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THE NATIONAL STATE OF EMERGENCY

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INTRODUCTION

On 12 June 1986, at a joint sitting of the three houses of Parliament, the State President declared a National State of Emergency. In his speech he said:

“...the sporadic instances of violence have once again begun to increase and have taken on such proportions that I am of the opinion that the ordinary laws of the land at present on the statute book are inadequate to enable the Government to ensure the security of the public and to maintain public order.”

- * What were the State President's reasons for declaring the State of Emergency?
- * Was the Government's action justified?
- * What of the rule of law?
- * Has the National State of Emergency achieved its objectives?
- * When will the National State of Emergency be lifted?

The objective of this publication is to provide answers to these questions.

BACKGROUND

Between September 1984 and June 1986 South Africa experienced a rising spiral of unrest, instigated primarily by Black consciousness and other radical groups. The ANC sought to capitalise on this situation.

In a major policy speech on 8 January 1986 Oliver Tambo spelled out the plans of the African National Congress (ANC) for the year. **Inter alia** he said that:

- * the ANC would “continue to make South Africa un-governable.”
- * the ANC would build its forces “into an ever more formidable united mass army of liberation, an army that must grow in strength continuously.”
- * the ANC's goal was “the destruction of the ‘apartheid regime’ and the transfer of power to the people.”
- * the ANC would heighten “its mass political advance on all fronts” and would escalate its “resolute military

offensive.”

- * the ANC would work for “the political mobilisation and organisation of all the oppressed and exploited – in particular the working class.”
- * the ANC’s offensive “must spread to every corner of our country, encompassing cities, towns and countryside.”

During the first five months of 1986 there was an alarming escalation in unrest. Between September 1984 and May 1986, the consequences of unrest included:

- * 3 477 private Black houses badly damaged or destroyed;
- * 1 220 schools badly damaged or destroyed;
- * over 7 000 buses and 10 000 other vehicles damaged or destroyed;
- * large-scale intimidation;
- * consumer and rent boycotts;
- * disruption of Black education and democratically elected municipal government;
- * the establishment of “street committees” and kangaroo courts; and
- * 573 deaths due to Black-on-Black violence, 295 of the victims being killed by way of the horrific “necklace” method.

In May 1986 the South African authorities received reliable information on the radicals’ plans to disrupt society during the period 16 to 26 June.

The ANC, the United Democratic Front (UDF), the Azanian Peoples Organisation (AZAPO) and a host of other radical organisations planned:

- * mass marches into White areas;
- * student uprisings;
- * countrywide stayaways; and
- * large-scale intimidation.

These plans would certainly have exacerbated the unrest situation and would in all likelihood have led to widespread loss of life, injuries and destruction of property.

DECLARATION

It was against this background that the State President decided on 12 June 1986 to declare a National State of Emergency. The State President stated that his action was necessary for the following reasons:

“The occurrence and increase of violence as perpetrated by persons and organisations, is in itself in my opinion of such a nature and extent that it seriously endangers the security of the public and the maintenance of public order.

“Because I am thus of the opinion that the ordinary laws of the land are inadequate to enable the Government to ensure the security of the public and to maintain public order, I have decided to declare a National State of Emergency, including the self-governing national states.”

The State President added that the objectives of the National State of Emergency were:

“ . . . to create a situation of relative normality so that every citizen can perform his daily task in peace, business communities can fulfil their role and the reform programme to which the Government has committed itself can be continued.”

LEGAL BASIS

The State President declared the National State of Emergency in terms of section 2(1) of the Public Safety Act, Act 3 of 1953, which stipulates that if in his opinion it at any time appears that:

- (a) any action or threatened action by any persons or body of persons in the Republic or any area within the Republic is of such a nature and extent that the safety of the public, or the maintenance of public order is seriously threatened thereby; or
- (b) circumstances have arisen in the Republic or any area within the Republic which seriously threaten the safety of

the public, or the maintenance of public order; and

- (c) the ordinary law of the land is inadequate to enable the Government to ensure the safety of the public or to maintain public order, he may, by proclamation in the Gazette, declare that as from a date mentioned in the proclamation, a state of emergency exists within the Republic or within such area as the case may be.

Clearly, the situation in South Africa in May/June 1986 met these requirements.

