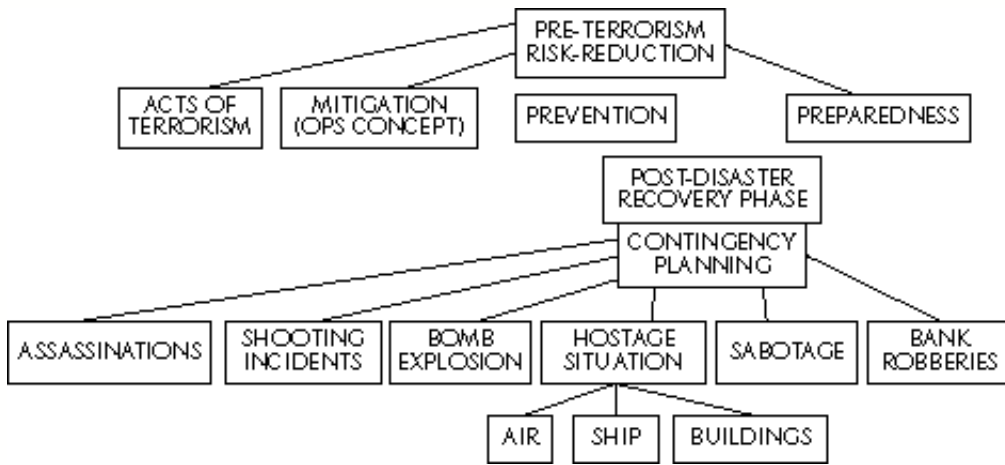
Finally, in order to be prepared, personnel must be trained and willing to use immense investigative resources to investigate any terrorist events targeting South Africans. It is also vital to link prosecutions with investigations, to ensure a high number of successful prosecutions.

Recovery: Post acts-of-terrorism phase

The post acts-of-terrorism phase includes contingency planning for assassinations, shooting incidents, bomb explosions, hostage situations, sabotage and kidnapping. 'Pre acts-of-terrorism' refers to those actions executed to prevent terrorism, to mitigate it and to prepare for acts of terrorism. 'Post acts-of-terrorism' refers to those actions executed after acts of terrorism have occurred.

A strategy for anti-terrorism acts can visually be explained as follows (Figure 7).

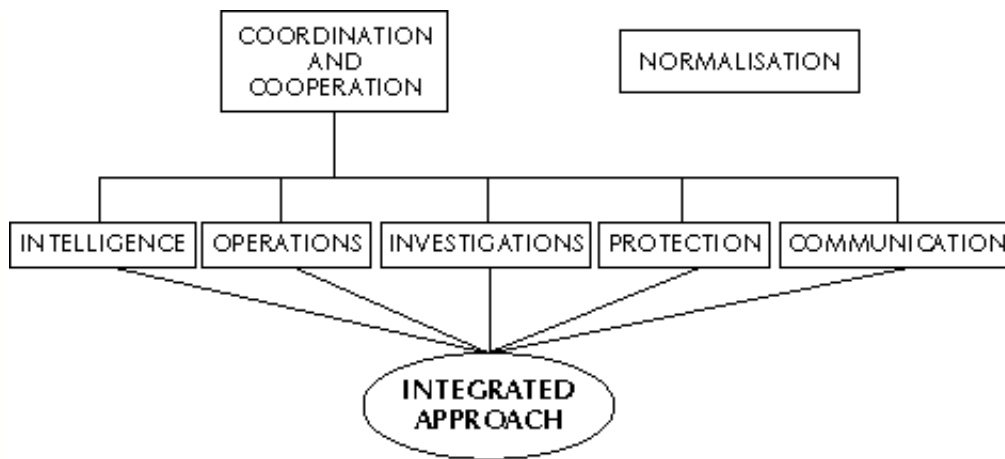
Figure 7: An anti-terrorism strategy



The strategy currently used in South Africa has been operationalised in an anti-terrorism operational concept based on co-ordination and co-operation between the following entities: intelligence, operations, investigations, protection and communication.

The operational concept is co-ordinated within the Joint Operational and Intelligence Structure (Figure 8).

Figure 8: Anti-terrorism operational concept



A proposed anti-terrorism operational concept

A proposed anti-terrorism operational concept is outlined here, based on experiences gained during operations Recoil, Saladin and Good Hope.

The most important principle is to co-ordinate an operation with an integrated approach. This can be done within the National Operational Co-ordinating Mechanism, including all the disciplines of the SAPS, SANDF, NIA and the South African Secret Service (SASS), as well as any other government department that needs to be involved. The intelligence community is responsible for gathering tactical and co-ordinated, court-directed intelligence.

Operations based on intelligence would be executed to: stabilise the focus area; conduct tactical intervention regarding urban terrorism and crowd management; and effectively control high-risk operations.

Investigations must be conducted with the specific intention of ensuring successful prosecutions. It must be stressed again that intelligence is critical in order to operationalise any anti-terrorist courses of action.

Conclusion

Taking into consideration the history of urban terrorism in the Western Cape, and the success of the security forces in counteracting urban terrorism, it is important to manage public expectations.

The message to the public and to the world regarding urban terrorism is this: We can deal with it, we can discourage it, but we cannot end it completely, any more than we can end violence for other purposes.

One of the great dangers that terrorism presents to every democracy is that terrorism itself, and the measures taken to counter it, may lead, as is often intended by the terrorists, to self-destructive actions. We should never react to the limited violence of small groups by launching a crusade in which we destroy our unity as a nation or our trust in the fairness and restraint of the institution of the South African government, which is entrusted to control and exercise legitimate force.

Notes

1. NOCOC is a mechanism set up to be utilised for joint intelligence co-ordination on national

and provincial level. It is known as the National Intelligence Co-ordinating Committee (at the national level) and as the Provincial Intelligence Co-ordinating Committee (at the provincial level).

2. Western Cape. This refers to the area in which the operation was executed. The area is the eastern and western metropole of Cape Town.
3. 'High-density' refers to an operation where an area is flooded by SAPS/SANDF members executing patrols, roadblocks, and cordon and search operations.
4. 'Crime-prevention' refers to action executed to prevent crime by means of patrols, roadblocks, and cordon and search operations.

CHAPTER 4

LAWS AS WEAPONS: LEGISLATING AGAINST TERRORISM

Introduction

In terms of its constitution, bill of rights and formal system of government South Africa is a liberal democratic state. People the world over who live in authoritarian and oppressive states covet the freedom and economic opportunities that liberal democratic societies provide. Freedom comes at a price, however. Free societies must tolerate and even welcome high levels of protest, turbulence and extra-parliamentary agitation. In a complex society with a high level of political awareness and political demands, "protest is more than simply a safety valve: it should be regarded as a valuable mode of political communication, criticism and democratic consultation".¹ A state that suppresses peaceful protest and agitation loses the right to call itself liberal, while the disillusioned and marginalised in society are often tempted to resort to political violence to express their frustrations.

Liberal democratic societies need to draw a firm line between legitimate, albeit rigorous, protest and dissent, and political violence or the threat of such violence that seeks to infringe the rights and liberties of others. The former should be condoned; the latter must be combated within the rule of law.

This chapter will analyse how South African governments between the 1950s and the 1980s refused to tolerate legitimate political protest. Their response to political protest and dissent was to promulgate ever more Draconian laws and erode the rule of law, persuading many peaceful protestors to resort to political violence. In the end dozens of tough anti-terrorism laws, and a heavy-handed application of these laws by the security forces, fostered rather than prevented insecurity and acts of political violence.

The chapter also describes over 30 pieces of legislation on the South African statute books designed to combat terrorism and related criminal behaviour. A brief description of some important common law crimes that can be used against people engaging in terrorist activities is provided. A number of United Nations conventions and an Organisation for African Unity convention that seek to combat terrorism or crimes committed by terrorists are also discussed. South Africa has acceded to or ratified a number of these conventions and has brought its domestic legislation in line with their requirements.

The chapter further analyses the draft anti-terrorism bill, which was published for comment by

the South African Law Commission in mid-2000. The draft bill seeks to create an omnibus statute to address the issue of terrorism and a variety of related crimes in one piece of legislation. The draft bill contains some controversial provisions, notably proposals that suspects can be detained without charge or trial for up to 14 days, and an excessively broad definition of terrorism. These contentious provisions are discussed in some detail, drawing on the views of academics and experts on security legislation.

Finally, the chapter suggests that even the best legislation is ineffective if it is not properly implemented and used by the personnel of the criminal justice system. Many of the existing laws designed to combat terrorism, uphold internal security, and strengthen the hands of the security forces against terror groups are not being used fully. This is because of a variety of operational weaknesses in the criminal justice system such as a lack of detective and prosecution skills, resource constraints, a weak intelligence capacity and insufficient public co-operation with law enforcement agencies. Policy makers need to direct their efforts at these weaknesses, before advocating harsh measures whose purpose is to seek to dilute some of the rights and civil liberties entrenched in the country's constitution.

The pre-1994 era

From the 1950s onwards an increasing number of security laws were placed on the South African statute books, often to the detriment of civil liberties and the rule of law.² Much of this legislative history is marked by an escalation of legislative measures from the side of the state and a similar escalation in the response on the side of those against whom the legislation was directed. "Reaction to a law frequently plays a part in subsequent political actions, particularly the strategies and programmes of those intent on upsetting the existing order; a new law is made to counter those strategies and programmes; and so the process continues."³ According to Snyman, the ruling National Party at the time felt that because certain requirements for common law offences were vague and ambiguous and because of problems of proof, effective action against activities undermining the existence and safety of the state was difficult. The statutory offences did not replace the common law offences but supplemented them. It was, for example, common for a person in the 1960s to be charged with a common law offence such as treason and with a number of statutory offences in the alternative.⁴

Parliament passed the Suppression of Communism Act in 1950 (later to become the Internal Security Act).⁵ In terms of the act, the executive was granted powers to declare unlawful any organisation whose objectives or activities were considered to be directed at promoting the aims of communism. Communism was widely defined and included any doctrine or plan aimed at revolutionary upheaval. After the Communist Party of South Africa had been declared unlawful, a joint planning council was set up by the African National Congress (ANC), the South African Indian Congress and some former members of the Communist Party. A widespread strike by black workers in June 1950 also saw the launch of a 'defiance campaign' to organise resistance against unjust laws. Partly in response to this, two new security laws were placed on the statute books in 1953.

The Criminal Law Amendment Act of 1953 created two criminal offences: incitement to commit offences in campaigning against existing laws, and offer or acceptance of assistance for such campaigning.⁶ The Public Safety Act of 1953 authorised the executive to proclaim a state of emergency.⁷ To do so, the executive had to be of the opinion that the safety of the public or the maintenance of public order was seriously endangered, and that the ordinary law of the land was inadequate to enable the government to ensure public safety or to maintain public order.⁸ The act was used to declare a state of emergency after the events at Sharpeville in 1960. In the

same year the Unlawful Organisations Act was promulgated.⁹ Both the ANC and the Pan Africanist Congress (PAC) were declared unlawful under the provisions of this act. As a result both organisations went underground and embarked on a campaign of sabotage and armed resistance.

In reaction, parliament passed the General Law Amendment Act in 1962, which introduced the statutory crime of sabotage.¹⁰ The act gave a very broad definition of sabotage for example, tampering with any water supply, postal or telephone service or any property. The act further provided that the person who committed such an act be considered guilty of the crime of sabotage, unless the accused proved "beyond a reasonable doubt" that the offence was neither objectively calculated nor subjectively intended to produce certain consequences, such as the promotion of general disturbance or the achievement of any political aim.

In the 1960s, the government enacted a spate of detention laws. These laws had the effect of converting what was formerly exceptional (such as detention only during times of war) into the rule; they became permanent rather than emergency detention laws.¹¹ In 1963, another General Law Amendment Act was passed.¹² The act inserted a provision in the Suppression of Communism Act that authorised 'preventive detention' for up to 12 months at a time. This permitted the detention of persons who the executive was satisfied were engaged in activities endangering or calculated to endanger state security or public order. The 1963 act authorised any commissioned officer to detain a person for interrogation for up to 90 days. Any person could be detained who was suspected by the officer of having committed or intending to commit, *inter alia*, the crime of sabotage or of possessing information about the commission of, or the intention to commit, such an offence. Access to the detainee was forbidden, except by special consent or by a magistrate on a prescribed weekly visit. The power of the courts to order the release of such a detainee was explicitly excluded. In 1964 the 90-day detention provision was suspended only to be replaced in 1965 with a law permitting a 180-day period of detention.¹³ Moreover, in 1966 a new General Law Amendment Act was passed providing for the detention of suspected 'terrorists' and certain others for interrogation, but only for a period of 14 days, any extension having to be authorised by a court order.¹⁴

The Terrorism Act of 1967 created the statutory crime of participating in terrorist activities.¹⁵ A particularly grim aspect of the act was a detention provision without a time limit. "Stressing the pressure under which the police force was operating, the minister [of law and order] claimed that the restrictions of the previous year's law rendered the provision inadequate. He rejected opposition proposals for extension of the 14 days limit, saying the police needed a power, subject only to his directions, of detention 'for an unspecified time for questioning'."¹⁶ A person could be detained if a commissioned police officer of or above the rank of lieutenant-colonel had reason to believe that the person was a terrorist, or was withholding information about terrorism from the police. Release from detention needed only to occur when the minister so directed or the police commissioner considered that all questions had been answered to their satisfaction.

The Affected Organisations Act of 1974 sought to prevent organisations that were declared 'affected' under its terms from receiving financial assistance from foreign sources.¹⁷ Once an organisation had been declared affected, it became an offence to ask for foreign money for the organisation, or to receive or deal with money from abroad with the intention of handing it over to an affected organisation.

According to de Villiers, the government rejected criticism of the security laws as politically disloyal and unpatriotic, and based on ignorance of the critical facts known only to senior members of the security forces. Critics were also referred to laws and practices in Northern

Ireland and Israel. Ordinary legal processes were said to be inadequate because of the intimidation of witnesses, the need to protect informers, secret methods of investigation and the need to act in protection of the public against terrorists before they struck, even on evidence that might be insufficient to convince a court.¹⁸

Nevertheless, criticism of many of the security laws became more vocal in the 1970s as an increasing number of people died in detention under the security laws. In 1979, the state president appointed a judicial commission of inquiry (known as the Rabie commission, after its chairman Mr Justice P J Rabie, and later chief justice) to examine the necessity, adequacy, fairness and efficacy of legislation relating to the protection of internal security.¹⁹ The commission's report was tabled in parliament at the beginning of 1982. The recommendations contained in the report were largely accepted and implemented by the government.

The commission recommended that the various statutory crimes that had been created by security laws, particularly sabotage, terrorism and offences relating to communism or state security, be consolidated in order to prevent duplication and overlapping. In addition, it recommended the amendment of the statutory provisions in a number of aspects that had evoked criticism in the past. Precise formulations were substituted for language that had been too wide and too loose. The mandatory minimum sentence of five years, which had applied for most of the relevant crimes, was to be abolished and the sentencing discretion of the courts restored.²⁰ The onus, which had in some cases been placed on an accused to prove a fact or rebut a presumption of guilt 'beyond reasonable doubt', was replaced with a lesser onus: that of a 'balance of probabilities'.²¹ These recommendations were embodied by the commission in a draft bill that, with little amendment, resulted in the promulgation of the Internal Security Act of 1982.²²

On the crucial issue of detention without trial, the commission recommended the retention of indefinite detention for interrogation with some modifications to serve as safeguards against security force abuses against detainees.²³ These safeguards were criticised on the basis that they did not "make any inroads into the absolute control that the executive (particularly the police) exercised over the process. It was this absolute control and concomitant absence of any effective checking mechanism that resulted in widespread torture. The fact that, at the time of the appointment of the Rabie Commission, there had been 47 deaths in detention was totally ignored by the commission."²⁴ The commission's recommendation to retain detention without trial was based "on evidence given before it that information obtained from persons in detention is the most important and, to a large extent, the only weapon of the police for anticipating and preventing terroristic and other subversive activities, and also that information obtained in this way may in appropriate cases be used as evidence in the trial of persons charged" with offences relating to the internal security of the state.²⁵

In line with the Rabie commission's recommendations, the Internal Security Act consolidated a variety of separate terrorism laws that existed at the time. For example, the act authorised the minister of law and order to declare any organisation unlawful if he was 'satisfied' that it engaged in activities that endangered the security of the state or the maintenance of law and order, or promoted the spread of communism in a variety of ways. The act also made provision for indefinite preventive detention. The minister of law and order had the power to issue a notice for the detention of any person for such period as the minister specified. There was no outer limit to the period that the minister could fix for detention, nor was there a legal barrier to the indefinite re-issue of lapsed notices. "In short, the minister could directly, or indirectly by renewals, detain a person for his or her lifetime."²⁶ The minister could exercise his far-reaching powers on any one of three grounds, namely, that he had reason to believe that the person in

question would commit the offence of terrorism, subversion or sabotage; that the minister was satisfied that the detainee would endanger the security of the state or the maintenance of law and order; or that he had reason to suspect that a person who had committed a specified offence or political offence would be likely to endanger state security or the maintenance of law and order.

The Internal Security Act empowered the minister of law and order to prohibit the printing, publication or dissemination of any periodical or the dissemination of any other publication. He could exercise this power if 'satisfied' that the publication in question endangered state security or the maintenance of law and order, promoted communism, encouraged feelings of hostility between different population groups, or was a substitute for a publication previously banned by the minister.

To its credit, the Rabie commission felt at the time that "in the long run, security legislation by itself can be no guarantee of the maintenance of law and order in the country. Laws designed to combat or to contain unrest and violence cannot remove the circumstances that give rise to unrest and violence. After all, it is known that the existing security laws have not put an end to unrest and violence... the legislation which should be retained, or introduced, is designed to provide for the present and for the near future the means by which order can be maintained as effectively as possible, but that those means cannot in any way offer a solution to the problems that give rise to unrest and violence. The removal of those problems, it seems, calls for solutions in the socio-economic and political spheres."²⁷

The subsequent deterioration of South Africa's internal security situation from the mid-1980s to the early 1990s gave credence to the commission's warning. In 1950, when the Suppression of Communism Act was passed, the only reported illegal political activities that took place in South Africa were a one-day strike and a mass protest meeting in opposition to the apartheid policy of the time.²⁸ In the ensuing three decades a plethora of security legislation was promulgated granting the security forces extensive powers while undermining the rule of law and civil liberties. Notwithstanding the state's tough approach, insecurity increased. In 1984, for example, 175 people were killed in unrest related incidents and 58 incidents of guerrilla insurgency took place.²⁹ In 1990, as many as 3 699 people were killed in political violence in South Africa.³⁰ "The tragic growth of political violence and disorder after decades of Draconian law enforcement makes it impossible to present security policy as one of South Africa's success stories. In fact, disorder has increased in direct proportion to the application of harsh security measures".³¹

Anti-terrorism policy after 1994

Government policy

After 1994 the South African Government of National Unity gave its support to initiatives that sought to strengthen international co-operation with the aim of eliminating terrorism. The present government recognises that it is only with the full and committed support of all members of the international community that terrorism can be eradicated. To this end, the South African government actively participated in a variety of international fora and organisations — in particular in the Non-Aligned Movement (NAM), the Organisation of African Unity (OAU), and the United Nations (UN) — to finding ways of combating terrorism.³²

In 1998, a new official policy on terrorism was approved. In terms of the policy, terrorism is defined as an incident of violence, or the threat thereof, against a person, a group of persons or property not necessarily related to the aim of the incident, to coerce a government or civil

population to act or not to act according to certain principles.

