

## SOUTH AFRICA

### **Criminalizing Terrorist Acts**

South Africa has taken steps to criminalize terrorist actions. The Anti-Terrorism Act, passed in 2002, was added by South Africa to address short-falls in the country's legislation related to terrorism. Under Chapter 2, Clause 2, "(1) Any person who -- (a) commits or threatens to commit a terrorist act; (b) conspires with any person to commit or bring about a terrorist act; or (c) incites, commands, aids, advices, encourages, or procures any other person to commit or bring about a terrorist act -- is guilty of an offence and liable on conviction to imprisonment which may include imprisonment for life." The Act broadly defines a "terrorist act" to include "any unlawful act, committed in or outside the Republic." However, the Act does not distinguish between an unlawful act rising to the level of a "terrorist act" and any other unlawful act.

The Anti-Terrorism Act also criminalizes providing assistance to terrorists and terrorist organizations. Chapter 2, Clause 2(5) provides that "(a) Any person is guilty of an offence if he or she *knowingly* : (i) harbors or fails to report to authorities the presence of a member of a terrorist organisation; (ii) furnishes weapons, food, drink, transport or clothing to members of a terrorist organisation; (iii) receives any benefit from a terrorist organization or any member of such an organisation; or (iv) carries out any instruction or request by a terrorist organisation or any member of such an organisation on its behalf." A person found guilty under this provision is may receive up to 15 years imprisonment.

The Anti-Terrorism Act (Chapter 2, Clause 4) provides South African courts with jurisdiction over individuals if: the accused was arrested in the Republic; the offense was committed within the territory of the Republic; the offense was committed by a citizen of the Republic; the offence was committed against the Republic; a citizen of the Republic or a resident of the Republic; or against a Republic facility located abroad.

### **Suppressing Recruitment of Members of Terrorist Groups**

South African legislation aims at suppressing the recruitment of members by terrorist groups. The Anti-Terrorism Act, 2002, Clause 3(3) provides: "participating in or contributing to the activities of a terrorist organisation includes providing, receiving or recruiting a person to receive training." Under the Anti-Terrorism Act, participating in or contributing to the activities of a terrorist organisation are criminal offences. In addition, "South Africa controls the establishment in its territory of para-military groups through the Second Criminal Law Amendment Act, 1992 (Act No. 126 of 1992). The Act "prohibits the organising, training, equipping or arming of any organisation if the purpose of that organisation is to usurp some or all of the functions of either the South African Police Service or the South African National Defence."

### **Regulation of Biology**

Legislative instruments in South Africa regulate biological warfare agents and genetically modified organisms. The Non-Proliferation of Weapons of Mass Destruction Act No. 87 defines biological warfare agent as "a living organism, including viruses or infections material derived therefrom, which can be used to cause disease or death in humans, animals or plants and which usually depend for the primary effects on their ability to multiply in the organism attacked." The Minister of Agriculture determines the policies of Act No. 87. The Minister of Agriculture may declare certain controlled goods as contributory to weapons of mass destruction and may prohibit their export, re-export or transit. The Minister may also a require permit to import or export of certain controlled goods and/or require those individuals in possession of the controlled good to complete appropriate registrations. A person who refuses to answer questions, hinders a inspector or falsely represent goods shall be guilty of an offense and liable on conviction to a fine and imprisonment up to

10 years.

The Council for the Non-Proliferation of Weapons of Mass Destruction carries out the non-proliferation responsibilities. The Chairperson of the Council may appoint inspectors to ensure compliance with Act No. 87. The inspector is therefore given the authority to enter premises where controlled substances are kept, investigate the premises, take measures and samples, remove evidence and open packages. The Council for the Non-Proliferation of Weapons of Mass Destruction may obtain cooperation and exchange information with governments of other states as well as foreign and international bodies to achieve the goals of Act No. 87. The Council may also supervise and implement matters arising from international conventions, treaties, and agreements relating to proliferation. In 2002, The Decree of The President of the Republic of South Africa No. R. 16, 26 February 2002, made the BTWC a schedule to the 1993 Non-Proliferation and Weapons of Mass Destruction Act.