In terms of the Public Safety Act the State President was empowered “. . . in any area in which the existence of a State of Emergency has been declared under section 2, and for as long as the proclamation declaring the existence of such emergency remains in force, by proclamation in the Gazette, to make such regulations as appear to him to be necessary or expedient for providing for the safety of the public or the maintenance of public order and for making adequate provisions for terminating such emergency or for dealing with any circumstances which in his opinion have arisen or are likely to arise as a result of such emergency.”

Political basis for emergency powers

It is generally accepted that the State has a right and a duty to protect itself when confronted by an extreme external or internal threat.

“It is both common and respectable for modern states, even democratic ones, to adopt permanent statutes which empower the government of the day to take swift and effective action in times of crisis and emergency” – Anthony Mathews.

“The State has an inherent right and duty to defend itself. It is experienced in the doctrine: **salus reipublicae suprema lex**. This is a doctrine which we have taken over from English constitutional law and is a doctrine recognised by all states” – R. Snyman.

Emergency powers in other countries

Most other democratic societies make provision for the assumption of emergency powers during periods of crisis. The assumption of such powers is a widespread practice. In recent years the following States have at one time or another declared states of emergency:

- * Afghanistan
- * Argentina
- * Canada
- * Chile
- * Colombia
- * Egypt
- * El Salvador
- * Ghana
- * Greece
- * Haiti
- * India
- * Israel
- * Kuwait
- * Malaysia
- * Nicaragua
- * Northern Ireland
- * Peru
- * Poland
- * Saudi Arabia
- * Sri Lanka
- * Sudan
- * Syria
- * Thailand
- * Turkey
- * Uruguay
- * Zaire
- * Zambia
- * Zimbabwe

Other states, especially the communist countries and many Third World states have no need to declare states of emergency because total power is vested in their governments at all times in any event.

Protection under the law

The Public Safety Act does not bestow unlimited powers on the State President or officials to whom he may delegate certain powers.

- * The Government is required to reveal the names of all detainees to Parliament. ("Whenever any regulation made under subsection (4) provides for the summary arrest and detention of any person, and any person is, in pursuance of such a regulation, detained for a period of longer than thirty days, the Minister shall, within fourteen days of the expiration of such period of thirty days, if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within fourteen days after the commencement of its

next ensuing ordinary session, lay the name of such person on the Tables of the respective Houses of Parliament” – Public Safety Act, No 3 of 1953, section 5A (7).

- * The Government is required to permit visits to detainees by magistrates. (“Any person detained in terms of the provisions of this section shall, in addition to any visits under this Act by an Inspector of Detainees, be not less than once a fortnight –
(a) visited in private by a magistrate;” – Internal Security Act, No 74 of 1982, section 29 (9).
- * Since the declaration of the State of Emergency, emergency regulations and government actions in terms of the regulations have been challenged on numerous occasions in the courts – sometimes with success.

THE MEDIA REGULATIONS

The Government deemed it necessary within the context of the State of Emergency to promulgate regulations which limited the freedom of the media to report on a range of topics particularly on certain unrest incidents and various matters affecting the security of the State.

It did so because of the negative role played by some elements of the media in consciously or unconsciously promoting the objectives of the instigators of unrest. In revolutionary struggles the prime objective is to win the “hearts and minds” of the population. The media are the important generators of perceptions, and clearly play a key role in this struggle. This role is recognised by many observers. Ted Koppel, the widely respected anchorman of ABC’s **Nightline** programme in the USA made the following comment in this regard:

“Let me begin by putting forward the proposition that the media, particularly television, and terrorists need one another, that they have what is fundamentally a symbiotic relationship.

“Without television, international terrorism becomes rather like the philosopher’s hypothetical tree falling in the forest

— no one hears it fall and therefore it doesn't exist.

“And television without terrorism, while not deprived of all the interesting things in the world, is nonetheless deprived of one of the most interesting.”

Shirley Christian of the **Miami Herald** writes:

“People here (El Salvador) will be left with the solution partly or wholly created by us – not just the American government but the American Press. Then we will all leave when the story disappears.”