According to its policy on terrorism, the government is committed to:

- upholding the rule of law;
- never resorting to any form of general and indiscriminate repression;
- defending and upholding the freedom and security of all its citizens; and
- acknowledging and respecting its obligations to the international community.

Moreover, according to the terrorism policy the government is obliged:

- to condemn all acts of terror;
- to take all lawful measures to prevent acts of terror and to bring to justice those who are involved in acts of terror;
- to undertake to protect foreign citizens from acts of terror in South Africa;
- to, in the event of an act of terror in a foreign country and involving a South African citizen, co-operate with the host government to resolve the matter;
- not to make concessions that could encourage extortion by terrorists;
- not to allow its territory to be used as a haven to plan, direct or support acts of terror;
- to support and co-operate with the international community in their efforts to prevent and combat acts of terror;
- to use all appropriate measures to combat terrorism; and
- to support its citizens who are victims of terrorism.

Bill of rights

South Africa's constitutionally entrenched bill of rights grants a variety of rights to arrested, detained and accused persons.³³ Everyone who is arrested on the suspicion of having committed an offence has the right, *inter alia*:

- to remain silent;
- not to be compelled to make any confession or admission that could be used in evidence against that person;
- to be brought before a court as soon as reasonably possible, but not later than 48 hours after the arrest; and
- to be released from detention if the interests of justice permit, subject to reasonable conditions.

Everyone who is detained, including every sentenced prisoner, has the right:

- to choose, and to consult with, a legal practitioner;
- to have a legal practitioner assigned by the state at state expense, if substantial injustice would otherwise result;
- to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released; and
- to communicate with, and be visited by, one's spouse or partner, next of kin, chosen religious counsellor and medical practitioner.

Every accused person has the right to a fair trial, which includes the right:

- to be informed of the charge with sufficient detail to answer it;
- to a public trial before an ordinary court;
- to be presumed innocent, to remain silent, and not to testify during the proceedings;
- not to be compelled to give self-incriminating evidence;
- not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted; and
- to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing.

Evidence obtained in a manner that violates any right in the bill of rights must be excluded if the admission of that evidence renders the trial unfair or otherwise is detrimental to the administration of justice.

The bill of rights includes a number of other provisions that are relevant when evaluating the constitutionality of some of the statutes discussed in this chapter.

- Everyone has the right to freedom of conscience, religion, thought, belief and opinion.³⁴
- Everyone has the right to freedom of expression. This right does not, however, extend to propaganda for war, incitement of imminent violence, or advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.³⁵
- Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.³⁶
- Everyone has the right to freedom of association.³⁷
- Everyone has the right to freedom of movement.³⁸
- Anyone belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community to form, join and maintain cultural, religious and linguistic associations and other organs of civil society. (This right may not be

exercised in a way that is inconsistent with any provision of the bill of rights.)³⁹

The bill of rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.⁴⁰ The bill of rights may only be amended by a bill of parliament passed by the National Assembly with a supporting vote of at least two-thirds of its members, and the National Council of Provinces with a supporting vote of at least six out of the nine provinces.⁴¹ The bill of rights does, however, contain a limitations clause permitting the limitation of rights in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors, including:⁴²

- the nature of the right;
- the importance of the purpose of the limitation;
- the nature and extent of the limitation;
- the relation between the limitation and its purpose; and
- less restrictive means to achieve the purpose.

Security legislation in South Africa

In 1995, the minister for safety and security requested the South African Law Commission to undertake a review and rationalisation of the country's security legislation. The minister felt that security legislation existing at the time, including similar legislation promulgated by the former TBVC states or nominally independent homelands, should be repealed.⁴³ The legislation would need to be replaced by a new statute conforming with international norms, the constitution, and the country's circumstances and requirements.⁴⁴

A South African Law Commission project committee on security legislation was appointed in October 1998. The project committee is conducting a wide-ranging review of security legislation in South Africa, and concentrates on matters such as:⁴⁵

- a review of terrorism and sabotage legislation so that the country's obligations in respect of international terrorism are fulfilled;
- the protection of classified information in the possession of the state;
- a review of the Interception and Monitoring Act, with the aim of granting the state greater powers in intercepting and monitoring communications;
- economic espionage that poses a threat to national security;
- protection of property and personnel of foreign governments and international organisations in South Africa, including protection from intimidation; obstruction; coercion and acts of violence committed against foreign dignitaries, foreign officials and their family members; and
- hostage taking that seeks to compel any government to do, or abstain from doing, any act.

In 1996, parliament passed the Safety Matters Rationalisation Act.⁴⁶ The act repealed a number of South African statutes dealing with security legislation, including those of the former TBVC states that were clearly inconsistent with the interim constitution. A total of 34 laws were repealed in the process. The operation of the following statutes of the Republic of South Africa

were extended to the whole national territory of the country, including that of the former TBVC states:

- Riotous Assemblies Act of 1956.
- Explosives Act of 1956.
- Intimidation Act of 1982.
- Internal Security Act of 1982 (only two sections remained in force however).
- Regulation of Gatherings Act of 1993.

The South African statute books contain numerous old and new laws that can be used to combat terrorism and related criminal activities. Available to the state are laws that:

- protect the country's internal security (much of its remnants of legislation enacted before 1994);
- permit the state to restrict gatherings and demonstrations;
- enhance the state's power to collect information on suspected terrorist organisations; and
- target terrorism's foot soldiers and sources of money: criminal gangs and organised criminal groups respectively.

The summaries of the statutes that follow below focus on aspects of the law which are relevant to the discussion in this chapter: legislation as it applies to terrorist activities and legislation which could be used to investigate, combat and prevent terrorist activities. The summaries focus on aspects of the individual pieces of legislation that could assist the state and its law enforcement agencies to combat terrorism and related criminal activity.

The legislation listed below was on the statute books at the time of writing. However, certain provisions of some of the statutes are likely to be declared unconstitutional in a constitutional challenge.⁴⁷ For example, South Africa's post-1994 constitutional dispensation guarantees the right of every accused person to be presumed innocent.⁴⁸ Thus, in any criminal trial, the onus is on the prosecution to prove its case beyond a reasonable doubt. South African common law has long recognised this right. However, there are a number of laws on the statute books that seek to assist the state in the prosecution of certain offences. These laws create presumptions in the state's favour by placing an onus on persons accused of certain offences which, on a balance of probabilities they have to rebut by proof to be acquitted of the charges against them. The effect of such presumptions is to impose a 'reverse onus' on an accused to disprove an essential element of the criminal charge. Failure to do so, even where reasonable doubt as to guilt exists, results in a conviction of the accused. After 1994, the constitutional court declared a number of such presumptions invalid and unconstitutional.⁴⁹ Yet a number of such presumptions are still contained in existing statutes discussed in this chapter as they have not been relied upon by the state in the prosecution of accused persons, and have consequently not undergone a constitutional challenge.

Limited use of reverse onus possible?

The constitutional court has held that legislation that reverses the onus of proof, and thereby relieves the prosecution of the burden of proving an essential element of an offence, offends against the right to a fair trial. Such legislation is generally

unconstitutional and can be saved only by the limitations clause in the bill of rights.

The constitutional court has, for example, upheld a reverse onus in a challenge to the National Road Traffic Act of 1989. The act provides that, for the purpose of proving a driving offence in terms of the act or the common law, it is presumed, until the contrary is proved, that the vehicle was driven by the owner.⁵⁰ The court held that the presumption was triggered only when criminal conduct had been proved and that it was rational to presume that the owners of vehicles drive them, or are aware of who is driving them. It was not unfair to ask a driver to prove to the court that someone else was driving the vehicle.

There has been a subtle but noticeable trend among some legal practitioners to place the constitutional rights enjoyed by accused persons into perspective and to place more emphasis on the public's right to be protected from criminals. Writing in the journal of the South African Bar in 1998, judge Kees van Dijkhorst of the Transvaal Provincial Division of the high court called on the courts to "stop bending over backwards to accommodate the accused". He went on to propose re-examining the accused person's right to silence, as this right was fettering the proper administration of justice.⁵¹ In 1999, the judge president of the Transvaal, Bernard Ngoepe, suggested that some aspects of the constitution might have to be reconsidered. "People are beginning to argue that the constitution is too criminal-friendly. They say they have seen people who, despite strong evidence against them, were acquitted on mere technicalities... If, and I say if, it is the fault of the constitution that criminals escape arrest and conviction, then it must be revisited," judge Ngoepe said.⁵²

Emergency situations

State of Emergency Act of 1997

The act provides for the declaration of a state of emergency in South Africa. According to the constitution, a state of emergency may be declared only when "the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency, and the declaration is necessary to restore peace and order".⁵³

The act permits the president, by proclamation in the Government Gazette, to declare a state of emergency for the whole country, or parts of the country. During a state of emergency, the president may make such regulations as are necessary or expedient to restore peace and order. Regulations governing the detention of persons must provide for international humanitarian organisations to have access to persons detained under such regulations. A declaration of a state of emergency may be effective for no more than 21 days, unless the National Assembly resolves to extend the declaration. The Assembly may extend a declaration of a state of emergency for no more than three months at a time.⁵⁴ No act of parliament that authorises a declaration of a state of emergency, and no action taken in consequence of a declaration may permit any derogation from a number of provisions in the bill of rights, such as the right to life, human dignity, or the right of an arrested person to remain silent and not to be compelled to make any confession or admission that could be used in evidence against him.⁵⁵

According to the bill of rights, whenever anyone is detained without trial in consequence of a derogation of rights resulting from a declaration of a state of emergency, certain conditions must be followed.⁵⁶ These include:

- The detainee must be allowed to choose, and to be visited at any reasonable time by, a medical practitioner and legal representative.

- The detention must be reviewed by a court as soon as reasonably possible, but no later than 10 days after the date the person was detained. The court must release the detainee unless it is necessary to continue the detention to restore peace and order.
- The detainee must be allowed to appear in person before any court considering the detention, to be represented by a legal practitioner at those hearings, and to make representations against continued detention.
- The state must present written reasons to the court to justify the continued detention of the detainee, and must give a copy of those reasons to the detainee.
- If a court releases a detainee, that person may not be detained again on the same grounds unless the state first shows a court good cause for re-detaining that person.

Civil Protection Act of 1977

The act empowers the minister of provincial and local government to declare a state of disaster. To do so, the minister must be of the opinion that any disaster is of such a nature and extent that extraordinary measures are necessary to assist and protect the country and its inhabitants and to combat civil disruption. The concept 'disaster' includes: "Any consequences arising out of terrorism and sabotage contemplated in the Internal Security Act of 1982."⁵⁷

Defence Act of 1957

The act contains various provisions relating to the combating of terrorism.⁵⁸ These include the mobilisation of the Citizen Force, the Reserve and the commandos for:

- service in the prevention or suppression of terrorism;
- compulsory service outside South Africa for the prevention or suppression of terrorism;
- the safeguarding of the borders of South Africa for the prevention or suppression of terrorism;
- the commandeering of, amongst other things, buildings, vehicles, aircraft and equipment for the prevention or suppression of terrorism; and
- assuming control over transport systems for the prevention or suppression of terrorism.

During operations for the prevention or suppression of terrorism the act empowers the president to enforce a censorship over postal, telephonic or radio communication, and over printed matter, photographs and drawings.

Terrorism, sabotage and intimidation

Internal Security Act of 1982

In terms of the act, a person is guilty of the offence of terrorism if he, *inter alia*, commits (or threatens to commit) an act of violence; or incites, aids, advises or encourages any other person to commit an act of violence with the intent to:

- overthrow or endanger the state authority in South Africa;
- achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the country; or
- induce the government to do or to abstain from doing any act or to adopt or abandon any particular standpoint.

The punishment for terrorism is the same as that which may be imposed for treason (that is, life imprisonment).

The act provides a wide definition of terrorism and includes any act of violence committed with the specified intent. According to the South African Law Commission's project committee on security legislation, the definition of terrorism is not sufficiently wide to cover all acts of modern terrorism, and excludes acts of international or transnational terrorism. In terms of the act, the intent must be directed at the South African government or the constitutional or political dispensation of South Africa. Consequently, a South African citizen who murders or kidnaps a foreign diplomat cannot be convicted of terrorism in terms of the Internal Security Act. The project committee advocates an expansion of the element of intent to provide for violence or threats of violence aimed at states, international organisations, persons or groups of persons other than the South African government or the South African constitutional dispensation.⁵⁹

In terms of the Internal Security Act, a person is guilty of the offence of sabotage if he, *inter alia*, commits (or attempts to commit) any act; or conspires with other persons to commit an act; or incites, aids, or advises other persons to commit acts with the intent to:

- endanger the safety, health or interests of the public anywhere in South Africa;
- destroy, pollute, or contaminate any water supply intended for public use;
- interrupt, impede or endanger the manufacture, storage, distribution or supply of fuel, power, water, or of medical, health, educational, police, fire-fighting, ambulance, postal, radio or television services, or any other public service;
- cripple or interrupt any industry generally, or the production, supply or distribution of commodities or foodstuffs; or
- impede or endanger the free movement of any traffic on land, at sea or in the air.

Upon conviction of sabotage, a person may be sentenced to imprisonment for up to 20 years.

The definition of sabotage is sufficiently broad to include a variety of acts such as bombings and damage of any property that forms part of the public infrastructure. However, the act requires that the intent of the saboteur must be aimed at the public interest or public service. According to the Law Commission's project committee on security legislation, acts of fear or violence aimed at organisations or individuals, such as the placing of a bomb in the residence of a diplomat, do not qualify as acts of sabotage.⁶⁰

The Internal Security Act makes it a criminal offence to harbour, conceal or fail to report to the police any person who has committed, or is intending to commit, acts of terrorism or sabotage. The act empowers the minister for safety and security to prohibit any gathering if he deems it

necessary in the interests of the security of the state, or for the maintenance of the public peace, or to prevent hostilities between different population groups in the country.

Intimidation Act of 1982

The act is targeted at persons who intend to frighten, demoralise, or incite the public (or a particular section of the population) to do or abstain from doing any act. Any person who does any of these things and commits (or threatens to commit) an act of violence, is guilty of an offence and can on conviction be fined to an amount at the discretion of the court and/or to imprisonment for a period of up to 25 years. Persons who through their behaviour, speech or published writings seek to create fear in other people for their own safety, the safety of their property, or the security of their livelihood are guilty of an offence. Such persons can be fined up to R40 000 and/or imprisoned for up to 10 years.

Assisting and training terrorists

Criminal Law Second Amendment Act of 1992

The act prohibits any person from:

- taking part in the control, administration or management of any organisation;
- organising, training, equipping or arming the members or supporters of any organisation;
or
- undergoing training in any organisation,

if the members or supporters of that organisation are organised, trained or armed in order to usurp some or all of the functions of the South African Police Service (SAPS) or the South African National Defence Force (SANDF). A contravention of this provision can lead to a fine or to imprisonment for a period of up to 10 years.

This provision of the act is bolstered by a constitutional provision stating that the "defence force is the only lawful military force in the Republic", and that "other than the security services established in terms of the Constitution, armed organisations or services may be established only in terms of national legislation".⁶¹

A 1998 amendment to the Criminal Law Second Amendment Act prohibits a variety of acts connected with military, paramilitary or other similar operations.⁶² A contravention of this prohibition can lead to a fine as the court may deem fit to impose, or to imprisonment for a period of up to five years. It is prohibited for any person to:

- train anyone, or undergo any training, to conduct any military or paramilitary operation;
- train anyone, or undergo any training, to construct, manufacture or use any weapon, ammunition, or explosive for the purpose of: endangering life or causing serious damage to property, promoting any political objective, or for military or paramilitary purposes; or
- employ two or more persons trained, or intended to be trained, with a weapon, ammunition or explosive with the purpose of: endangering life or causing serious damage to property, promoting any political objective, or for military or paramilitary purposes.

The act defines 'political objective' as the bringing about of any constitutional, political, social, economic or industrial change in the country. Moreover, it includes the inducement of any person, including the national, provincial or local sphere of government, to do or abstain from doing any act, or to support or to oppose any person or action. These provisions of the act do not apply to members of the SAPS, any municipal police service, or members of the SANDF who act in the course and within the scope of their duties.

Also excluded — in the case of any act relating to weapons or ammunition — are persons who are registered as security officers in terms of the Security Officers' Act of 1987, as amended. This is provided that, in the case of an employer, the person acts in good faith in rendering a security service for the protection or safeguarding of persons or property. In the case of an employee, the person must act in the course and within the scope of his employment as such an officer, and with a view to protect and safeguard persons or property.

The Criminal Law Second Amendment Act permits a director of public prosecutions to identify an offence in which murder, robbery with aggravating circumstances, violence or intimidation is involved as a 'special offence', irrespective of what the actual charge is. An accused who is in custody on a special offence may not be released on bail or on warning without the written authorisation of the director of public prosecutions for a period of 120 days, provided the state can commence with the presentation of its case within 60 days of the issue of the certificate declaring the crime in question a special offence.

A court that tries a special offence may sit on any day of the week to ensure that the trial is concluded as soon as possible. The charge sheet or indictment for a special offence must be accompanied by a summary of the substantial facts on which the prosecution relies. If the accused pleads not guilty, the accused must outline the basis of this defence and indicate the extent to which he disputes the facts in the summary. If the accused fails to do this, the court may, in respect of the accused person's credibility or conduct, draw an unfavourable inference regarding such failure, if the court is of the opinion that such an inference is justified in the light of all the evidence that was adduced at the trial. The court must inform the accused that it may draw such an inference.

According to the act a warrant for the arrest and detention of a person may be issued if a magistrate has reason to believe, on information given under oath by a public prosecutor, that any person is withholding information relating to the possession of prohibited armaments and weaponry from a police officer. Once such a person is arrested, they must be detained in custody for interrogation until the magistrate orders their release when satisfied that the detainee has "satisfactorily replied to all questions at the interrogation or that no useful purpose will be served by his further detention".⁶³ Any person arrested in terms of such a warrant must be brought before a magistrate within 48 hours of being arrested and, thereafter, not less than once every 10 days. The magistrate must, at every appearance, enquire whether the detainee has satisfactorily replied to all questions at his interrogation and whether it will serve any useful purpose to detain him further. A detainee may at any time make representation in writing to the magistrate relating to his detention or release. No person may be detained for more than 30 days. Except for the legal representative of the detainee, only officers in the service of the state acting in performance of their official duties may have access to the detainee, or be entitled to any official information relating to or obtained from the detainee.

Regulation of Foreign Military Assistance Act of 1998

The act regulates the rendering of foreign military assistance by South African persons — both

natural and juristic — including citizens, permanent residents and foreign citizens from within the borders of South Africa. The act prohibits anyone from recruiting, using or training persons for, or financing or engaging in, mercenary activity. Mercenary activity is defined as direct participation as a combatant in armed conflict for private gain. It is also prohibited to render or offer any foreign military assistance to any state or organ of state, group of persons, or other entity unless authorisation has been granted by the National Conventional Arms Control Committee. Such an authorisation is unlikely to be granted if it would, inter alia, support or encourage terrorism in any manner.

Foreign military assistance is broadly defined and refers to military services or military-related services, or any attempt, encouragement, or solicitation to render such services in the form of:

- Military assistance to a party to an armed conflict by means of: advice or training; personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; or procurement of equipment.
- Security services for the protection of individuals involved in armed conflict or their property.
- Any action aimed at overthrowing a government or undermining the constitutional order, sovereignty or territorial integrity of a state.
- Any other action that has the result of furthering the military interests of a party to an armed conflict.

Excluded from the ambit of the act are humanitarian or civilian activities aimed at relieving the plight of civilians in an area of armed conflict.

Any person convicted of contravening the aforementioned provisions of the act is liable to a fine and/or to imprisonment (no maximum limit is set). Moreover, the court convicting any person of an offence under the act may declare any armament, weapon, vehicle, uniform, equipment or other property in respect of which the offence was committed or which was used to commit the offence, to be forfeited to the state.