The Agricultural Pets Act No. 36, 1983, provides measures to prevent infectious diseases and to regulate the use of pathogens. An Executive Officer may enter upon any land, building or vehicle if he suspects that controlled goods are in use. The Officer may also inspect any document, book and demand explanations. The Officer may also seize anything that may serve as evidence and quarantine an area to determine a user's compliance with Act No. 36. A person found in possession of goods where a "reasonable suspicion" exists that the goods were imported without permit or refuses or neglect to comply with the provisions of Act No. 36 is guilty of an offense. A person who fails to provide the requisite notifications under this Act or refuses to comply with these provisions is guilty of an offense. A person who hinders an Executive Officer's exercise of power, refuses to comply with information or damages, destroy, removes, or alters a quarantine area is guilty of an offense and subject to a fine or imprisonment.

Other laws authorize government officials to control potentially dangerous biological materials and medicines. Declaration of Certain Goods as Controlled Goods and the Determination of Control Measures Applicable to Such Goods, No. R. 1025, as amended 9 October 2001, provides notification of the authority of the Minister of Trade and Industry to declare that any item of equipment, technology, materials, chemicals, biological agents and toxins and production facilities or components thereof, whether listed as controlled items or not, may be declared to be a controlled good by the Minister, in consultations with the Council, if they determine that such an item, in its entirety or in part, is intended for use in the production, stockpiling, development, handling, operation, maintenance, storage, or dissemination of chemical, biological or nuclear weapons or their delivery systems. The Medicines and Related Substances Amendment Bill 2002 (amending the Medicines and Related Substances Act of 1965), requires registration and monitoring of medicines used for humans and animals.

The Animal Diseases Act No. 35, 20 March 1984, outlines requirements for importation of certain controlled animal or things. The Minister of Agriculture is authorized to establish quarantine stations and prescribe general control measures and to introduce animal health systems. The Act also outlines the duties of owners and managers with respect to animal disease and the authority of inspectors. It is prohibited to conduct any investigation, experiment or research with any vaccine, serum, toxin, anti-toxin, antigen or other biological product which consists or originates wholly or partially of, or from, any micro-organism, or of or from the glands, organs, fluids, or any other part, of an animal or parasite except with a permit and 'the manufacture or evaluation of a product or remedy used for or intended to be used at or for the testing, diagnosis, prevention, treatment or cure of any animal disease or parasite, or for the maintenance or improvement of the health, growth, production or working capacity of an animal, use any vaccine, serum, toxin, anti-toxin, antigen or other biological product without a permit. Violation of these provisions will lead to criminal penalties. The Animal Health Act No. 7, 24 July 2002, provides for measures to promote animal health and to control animal diseases; to assign executive authority as to certain provisions of this Act to provinces; to regulate the importation and exportation of animals; and to establish animal health schemes.

The Genetically Modified Organisms (GMO) Bill establishes regulations concerning the contained use and control of organisms that can pose as a hazard to the environment. The GMO Bill was enacted to assess the potential risk from activities involving the use of GMO's and to provide criteria data. The

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Executive Council maintains registration of all facilities involved in contained use and requires notification for change in types of activities at facilities. The Executive Council also promotes the Republic's cooperation with other countries; it may inform any other country of accidents pertaining to the use of genetically modified organisms that may impact the country's environment..

The GMO Bill provides for the approval of applications and requires immediate notifications of any accidents involving a genetically modified organism. The GMO Bill authorizes inspectors, who are appointed by the Minister of Agriculture. The Minister makes the regulations regarding contained use of a genetically modified organism, laboratory requirements, standards of facilities and waste management. In order to conduct investigations pursuant to the provisions of the GMO Bill, a judge can issue a warrant to the inspector if information on oath shows reason. Any person convicted of an offense for violating the provisions of the GMO Bill is liable to a fine or imprisonment.

### **Preventing Terrorists From Obtaining Weapons**

South Africa is committed to preventing terrorists from obtaining weapons. In 1993, South Africa passed the Non-Proliferation of Weapons of Mass Destruction Act (Act No. 87 of 1993). The Act gives the South African Council for Non-Proliferation the right to "control export, import, transit and re-export of South African dual-use technology, material and equipment which could be used in the production of weapons of mass destruction and other advanced weapons systems."