In his book **The Real War** Richard Nixon described the role played by the United States' media in generating perceptions concerning the Vietnam War:

“In retrospect it is remarkable that the public continued to support our efforts in Vietnam for as long as they did. As **Newsweek** correspondent Kenneth Crawford observed, this war was the first war in our history during which our media were more friendly to our enemies than to our allies. American and South Vietnamese victories, such as the smashing of the Tet offensive in 1968 were portrayed as defeats. The United States, whose only intent was to help South Vietnam defend itself, was condemned as an aggressor. The Soviet-supported North Vietnamese were hailed as liberators.”

Walter Laquer, Chairman of the International Research Council of the Center for Strategic and International Studies in Washington, has described the relationship between terrorism and the media as follows:

“The terrorists understand that the media are of paramount importance in their campaigns, that the terrorist act by itself is next to nothing whereas publicity is all. The real danger facing the terrorist is that of being ignored, of receiving insufficient publicity, of losing the image of a desperate freedom fighter, and of course, of having to face determined enemies unwilling to negotiate at any cost. Fortunately, from the terrorist point of view, there are few such people in authority in democratic societies.”

Criticism continues

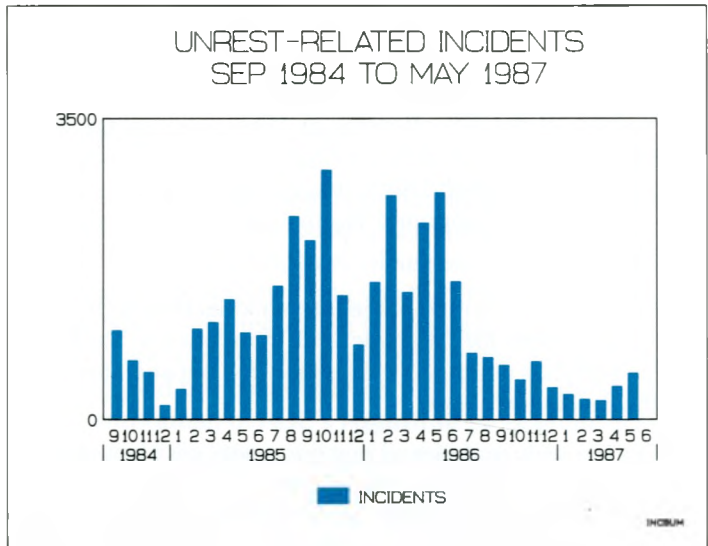
Despite the imposition of the media regulations the Press in South Africa has continued to criticise the Government vehemently and openly across a wide spectrum of national affairs. At the same time the national debate on South Africa's constitutional future has continued unabated.

EFFECTS OF THE NATIONAL STATE OF EMERGENCY

Reduction in unrest-related incidents

The National State of Emergency has caused a marked decline in unrest-related incidents. From May 1986 to May 1987 the occurrence of such incidents dropped by 79 per cent.

The following graph shows the steep decline in unrest-related incidents since the declaration of the National State of Emergency:



Restoration of personal security

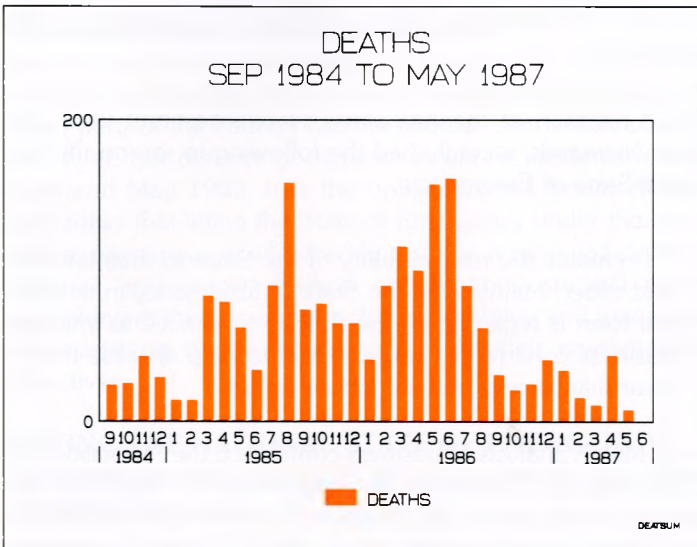
In May 1986, 157 Blacks were killed in unrest-related incidents. By May 1987 the death-rate had dropped by 94,9 per cent, i.e. eight death incidents in that particular month.