Restricting protest and hatred

Regulation of Gatherings Act of 1993

In terms of the act, organisers of gatherings must give seven days notice to a 'responsible officer' appointed by the local authority in whose jurisdiction the gathering is to take place. If this is not reasonably possible, a shorter notice period can be given. The written notice must contain, among other things, the name and address of the convenor of the gathering, the place where the gathering is to take place, and its purpose. The 'responsible officer' may prohibit a proposed gathering if he has been given information under oath that such a gathering could result in serious disruptions of traffic, injury to participants or others, or extensive damage to property.

No participant or other person in a gathering or demonstration may by placard, speech or singing, incite hatred of other persons on account of differences in culture, race, sex, language or religion. No participant or other person may perform any act or utter any words calculated or likely to encourage violence against any person or group. The wearing of masks or disguises is prohibited, as is the donning of uniforms similar to those of the security forces.

According to the act, a 'gathering' refers to any assembly or procession of more than 15 persons on a public road or place at which: the principles, policy or actions of any government, political party or organisation are discussed, attacked or promoted; or gatherings held to form pressure groups, hand over petitions, or mobilise or demonstrate support for or opposition to the principles, policy or actions of any person or institution. A 'demonstration' is where fewer than 16 persons demonstrate for or against any person, cause or action.

The Regulations of Gathering Act repealed a number of provisions in the Internal Security Act of 1982 to do with gatherings. It is interesting to note that in terms of the repealed provisions of the Internal Security Act, gatherings were generally permitted, with the exception of those that were expressly prohibited. In terms of the Regulations of Gathering Act, the situation is reversed with generally all gatherings (of a defined nature) being prohibited unless expressly permitted.⁶⁴

Riotous Assemblies Act of 1956

The act provides the president with the power to take special precautions to maintain public order or to protect life and property. By proclamation the president may prohibit the transport of explosives or limit the storage, removal or possession of such explosives.

The act also provides for the offence of incitement to public violence. A person is deemed to have committed the offence if "he has acted or conducted himself in such a manner, or has spoken or published such words, that it might reasonably be expected that the natural and probable consequences of his act, conduct, speech or publication would, under the circumstances, be the commission of public violence by members of the public generally or by persons in whose presence the conduct took place or to whom the speech or publication was addressed".

Films and Publications Act of 1996

The act criminalises the actions of any person who knowingly distributes a publication; broadcasts, exhibits in public or distributes a film; or presents an entertainment or play in public which, judged in context:

- amounts to propaganda for war;
- incites to imminent violence; or
- advocates hatred that is based on race, ethnicity, gender or religion, and which constitutes incitement to cause harm.

Such actions can lead, upon conviction, to a fine and a period of imprisonment not exceeding five years. If aggravating factors are present, guilty persons can be sentenced to a fine and imprisonment.

The act defines publication broadly to include, for example, any newspaper, book, pamphlet, poster, photograph, computer software, or soundtrack.⁶⁵

Prohibition of Disguises Act of 1969

The act states that it is an offence for any person to be found disguised in any manner in circumstances from which it may be reasonably inferred that they had the intention of

committing or inciting, encouraging or aiding any other person to commit an offence. The onus is on the accused to show that they did not have the intention. In prosecuting the offence, the state does not have to prove that the circumstances in which the accused was found gave rise to an inference that that person had the intention of committing or inciting, encouraging or aiding any other person to commit any offence, according to the act. A penalty of a fine not exceeding R200 and/or imprisonment not exceeding six months may be imposed on conviction.

Collecting and protecting information

National Strategic Intelligence Act of 1994

The act provides for the establishment of the National Intelligence Co-ordinating Committee (NICOC). NICOC is responsible for the co-ordination of intelligence supplied by the intelligence divisions of the SANDF and the SAPS, the National Intelligence Agency (NIA), and the South African Secret Service.

According to the act, the NIA is responsible for gathering, evaluating and analysing domestic intelligence to identify any threat to the security of South Africa or its people, and to supply intelligence regarding such a threat to NICOC. It is also the NIA's function to gather, analyse and interpret information regarding counter-intelligence and to supply intelligence relating to threats against the country and its inhabitants to the SAPS for the purposes of investigating any offence. In terms of the Intelligence Services Act, a judge, who is convinced that information which could have a bearing on the functions of the NIA can be obtained on certain premises, may issue the NIA with a direction authorising any of its members to enter and search such premises and to remove any material from them.⁶⁶

Protection of Information Act of 1982

The act provides for the protection from disclosure of certain information. The act contains provisions relating to prohibited places and certain acts prejudicial to the security or interests of the country. Thus, any person who inspects, is in the neighbourhood of or enters any 'prohibited place' for any purpose prejudicial to the security or interests of South Africa, is guilty of an offence and liable on conviction to imprisonment for up to 20 years.

A prohibited place is any defence-related area belonging to, occupied or used by or on behalf of the government, including any military establishment, factory, ship, or aircraft. The president may also, by proclamation in the Government Gazette, declare any place a prohibited place provided the president is satisfied that information with respect to that place, or the loss or damage of the place, could be of use to a foreign state or a hostile organisation. A hostile organisation is any association of persons, movement or institution outside of South Africa, which the president by proclamation in the Government Gazette declares to be hostile. To do so the president must be satisfied that the association of persons, movement or institution incites, commands, aids, encourages or procures any person to commit an act of violence in South Africa for any purpose prejudicial to the security or interests of the country.

Any persons who, for the purpose of assisting anyone to gain admission to a prohibited place, or for any other purpose prejudicial to the country, unlawfully wear any military or police uniform, make a false statement, forge or tamper with any passport or other official document, falsely represent themselves as government employees, or unlawfully possess any official stamp or seal are guilty of an offence. A person convicted of such an offence is liable to a fine not exceeding R5 000 and/or to imprisonment for up to five years.

Anyone who knowingly harbours or conceals someone whom they have reason to believe is about to commit or has committed an offence under the act, or knowingly permits such a person to meet on any premises under their control is guilty of an offence. Moreover, it is an offence to wilfully omit or refuse to disclose to a member of the SAPS any information one can give in relation to a person one has harboured or concealed. The maximum penalty for conviction of either of these offences is a fine of R1 000 and/or imprisonment for 12 months.

Interception and Monitoring Prohibition Act of 1992

The act permits a judge to direct that postal articles, communications and conversations by, to or from a person or organisation be intercepted or monitored. A judge making such a directive must be convinced that a serious offence has been or will probably be committed, and that such an offence cannot be properly investigated in any other manner. The offence under investigation must have been committed over a lengthy period of time, on an organised or regular basis, or have harmed the country's economy.

A judge may only direct the interception or monitoring of an article or communication for three months at a time. Any member of the SAPS executing a direction may enter into any premises to install a monitoring device, or to intercept a postal article or communication.

The Judicial Matters Amendment Act of 1998 amended the Interception and Monitoring Prohibition Act. The amendment grants the police the authority to intercept and monitor any communication, including electronic mail and fax communication.

A South African Law Commission discussion paper released in 1998 recommends that all telecommunication service providers be obliged by law to acquire, at their own expense, equipment permitting the monitoring and interception of communications on their systems. Moreover, the discussion paper suggests that no South African telecommunication service providers be permitted to provide facilities — from telephones and cell-phones, to the Internet — which are not capable of being monitored.⁶⁷

Criminal Procedure Second Amendment Act of 1996

In terms of the amendment act, police officers and other authorised persons may use a trap, or engage in an undercover operation, to detect, investigate or uncover the commission of an offence, or to prevent the commission of an offence. Evidence obtained through an undercover operation or a trap is admissible provided that that conduct does not go beyond providing an opportunity to commit an offence. However, even under such circumstances the courts have the discretion of accepting the evidence. In considering whether to admit such evidence, the courts have to weigh up the public interest against the personal interest of the accused, having regard to, *inter alia*, the seriousness of the offence, the extent of the effect of the trap or undercover operation on the interests of the accused, and the nature and seriousness of any infringement of any fundamental constitutional right.

A police officer or other authorised person acting within the parameters of the act cannot be held criminally liable "in respect of any act which constitutes an offence and which relates to the trap or undercover operation if it was performed in good faith".

Enhanced investigative powers

National Prosecuting Authority Act of 1998

In terms of the act, the president may establish three investigating directorates in the office of the national director of public prosecutions. Investigating directorates are established to investigate and prosecute offences that are not dealt with by the directorate of special operations ('the Scorpions'). Every investigating directorate consists of an investigating director assisted by one or more deputy directors of public prosecutions, prosecutors, civil servants seconded to the directorate, and any person whose services the directorate requires for a particular inquiry. This permits investigating directorates to be staffed with a multi-disciplinary team of people who can contribute their skills to fulfilling the mandate of the directorate.

Investigating directorates are provided with considerable powers for the fulfilment of their mandates. If an investigating director has reason to suspect that a specific offence has been or is being committed, or that an attempt is being made to commit an offence, an inquiry on the matter may be held. The inquiry may be extended to include any offence that might be connected with the subject of the inquiry.

An investigating director may summon any person who can furnish information on the subject of an inquiry, or who has any document or other object relating to that subject, to appear before him. The summoned person may be questioned under oath by an investigating director (or a person designated by the director), and any document or object may be examined or retained. The summoned person may not refuse to answer any question on the ground that the answer could expose him to a criminal charge.

On obtaining a warrant from a court, an investigating director, or his agents, may enter and search premises in which they suspect anything connected with an inquiry will be. An investigating director may examine any object found on the premises, and request the owner or person in charge of the premises to provide information regarding that object. It is a criminal offence for anyone to refuse to supply requested information, or to give false or misleading information. An investigating director may also seize anything on the premises that might have a bearing on the inquiry in question. Under certain circumstances, premises may also be entered and searched without a warrant.

In early 2001, an amendment to the National Prosecuting Authority Act of 1998 was promulgated, thereby formally establishing the Directorate of Special Operations (DSO) — nicknamed 'the Scorpions' — as an investigating directorate of the national prosecuting authority.⁶⁸ A special investigator of the DSO has the same powers as a member of the SAPS and the powers bestowed upon a peace officer relating to the investigation of offences, the entry and search of premises, the seizure and disposal of articles, the execution of warrants, and the attendance of an accused person in court. The minister of justice and constitutional development may, in consultation with the minister for safety and security, bestow any power on special investigators that relates to the prevention, investigation or combating of any offence or other criminal or unlawful activity.⁶⁹ A person may be appointed as a special investigator only after information with respect to that person has been gathered in a screening investigation of the National Intelligence Agency, and the national director of public prosecutions, after evaluating the gathered information, is satisfied that the screened person is not a security risk or might act in any way prejudicial to the objectives of the DSO.

Criminal Procedure Act of 1977

The act grants certain powers to police officials to enter premises in connection with matters

pertaining to state security or any other offence. A magistrate may issue a warrant authorising a police official to enter and search any premises if it appears from information obtained under oath that there are reasonable grounds for believing that:

- the internal security of the country or the maintenance of law and order is likely to be endangered in consequence of any meeting which is being held or is to be held, or
- an offence has been, is being or is likely to be committed, or that preparations for the commission of any offence are likely to be made.

Police officials may also enter and search premises without a warrant if they have reasonable grounds to believe that a warrant will be issued to them if they applied for it, and that the delay in obtaining such a warrant would defeat the object of entering and searching premises.

South African Police Service Act of 1995

To restore public order or to ensure the safety of the public in a particular area, the national or provincial commissioner of the SAPS may in writing authorise that a particular area be cordoned off for up to 24 hours. In order to achieve the object specified in such a written authorisation any member of the police may, without warrant, search any person, premises or vehicle. Such a member may also seize any article which has been or might be used in the commission of an offence, or could afford evidence of the commission of an offence.⁷⁰

Members of the police may dispense with obtaining authorisation from the national or provincial commissioner for the setting up of a roadblock in cases where a delay will defeat the object of the roadblock. In such instances roadblocks may be set up to establish whether a vehicle is carrying:

- a person who has been involved in the commission of a serious offence;
- a person who is a witness to the commission of a serious offence;
- a person who is suspected of intending to commit a serious offence; or
- an object which may afford evidence of, or is intended to be used in the commission of a serious offence.

Targeting the tools of terrorism

Armaments Development and Production Act of 1968

The act regulates the manufacture, possession and importation of armaments. The meaning of armaments is broadly defined to include "bombs, ammunition or weapons, or any substance, material, components... of whatever nature capable of being used in the development, manufacture or maintenance of armaments".⁷¹

In terms of the act, the minister of defence may, by notice in the Government Gazette, prescribe that no armaments of a specific class or kind be imported into the country or moved inside the country, and moreover, that no specified armaments be developed or manufactured in the country. Armaments may also be classified according to the manner in which, or material from which, they are developed or manufactured. Anyone found guilty of contravening such provisions is liable on conviction to a fine of R10 000 or up to 10 years imprisonment, or both the fine and imprisonment.

Explosives Act of 1956

The act regulates the manufacture, storage, transport, importation, exportation and the use of explosives. A 1997 amendment to the act holds that no person may manufacture, import, possess, sell, supply or export any plastic explosive that is not marked with a detection agent.⁷² A detection agent is a substance — as laid down by the United Nations Convention on the Marking of Plastic Explosives for the Purpose of Detection — which is mixed into an explosive to enhance its ability to be detected by vapour-detection means.

In terms of the act, ‘inspectors of explosives’ may at any time enter any explosive factory or storage facility for the purpose of inspecting it. Such inspectors may also remove samples of explosives, or ingredients of explosives, for the purposes of analysis and testing.

The act lays down minimum sentences for certain explosive-related offences. Any person who wilfully causes an explosion causing danger to life or property (but without killing anyone) is liable to imprisonment without the option of a fine for a period of between 3 and 15 years. Any person who threatens, or falsely alleges, that any other person intends to cause an explosion whereby life or property is, or may be, endangered, in order to intimidate any person, is liable on conviction to imprisonment for a period of between 3 and 15 years.

Dangerous Weapons Act of 1968

In terms of the act, a ‘dangerous weapon’ is any object, other than a firearm, which is likely to cause serious bodily injury if used to commit an assault. A person who is in possession of a dangerous weapon is guilty of an offence unless they can prove that they at no time had the intention of using the weapon or object for any unlawful purpose. The penalty for conviction of this offence is a fine or a period of imprisonment of up to two years.

The minister for safety and security may, by notice in the Government Gazette, prohibit any person from being in possession of a dangerous weapon. Such a prohibition may also be imposed in respect of a specified gathering or a specific type of gathering.⁷³ Details of the circumstances under which such possession is prohibited, the time period for which the prohibition applies and the weapons covered by the prohibition must be specified in the notice. The act also provides for minimum sentences for violent offences involving dangerous weapons.

Firearms Control Act ⁷⁴

According to the act, it is an offence to possess a firearm without a licence. Anyone convicted of possessing an unlicensed firearm can be fined or imprisoned for up to 15 years. The possession of ammunition by a person who does not hold a licence in respect of a firearm capable of discharging that ammunition carries with it a maximum penalty of 15 years’ imprisonment. Moreover, the possession of more than 200 cartridges for a legally owned firearm is also an offence with a maximum penalty of 10 years’ imprisonment. The possession of ‘prohibited firearms’ including fully automatic firearms, grenades, bombs and explosive devices is also a criminal offence. The penalty on conviction of possession of a prohibited firearm is a fine or a period of imprisonment of up to 25 years. Persons convicted of trading in any firearm or ammunition without a dealer’s licence can be sentenced to a period of imprisonment of up to 25 years. The same penalty applies for persons convicted of manufacturing any firearm or ammunition without the requisite licence. It is an offence to carry a firearm in a public place unless the firearm is carried, in the case of a handgun, in a holster, rucksack or similar holder, and is completely covered. Failure to carry the firearm in this way can lead to a fine or period of imprisonment of up to two years.

Any police official may search any premises, vehicle, vessel or aircraft and seize any firearm and ammunition that is reasonably suspected of being held in contravention of the act. Any police official may also, without a warrant, take the finger-prints, palm-prints, foot-prints and bodily samples of a person or a group of persons if there are reasonable grounds to suspect that the person(s) have committed an offence punishable with imprisonment for a period of five years or longer. The police official must also have reasonable grounds to believe that the prints or samples will be of value in an investigation by excluding possible perpetrators of the offence investigated.

The act empowers the minister for safety and security, by notice in the Government Gazette, to declare any premises or categories of premises to be firearm-free zones. This means that no person may (unless specifically exempted) carry or store any firearm or ammunition in a firearm-free zone. Anyone who unlawfully carries a firearm or ammunition in a firearm-free zone can, upon conviction, be sentenced to imprisonment for up to 10 years. The unlawful storing of a firearm or ammunition in such a zone can lead to a prison sentence of up to 25 years. Police officials may, without a warrant, search any building or premises in a firearm-free zone if they suspect, on reasonable grounds, that a firearm or ammunition may be present. Police officials may also search any person present in a firearm-free zone.

Non-Proliferation of Weapons of Mass Destruction Act of 1993

The act provides for control over weapons of 'mass destruction', that is, a weapon designed to kill, harm or infect people, animals or plants through the effect of a nuclear explosion, or the toxic properties of a chemical or biological warfare agent.⁷⁵ The act, which is administered by the department of trade and industry, establishes a non-proliferation council which controls all imports, exports and transfers of dual-use technologies, dual-use materials and dual-use items that can be used in the production and operation of weapons of mass destruction. On the recommendation of the council, the minister of trade and industry may, whenever he deems it necessary in the public interest, declare goods which may contribute to the design, development, production, deployment, maintenance or use of weapons of mass destruction, to be 'controlled goods'. A variety of limitations and restrictions may be placed on the use and procurement of controlled goods.

An inspector appointed by the council may at any reasonable time enter any premises where controlled goods are kept or are reasonably suspected of being kept. An inspector is given a variety of powers for the effective performance of duties. A failure to comply with an inspector's lawful request is a criminal offence and can result on conviction to a fine or to imprisonment for up to 10 years. Anyone convicted of the offence of falsely representing that any goods or activities fall outside the purview of the act is liable to a fine or imprisonment for up to 15 years.

Nuclear Energy Act of 1999

The act empowers the minister of mineral and energy affairs to control the possession, acquisition, import or export of specified nuclear-related material and equipment. The minister may appoint inspectors who may, after obtaining the necessary warrant, enter any land, premises or place where any nuclear-related material is to be found, or on reasonable grounds is expected to be found. An inspector may also do this without a warrant to perform an inspection necessary for monitoring compliance with the terms of the minister's authorisation for possessing nuclear-related material, or "any other relevant requirement imposed by the act" with regard to regulated material and activities. Anyone convicted of the offence of unlawfully

being in possession of nuclear-related material is liable to a fine or to a period of imprisonment of up to 10 years.

Protecting specific places

National Key Points Act of 1980

The act empowers the minister of defence to declare a place or area as a national key point if it appears to the minister that such a place or area is so important that its loss, damage or disruption or immobilisation may prejudice the country, or whenever the minister considers it necessary or expedient for the safety of the country, or in the public interest. The owners of a national key point must, after consultation with the minister, take steps at their own expense to enhance the security of the key point to the satisfaction of the minister. The minister may make regulations to grant guards employed to protect national key points additional powers in respect of the searching of persons, the examination and seizure of articles and the arresting of persons. Anyone who furnishes information relating to the security measures at any national key point without being legally obliged or entitled to do so, is committing an offence and on conviction is liable to a fine of up to R10 000 and/or a sentence of up to three years of imprisonment.