The National Conventional Arms Control Committee (NCACC) is the implementing body for South Africa's policy on conventional arms control and the control services. The NCACC is organized to handle arms control through four levels of responsibility: "(1) An initial permit application technical processing level, which is done by the Directorate for Conventional Arms Control (DCAC) of the South African National Defence Force; (2) A multi-departmental review and recommendation process on permit applications; (3) This process is performed by the Scrutiny Committee consisting of senior representatives of the relevant Government Departments; and (4) A control, policy and decision-making authority, which is performed by the NCACC." In addition, a bill is currently at the drafting stages (National Conventional Arms Control (NCACC) Bill) that would detail the NCACC's organization, including control and inspection functions, and includes principles to be considered when granting applications .

The Armaments Development and Production Act, 1968 (Act No. 57 of 1968) provides that "no armaments (conventional arms) shall be marked, exported, imported, conveyed, developed or manufactured except under the authority of and according to the conditions stated in a permit issued by the Minister of Defence or by a person authorised by him." The Arms and Ammunition Act, 1969 (Act No. 75 of 1969) prohibits import, export and manufacture of armaments without authorization; violation of these prohibitions is subject to up to 25 years imprisonment.

As of April 2002, South Africa was in the process of signing and ratifying two agreements on weapons control: (1) the Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) region (in process of ratification); and (2) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention against Trans National Organized Crime (in process of signing).

### **Preventing, Suppressing and Criminalizing the Financing of Terrorism**

South Africa has several legislative provisions to help prevent and suppress terrorism financing. The Financial Intelligence Centre Act (Act No. 38 of 2001) "sets up an anti-money laundering regime that encourages voluntary compliance and self-regulation by institutions which otherwise may be exploited for money laundering purposes." It requires reporting of suspicious transactions and cash transactions over a specified amount. The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) contains provisions to freeze and confiscate property and forfeit it to the state if acquired through criminal activities. Freezing of property can be done through two methods: (1) a restraint

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order filed after criminal proceedings have begun, or (2) a preservation of property order, filed before proceedings have been instituted. This Act also compels businesses to report transactions involving funds or assets associated with criminal activities (including financing of future terrorist activities).

In November 2001, South Africa signed the International Convention for the Suppression of the Financing of Terrorism. The Anti-Terrorism Act (2002) implements that Convention and criminalizes providing material support to terrorists. Material Support has been defined broadly to mean “funds, or financing, financial services, lodging, training, safe houses, false documentation, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, funds or financing.” The Act does require that those lending material support have knowledge or intent that their support or resources will be used to commit a terrorist act or conceal such an act. Some of South Africa’s legal mechanisms to control the financing of terrorism were not drafted to specifically apply to terrorist activities; however, they are “applicable to transactions involving funds or assets associated with terrorism or terrorist groups in certain circumstances.”

### **Information Exchange**

South Africa has taken steps to ensure cooperation between different governmental agencies. An Inter-Departmental Counter-Terrorism Working Group monitors and oversees the implementation of U.N. Security Council Resolution No. 1373 (2001). The Group is chaired by the Department of Foreign Affairs. A National Joint Operational Committee (NATJOC) was created to coordinate all operational activities and intelligence related to counter-terrorism, as well as to assist in implementing Resolution No. 1373. Relevant intelligence must be continually forwarded to the “National Intelligence Coordinating Committee (NICOC) and the Office of the Ministry of Intelligence, for further liaison with parliament, Other Ministries (Foreign Affairs) and the Early Warning Centre at the Union Buildings. A 24-hour Alert Centre at the National Intelligence Agency and an Operational Centre at the South African Secret Service ensure continuous links in this regard.” An Inter-Departmental Working Group has been established to focus on unregulated foreign military assistance. Finally, “in order to enhance joint actions between the Intelligence Community of South Africa and the Department of Home Affairs, the Border Control Operational Coordinating Committee (BCOCC) has been created, which will implement preventative measures at the borders.”