Of the Blacks killed during the period 1 January 1986 to 4 April 1987, 484 were burnt to death, 310 by the horrendous “necklace” method.

The following table shows the very substantial decline in number of deaths due to burning after the National State of Emergency was declared. “Necklace” deaths decreased by 64 per cent and deaths due to other methods of burning by 43 per cent:

Period	“Necklaced”	Other methods	Total
1 Jan 1986 – 11 June 1986	228	111	339
12 June 1986 – 4 April 1987	82	63	145

The decline in unrest-related deaths since September 1986 is clearly shown by the following graph:



Restoration of community services

The imposition of the National State of Emergency has enabled the authorities to restore the following essential community services to Black South Africans in most of the areas where such services had been disrupted by the unrest:

- * education
- * refuse removal
- * water reticulation
- * electricity supply
- * street maintenance
- * sewerage
- * public transport
- * clinics and related medical services
- * social work
- * recreation
- * fire-fighting services
- * postal services.

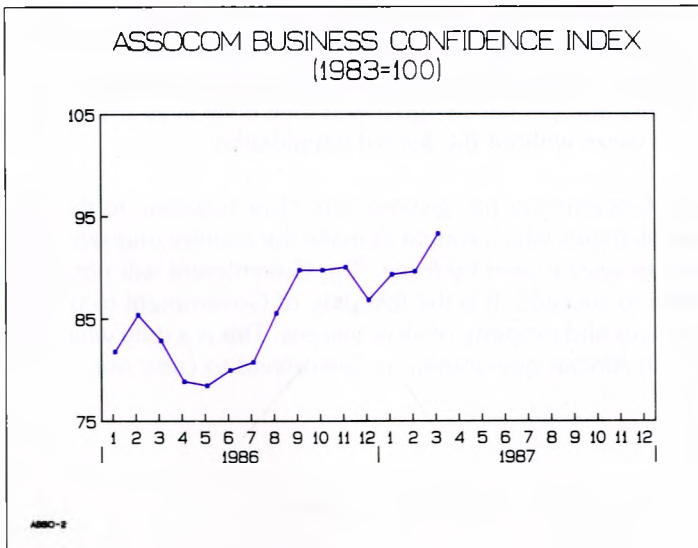
Restoration of business confidence

The greater stability which the National State of Emergency has brought, was a major factor in restoring business confidence in the Republic and in leading to an upswing in the economy.

The Chairman of the Afrikaanse Handelsinstituut (AHI), Mr A.D. Niemandt, recently had the following to say on the National State of Emergency:

“It remains the responsibility of the State to maintain law and order. Maintaining the State of Emergency in its present form is regarded by the AHI as conducive to improve business confidence, and essential to help stabilise the labour market and prevent labour unrest.”

In its March analysis of business confidence the Association of Chambers of Commerce of South Africa (ASSOCOM) reported a sharp rise in the Business Confidence Index (BCI) – the biggest single monthly rise in the BCI since September 1986. This upward trend was attributed to factors, including improved economic expectations and the renewal of foreign confidence as reflected in the new foreign debt deal concluded in March. There can be little doubt that the National State of Emergency contributed to this positive trend.



The revolutionary climate is sustained

Despite the marked decrease in the number of unrest-related incidents and deaths, the underlying revolutionary climate in many parts of the country has not abated. This is indicated by the slight, but disturbing, increase in unrest incidents during April and May 1987. It is the opinion of the South African authorities that lifting the State of Emergency under the present circumstances would quickly result in a renewed cycle of violence and unrest. Radical organisations are still doing everything in their power to politicise, mobilise and intimidate the masses in their attempts to achieve their revolutionary objectives.

LIFTING THE NATIONAL STATE OF EMERGENCY

When the National State of Emergency was declared three objectives were set:

- * The restoration of law and order and security.
- * A return to normality in the unrest-ravaged Black residential areas.
- * The creation of a climate in which constitutional change can take place.

The vast majority of South Africans desire peaceful evolutionary change through negotiations. This will be possible only if stability is restored, normal life is resumed throughout the country and people can go about their daily lives and express their views without the fear of intimidation.

The Government has given a very clear response to the radical elements which sought to make the country ungovernable and to seize power by force. The Government will not allow them to succeed. It is the first duty of Government to protect the lives and property of all its citizens. This is a duty which the South African government is determined to carry out.

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