Control of Access to Public Premises and Vehicles Act of 1985

According to the act, the owner of any public premises or public vehicle (that is, the head of the department of state, division or office that occupies or is in charge of the premises or vehicle) may take such steps as are considered necessary for the safeguarding of those premises or vehicle, as well as for the protection of the people therein. An owner of public premises or a vehicle may also direct that no person may enter those premises or vehicle unless such persons give their names, addresses and any other relevant information; produce satisfactory proof of identity; declare whether they have any dangerous object in their possession; and reveal the contents of any vehicle, bag or container in their possession. Anyone who enters public premises or a public vehicle without permission, provides false information, impersonates an authorised officer, or hinders an officer in his duties is guilty of an offence and liable on conviction to a fine of up to R2 000 and/or imprisonment for up to two years.

Moreover, a person may be searched by an authorised officer if such a person intends to enter premises or vehicles that have been specifically identified by the minister for safety and security by notice in the Government Gazette. Police officers and members of the South African National Defence Force acting in the performance of their duties are exempt from most provisions of the act.

Diplomatic Immunities and Privileges Act of 1989

The act gives effect to the provisions of the Vienna convention on diplomatic relations of 1961. The convention places a 'special duty' on the receiving state to take all appropriate steps to protect the premises of foreign missions against any intrusion or damage, and to prevent any disturbance of the peace of the mission. The receiving state is also obliged to take all appropriate steps to prevent any attack on the person, freedom or dignity of a member of the diplomatic staff of a foreign mission.

Specific offences

Civil Aviation Offences Act of 1972

The act grants certain powers to commanders of aircraft to ensure good order aboard aircraft and the safety of the aircraft and persons or property on board the aircraft. The act creates a number of offences relating to aircraft and airports. Anyone who:

- on board an aircraft unlawfully seizes control of the aircraft by force, threat of force or intimidation, or assaults someone on the aircraft, thereby endangering the safety of the aircraft;
- destroys or damages an aircraft which is likely to endanger its safety in flight;
- places on an aircraft a device which is likely to destroy or damage the aircraft and is likely to endanger its safety in flight;
- places at an airport a device which is calculated to endanger any person or any vehicle, aircraft, building or air navigation equipment;
- wilfully pollutes any aviation fuel; or
- performs any other act which may jeopardise the operation of an air carrier, the safety or good order of an airport,

is guilty of an offence and liable on conviction to a period of imprisonment of between 5 and 30 years. Anyone who communicates information that they know to be false and by doing so interferes with the operation of an air carrier or an airport, is guilty of an offence carrying a penalty of imprisonment for up to 15 years, without the option of a fine.

If the minister of transport is of the opinion that any action by any person or group of persons is of such a nature that the safety of anyone in an aircraft or airport, or of any aircraft or airport, is being seriously and immediately threatened, he may issue such orders as are necessary to counter such action. Any member of the SAPS, SANDF or anyone appointed by the minister is permitted to take such steps as he may deem necessary in the circumstances to ensure that the minister's order is complied with.

Merchant Shipping Act of 1951

According to the act, no person may without a reasonable excuse do anything to obstruct or damage any equipment on a ship, or obstruct, impede or molest any of the crew in the navigation and management of the ship. Anyone convicted of contravening this provision can be fined or imprisoned for a period of up to one year. Moreover, it is illegal to go on board a ship without the permission of the ship's owner or the person in charge of the ship. Similarly, to remain on board a ship in a South African port after being required to leave by the owner, captain of the ship or police officer is an offence. In convicting a person of contravening either of these two provisions, a court may impose a fine or a period of imprisonment of up to three months.

Criminal laws

For the purpose of predicting the efficacy of anti-terror legislation it is possible to distinguish between two types of terrorists.²⁶ There are those who are loners who in an unpredictable

moment of hate, jealousy, spite or madness go out and set off a bomb or shoot into a crowd. It is almost impossible for the state to prevent such actions through legislation. Such 'terrorists' are likely to be fairly inconspicuous individuals who do not otherwise engage in noticeable criminal behaviour. Even states with well-resourced anti-terrorist capabilities usually have no forewarning or foreknowledge of such a person.

Then there are terrorists who belong to some sort of gang, organisation or structure that seeks to make a political, religious or other point by engaging in terrorism. The potential terrorist attached to a cause or an organisation is easier to pinpoint. In many cases the state has a good idea of who, attached to what organisation, is likely to be engaged in future terrorist activities. While it might appear tempting to promulgate severe laws to remove such 'suspects' from society, this might prove to be unnecessary. There are a number of pieces of legislation on the statute books that permit the state to prosecute and convict such people even before they engage in any terrorist-type violent acts.⁷⁷ The most important of these are discussed below.

Terrorist groups usually engage in a number of illegal activities. These activities include offences related to the preservation of the group and group power (murder, assault, kidnapping) and those related to the underground economic activities of the group to finance or support its activities (burglary, theft, robbery, drug trafficking, brothel keeping, and dealing in stolen or illegal items such as firearms and explosives). A closer look at the legislation (and common law) dealing with some of these crimes shows that the state is often provided with additional powers of investigation and legal presumptions that favour the prosecution service. Moreover, many of these crimes tend not to rely on the testimony of civilian witnesses (who are easily intimidated and even eliminated) for a successful prosecution. It is likely that the state could be more successful in obtaining convictions against suspected terrorists on these kinds of offences rather than the internal security type of legislation focusing specifically on criminal terrorist acts. While some of the legal assumptions are open to constitutional challenge, these types of crimes are often committed in a blatant manner.⁷⁸

Legislation dealing with minimum sentences is analysed. Minimum-sentencing legislation is a potentially effective sanction against suspected terrorists who are convicted of non-terrorist type crimes covered by the legislation. Such convicted persons can be sentenced to lengthy periods of imprisonment for a wide range of crimes ranging from murder to the illegal possession of a pistol.

Prevention of Organised Crime Act of 1998

In the 1990s, a trend developed whereby terrorist groups increasingly sought a partnership with organised crime. Forming a 'symbiotic relationship', terrorist groups and organised crime syndicates co-operate to further their aims. Some terrorist groups also get directly involved in organised criminal activities to raise money for their activities. "Economic motives [for terrorists] have become as important as political and religious motives."⁷⁹ The Prevention of Organised Crime Act, directed at organised crime syndicates and their foot soldiers — criminal gangs — is thus a potentially useful tool in the hands of the state to combat terrorism.

The act creates a number of offences relating to criminal gangs. It defines a criminal gang as any formal or informal ongoing organisation of three or more persons, "which has as one of its activities the commission of one or more criminal offences, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity". Criminal gang members or participants of such gangs are guilty of an offence if they, inter alia, wilfully aid any criminal activity committed for the

benefit of, or in association with, a criminal gang. Moreover, any person who promotes, or contributes towards, a pattern of criminal gang activity, or incites, aids or encourages any person to commit or participate in a pattern of criminal gang activity, is guilty of an offence. Persons found guilty of such offences are liable to a fine and to imprisonment ranging from three to eight years.

Provided the state has an idea about which person attached to what organisation is likely to be engaged in acts of terrorism in the future, and the organisation fits the description of a 'criminal gang', a successful prosecution of such an individual should be possible. The provisions of the act relating to criminal gangs can be used to convict persons against whom there is insufficient evidence of direct terrorist activities, or those who have merely threatened but not yet committed a serious crime.⁸⁰

To assist the courts in determining whether a particular person is a member of a criminal gang, the act says the courts may have regard to certain factors. These are that such a person:

- admits to criminal gang membership;
- is identified as a member of a criminal gang by a parent or guardian;
- resides in or frequents a particular criminal gang's area and adopts their style of dress, their use of hand signs, language or their tattoos, and associates with known members of a criminal gang;
- has been arrested more than once in the company of identified members of a criminal gang for offences which are consistent with usual criminal gang activities; and
- is identified as a member of a criminal gang by physical evidence such as photographs or other documentation.

Drugs and Drug Trafficking Act of 1992

The act provides for tough penalties for those convicted of dealing in drugs. For example, anyone convicted of unlawfully dealing in any dangerous dependence-producing substance is liable to a period of imprisonment of up to 25 years (or 10 years if it is simply a dependence-producing substance) and/or a fine as the court may decide to impose. Anyone convicted of unlawfully using or possessing any dangerous dependence-producing substance is liable to imprisonment for a period of up to 15 years (or five years if it is a dependence-producing substance) and/or a fine as the court may see fit to impose.

The owner, occupier or manager of any place of entertainment who has reason to suspect that anyone at the place of entertainment has drugs in their possession or deals in drugs, is obliged to report this suspicion to a police official. Failure to do so is an offence and can, upon conviction, lead to a sentence of imprisonment for a period of up to 15 years and/or a fine as the court may deem to impose.

In terms of the act, a police official may, if there are reasonable grounds to suspect that an offence has been committed under the act, enter or board and search any premises, vehicle, vessel or aircraft. Moreover, a police official may search any person if there are reasonable grounds to suspect them of having committed or being about to commit an offence under the act. Failure to co-operate with a police official in these instances is an offence and can lead

upon conviction to a period of imprisonment of up to 12 months and/or a fine.

Whenever it appears to a magistrate, from information submitted by a director of public prosecutions, that there are reasonable grounds for believing that a person is withholding any information about a drug offence, the magistrate may issue a warrant for the arrest and detention of such a person. Persons arrested in this manner shall be detained until the magistrate orders their release when satisfied that the detainee has satisfactorily replied to all questions at the interrogation or that no useful purpose will be served by further detention. Any person arrested in terms of such a warrant must be brought before a magistrate within 48 hours of their arrest and, thereafter, not less than once every 10 days. Only officers in the service of the state, acting in performance of their official duties, and the legal representative of the detainee may have access to the detainee.

Criminal Law Amendment Act of 1997

The act provides for minimum sentences to be imposed on persons convicted of certain offences.⁸¹ Judicial officers may only impose sentences lower than the prescribed minima if they are "satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence".⁸²

For example, the act mandates life imprisonment for persons convicted of a murder, where: ⁸³

- it was planned or premeditated;
- the victim was a law enforcement officer, or a person likely to give material evidence in a criminal trial; or
- it involved rape or robbery with aggravating circumstances.

The act mandates a prison sentence of 15 years for a first offender convicted of murder in circumstances other than those referred to above; robbery with aggravating circumstances (including vehicle hijacking); certain drug-related offences; the smuggling of firearms; the illegal possession of automatic or semi-automatic firearms; and commercial crimes where large amounts of money are involved.⁸⁴ On a second conviction for one of these offences the act lays down a 20-year prison sentence, which increases to 25 years for a third conviction.

Even relatively minor offences such as theft and malicious damage to property carry a five year prison sentence (10 years on a third conviction) if at the time of the offence the accused had a firearm in his possession, with the intention of using it in the execution of the crime.

Common law crimes

Apart from the above-mentioned statutory provisions, South African common law can be used in the prosecution of persons who engage in terrorist activities.⁸⁵ The unlawful and intentional killing of a person is a murder irrespective of whether it takes place in the context of a domestic dispute or a terrorist bombing. Common law offences that have been used to prosecute persons guilty of terrorist acts include treason, sedition, public violence, murder, kidnapping, arson, culpable homicide, assault and malicious injury to property. It is useful to describe the first three of these common law crimes in more detail as their application is potentially a broad one.

Treason

Treason is "any overt act unlawfully committed by a person owing allegiance to a state with intent to overthrow, impair, violate, threaten or endanger the existence, independence or

security of the state or to overthrow or coerce the government of the state or change the constitutional structure of the state".⁸⁶ Treason includes such actions as taking up arms to force the government to adopt a different policy, or to replace the structures of government.⁸⁷ The courts have held that failure to report an act of treason being committed, or about to be committed, constitutes an act of treason.⁸⁸ According to Burchell and Milton, although the constitutional court has declared the death penalty unconstitutional, it has expressly left open the question whether its decision also applies to the crime of treason.⁸⁹

Sedition

Sedition consists of "unlawfully gathering together with a number of people, with the intention of impairing the authority of the state by defying or subverting the authority of its government, but without the intention of overthrowing or coercing the government".⁹⁰ The courts have held that the purpose of the gathering must be to challenge, resist or defy the authority of the state such as convening peoples' courts and assuming law-enforcement functions of the police.⁹¹ According to Burchell and Milton, there are three points of distinction between treason and sedition. First, for treason there must be hostile intent to overthrow or coerce the government; for sedition all that is required is intent to defy or subvert the authority of the executive. Second, for treason any overt act committed with hostile intent suffices; for sedition there must be a gathering of a number of people. Third, for treason the accused must owe allegiance to the state against which he acts; for sedition it would seem he need not.⁹²

Public violence

Public violence is the unlawful and intentional commission, by a number of people acting in concert, of acts of sufficiently serious dimensions which are intended to forcibly disturb the public peace or security or to invade the rights of others. The crime of public violence involves the punishment of an individual for the unlawful conduct of a group of people. The crime does not require that the wrongdoer should have committed some act of violence. It is sufficient that the wrongdoer is associated with the group of people who collectively perpetrated acts of violence. The violence may be directed either at persons or at property, and the conduct need merely be intended to disturb the peace or invade the rights of others.⁹³

Regional and international conventions ⁹⁴

The combating of terrorism is approached differently by the various international fora in which South Africa is engaged. A number of international conventions seeking to combat forms of terrorism exist that do not define what terrorism is, as the international community is careful not to oppose the legitimate struggle for freedom and self-determination. There are consequently a number of conventions that condemn specific acts of terrorism only. Thus, the United Nations (UN) has adopted an approach of legislating for specific crimes that are normally associated with terrorism. The UN has adopted 11 treaties using this approach.

The Organisation for African Unity (OAU) and the Non Aligned Movement (NAM) have adopted a comprehensive approach to terrorism by adopting an overarching convention on terrorism. South Africa, as a member of both the OAU and the NAM, supports the latter approach and actively participated in the elaboration and adoption of the OAU convention on the prevention and combating of terrorism, which is a comprehensive regional convention on terrorism. South Africa also actively participates in the development of individual UN conventions that seek to combat terrorism. In essence, the purpose of most conventions is to ensure international co-operation in prosecuting or extraditing terrorist offenders, thereby ensuring that there is no safe-

haven for terrorists.⁹⁵

A country that signs a convention indicates that it agrees with the text of the convention; the convention is, however, not legally binding on the signing country. A convention becomes legally binding once a country becomes a party to the convention by either ratifying or acceding to the convention. For a country to become a party to a convention parliamentary authorisation is required, and that country's domestic laws must be brought in line with the requirements of the convention (or protocol). South Africa has not ratified or acceded to a number of the UN conventions against terrorism listed below, as its domestic legislation is not in line with the requirements of these conventions.⁹⁶

OAU convention

The Organisation of African Unity convention on the prevention and combating of terrorism, 1999

South Africa signed the convention in July 1999, but had not ratified it at the time of writing. The convention defines a terrorist act as any act which is in violation of the criminal laws of a state party (that is a member state of the OAU that has ratified or acceded to the convention) and that may endanger the life, physical integrity or freedom of — or cause serious injury or death to — any person(s), or causes damage to public or private property, natural resources, environmental or cultural heritage, and is intended to:

- intimidate, put in fear, force, coerce or induce any government, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint;
- disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- create general insurrection in a state.

The convention also defines as a terrorist act any promotion, contribution to, aid, encouragement, threat, organising or procurement of any person with the intent to commit any of the aforementioned acts.

State parties undertake to review their national laws and establish criminal offences for terrorist acts as defined in the convention. Such acts must be made punishable by appropriate penalties that take into account the "grave nature of such offences".

The convention excludes from its definition of terrorist acts "the struggle waged by people in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces".⁹⁷ However, "political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act".⁹⁸

According to the convention, state parties are forbidden from any activities aimed at organising, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, including the provision of weapons and their stockpiling in their countries and the issuing of travel documents. In particular, state parties are obliged to:

- prevent their territories from being used as a base for the planning, organisation or execution of terrorist acts;
- develop and strengthen methods of monitoring and detecting plans or activities aimed at the illegal cross-border transportation of arms and other materials for committing terrorist acts;
- strengthen the protection and security of persons and diplomatic missions, and premises of regional and international organisations, accredited to a state party, in accordance with the relevant conventions and rules of international law;
- promote the exchange of information and expertise on terrorist acts;
- take all necessary measures to prevent the establishment of terrorist support networks;
- ascertain, when granting asylum, that the asylum seeker is not involved in any terrorist activity;
- arrest the perpetrators of terrorist acts and try them in accordance with national legislation, or extradite them; and
- establish effective co-operation between relevant domestic security officials and services and the citizens of the state parties in a bid to enhance public awareness of the scourge of terrorist acts and the need to combat such acts, by providing guarantees and incentives that will encourage the population to give information on terrorist acts that may help to arrest their perpetrators.

UN conventions

In December 1994, the United Nations General Assembly adopted a resolution which identified 11 international UN conventions or instruments on terrorism, a number of which South Africa still has to accede to, sign or ratify.⁹⁹

Tokyo convention on offences and certain other acts committed on board aircraft, 1962

The convention applies to acts affecting in-flight safety. It authorises an aircraft's commander to impose reasonable measures, including restraint, on any person interfering with, or threatening, the in-flight safety of an aircraft. South Africa acceded to the convention in May 1972.

Hague convention on the unlawful seizure of aircraft, 1970

The convention makes it an offence for any person on board an aircraft in flight "unlawfully, by force or threat thereof, or any other form of intimidation, to seize or exercise control of that aircraft" or to attempt to do so. Parties to the convention are required to make aircraft hijackings punishable by "severe penalties". South Africa ratified the convention in May 1972. The Civil Aviation Offences Act of 1972 gives effect to the Tokyo, Hague and Montreal conventions. The act criminalises, in general, the interference with aircraft in flight, or endangering flight crew, passengers, aircraft and aviation facilities.

Montreal convention for the suppression of unlawful acts against the safety of civil aviation, 1971

The convention makes it an offence for any person unlawfully and intentionally to perform an act of violence against a person on board an aircraft, if that act is likely to endanger the safety of the aircraft. It is also an offence to place an explosive device on an aircraft. The convention mandates "severe penalties" for persons guilty of the aforementioned acts. South Africa ratified the convention in May 1972.

Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents, 1973

The convention defines internationally protected persons as a head of state, a minister of foreign affairs, a representative or official of a state or of an international organisation who is entitled to special protection from attack under international law. The convention requires each party to criminalise and make punishable "by appropriate penalties which take into account their grave nature", the murder, kidnapping, or other attack upon the person or liberty of an internationally protected person; or, a violent attack upon the official premises, the private accommodations, or the means of transport of such a person. South Africa had not ratified the convention at the time of writing. In South Africa, internationally protected persons enjoy the same common law protections as any South African citizen. The Diplomatic Immunities and Privileges Act of 1989 affords certain privileges and protections to some classes of internationally protected persons (see above).¹⁰⁰

Convention on the physical protection of nuclear materials, 1979

The convention criminalises the unlawful possession, use and transfer of nuclear material, the theft of nuclear material, and threats to use nuclear material to cause death or serious injury to any person, or substantial damage to property. The convention had been signed but not ratified by South Africa at the time of writing. Most provisions of the convention are contained in the Nuclear Energy Act of 1999 (see above).

International convention against the taking of hostages, 1979

The convention provides that "any person who seizes or detains and threatens to kill, to injure, or to continue to detain another person, or a group of persons, to do or abstain from doing any acts as an explicit or implicit condition for the release of the hostage commits the offence of taking of hostages within the meaning of this convention". South Africa had not ratified the convention at the time of writing. In terms of the South African common law, the crime of kidnapping is committed when a person is unlawfully and intentionally deprived of their freedom of movement. Hostage taking falls within the common law definition of kidnapping. Moreover, the definition of intimidation contained in the Intimidation Act of 1982 is broad enough to include hostage taking.¹⁰¹

Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation, 1988

The protocol extends the provisions of the 1971 Montreal convention for the suppression of unlawful acts against the safety of civil aviation, to encompass terrorist acts at airports serving international aviation. The extended convention was ratified by South Africa in September 1998. The provisions of the protocol are partly addressed in the Civil Aviation Offences Act of 1972 (see above).