### **International Cooperation**

South Africa has signed most of the international and regional conventions relating to terrorism; however, South Africa is still working to ratify many of these conventions. The Anti-Terrorism Act, 2002, discussed above, was drafted to ratify and implement the International Convention for the Suppression of Terrorist Financing, signed in November of 2001. The Anti-Terrorism Act may also ratify several other conventions. The Civil Aviation Offences Act, 1972 (Act No. 10 of 1972) ratifies The Hague, Tokyo and Montreal International Security Conventions. South Africa has also signed (but not yet ratified ) the Transactional Organised Crime Convention (the Palermo Convention).

South Africa is a member of several regional organizations and agreements targeting terrorism. The Republic signed the Convention of the Organization of African Unity on the Suppression and Combating of Terrorism in July of 1999. Representatives of South Africa attended the African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism (held in Algiers, 11-14 September 2002). Bilateral Agreements have been created between Common Monetary Area Member States (South Africa, Lesotho, Swaziland, and Namibia) regarding financial policy measures implemented in the Southern African Region, including those related to prevention of terrorism. South Africa is a signatory to the Agreement on Mutual Cooperation in the Field of Crime Combating , an agreement between 12 African nations providing for cross border investigations and operations. These nations include Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia, Zimbabwe and Tanzania. In addition, South Africa is also a member of the Southern African Police Chiefs Cooperation Organisation (SARPCCO), a regional

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organization where anti-terrorism, firearms, explosives, and other issues are discussed.

South Africa is also a party to several agreements aimed at improving legal assistance between nations. In 1996, South Africa implemented the International Cooperation in Criminal Matters Act, 1996 (Act No. 75 of 1996), which “facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime” between South Africa and foreign States. The Republic is also a party to many Mutual Legal Assistance, Extradition, and Police Cooperation Agreements.

### **BIBLIOGRAPHY OF SOUTH AFRICAN LEGISLATION**

#### **Criminalizing Terrorist Acts**

1. Anti-Terrorism Bill (2002), Chapter 1: Section 12 (Hoaxes involving noxious substances or things or explosives or other lethal devices or weapons of mass destruction), Section 13 (Use of weapons of mass destruction); Clause 3(3) (participating in or contributing to the activities of a terrorist organisation includes providing, receiving or recruiting a person for training”).
2. Internal Security Act, 1982 (Act No. 74 of 1982) (criminalizes offense of “terrorism”).
3. Riotous Assembly Act, 1956 (Act No. 17 of 1956) (provides for prosecution of ancillary crimes such as attempt, conspiracy, and incitement).
4. Intimidation Act, 1982 (Act No. 72 of 1982).
5. State of Emergency Act, 1997 (Act No. 64 of 1997).
6. Explosives Act, 1956 (Act No. 26 of 1956).
7. Judicial Matters Amendment Act, 1998 (Act No. 34 of 1998) (paramilitary training).
8. Criminal Procedure Act, 1977 (Act No. 51 of 1977).
9. Merchant Shipping Act, 1957 (Act No. 51 of 1957).
10. Nuclear Energy Act, 1999 (Act No. 46 of 1999).
11. Defence Act, 1957 (Act No. 44 of 1957).
12. National Key Points Act, 1980 (Act No. 102 of 1980).
13. Protection of Information Act, 1982 (Act No. 84 of 1982).
14. Civilian Protection Act, 1977 (Act No. 67 of 1977).
15. Regulation of Gatherings Act, 1993 (Act No. 205 of 1993).
16. Films and Publications Act, 1996 (Act No. 65 of 1996) (hate and war speech).
17. Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992).
18. Second Criminal Law Amendment Act, 1992 (Act No. 126 of 1992) (“prohibits the organising, training, equipping or arming of any organisation if the purpose of that organisation is to usurp some or all of the functions of either the South African Police Service or the South African National Defence”). (p.17 SA1)

#### **Laws Pertaining To Biology**

1. Non-Proliferation of Weapons of Mass Destruction Act No. 87 of 1993 (“Act No. 87”); (amended, No. 50, 4 October 1995, and No. 1759, 1 November 1996).
2. Declaration of Certain Goods as Controlled Goods and the Determination of Control Measures Applicable to Such Goods, No. R. 1025, as amended 9 October 2001
3. Animal Diseases Act No. 35, 20 March 1984
4. Genetically Modified Organisms Bill (“GMO Bill”)
5. Medicines and Related Substances Amendment Bill 2002
6. The Agricultural Pest Act No. 36, 1983 (“Act No. 36”)
7. Plant Breeder’s Right Act No. 15
8. Regulations Relating to Plant Breeder’s Rights No. 1186
9. Environment Conservation Act No. 73
10. Foodstuff Cosmetics and Disinfectants Act No. 54
11. The National Environmental management Act No. 107
12. Hazardous Substances Act No. 15, 1973

#### **Preventing Terrorists From Obtaining Weapons**

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1. Protocol on the Control of Firearms, Ammunition and other Related Materials in the Southern African Development Community (SADC) region (in process of ratification).
2. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition supplementing the United Nations Convention against Trans National Organized Crime (in process of signing).
3. National Conventional Arms Control (NCACC) Bill (draft) (details NCACC's organization, control and inspection functions, including principles for granting permit applications).
4. Firearms Control Act, 2000 (Act No. 60 of 2000) (regulations for possession of firearms).
5. Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998) (prohibits persons from rendering foreign military assistance to anyone without authorization by the National Conventional Arms Control Committee).
6. Armaments Development and Production Act, 1968 (Act No. 57 of 1968) ("no armaments (conventional arms) shall be marked, exported, imported, conveyed, developed or manufactured except under the authority of and according to the conditions stated in a permit issued by the Minister of Defence or by a person authorised by him").
7. Arms and Ammunition Act, 1969 (Act No. 75 of 1969) (prohibits import, export and manufacture of armaments without authorization; violation of these prohibitions subject to up to 25 years imprisonment).

### **Preventing, Suppressing and Criminalizing the Financing of Terrorism**

1. International Convention for the Suppression of the Financing of Terrorism (signed 10 November 2001; still undergoing ratification).
2. Financial Intelligence Centre Act (Act No. 38 of 2001) (reporting of suspicious and unusual transactions, money laundering controls).
3. Exchange Control Regulations 1961 (Treasury controls South Africa's currency reserves).
4. Regulations 3(1)(d) & 10(1)(c) (outlaws unauthorized financial transactions, *hawala*);
5. Regulation 22 (failure to comply with Exchange Control Regulations is a criminal offense, with a penalty not exceeding 5 years imprisonment and /or R250,000.00);
6. Currency and Exchange Act, 1933 (Act No. 9 of 1933).
7. Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998) (provides for freezing of property and its confiscation or forfeiture to the state if acquired through criminal activities).

### **International Cooperation**

1. Convention of the Organization of African Unity on the Suppression and Combating of Terrorism (signed 12 July 1999).
2. International Cooperation in Criminal Matters Act, 1996 (Act No. 75 of 1996) ("Act facilitates the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime" between South Africa and foreign States).
3. Southern African Police Chiefs Cooperation Organisation (SARPCCO) (regional organization where anti-terrorism, firearms, explosives, and other issues are discussed).
4. African Union High-Level Inter-Governmental Meeting on the Prevention and Combating of Terrorism (Algiers, 11-14 September 2002).
5. Commonwealth Model Legislative Provisions on Measures to Combat Terrorism (discussed at regional workshop in Gaborone, hosted by Commonwealth Secretariat November 4-8, 2002).
6. Bilateral Agreements with the Common Monetary Area Member States (Agreements between South Africa, Lesotho, Swaziland, and Namibia re: financial policy measures implemented in the Southern African Region).
7. Agreement on Mutual Cooperation in the Field of Crime Combating (agreement between 12 African nations providing for cross border investigations and operations).
8. Civil Aviation Offences Act, 1972 (Act No. 10 of 1972) (ratifies The Hague, Tokyo and Montreal International Security Conventions).
9. Extradition Act of 1962, Section 11 ("request for extradition cannot be refused on the basis of a claim that the offense, for which extradition is sought, was committed for political reasons").
10. Transactional Organised Crime Convention (the Palermo Convention), December 2000 (still

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undergoing the ratification process).