Convention for the suppression of unlawful acts against the safety of maritime navigation, 1988

The convention makes it an offence for a person to seize or exercise control over a ship by force, threat, or intimidation. It is illegal for a person to perform an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of the ship. It is also an offence for a person to place a destructive device or substance aboard a ship. South Africa had not ratified the convention at the time of writing. Most of the provisions of the convention are contained in the Merchant Shipping Act of 1951 (see above).

Protocol for the suppression of unlawful acts against the safety of fixed platforms on the continental shelf, 1988

The protocol establishes a legal regime similar to the regimes established in respect of international aviation, applicable to acts against fixed platforms on the continental shelf. South Africa had not ratified the protocol at the time of writing.

Convention on the marking of plastic explosives for the purposes of detection, 1991

Plastic explosives, popular amongst international terrorists, are extremely pliable and can be formed into innocuous looking objects, making them difficult to detect. Plastic explosives can be marked by mixing them with highly vaporous chemical agents rendering the explosives detectable by detection devices at, for example, airports. The convention seeks to control and limit the use of unmarked and undetectable plastic explosives. Parties to the convention are obliged to ensure effective control over 'unmarked' plastic explosives in their respective territories. South Africa ratified the convention in December 1999. The convention was incorporated into South African law through the Explosives Amendment Act of 1997 (see 'Explosives Act' above).

International convention for the suppression of terrorist bombings, 1997

The purpose of the convention is to enhance international co-operation to eliminate the use of explosives or other lethal devices in acts of terror. Conduct that amounts to the unlawful and intentional delivery, placement, discharge or detonation of explosives or other lethal devices into or against public places, state facilities, infrastructure facilities or public transportation systems is prohibited. Such actions constitute an offence in terms of the convention where the intention is to cause death, serious bodily injury, or extensive destruction that results in actual or potential economic loss of such places or facilities. South Africa signed the convention in December 1999, but had not ratified it at the time of writing.

Omnibus anti-terrorism law

Support for tougher law

During 1998, some 667 attacks that police alleged were gang or terror related — including pipe bombings, petrol bombings and drive-by shootings — were perpetrated in the greater Cape Town area.¹⁰² While 168 arrests were made as a consequence of these attacks, none resulted in a successful prosecution. On the first day of 1999, a car bomb exploded outside the well-known shopping and tourist destination, the V&A Waterfront in Cape Town, injuring two people. A few weeks after the Waterfront blast another car bomb exploded just metres from the entrance to the Caledon Square police station in central Cape Town, injuring 11. In November 1999, a bomb placed inside a popular beachfront restaurant in the city injured 48. A few days before the end of that year — on Christmas Eve — a police vehicle was ambushed. The seven police officers in the vehicle, who were responding to a telephonic bomb threat, were injured as a

bomb exploded outside of a restaurant they had driven to in order to investigate the threat.

As a result of these bomb blasts, and strong public pressure to act against the perpetrators of acts of terror, governmental policy makers announced their intention to promulgate tough anti-terrorism legislation for South Africa.¹⁰³ The acting premier of the Western Cape, Peter Marais, called for constitutional amendments, in particular, to provisions that give terror suspects the right to remain silent and that require for them to be released within 48 hours or be charged. "The police could not be expected to build watertight cases against terrorists in such a short period", and "you can't tell me that a terrorist who has killed 100 people with a bomb deserves the right to silence after being arrested," Marais said.¹⁰⁴ The minister for safety and security, Steve Tshwete, also called on parliament to amend the constitution to extend the 48 hours rule, and to restrict suspected terrorists' access to legal representation during this period.¹⁰⁵ The minister of intelligence, Joe Nhlanhla, has argued for special legislative measures to combat terrorism. An African National Congress official, who supported Nhlanhla's view felt that the "drafters of South Africa's constitution made a mistake in insisting that suspects for all categories of crimes be charged within 48 hours. An amendment to deal with terror suspects will not be controversial. The fact is that the heart of intelligence work happens after the suspect is detained."¹⁰⁶

In early 2001, the minister of justice and constitutional development, Penuell Maduna, and minister Tshwete argued that new legislation was necessary because the lack of specific anti-terrorism legislation made South Africa a "safe haven" for international terrorists and fugitives. Tshwete said that a draft anti-terrorism bill released by the South African Law Commission was to be passed into law during 2001.¹⁰⁷

One versus many

Governments can respond to terrorist activities in one of two ways. First, acts of terror such as murder, kidnapping, arson or intimidation can be prosecuted in terms of existing criminal law. The person who bombs a restaurant and thereby kills someone is guilty of murder irrespective of the motive. Second, specific legislation can be created which seeks to broaden the jurisdiction of the courts to, for example, deal with forms of terrorism committed outside the country's borders, and to prescribe to the courts especially severe sentences in respect of terrorist acts. With the release of a draft anti-terrorism bill in mid-2000, the South African Law Commission committed itself to the latter option of an omnibus act addressing the issue of terrorism on a broad basis.¹⁰⁸ The commission's omnibus draft bill is based on the research and a preliminary draft bill drawn up by the South African Police Service (SAPS).

The commission motivates its support for one comprehensive anti-terrorism statute on the practical ground that there is a worldwide trend to create specific anti-terrorism legislation based on international instruments relating to terrorism. If South Africa ratifies or accedes to the various international instruments relating to terrorism, it can follow one of two courses of action. First, the various government departments that are responsible for the implementation of the instruments can amend existing legislation on such issues as nuclear energy, civil aviation or internationally protected persons, to meet with the requirements of the conventions and treaties South Africa has ratified. Second, one comprehensive anti-terrorism statute can be promulgated to address the issue of terrorism on a broader basis, thereby complying with South Africa's international obligations in one piece of legislation.¹⁰⁹

Anti-terrorism bill

Terrorism

The draft anti-terrorism bill (hereinafter called 'the bill') proposes that anyone who commits a 'terrorist act' (including outside of South Africa) commits an offence and will be liable, upon conviction, to life imprisonment. The bill's definition of terrorist act is broad and includes any act which does or may endanger the life, physical integrity or freedom of any person, or causes or may cause damage to property, and is calculated to:

- intimidate, coerce or induce any government, persons or the general public;
- disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
- create unrest or general insurrection in any state.

The bill's definition of a 'terrorist act' has been criticised for being too broad.¹¹⁰ The definition includes lawbreakers who would clearly not be terrorists in the normal meaning of the word. For example, the definition includes "any act which may cause damage to property and is intended to disrupt any public service". Minibus taxi owners who blockade a street used by municipal bus services, and where some parked vehicles are subsequently damaged, or a group of youths who destroy a Post Office letterbox would be guilty of committing a terrorist act as defined by the bill. In its submission on the bill, Amnesty International raises the concern that the broad definition could encompass legitimate activities, such as trade union strikes that result in damage to property or the disruption of the delivery of essential services.¹¹¹ "If the definition remains vaguely or too widely worded, then the danger exists that the provision of the law will be open to abuse or used for repressive purposes," Amnesty International argues.¹¹²

The bill seeks to criminalise the actions of those who provide material support in respect of terrorist activities. For example, anyone who provides material, logistical or organisational support, knowing or intending that such support will be used in the commission of an offence in terms of the bill, is deemed to have committed a criminal offence. The same would apply to anyone who participates in the activities of a terrorist organisation. On conviction of such an offence, a penalty of up to 10 years imprisonment, without the option of a fine, is proposed. Moreover, anyone who conceals a person knowing that that person intends to commit or has committed an offence in terms of the bill, also commits an offence. The proposed penalty for concealing such a person is the penalty for the offence that the concealed person intended to commit or has committed. For example, if X conceals a person who intends to commit a terrorist act and X is aware of this intention, then X can, on conviction, be sentenced to life imprisonment.

The bill proposes that any person who is a member of a "terrorist organisation" commits an offence through such membership and would be liable, on conviction, to imprisonment for up to five years without the option of a fine. The bill defines a terrorist organisation broadly as "an organisation which has carried out, is carrying out or plans carrying out terrorist acts". Given the broad definition of what constitutes a terrorist act, such a provision could be used to criminalise the actions of a wide range of people. Using the aforementioned example, this could apply to all members of a taxi organisation that organise a street blockade, whether such members are actually involved in the blockade or not. Moreover, to secure a conviction under this provision the state would not have to prove that an accused person knew that he was a member of a terrorist organisation. The state would merely have to prove membership of a terrorist organisation.¹¹³ The concern has been raised that the creation of such a membership offence

could result in the prosecution of a member of a particular organisation even though such a person is unaware that the organisation is regarded as a terrorist organisation.¹¹⁴

The Law Commission's project committee on security legislation raises the question of whether it is necessary to make provision for the banning of organisations in order to assist the police and prosecution service in the performance of their tasks. The original drafters of the bill — the SAPS — argue against providing for a mechanism for proscribing or banning organisations. In 1996, the section of the Internal Security Act that provided for the banning of organisations was repealed. The thinking at the time was that it is more expedient to target criminal activities than to ban organisations. In the past, the banning of organisations led to a proliferation of new structures and a growing list of organisations that had to be identified and monitored by the security forces.¹¹⁵ It is also likely that legislation permitting the banning of organisations is at risk of being unconstitutional.

The bill provides for creating the specific offence of "terrorist bombings". That is, anyone who unlawfully and intentionally places or detonates an explosive or other lethal device in a place of public use or government facility, with the intent to cause death or serious bodily injury, or to cause extensive damage that is likely to result in major economic loss, commits an offence, and is liable upon conviction to life imprisonment.¹¹⁶ The Law Commission's project committee questions the need for making a separate provision for terrorist bombings, as such actions are covered under the definition of terrorist acts. The SAPS, however, argues the intent required under the terrorist-bombing clause is different and easier to prove than the intent required for terrorist activity.¹¹⁷

Specific offences

The bill proposes that aircraft hijacking be regarded as a specific offence punishable, on conviction, by mandatory life imprisonment. The same penalty is also proposed for anyone convicted of taking someone hostage and threatening to kill, injure or continue to detain the hostage in order to compel a state, international governmental organisation or person to do or abstain from doing any act. The offence of endangering the safety of maritime navigation is also provided for in the bill, punishable by a fine or imprisonment of up to 20 years, or life imprisonment if somebody is killed as a result of the criminal conduct.

The bill provides for a number of offences in respect of internationally protected persons. That is, persons who enjoy immunities and privileges in terms of the Diplomatic Immunities and Privileges Act of 1989 (see above). The offences deal with attacks upon, and the murder and kidnapping of, internationally protected persons, and damaging or trespassing upon the property of internationally protected persons.

Specific offences in respect of nuclear terrorism are catered for in the bill. Anyone who unlawfully and intentionally possesses or uses radioactive material, or damages a nuclear facility with the intent to cause death or serious bodily injury or to cause substantial damage to property or the environment, commits an offence and is liable on conviction to life imprisonment. The same penalty is also proposed for accomplices to such offences.

Detention

The bill provides that a judge may issue a warrant of detention when, on the ground of information submitted under oath by a director of public prosecutions, "there is reason to believe

that any person possesses or is withholding from a law enforcement officer any information regarding any offence" contained in the bill. The concern has been raised that the provision is so widely phrased that it could include journalists, lawyers or family members of terror suspects.¹¹⁸ It has also been argued that such a blanket approach relating to any offence contained in the bill can "turn detention without trial into a blunt instrument capable of being effectively deployed against political opponents — as was the case in the past".¹¹⁹ The bill proposes that a person be detained for interrogation until a judge orders his release, if satisfied that the detainee has satisfactorily replied to all questions under interrogation or that no lawful purpose is served by further detention. The detention period may, however, not be longer than 14 days. A person detained in this manner does not have the right to apply for bail.

This bill's detention provision is an ominous reminder of the General Laws Amendment Act which the previous government passed in 1966, in response to guerrilla activities on the northern borders of the then South West Africa, to provide for up to 14 days' detention of suspected 'terrorists' for interrogation purposes. The 14-day period was eventually increased to 90 days, then 180 days and finally to an indefinite period. According to the final report of the Truth and Reconciliation Commission there was a link between incidents of torture and detention without trial provisions.¹²⁰ It is this that has prompted Amnesty International to warn that: "the depth and persistence of abuses in the past strongly suggest that the reintroduction of the power to detain without charge carries the grave risk of a repetition of the past pattern of human rights violations. The likelihood of repetition is increased by the reality that torture still occurs in South Africa, primarily in the context of criminal investigation."¹²¹ This is borne out by the Independent Complaints Directorate's (ICD) annual report for 1999/2000. The ICD is a statutory body whose principal function is to investigate police misconduct and criminal offences allegedly committed by members of the police service. According to the report, the ICD received 4 380 complaints against the police between April 1999 and March 2000 (up from 2 874 in 1998/99 and 1999 in 1997/98). Of these, 209 complaints related to the death of crime suspects in police custody. According to the ICD, the causes of death in these cases were: natural causes (31 deaths), suicides (63), injuries in custody (20), injuries prior to custody (28), and possible police negligence (67). A further 764 complaints were in respect of "serious criminal offences" allegedly committed by members of the police, including 500 cases of serious assault or attempted murder and 143 cases of common assault.¹²²

Professor Michael Cowling of the University of Natal argues that the enactment of detention without trial provisions could amount to a violation of South Africa's obligation under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which South Africa is a party. The convention obliges each state party to keep under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subject to any form of arrest or detention in order to prevent any cases of torture. "This means that the government is under a duty not only to actively prevent torture by punishing those who perform acts of torture but also to prevent it indirectly by eliminating conditions in which torture is likely to take place."¹²³

Advocate George Bizos, a well-known jurist who represented numerous families of detainees who died in custody in the pre-1994 era, has spoken out strongly against the detention provision in the bill. Bizos argues that detention without trial, particularly for the purposes of interrogation, takes place on the premise that the suspect is guilty of a serious offence or has information that the suspect refuses to disclose about others whom the interrogator suspects of being guilty. In such a situation, the innocent or ignorant may be at greater risk than the offender and the co-conspirators because the former is unable to confess or furnish information to the satisfaction of the interrogator. Bizos further holds that detention without trial is invariably

abused:

"Even where safeguards are provided, assurances that the power is needed for a limited period and that it will be used with circumspection are hardly ever honoured. We are given assurances, but history teaches us how often the temporary becomes permanent. The abrogation of one fundamental right always endangers the others. Chipping away at one pillar of democracy may imperil the whole edifice."¹²⁴

In its discussion paper, the Law Commission's project committee on security legislation concedes that the 14-day detention period is a 'thumb-suck'. This is not surprising, as each terrorist investigation is likely to be different, and some detainees will need to be interrogated for longer periods than others before they reply "to all questions". The lack of a proper basis for coming up with a 14-day detention period could easily become the Achilles' Heel of some of the important liberal principles on which the 'new' South Africa is based. Once policy makers and the courts accept the principle of detaining someone for 14 days as a legitimate investigative tool, they will be hard pressed to resist police requests for extensions of this period for the investigation of particularly serious cases. Which ANC politician would resist increasing the detention period — or even amending the constitution as safety and security minister Steve Tshwete has on more than one occasion threatened to do — should there be a resurgence of right-wing terror activities targeted at black people or ANC office bearers?

According to Paul Wilkinson, a British academic who has written on the problems liberal states face when dealing with terrorism, the primary objective of a counter-terrorist strategy must be the protection and maintenance of liberal democracy and the rule of law. "To believe that it is worth snuffing out individual rights and sacrificing liberal values for the sake of order is to fall into the error of the terrorists themselves, the folly of believing that the end justifies the means," Wilkinson argues.¹²⁵

In its discussion document, the Law Commission's project committee on security legislation emphasises that the detention proposal emanates from the police service (which suggested a 30-day detention period) and that the project committee was not told why such a drastic measure was required, and why conventional policing methods were inadequate to combat terrorism:

"Since countries such as the United States, Canada or Australia do not have such measures, conventional policing methods seem to be regarded as adequate in these countries, even in the USA which also faces serious terrorist incidents from time to time. Arguments are raised about a lack of resources in South Africa, but it is important to make it absolutely clear that nothing which the commission says should be conveying its acceptance as presently advised that there is evidence to justify these [detention] measures. Before these measures can be considered by the commission, and subsequently in all probability by parliament, compelling evidence of justification needs to be presented."¹²⁶

Aware of the country's history of abuse of detention laws, the drafters of the anti-terrorism bill included various safeguards for detained persons in the bill. Thus, detainees have the right to choose a legal representative who is entitled to be present during the interrogation process, and to be visited by their medical practitioners. Any detained person must be brought before a judge within 48 hours of being detained and again after a further five days. At every court appearance of the detainee, the judge must enquire as to the conditions of the detainee's detention and welfare, whether the detainee has satisfactorily replied to all questions under interrogation or

not, and whether further detention will serve any lawful purpose. In such inquiries, the onus is on the director of public prosecutions to provide reasons for the further incarceration of the detainee, failing which the judge must order the release of the detainee. The need for detention or continued detention must be motivated in relation to one or other of the following purposes:

- to compare fingerprints, do forensic tests and verify answers provided by the detainee;
- to explore new avenues of interrogation or to determine accomplices;
- to correlate information provided by the person in custody with relevant information provided by other persons in custody;
- to find and consult other witnesses identified through interrogation;
- to hold an identification parade;
- to communicate with other police services and agencies; or
- for any other purpose relating to the investigation of the case approved by the judge.

While the bill contains a number of safeguards for detained persons, the project committee on security legislation concedes that the envisaged detention measures are "incredibly drastic" but argues that the number of terrorist incidents in South Africa "seem to justify the adoption of carefully drafted measures which limit but do not absolutely abrogate section 35 of the constitution [rights of detained persons] and which contain the necessary safeguards".¹²⁷ The project committee might be overly optimistic in its appraisal of a possible constitutional challenge to the bill's detention provisions. The constitution's limitations clause can be used to justify a derogation of rights. However, the pronouncements of the various justices in the constitutional court case of *De Lange v Smuts NO* is that detention without trial provisions are very likely to be considered unconstitutional as the limitations clause cannot be used to justify violating the express and unequivocal constitutional right not to be detained without trial.¹²⁸

It is also unlikely that the constitutional court would countenance safeguards for detained persons or conditions of detention that fall below those contained in the constitution's state of emergency provisions.¹²⁹ These provisions set minimum standards that apply to detained persons following the declaration of a state of emergency. A state of emergency can be declared only in extreme circumstances such as when the life of the nation is threatened by war or general insurrection. Even during a state of emergency, detainees have such rights as access to a legal representative and medical practitioner, a judicial review of their detention every 10 days, obtaining written reasons for their continued detention, and the right to appear in person before any court considering their detention.

Bail

It is further proposed that persons standing trial on any charge under the bill can be released on bail only if they, having been given a reasonable opportunity to do so, adduce evidence which satisfies the court that "exceptional circumstances exist which in the interests of justice permit their release".¹³⁰ The onus on an accused, to satisfy a court that exceptional circumstances exist, seems harsh given the broad range of offences that the bill seeks to create. Thus, a person charged with trespassing on the property of a foreign diplomat (that is, an internationally protected person) could be in the same position as a person charged with terrorism when it

comes to the issue of bail.

Professor Anthony Mathews in his book 'Freedom, state security and the rule of law', argues that the denial of bail to an accused in a terrorism trial with strong political overtones, could detrimentally affect the right to a fair trial of such an accused.

" ... in political trials, especially complex ones, the right to bail is directly related to the right to a fair hearing. Political trials, especially major ones, tend to be a contest for legitimacy and to involve the discrediting of opponents. As a result the prosecution, on behalf of the state (more realistically, the government of the day), tends to marshal all possible resources to establish the guilt of the accused. Frequently, political trials are factually and legally complex and involve multiple charges relating to long periods of complicated human political activity... Now it is clear that where the accused remain locked up from the time that charges are brought to the conclusion of the trial, the ability of the defence to marshal its own resources is gravely impaired. The accused will have a restricted ability to consult regularly with legal advisers on the highly complex indictment against them and to find witnesses and organise counter-evidence and, as a result, the contest between the state and the prosecuting authority and the individuals in the dock will be more unequal than ever."¹³¹

Provide information

The bill proposes to place a duty on anyone who knowingly possesses any information, which may be essential to investigate any terrorist act, to provide such information to a law enforcement officer or public prosecutor. Intentionally withholding such information constitutes an offence leading on conviction to imprisonment for up to five years without the option of a fine. According to Amnesty International, the implementation of this provision could result in abusive prosecutions, given the broad definition of what constitutes a terrorist act. Moreover, the provision may be in breach of the right not to incriminate oneself, which is enshrined in international standards and the South African constitution.¹³²

Special powers

A police officer of at least the rank of director may authorise that special powers are given to all uniformed police officers within his or her area of authority, provided there are reasonable grounds to do so to prevent a terrorist act. Uniformed officers may then stop and search any vehicle or person for articles that could be used for the commission, preparation or instigation of any terrorist act. Moreover, a police officer may exercise such powers whether or not there are any grounds for suspecting the presence of such articles.

Courts' jurisdiction

It is proposed that South African courts have wide jurisdiction in respect of offences created by the bill. For example, South African courts will have jurisdiction if:

- the perpetrator of the criminal act is arrested in South Africa, in its territorial waters or on board a ship flying the flag of South Africa, or an aircraft registered in South Africa;
- the criminal act has been committed in the territory of South Africa and the perpetrator of the criminal act is arrested in South Africa;

- the criminal act is committed outside of South Africa but the act is punishable in terms of South Africa's domestic law or South Africa's obligation under international law;
- the criminal act is committed against a South African government facility abroad;
- the criminal act is committed by a stateless person or refugee who has habitual residence in South Africa; or
- the criminal act is committed against the security of South Africa.

Operational environment

Numerous pieces of legislation designed to combat terrorism, uphold internal security, and strengthen the hands of the security forces against terror groups, are on the South African statute books. Many of the available laws are not being used fully by the security forces because of a variety of operational weaknesses in the criminal justice system and the state's intelligence agencies. Policy makers should direct their efforts at these weaknesses, before advocating Draconian measures that seek to dilute some of the rights and civil liberties entrenched in the country's constitution. Even the best legislation is ineffective if it is not properly implemented and used by the personnel (primarily the police and the prosecution service) of the criminal justice system. Terrorism can be effectively combated. What is needed is a well-run and adequately resourced criminal justice system staffed by trained and motivated personnel. Amending the constitution and restricting accused persons' rights is not the answer. As the editorial of a national Sunday paper commented: "The constitution is in no need of repair. Our policing strategies are."¹³³

A number of factors influence the state's operational effectiveness in combating terrorism. Among these factors are intelligence capacity, detection and prosecution skills, resource constraints, public and international co-operation and the creation of unrealistic expectations. In so far as they exist, mention is made of initiatives that have been undertaken to address these operational weaknesses. Suggestions are also made on how some of these weaknesses could be addressed to enhance the state's anti-terrorist operational capacity.

Intelligence capacity

The perpetrators of (especially urban) terrorism frequently belong to small close-knit cells whose members are sworn to secrecy. To uncover such a group and collect sufficient evidence on its activities, so as to launch a successful prosecution, the state's security services must have the ability to collect accurate evidence and intelligence. Often this requires of the state to deploy undercover agents to infiltrate such groups. As Wilkinson points out:

"A crucial requirement for defeating any political terrorist campaign must be the development of high quality intelligence, for unless the security forces are fortunate enough to capture a terrorist red-handed at the scene of the crime, it is only by sifting through comprehensive and accurate intelligence data that the police have any hope of locating the terrorists. It is all very well engaging in fine rhetoric about maximising punishment and minimising rewards for terrorists. In order to make such a hard line effective the government and security chiefs need to know a great deal about the groups and individuals that are seeking rewards by terrorism, about their aims, political motivations and alignments, leadership, individual members, logistics

and financial resources and organisational structures."¹³⁴

It is questionable whether South Africa's intelligence agencies have the resources and personnel necessary to successfully infiltrate suspected terrorist groups in the country.¹³⁵ Moreover, it appears that there is considerable inter-agency rivalry and even mistrust between the various intelligence agencies dealing with internal security matters, thus further weakening the state's intelligence capabilities vis-à-vis suspected terrorist groups.¹³⁶

Detection and prosecution skills

The success of a prosecution is largely determined by the way a crime is investigated by the police. A poorly investigated case, where no statements are taken from corroborating witnesses, where incomplete or inaccurate statements are taken, or where evidence is obtained in an illegal manner, is likely to result in the acquittal of a guilty accused. Even a good prosecutor — let alone an inexperienced one — will find it difficult to salvage a case where crucial aspects of its investigation are flawed.

Since 1994, prosecutors have become increasingly reliant on properly investigated cases. The bill of rights guarantees every accused the right to a fair trial with the result that laws that used to place an onus on the accused to disprove certain allegations against them have largely been declared unconstitutional. The courts have also become more reluctant to accept evidence that is obtained under suspicious or unlawful circumstances. Moreover, it is especially in trials where the accused can afford good defence teams — such as cases involving organised crime or well-funded terrorist groups — that the legal defence focuses its efforts on technical flaws in the investigation. According to Bulelani Ngcuka, the national director of public prosecutions, such defence teams "focus on a technical flaw in the prosecution. You have to make sure the investigations are done in such a way as to avoid technical or jurisdictional challenges."¹³⁷

The investigation of crimes by the SAPS is largely inadequate. The average workload of a detective is the investigation of 140 separate cases simultaneously, making any proper and thorough investigation impossible.¹³⁸ On average, of every 10 crimes that are reported to the police, only two are investigated sufficiently for the prosecution to take on the case.¹³⁹

Many prosecutors argue that the general quality of the police's detective work declined in the post-1994 period.¹⁴⁰ This was partly to be expected. Before 1994, the South African Police (SAP) used authoritarian policing methods and tough law enforcement strategies to combat crime. Frequently using a 'confession driven' approach to solving crime, many SAP detectives were more concerned about getting crime suspects convicted than about upholding the law and conducting investigations in a legally correct manner.¹⁴¹ Moreover, by the late 1980s and early 1990s, much of the operational focus of the SAP had shifted from combating crime to repressing political opponents of the government.

After 1994, the newly formed SAPS was burdened by coping with the amalgamation of the old SAP and a number of homeland police forces, and with having to adapt to a new constitutional order based on the rule of law. A liberal bill of rights granting constitutionally entrenched protection to those accused of having committed a crime requires that the police investigate all crimes in a procedurally and legally correct manner. Moreover, because of poor pay, transformational problems, a dangerous working environment, and tempting employment opportunities in the burgeoning private security industry, many experienced detectives left the SAPS.¹⁴² The departure of experienced personnel, and the consequent decline in the experience level of the average detective, has detrimentally affected the operational

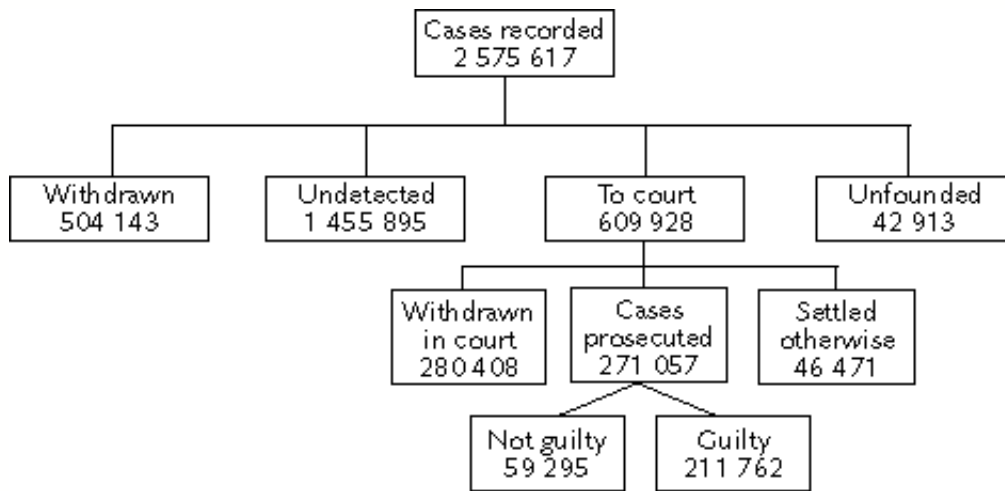
effectiveness of the courts and the prosecution service. As one senior official at the Johannesburg magistrates' court comments:

"Inexperienced investigators don't always know what they should investigate and they're not getting the guidance that they should. That means court cases take longer and there are many postponements instead of one. And when it takes longer and longer to go to trial, witnesses disappear and the investigating officer sometimes changes."¹⁴³

No reliable statistics are available on the proportion of urban terror incidents that have led to the successful prosecution of the perpetrators. From the available evidence, it would seem that the successful prosecution rate is low, with the vast majority of urban terrorists getting away with the crimes they commit.¹⁴⁴ This is confirmed by more accurate prosecution data in respect of serious crimes generally.¹⁴⁵

Since 1996, the Crime Information Analysis Centre (CIAC) of the SAPS has published detailed statistics covering the various stages through which a criminal case passes in its journey through the criminal justice system. The statistics provide a bird's eye view of this process from the time a criminal case is recorded by the police, to when it is finalised with the conviction or acquittal of the person accused of committing the crime (Figure 9).

Figure 9: Flowchart of number of criminal cases processed in 2000



In 2000, some 2 575 617 crimes were recorded by the police.¹⁴⁶ Of these, 609 928 were sent to court, where 271 057 cases were prosecuted resulting in 211 762 convictions.¹⁴⁷ In other words, of all the crimes that were recorded by the police in 2000 only 11% resulted in a prosecution and 8% in the conviction of the perpetrators.¹⁴⁸ While the number of cases resulting in a conviction as a proportion of the number of all recorded cases is low, it is even lower for certain crime types. In 2000, it was 4.7% for residential housebreaking, 2.8% for serious robbery and 2.3% for vehicle hijacking. On average, therefore, only one out of 21 recorded residential burglaries ended in the conviction of the perpetrators, in 2000. For vehicle hijacking the comparable ratio is one out of 44. These dismal statistics are likely to be worse for crimes related to urban terrorism where the perpetrators operate in small and difficult to uncover cells and where witnesses are fearful to come forward to testify.

Over the last few years a number of initiatives have been undertaken to improve the operational capacity of the detective and prosecution services to, inter alia, combat terrorism more

effectively in South Africa.

Out of a total of some 20 000 detectives in the SAPS, only 13 000 (65%) had undergone specialist detective training by October 1997.¹⁴⁹ A newly established detective academy presented its first course in October 1997. By mid-2000, the academy had trained a few thousand detectives, including specialist detectives engaged in investigating cases of organised crime, as well as forensic specialists who investigate terrorist crime scenes (such as bomb blasts and drive-by shootings).

In the past, newly graduated law students were appointed to the prosecution service and expected to prosecute without any practical training. As a result, most prosecutors learnt by trial and error and made many mistakes. To address the gaps that exist in the training of prosecutors, the court management unit of the national prosecuting authority, in conjunction with Justice College, has devised new training courses that emphasise the teaching of courtroom skills instead of theoretical legal principles. Justice College presents different courses to accommodate prosecutors with varying levels of skill and experience.¹⁵⁰ These include specialist-training courses that are held irregularly for experienced specialist prosecutors. Such courses are generally conducted by senior staff from the specialist units and investigating directorates in the office of the national director of public prosecutions. Advanced prosecutor training courses are also offered for prosecutors with more than two years experience. These courses are an advanced version of the professional development-training course, and focus on specific aspects of the law and criminal procedure such as, for example, offences relating to terrorism and conducting a terrorism trial.

In late 1998, the Investigating Directorate for Organised Crime and Public Safety was established in terms of the National Prosecuting Authority Act. The unit's head leads a multi-disciplinary team of senior state advocates, prosecutors, attorneys from the private sector, police investigators, chartered accountants, and members of the National Intelligence Agency (NIA) and the South African Revenue Service (SARS). According to the then minister of justice, Dullah Omar: "The directorate will bring together with one line of command, all the different agencies engaged in the fight against crime. This will go a long way towards ensuring maximum co-operation, and will eliminate competition and in-fighting [among law enforcement agencies]."¹⁵¹

The Directorate of Special Operations (DSO) — nicknamed 'the Scorpions' — was launched in September 1999. The DSO's purpose is to combat organised crime, corruption within the criminal justice system, serious economic crimes, and crimes against the state such as terrorism.¹⁵² In October 2000, the National Assembly approved a bill to establish the DSO as an investigating directorate of the national prosecuting authority.¹⁵³ Speaking at the national assembly vote on the bill, justice minister Maduna proclaimed: "The DSO needs to become the plague of organised criminals and terrorists, and inject its venom into the criminal law to paralyse organised crime and terrorism." The DSO will be "loved by the people, feared by the criminals, and respected by its peers," the minister said.¹⁵⁴

The Directorate of Special Operations is an attempt to institutionalise a pro-active, multi-disciplinary approach to fighting crime.¹⁵⁵ The rationale behind the DSO is the integration of three traditionally separate functions: intelligence, investigations and prosecutions, whereby special investigators, intelligence operatives and specialist prosecutors work together in project teams. Investigators work in a prosecution-driven and intelligence-led environment. Experienced prosecutors direct investigations to ensure that the DSO's investigations are court directed. Prosecutors working for the DSO prepare and adduce evidence in the prosecution of offences

and crimes that the DSO investigates. They advise and direct police investigators in their work so that sufficient evidence is collected for the prosecution service to convict those who commit acts of terror in South Africa.¹⁵⁶

The head of the DSO is a deputy national director of public prosecutions, who exercises powers, duties and functions subject to the control and direction of the national director. The head of the DSO is assisted by investigating directors and deputy directors, as well as prosecutors, special investigators, persons in the service of any public or other body who are seconded to the DSO, and any other person whose services are obtained by the DSO.¹⁵⁷ Investigating directors, and any prosecutors designated by a director, have the same extensive investigative powers as an investigating director of an investigating directorate, including the right to hold inquiries, question people under oath, and search and seizure rights.

Initial indications are that the DSO's approach has been more successful than traditional policing and detective methods have been. In 2000, the directorate handled 979 new cases, of which 270 went to court leading to 190 convictions and only 10 acquittals. During the first two months of 2001, the DSO handled 97 cases, resulting in all 30 suspects being convicted.¹⁵⁸

The DSO's approach of combining intelligence, investigation and prosecution functions in one structure was partially adopted by Operation Good Hope, which was implemented in January 1999 to "prevent, combat and successfully investigate acts of terrorism and related crimes".¹⁵⁹ Operation Good Hope's personnel consist of members of the SAPS (namely, members of the public order units and the special task force, an investigation team, an intelligence team, a communications team, and visible uniformed police), and the SANDF (including uniformed soldiers, members of the special forces, and Military Intelligence).

The operation thus rested on three pillars: intelligence, investigations and operations.¹⁶⁰ Emphasis was placed on collecting information that would assist the prosecution service to secure convictions against those involved in terrorist activities. By mid-1999, Operation Good Hope had stabilised the internal security situation in the Western Cape. The number of incidents of urban terror involving criminal gangs and Pagad (People Against Gangsterism and Drugs) had decreased from 296 for the period January to May 1998, to 94 for the corresponding period in 1999. Operation Good Hope was, however, less successful in prosecuting those suspected of committing acts of terrorism. Moreover, a number of high profile bombings in Cape Town at the end of 1999 revealed Operation Good Hope's weakness: it was unable to identify and effectively destroy the groups or cells responsible for these acts of terror.

Resource constraints

State spending on the criminal justice system has increased in real terms over the last decade.¹⁶¹ Yet, a lack of resources has contributed to low performance levels of the criminal justice system. For example, partly for historical reasons, but also because of a lack of money for training purposes it was estimated that at the end of 1999, close to a quarter of SAPS members were 'functionally illiterate'.¹⁶² At the beginning of 2000 almost 35 000 police officers had a standard eight qualification or lower.¹⁶³ The low educational levels of many police officers make it difficult, and even impossible, for them to take down complaints, fill out dockets, give articulate testimony in court, or fulfil any but the most basic policing duties.

Salaries of prosecutors were described as a "national disgrace" by the 1997 interim Hoexter Commission report.¹⁶⁴ In early-2001, a beginner prosecutor with a minimum qualification of a three-year legal degree or diploma, earned a gross salary of R58 849 per annum — excluding

pension and medical aid benefits and an optional housing allowance. As a result, most law graduates with good grades do not even consider the prosecution service, while many of the better prosecutors resign as their skills are better rewarded in the private sector.¹⁶⁵ Junior state advocates who prosecute serious crimes in the high court are employed at a starting salary of R96 046 a year and can hope to progress to an annual salary of R190 279. Upon promotion to the rank of senior state advocate, salary levels increase to between R201 933 and R229 545 a year, depending on seniority and experience. Senior state advocates prosecute the most serious and intricate crimes, including those relating to terrorism. By general public service standards, senior state advocates earn a good salary. However, compared to their private sector peers, their salaries are low. A good senior counsel defending a leader of a crime syndicate or well financed terrorist group can realistically expect to earn upwards of R10 000 a day.

Badly paid and under-resourced, many experienced prosecutors have left the prosecution service.¹⁶⁶ Between January 1994 and December 1997, some 630 prosecutors resigned. Between them they had the equivalent of more than 2 000 years of work experience as prosecutors.¹⁶⁷ While prosecutors who left the prosecution service were replaced, and the absolute number of prosecutors employed has consistently increased, the high personnel turnover has meant a decline in the experience level of the average prosecutor.

A rapid turnover of staff impairs the professional capacity of the prosecution service. Prosecuting is a practically orientated profession. It requires the ability to apply legal theory to the actual cases before court, to sum up the demeanour and expression of witnesses quickly and correctly, and to present various forms of evidence and witnesses to the court in such a manner as to build up a convincing and coherent case. Many of these skills cannot easily be taught and are acquired and perfected through practice and experience. A rapid staff turnover, therefore, undermines the professional capacity of the prosecution service. Moreover, many experienced prosecutors who leave the prosecution service, join the private sector to specialise in criminal law defending clients against their erstwhile colleagues, some of who remained behind because of their inability to obtain employment in the private sector.

The resource constraints of the criminal justice system were partially addressed in the 2001/02 budget, in terms of which, spending on the three core departments of the criminal justice system (safety and security, justice and correctional services) increased by 10.6% compared to the preceding budget year. With inflation at around 8%, this was an increase in real terms. Of the total budget allocation of R26.9 billion to the three criminal justice departments in the 2001/02 budget year, the greatest portion — R17.1 billion — was allocated to the department of safety and security. R6.2 billion went to correctional services and R3.7 billion to justice.

Compared to the preceding budget year, the greatest increase in expenditure (23%) went to the department of justice. The increase in expenditure on the department of justice was the greatest increase on that department since the 1997/98 budget year. Part of the growth in spending on the department of justice can be attributed to a significant increase in expenditure on the DSO, from R149 million in 2000/01 to R210 million in 2001/02, an increase of 41%. Expenditure on the National Prosecuting Authority (NPA) as a whole increased from R319 million in 2000/01 to R415 million in 2001/02, an increase of 30%. According to the department of finance's medium-term expenditure estimate, expenditure on the NPA is to increase by 32% between 2001/02 and 2003/04.¹⁶⁸

During the budget process, money above that projected in the previous budget may be allocated. In terms of the revised medium-term expenditure estimates, an additional R4.1 billion will be made available to the three criminal justice departments between 2001/02 and 2003/04.

The bulk of this money will go to safety and security (R2.3 billion), followed by justice (R1.2 billion) and correctional services with R641 million.

The budget is the government's primary policy tool. As such an additional expenditure of R4.1 billion over this three year period should, if wisely spent, substantially improve the effectiveness of the criminal justice system.

International co-operation

To effectively combat terrorism that has an international dimension, a high level of co-operation is required by the law enforcement agencies dealing with terrorism in their respective countries. After South Africa's pre-1994 isolation, a number of initiatives have been undertaken by the South African government to forge closer ties between South African law enforcement agencies, those in the region and in other parts of the world.

The Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) was established in 1995 to enhance co-operation between the policing agencies of its 12 members, which includes South Africa.¹⁶⁹ The objective of SARPCCO is to promote, strengthen and perpetuate co-operation, and to foster joint strategies for the management of all forms of cross-border and related crimes with regional implications.¹⁷⁰

In 1996, South Africa and the United States signed an anti-crime agreement. Part of the agreement provides for the development by South Africa of a police-training programme to enhance the SAPS's professional capabilities in fighting crime. This includes specialised courses offered by US law enforcement training programmes such as the International Criminal Investigative Training Assistance Program (ICITAP).¹⁷¹

At the 1997 African Regional Interpol Conference, a resolution was passed to establish an African organised crime database to which all African Interpol member states have access. (All SARPCCO member states are members of Interpol.) The SAPS was the first policing agency to utilise the database.¹⁷² Bilateral co-operation agreements also exist between the SAPS and the policing agencies of Argentina, Brazil, France, and the Russian Federation.

In September 2000, after a car bomb explosion in a well-known entertainment area in one of Cape Town's suburbs, the minister for safety and security announced that European intelligence agencies as well as the Federal Bureau of Investigations (FBI) would join a contingent of SAPS detectives to help investigate and stop the wave of terrorist bombings that was plaguing the city at the time.¹⁷³

Public co-operation

To ensure their long-term success, terrorists need the support of parts of the community in which they live. Terrorists — except the exceptional loner who works alone — are members of bigger groups and gangs that provide them with logistical support and finances to further their cause. Moreover, terrorists have families, friends, and lovers, and live in a bigger community in which they plan their deeds, build their bombs and talk about their ideas and actions. The fact that many of the urban terrorists in South Africa live and hide among people who do not co-operate with the security forces is one of the state's biggest challenges.

Witnesses of, for example, terrorists assembling bombs or placing them in public places hesitate to come forward to report what they saw out of fear that their testimony could place them at risk

of reprisals from the terrorists or their supporters.¹⁷⁴ This is understandable given that the public generally questions the ability of the police to protect them from crime. For example, survey results released in 1996 show that of the people questioned throughout South Africa, only 34% "trust the police always or most times", while a minority of respondents (43%) thought that the "police are interested in what happens to you".¹⁷⁵ A national survey conducted at the end of 1998 found that 67% of the respondents either had "some" or "not much" confidence in the SAPS. Only 33% had "a lot" of confidence in the police.¹⁷⁶

The statutory protection of witnesses is a new concept in South Africa. It was introduced in 1991 through an amendment to the Criminal Procedure Act.¹⁷⁷ The main shortcoming of the system has been the lack of a proper centralised structure to co-ordinate and lay down a uniform policy on witness protection. The Witness Protection Act of 1998 addressed this problem by establishing an office for witness protection headed by a national director.¹⁷⁸ The kind of offences for which protection may be granted has been increased and includes treason, sedition, murder, public violence, kidnapping, any contravention of the Intimidation Act, any offence relating to the dealing in firearms and explosives, or the possession of an automatic firearm and explosives. The director also has the discretion to grant protection to a witness in respect of any offence if the director is of the opinion that the safety of the witness warrants it. The act also enlarges the scope of the witness protection programme beyond merely criminal trials, as has been the case so far. The act provides for the protection of witnesses of commissions of inquiry and inquest proceedings, proceedings before a special tribunal,¹⁷⁹ as well as investigations of the Independent Complaints Directorate, which investigates cases of police misconduct and complaints levelled against the police.

Witnesses who have reason to believe their safety or the safety of any person close to them is, or may be, threatened by reason or their being a witness, may apply for themselves or for any person close to them to be placed under protection. Such an application may also be made on behalf of the witness by an interested person or the investigating officer of the case in which the witness testifies. A protection agreement between a witness and the office for witness protection can include an obligation on the witness to give the evidence as required in the proceedings to which the protection relates. In determining whether a person should be placed under witness protection, account must be taken of such factors as:

- the nature and extent of the risk to the safety of the witness;
- any danger that the interests of the community might be affected if the witness is not placed under protection;
- the nature of the proceedings in which the witness has given evidence or may be required to give evidence; and
- the importance, relevance and nature of the evidence given or to be given by the witness in the proceedings concerned.

It is an offence in terms of the act to wilfully or negligently allow any unauthorised person to gain access to any protected person, or to disclose the identity or whereabouts of any protected person. Upon conviction for such an offence a court may impose a fine or imprisonment for up to 30 years.

South Africa's witness protection programme has not been without its problems. The 1998 Witness Protection Act was only implemented in March 2000 because of financial and staffing

constraints. The 1991 act was repealed with the promulgation of the new act. At the beginning of 2001 some 730 people were under witness protection as a result of 360 criminal cases. The witnesses were protected by 70 police officers, who have been permanently assigned to the programme. The programme removes witnesses from their communities and settles them elsewhere. There are no bodyguards and no full-time protection. Witnesses often complain that they receive insufficient money from the programme to sustain the lifestyles they had before joining the programme. Because of an over-burdened criminal justice system, it is not unusual for persons to be on the witnesses protection programme for two to three years before the criminal trial in which they have to testify is finalised.¹⁸⁰ The image of the witness protection programme was undermined when two witnesses to a foiled pipe bomb attack were murdered in their safe house at the end of 2000. Earlier in that year, two Western Cape officers of the programme were investigated for improper conduct following complaints of harassment from people on the programme. One witness protection officer resigned and the other was found guilty in an internal inquiry. In 1999, the then head of the Western Cape protection unit was charged with fraud involving almost R1 million. He was suspended with full pay and the trial was under way at the time of writing.¹⁸¹

Given that a prerequisite for the successful prosecution of terrorist and organised criminal groups depends on providing security for, and the co-operation of, witnesses it is crucial that the witness protection programme is enlarged and improved. A report on the witness protection programme by the Centre for the Study of Violence and Reconciliation, entitled 'Testifying without fear', emphasises that while there are priority areas of the programme that need attention, there are no 'quick-fix' remedies for improving the programme overall. According to the report, a key area for improvement is the recruitment and training of security and support staff on the witness protection programme. "Some 70 police members seconded from different provinces are responsible for providing security. Provincial commissioners, who may be reluctant to let their best members serve on the programme, ultimately decide the numbers and competence of programme staff in each province. As a result there are huge staffing discrepancies between the provinces. In the Northern Province staff numbers are more than adequate with one security officer to four witnesses, while in KwaZulu-Natal the programme is drastically understaffed with one officer to 26 witnesses."¹⁸²

In early 2001, the witness protection programme was placed under the direct control of the national prosecuting authority. The national director of public prosecutions has welcomed this, as his staff — who will run the programme — will be the "most passionate about making sure that witnesses were available to give evidence for the state".¹⁸³ The national prosecuting authority's budget allocation for the witness protection programme is to increase from R25 million in 2001/02 to R27.6 million in 2003/04 — a modest increase in expenditure of 10% over three years.¹⁸⁴ Time will tell whether the under-staffed prosecution service is able to manage the witness protection programme in a better way and, crucially, whether the service will improve public perceptions about the programme.

Encouragingly, the national prosecuting authority is taking steps to improve the witness protection programme. They are:¹⁸⁵

- reviewing all the criminal cases with witnesses in the programme to determine which witnesses need to be in the programme and the status of the cases they are involved in;
- fast-tracking all the cases involving witnesses that are in the programme;
- conducting a risk assessment for all witnesses in the programme;

- meeting with other agencies such as the NIA, SAPS and the department of welfare to explore ways of improving the services the programme provides to witnesses;
- investigating better ways of rehabilitating witnesses so that they are able to continue with their lives after the threat to them and their families is gone; and
- reviewing the Witness Protection Act and the structure of the programme.

Another problem faced by state witnesses in past terrorism trials was intimidation in the courtroom where the trial in which they had to testify was taking place. It can be an intimidating experience for witnesses to come face-to-face with the perpetrators of the brutal crimes they witnessed. This can be exacerbated by the often rigorous and intimidating cross-examination that state witnesses face at the hands of experienced and senior defence counsel. Timid state witnesses can easily break down under rigorous cross-examination or cease to give evidence altogether if, in addition to such a seemingly hostile environment, they are intimidated by members of the public sitting in the court's gallery. A number of counter-measures could be undertaken to combat such forms of intimidation. First, the police should have the right to record the identity of everyone who attends a terrorism-related trial. Second, closed-circuit television cameras facing the public gallery in courtrooms where terrorism trials take place should be installed to record any acts of intimidation by members of the public. Third, judges should not hesitate to interrupt and stop the cross-examination by defence counsel that seeks to identify state witnesses if it cannot be shown that the questioning is on the merits of the case.¹⁸⁶

Another factor which impedes good co-operation between the public and the security forces has been the state's inability to prevent certain elements (albeit a small minority) within the police service and defence force from breaking the law in their overzealous attempts at apprehending suspects and searching their homes. This is especially counter-productive where suspected terrorists are also members of an ethnic, religious or some other minority group, and the perception is fostered that the security forces, and by implication the government, are victimising all members of the minority group to get at the terrorists. Allegations by the Muslim (and largely Coloured) community in the Western Cape, that they are the victims of heavy-handed security force actions, need to be taken seriously. The government's outspoken belief that the Muslim dominated organisation Pagad and the Muslim militant fundamentalist group Qibla are behind the urban terrorism is easily interpreted by many Muslims as a veiled attack on their faith and community — especially where members of the security forces misuse their power and harass and intimidate members of that community. The result is a community that increasingly sees the state and its security organs as the enemy. Such a community not only stops co-operating with the police but also could begin to sympathise with any terrorists amongst them who can exploit the community's indignation at the security forces to their own advantage.

Especially in a multi-cultural society such as in South Africa, it is crucial that the government and its security forces at all times act within the law. "The terrorists can make enormous propaganda capital out of violations of the law by members of the security forces and use these as additional justifications for their own campaigns. Thus they conveniently divert the public's gaze away from the violations of the law and outrages stemming from their own petty tyranny, and attempt to portray the incumbent authorities as monstrous blood-soaked oppressors."¹⁸⁷

Creating unrealistic expectations

Unrealistic and unfulfilled promises by high ranking police officers and politicians — including the

minister for safety and security — regarding the police's ability to track down and arrest terrorism suspects have dealt the security forces some detrimental psychological blows. For example, at the beginning of December 1999, three days after a bomb blast in a Camps Bay pizza restaurant, the minister of justice and constitutional development, Penuell Maduna, promised that "the year will not come to an end before we have found [the Camps Bay bombers] and put them in jail".¹⁸⁸ Safety and security minister, Steve Tshwete, was even bolder and assured the public that the terrorists would be behind bars by Christmas.¹⁸⁹ This did not happen, and on Christmas Eve a further bomb injured seven police officers. The statements had the effect of lowering public morale and enhancing the status of the terrorists who could rightly claim that the state's senior representatives were powerless in their efforts to arrest the bombers.

Politicians and governmental spokespersons should guard against making promises that are not likely to be achieved. This does not mean that the government should concede defeat to the terrorists and thereby lower the morale of the security forces and the public at large. It does, however, mean that official government statements should not promise the impossible. In a state with a constitutionally entrenched bill of rights based on the rule of law, it is a costly and time consuming process for the criminal justice system to identify, infiltrate, prosecute and convict terrorist groups and their members. This must be admitted not as a defeat but as a virtue and a price worth paying for a free society — especially as authoritarian regimes are not necessarily more successful at combating terrorism.

Conclusion

South Africa's anti-terrorism policy — unlike the populist pronouncements of some of its policy makers — has taken the approach that terrorism should be combated without sacrificing citizens' civil liberties and the rule of law. The value of this approach — and the dangers of ignoring it in favour of a Draconian one — is spelt out by Paul Wilkinson:¹⁹⁰

"The primary objective of a counter-terrorist strategy must be the protection and maintenance of liberal democracy and the rule of law... To believe that it is worth snuffing out all individual rights and sacrificing liberal values for the sake of 'order' is to fall into the error of the terrorists themselves, the folly of believing that the end justifies the means.

It must be a cardinal value of liberal democracies in dealing with problems of civil violence and terrorism, however serious these may be, never to be tempted into using the methods of tyrants and totalitarians... It is a dangerous illusion to believe one can 'protect' liberal democracy by suspending liberal rights and forms of government. Contemporary history abounds in examples of 'emergency' or 'military' rule carrying countries from democracy to dictatorship with irrevocable ease."

Numerous pieces of legislation designed to combat terrorism, uphold internal security, and strengthen the hands of the security forces against terror groups, are on the South African statute books. Many of the laws are not being used fully by the security forces because of operational weaknesses in the criminal justice system and the state's intelligence agencies. Policy makers need to direct their efforts at these weaknesses, before advocating Draconian measures — as contained in some of the clauses of the draft anti-terrorism bill — which could have the effect of curtailing the rights and liberties entrenched in the country's constitution.

Tough and sweeping legislation is likely to fail in its aims if it is not properly implemented and used by the personnel of the criminal justice system. Terrorism can be effectively combated.

What is needed is a well-run and adequately resourced criminal justice system staffed by trained and motivated personnel.

Recent developments promise to improve the state's ability to apprehend and convict those guilty of urban terrorism. At the beginning of 2001, legislation was promulgated which formally established the Directorate of Special Operations (DSO). Comprised of multi-disciplinary teams of investigators, prosecutors and intelligence operatives, the DSO's structure, and prosecution-driven and intelligence-led approach, places the organisation in a strong position to effectively combat those guilty of acts of urban terror. An increase in budgeted expenditure of 41% between 2001/02 and 2002/03 to over R200 million per year should provide the DSO with the necessary resources to fulfil its mandate.

There is a need to streamline the many disparate pieces of legislation designed to combat terrorism and to bring them in line with South Africa's international obligations. It would, however, be a mistake to introduce legislation that seeks to combat terrorism by diluting the rights of all South Africans. The country's history is full of examples of tough temporary legislative measures becoming permanent fixtures on the statute books.

Notes

1. P Wilkinson, *Terrorism and the liberal state*, Macmillan Education, London, 1986, p 29.
2. Much of the information contained in this section is from: D P de Villiers, Change in respect of security legislation, in D J van Vuuren et al (eds.), *Change in South Africa*, Butterworths, Pretoria, 1983, pp 393-425.
3. D P de Villiers, op cit, p 397.
4. C R Snyman, *Criminal Law*, Butterworths, Durban, 1989, p 325.
5. *Suppression of Communism Act no. 44 of 1950*.
6. *Criminal Law Amendment Act no. 8 of 1953*.
7. *Public Safety Act no. 3 of 1953*.
8. See C Louw, *A state of emergency, security legislation and freedom of association in South Africa*, unpublished Master of Laws dissertation, University of South Africa, Pretoria, 1987, pp 25-30, for a brief discussion of the administrative powers granted to the executive by the Public Safety Act and how these powers were used in the 1986 and 1987 states of emergency.
9. *Unlawful Organisations Act no. 34 of 1960*.
10. *General Law Amendment Act no. 76 of 1962*.
11. A S Mathews, *Law, order and liberty in South Africa*, Juta & Co., Cape Town, 1971, p 134.
12. *General Law Amendment Act no. 37 of 1963*.
13. Section 215bis *Criminal Procedure Act no. 56 of 1955*, as amended by section 7 of the

Criminal Procedure Amendment Act no. 96 of 1965.

14. *General Law Amendment Act no. 62 of 1966.*
15. *Terrorism Act no. 83 of 1967.*
16. D P de Villiers, op cit, p 400.
17. *Affected Organisations Act no. 31 of 1974.*
18. D P de Villiers, op cit, pp 401-402.
19. *The report of the commission of inquiry into security legislation* (Rabie commission), RP90/1981, Government Printers, Pretoria, 1981, p 1.
20. Ibid, paragraph 14.4.8.1, p 203.
21. Ibid, paragraph 14.4.8.2, p 203.
22. *Internal Security Act no. 74 of 1982.*
23. *The report of the commission of inquiry into security legislation*, op cit, paragraph 14.5, pp 203-204.
24. M Cowling, The return of detention without trial? Some thoughts and comments on the draft anti-terrorism bill and the Law Commission report, *South African Journal of Criminal Justice*, 13 (3), 2000, Juta and Co., Lansdowne, p 350.
25. *The report of the commission of inquiry into security legislation*, op cit, paragraph 14.5, p 203.
26. A S Mathews, *Freedom, state security and the rule of law. Dilemmas of the apartheid society*, Juta & Co., Cape Town, 1986, p 63.
27. *The report of the commission of inquiry into security legislation*, op cit, paragraph 7.55, p 86.
28. A S Mathews, 1986, op cit, p 277.
29. *1984 Survey of Race Relations in South Africa*, South African Institute of Race Relations, Johannesburg, 1984, pp 65 and 92.
30. *1991/92 Race Relations Survey*, South African Institute of Race Relations, Johannesburg, 1992, p 486.
31. A S Mathews, 1986, op cit, p 277.
32. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982)*, South African Law Commission, discussion paper 92, project 105, part 1, July 2000, Pretoria, p 29.

33. Section 35, *Constitution of the Republic of South Africa Act no. 108 of 1996*.
34. *Ibid*, Section 15.
35. *Ibid*, Section 16.
36. *Ibid*, Section 17.
37. *Ibid*, Section 18.
38. *Ibid*, Section 21.
39. *Ibid*, Section 31.
40. *Ibid*, Section 8(1).
41. *Ibid*, Section 74(2).
42. *Ibid*, Section 36(1).
43. TBVC states are the former nominally independent black homelands of the republics of the Transkei, Bophuthatswana, Venda and Ciskei.
44. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 1, July 2000, Pretoria, pp 9-10.
45. *Review of security legislation. The Interception and Monitoring Act*, South African Law Commission, discussion paper 78, project 105, Pretoria, November 1998, pp 1-3.
46. *Safety Matters Rationalisation Act no. 90 of 1996*.
47. Interview with Director C van der Westhuizen, SAPS legal services, 20 April 2000, Pretoria.
48. Section 35(3)(h), *Constitution of the Republic of South Africa Act no. 108 of 1996*.
49. For example, *S v Zuma and Others 1995 (2) SA 642 (CC)*; *Mello and Another v The State 1998 (3) SA 712 (CC)*.
50. Section 130, *Road Traffic Act no. 29 of 1989*, which is now contained in section 73(1), *National Road Traffic Act no. 93 of 1996*.
51. C Rickard, Court urged to stand firm against accused, *Sunday Times*, 15 November 1998.
52. C Rickard, Constitution is no holy cow, says top judge, *Sunday Times*, 22 August 1999.
53. Section 37(1) *Constitution of the Republic of South Africa Act no. 108 of 1996*.
54. *Ibid*, Section 37(2)(b).

55. Ibid, Section 37(5)(b).
56. Ibid, Section 37(6).
57. Section 1, *Civil Protection Act no. 67 of 1977*, as amended.
58. See chapter X, *Defence Act no. 44 of 1957*, as amended.
59. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 1, July 2000, Pretoria, p 49.
60. Ibid, pp 50-51.
61. Section 199(2) and (3), *Constitution of the Republic of South Africa Act no. 108 of 1996*, as amended.
62. Section 23(2), *Judicial Matters Amendment Act no. 34 of 1998*.
63. *Criminal Law Second Amendment Act no. 126 of 1992*, as amended.
64. D Lambrechts and A Maree, The law in South Africa regarding state security, *Acta Criminologica*, 11 (1), 1998, Pretoria, p 53.
65. Section 1, *Films and Publications Act no. 65 of 1996*, as amended.
66. *Intelligence Services Act no. 38 of 1994*, as amended.
67. *Review of security legislation. The Interception and Monitoring Act*, South African Law Commission, discussion paper 78, project 105, Pretoria, November 1998.
68. *The National Prosecuting Authority Amendment Act no. 61 of 2000* came into operation in January 2001.
69. Section 30(3), *National Prosecuting Authority Act no. 32 of 1998*, as amended.
70. Section 13(7)(c), *South African Police Service Act no. 68 of 1995*, as amended, read with section 20 of the *Criminal Procedure Act of 1977*.
71. Section 1, *Armaments Development and Production Act no. 57 of 1968*, as amended.
72. Section 8A(1) *Explosives Act no. 26 of 1956*, as amended by Act no. 83 of 1997.
73. For example, in terms of Government Notice No. 1633 of 1 October 1996 (Government Gazette no. 17490), the minister prohibited the possession of certain prescribed dangerous weapons at any gathering or at any public place. Dangerous weapons in terms of the prohibition included a spear, a knobkierrie (a kind of club), a knife with a blade longer than 10 centimetres, and a baton.
74. At the time of writing, the *Firearms Control Bill [B34B-2000]* had not been promulgated.

75. Weapons of mass destruction are defined by the *Chemical Weapons Convention*; the *Bacteriological Weapons Convention*; the *Nuclear Non-Proliferation Treaty*; and the *Missile Technology Control Regime*.
76. J Redpath, *Legislation to combat organised crime: a comparative perspective*, June 2000 (unpublished draft paper), p 24.
77. Ibid, p 25.
78. Ibid, p 36.
79. M Hough, Urban terror 2000: some implications for South Africa, *ISSUP Bulletin*, 6/2000, Institute for Strategic Studies, Pretoria, p 6.
80. See J Redpath, Trial better than detention for urban terror suspects, *Sunday Times*, 9 January 2000.
81. Persons sentenced in terms of the *Criminal Law Amendment Act* of 1997 may not be placed on parole unless they have served at least four-fifths of the term of imprisonment imposed or 25 years, whichever is the shorter. However, the court when imposing imprisonment, may order that the prisoner be considered for placement on parole after he has served two-thirds of such a term. See section 73(6)(b)(v), *Correctional Services Act* no. 111 of 1998.
82. Section 51(3), *Criminal Law Amendment Act* no. 105 of 1997.
83. A person sentenced to life imprisonment may not be placed on parole until he has served at least 25 years of the sentence, but on reaching the age of 65 years he may be placed on parole if he has served at least 15 years of such sentence. See section 73(6)(b)(iv), *Correctional Services Act* no. 111 of 1998.
84. A person given a determinate sentence in terms of the *Criminal Law Amendment Act* of 1997 may not be placed on parole unless he has served at least four-fifths of the term of imprisonment imposed or 25 years, whichever is the shorter, but the court when imposing imprisonment, may order that the prisoner be considered for placement on parole after he has served two-thirds of such term. See section 73(6)(b)(v), *Correctional Services Act* no. 111 of 1998.
85. Common law offences are offences created through custom and judicial decisions, while statutory offences are offences specifically created by statute or legislation.
86. J Burchell and J Milton, *Principles of criminal law*, Juta & Co., Kenwyn, 1997, p 672.
87. In *S v Mayekiso* 1988 (4) SA 739 (W) the court held that the setting up of a peoples' court and other alternative structures of government constituted treason.
88. *S v Banda* 1990 (3) SA 466 (B).
89. J Burchell and J Milton, op cit, pp 681-682. See *S v Makwanyane* 1995 (2) SACR 1 (CC); Chaskalson P at 58f-g and Kriegler J at 83j.

90. Burchell and J Milton, op cit, p 683.
91. S v Zwane 1989 (3) SA 253 (W).
92. Ibid, p 683.
93. Ibid, pp 609-613.
94. Much of the information contained in this section is taken from: *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 1, July 2000, Pretoria, pp 34-47.
95. Ibid, pp 29-30.
96. Telephonic interview with Ms J Schneeberger, office of the chief state law adviser (international law), department of foreign affairs, 6 February 2001.
97. *Convention of the Organisation of African Unity on the prevention and combating of terrorism*, Article 3(1).
98. Ibid, Article 3(2).
99. United Nations General Assembly Resolution 49/60, *Declaration on Measures to Eliminate International Terrorism*, 9 December 1994.
100. *The Diplomatic Immunities and Privileges Act no. 74 of 1989* affords certain privileges and protections to some classes of internationally protected persons.
101. Section 1(1), *Intimidation Act no. 72 of 1982*, as amended.
102. 667 attacks: Not one conviction, *Cape Times*, 29 January 1999.
103. D Abdinor, Support for iron fist, *Cape Times*, 5 January 1999; J Steinberg, Irate Tshwete playing to the crowd, *Business Day*, 7 January 2000.
104. F Chothia, Tshwete seeks new terror laws, *Business Day*, 30 November 1999; Support for anti-terrorism legislation, *Pretoria News*, 2 December 1999.
105. J Steinberg, Irate Tshwete playing to the crowd, *Business Day*, 7 January 2000. See also A Hadland, Move to draft anti-terror legislation, *Sunday Argus*, 31 January 1999.
106. J Steinberg, Ministers divided over new anti-terror laws, *Business Day*, 5 February 1999.
107. R Munusamy, Maduna backs detention law, *Sunday Times*, 18 February 2001.
108. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 2, July 2000, Pretoria, p 200.
109. Ibid, pp x & xii.

110. M Schönteich, The detention-without-trial trap, *F&T Finance Week*, 18 August 2000.
111. *Preserving the gains for human rights in the 'war against crime': memorandum to the South African Government and the South African Law Commission on the draft Anti-Terrorism Bill 2000*, Amnesty International, November 2000, London, pp 2-3.
112. Ibid, p 3.
113. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 2, July 2000, Pretoria, p 216.
114. Amnesty International, op cit, p 3.
115. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 2, July 2000, Pretoria, p 215.
116. The bill's definition of "an explosive or other lethal device" includes a weapon or device which has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material.
117. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 2, July 2000, Pretoria, p 218.
118. Amnesty International, op cit, p 6.
119. See M Cowling, op cit, p 354.
120. *Final Report of the Truth and Reconciliation Commission*, Volume 2, Chapter 3, paragraphs 122—162.
121. Amnesty International, op cit, London, p 2.
122. The Independent Complaints Directorate, *Annual Report 1999/2000*, Pretoria. See also D Bruce, Heavy hand of the law, *Sowetan*, 17 April 2000.
123. See M Cowling, op cit, p 355.
124. G Bizos, Never, never and never again, *Sunday Times*, 10 December 2000,
125. P Wilkinson, op cit, p 126.
126. *Review of security legislation (terrorism: section 54 of the Internal Security Act, 1982 (Act no. 74 of 1982))*, South African Law Commission, discussion paper 92, project 105, part 2, July 2000, Pretoria, pp 223-224.
127. Ibid, p 234.

128. De Lange v Smuts NO 1998 (3) SA 785 (CC). See M Cowling, op cit, p 346.
129. Section 37(6), *Constitution of the Republic of South Africa Act no. 108 of 1996*, as amended. See M Cowling, op cit, pp 353-354.
130. The bail provision has been taken from section 60(11) of the *Criminal Procedure Act no. 51 of 1977*, as amended.
131. A S Mathews, 1986, op cit, p 225.
132. Amnesty International, op cit, pp 3-4.
133. Short cuts take us into dangerous territory, *Sunday Times*, 9 January 2000.
134. P Wilkinson, op cit, pp 137-138.
135. M Merten, Police helpless in Cape of fear, *Mail & Guardian*, 3 December 1999.
136. T Lamberti, The rivalry between police units is a major problem, *Business Day*, 13 December 1999; A Smith, What is going on in police force? *Cape Argus*, 9 December 1999.
137. W Hartley, Ngcuka outlines strategy to combat bombings, *Business Day*, 13 September 2000.
138. T van Vuuren, Private and public cooperation in the restoration of order in South Africa, *Police Science Association of Southern Africa Bulletin*, (2), Pretoria, 1997, p 5.
139. *The Nedcor project on crime, violence and investment (executive summary)*, June 1996, p 2.
140. The majority (approximately 75%) of the prosecutors interviewed by the author in mid-2000, for the purposes of research on the South African prosecution service, expressed the view that the quality of the police's detective work declined after 1994. According to most interviewees, the decline in work quality is especially marked among general detectives, and less so among detectives working in specialised detective units such as the murder and robbery unit. See M Schönteich, *Lawyers for the people: the South African prosecution service*, Institute for Security Studies, Pretoria, 2001.
141. See A Altbeker, *Solving crime. The state of the SAPS detective service*, ISS monograph series 31, Nov. 1998, Institute for Security Studies, Halfway House, p 49, where the point is made that a confession-driven investigative approach did not dominate all SAP detective units. Many units — especially those dealing with less serious crimes — relied less on confessions and complied more closely with the law.
142. L Stack, Pivot of the new order: *The South African judiciary and the political consequences of judicial malfunctioning*, Centre for Policy Studies, Johannesburg, August 1997, pp 11-12.
143. Police may arrest plenty of people but they don't get to court, prosecutors say, *Sunday*

Independent, 25 May 1997.

144. W Hartley, 'Eating soup with a fork' sums it up, *Business Day*, 11 August 2000.
145. See M Schönteich, *Assessing the crime fighters. The ability of the criminal justice system to solve and prosecute crime*, ISS Papers 40, September 1999, Institute for Security Studies, Pretoria.
146. This includes the 30 most serious and prevalent offences only. Minor offences such as trespassing, urinating in public and traffic offences are excluded.
147. E-mail from Inspector Ina du Plessis, Crime Information Analysis Centre, Pretoria, 27 July 2001.
148. Caution needs to be exercised when analysing the annual number of cases recorded and the annual number of cases prosecuted and convicted. Cases recorded during one year are often prosecuted during the following year. For example, the investigation of a complicated murder case recorded in December 1998 may only be finalised in mid-1999. The prosecution of the case may occur only in late 1999. There was no dramatic change in the number of crimes recorded from one year to the next between 1996 and 1999, however. Cases prosecuted (and those ending in a successful prosecution) as a proportion of reported cases also did not change much between 1996 and 1999. As a result, the proportion of prosecutions and convictions resulting from actual cases recorded during a given time would not vary much from the proportions calculated in this chapter. See also R Paschke, *Report on rate of conviction and other outcomes in eight South African police areas*, South African Law Commission, Pretoria, 2000.
149. *Hansard* (Q:NA), no. 19, cols. 3978 - 3979, 25 November 1997.
150. Interview with Ms Cecille van der Riet, head: justice college, Justice College, Pretoria, 16 August 2000.
151. Press statement by Dullah Omar on the establishment of an investigating directorate on organised crime and public safety, 17 September 1998.
152. *Special priority crimes investigation agency established*, press release issued by the ministry of justice and constitutional development, 8 July 1999.
153. *National Prosecuting Authority Amendment Act no. 61 of 2000*.
154. M Maduna, minister of justice and constitutional development, speaking at the national assembly vote on the *National Prosecuting Authority Amendment Bill B39B-2000*, Cape Town, 31 October 2000.
155. W Hofmeyr, *Combating organised crime: The challenges of implementing new legislation*. Paper delivered at a regional seminar on combating organised crime in the SADC region, Pretoria, 27 February 2001.
156. See M Schönteich, *Lawyers for the people: the South African prosecution service*, Institute for Security Studies, Pretoria, 2001.

157. Section 7(1), *National Prosecuting Authority Act no. 32 of 1998*, as amended.
158. B Webb, Ngcuka warns criminals that they have everything to lose, *Pretoria News*, 1 March 2001.
159. No author, briefing paper, *Operation Good Hope (prevention, combating and investigation of terrorism and related crimes)*, undated, p 1.
160. K Vernon, Cape cops never had a chance, *Sunday Times*, 17 January 1999.
161. M Schönteich, The rising cost of crime: State spending on criminal justice, *Nedcor ISS Crime Index*, 3 (4), July - August 1999, Institute for Security Studies, Pretoria, pp 18-21.
162. A Hadland, Many cops 'illiterate', *Natal Mercury*, 24 September 1999.
163. S V Tshwete, minister for safety and security, written reply to parliamentary question, 10 March 2000, question no. 309, (National Assembly).
164. *First Interim Report of the Commission of Inquiry into the Rationalisation of the Provincial and Local Divisions of the Supreme Court (the Hoexter Commission)*, released on 7 March 1997, volume 1, chapter 6, p 67.
165. See *The graduate. Newsletter of the HSRC register of graduates 1999*, Unit for labour market analysis, Human Sciences Research Council, Pretoria, 1999, pp 12-17.
166. See M Schönteich, Lack of conviction: prosecution's poor performance, *Nedcor ISS Crime Index*, 3 (2), March — April 1999, Institute for Security Studies, Pretoria, pp 5-8.
167. Telephonic interview with Mr J J Swart, president of the National Union of Prosecutors of South Africa, 7 April 1997, and *Hansard* [NA:Q] no. 6, col. 874, 16 April 1998. In 1995, there was a 40% turnover of prosecutors at the Johannesburg magistrate's court, (P Naidoo, Justice chaos: advocates start work-to-rule campaign, *Cape Argus*, 14 July 1996). At the Durban magistrates' court about one-third of prosecutors had resigned in the 18 months between the beginning of 1995 and June 1996, (L Seeliger, Durban's courts in crisis, *Natal Mercury*, 20 June 1996).
168. *Estimates of national expenditure 2001*, National Treasury, Pretoria, 2001
169. SARPCCO member states are: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.
170. D J M Bruce, The role and achievements of the Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO), *ISSUP Bulletin*, 4/98, Pretoria, 1998, p 3.
171. U.S., South Africa sign anti-crime agreement, <<http://www.usia.gov/regional/bnc/usafrica/sfmtcrim/htm>>.
172. *Hansard* (Q:NA), no. 15, cols. 2237-2238, 22 July 1998.
173. B van Hees, *The Citizen*, 11 September 2000.

174. Interview, Advocate Willie Viljoen, deputy director: Investigating Directorate: Organised Crime and Public Safety, Cape Town, 5 July 2000.
175. *Cape Argus*, 14 September 1996.
176. Has the government kept its promises? *The Star*, 21 April 1999.
177. Section 185A, *Criminal Procedure Act no. 51 of 1977*, as amended by Act no. 135 of 1991.
178. *Witness Protection Act no. 112 of 1998*.
179. Those established under the *Special Investigating Units and Special Tribunals Act no. 74 of 1996*.
180. M Merten, No protection for witnesses who refuse to relocate, *Mail & Guardian*, 5 January 2001.
181. Ibid.
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183. Ngcuka gets WPP. Witness protection moves after assassinations, *Sowetan*, 24 January 2001.
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186. Interview, Advocate Willie Viljoen, op cit.
187. P Wilkinson, op cit, pp 127-128.
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189. No author, Tshwete not reassuring, *The Citizen*, 28 December 1999.
190. P Wilkinson, op cit, pp 125-126

CONCLUSION

Three years of urban terrorism in the Western Cape have claimed five victims and injured one hundred more. Should South Africans consider themselves fortunate for having come out of the wave of urban terror of the late 1990s so lightly? To be fair, it is too soon to say, but probably not.

Certainly luck could have played a role in the terrorists' lack of bomb-building skills and the fact that most targets were not surrounded by crowds of people when the bombs exploded; two factors that minimised the loss of life. Under different circumstances more powerful bombs

exploding at different times could have led to a much greater loss of life. The loss of life and destruction of property constitute only one measure of terrorism's success, and not even the main one at that. Because no group has claimed responsibility for the series of bombings and targeted assassinations at the time of writing, it is impossible to say with certainty what the terrorists' ultimate objectives are. It is clear, however, that these terrorist acts have had a number of far-reaching consequences.

First, the rights and liberties for which many South Africans fought and died are under threat. Less than a decade after the country's transition to a liberal democracy policy makers and politicians are giving serious consideration to introducing a detention-without-trial law for suspected terrorists. A similar law introduced by a previous South African government in the 1960s ultimately led to far-reaching human rights abuses, a blatant disregard for the rule of law and a worsening of the internal security situation. Draconian laws, whatever their motivation, easily lead to the sacrifice of civil liberties at the altar of expediency.

Second, the bombs and assassinations have impressed among most South Africans the disillusioning fact that even a multi-party democratic state, where people are free to peacefully express their views, is not immune from terrorist threat. Such disillusionment could rapidly — especially under a sustained and successful terrorist campaign — lead to a loss of faith in the country's democratic institutions and law-enforcement agencies as the guarantors of freedom and security. This could further erode public confidence in the constitutionally enshrined rights and liberties on which the post-1994 South Africa is based.

Third, some commentators and politicians have come perilously close to blaming the Muslim community in the Western Cape for the terrorist acts committed there. Such comments, combined with heavy-handed security-force actions in predominantly Muslim areas, can become a self-fulfilling prophecy as ordinary law-abiding Muslims feel terrorised by the state rather than by the terrorists. Moreover, such comments and actions can bring about a feeling of alienation and isolation among the broad Muslim community in relation to the government and other dominant groups in the country. As one astute commentator on terrorism points out:

"... in many liberal states certain minority groups claim to have long-standing grievances against the majority institutions or against other groups. It is these aggrieved and allegedly under-privileged groups that constitute the potential constituencies for urban guerrilla movements. Such movements become a serious threat as soon as they begin to attract a degree of mass support, sympathy and tacit collaboration in particular strata."¹

It is no easy task for liberal democracies to deal effectively with a sustained terrorist threat. Civil liberties, constitutionally entrenched rights and the rule of law come at a cost when it comes to fighting terrorism: the state has to expend considerable resources and patiently collect evidence over frustratingly lengthy periods of time to successfully convict the kingpins in a closely knit terrorist network. This requires excellent teamwork between the various intelligence and law-enforcement agencies, and a motivated and specialised investigating and prosecuting unit devoted to identifying and convicting terrorists.

The alternative is to apprehend and lock away suspected terrorists at all costs. This might seem the better way to some. However, to sacrifice individual rights and liberal values to combat acts of terror is to accept the terrorists belief that the end justifies the means.

People who commit acts of terror should be punished to the full extent of the law, but not at the

expense of sacrificing the very values which they seek to destroy. It would be a mistake to introduce legislation that seeks to combat terrorism by diluting the rights of all South Africans. The country's history is full of examples of tough temporary legislative measures becoming permanent fixtures on the statute books.

1. P Wilkinson, *Terrorism and the liberal state*, Macmillan Education, London, 1986, p 29.