

REPUBLIC OF SOUTH AFRICA

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**PROTECTION OF  
CONSTITUTIONAL DEMOCRACY  
AGAINST TERRORIST AND  
RELATED ACTIVITIES BILL**

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*(As presented by the Portfolio Committee on Safety and Security (National Assembly), after  
consideration of Anti-Terrorism Bill [B 12 — 2003])*

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(MINISTER FOR SAFETY AND SECURITY)

**[B 12B—2003 Reprint]**

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# BILL

**To provide for measures to prevent and combat terrorist and related activities; to provide for an offence of terrorism and other offences associated or connected with terrorist activities; to provide for Convention offences; to give effect to international instruments dealing with terrorist and related activities; to provide for a mechanism to comply with United Nations Security Council Resolutions, which are binding on member States, in respect of terrorist and related activities; to provide for measures to prevent and combat the financing of terrorist and related activities; to provide for investigative measures in respect of terrorist and related activities; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** the Republic of South Africa is a constitutional democracy where fundamental human rights, such as the right to life and free political activity, are constitutionally enshrined;

**AND WHEREAS** terrorist and related activities, in whichever form, are intended to achieve political and other aims in a violent or otherwise unconstitutional manner, and thereby undermine democratic rights and values and the Constitution;

**AND WHEREAS** terrorist and related activities are an international problem, which can only be effectively addressed by means of international co-operation;

**AND WHEREAS** the Government of the Republic of South Africa has committed itself in international fora such as the United Nations, the African Union and the Non-Aligned Movement, to the prevention and combating of terrorist and related activities;

**AND WHEREAS** the United Nations Security Council Resolution 1373/2001, which is binding on all Member States of the United Nations, as well as the *Convention for the Prevention and Combating of Terrorism*, adopted by the Organisation of African Unity, requires Member States to become Party to instruments, dealing with terrorist and related activities, as soon as possible;

**AND WHEREAS** the Republic of South Africa has already become Party to the following instruments of the United Nations:

- (a) The *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963. The Republic became a Party thereto, by accession on 26 May 1972;
- (b) the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970. The Republic became a Party thereto by ratification on 30 May 1972;
- (c) the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, concluded at Montreal on 23 September 1971. The Republic became a Party thereto by ratification on 30 May 1972;
- (d) the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents*, adopted by the General

- Assembly of the United Nations on 14 December 1973. The Republic became a Party thereto by accession on 23 September 2003;
- (e) the *International Convention Against the Taking of Hostages*, adopted by the General Assembly of the United Nations on 17 December 1979. The Republic became a Party thereto by accession on 23 September 2003;
  - (f) the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, adopted at Montreal on 24 February 1988. The Republic became a Party thereto by accession on 21 September 1988;
  - (g) the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, signed at Montreal on 1 March 1991. The Republic became a Party thereto by accession on 1 December 1999;
  - (h) the *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on 15 December 1997. The Republic became a Party thereto by ratification on 1 May 2003; and
  - (i) the *International Convention on the Suppression of the Financing of Terrorism*, adopted by the United Nations General Assembly on 9 December 1999. The Republic became a Party thereto by ratification on 1 May 2003;

**AND WHEREAS** the Republic of South Africa desires to become a Party to the following remaining instruments of the United Nations, not yet ratified or acceded to by the Republic:

- (a) *The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, adopted at Rome on 10 March 1988;
- (b) *the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf*, adopted at Rome on 10 March 1988; and
- (c) *the Convention on the Physical Protection of Nuclear Material*, adopted at Vienna on 26 October 1979, and signed on behalf of the Republic on 18 May 1981;

**AND WHEREAS** the Republic of South Africa has become a Party by ratification, on 7 November 2002, to the *Convention on the Prevention and Combating of Terrorism*, adopted by the Organisation of African Unity at Algiers on 14 July 1999;

**AND WHEREAS** the United Nations Security Council from time to time passes resolutions under Chapter VII of the United Nations Charter, requiring Member States to combat terrorist and related activities, including taking effective measures to prevent and combat the financing of terrorist and related activities, and the freezing of funds, assets or economic resources of persons who commit terrorist and related activities;

**AND WHEREAS** our national laws do not meet all the international requirements relating to the prevention and combating of terrorist and related activities;

**AND WHEREAS** international law, and in particular international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter recognizes acts committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, as being excluded from terrorist activities;

**AND REALISING** the importance to enact appropriate domestic legislation necessary to implement the provisions of relevant international instruments dealing with terrorist and related activities, to ensure that the jurisdiction of the courts of the Republic of South Africa enables them to bring to trial the perpetrators of terrorist and related activities; and to co-operate with and provide support and assistance to other States and relevant international and regional organisations to that end;

**AND MINDFUL** that the Republic, has since 1994, become a legitimate member of the community of nations and is committed to bringing to justice persons who commit such terrorist and related activities; and to carrying out its obligations in terms of the international instruments dealing with terrorist and related activities,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,  
as follows:—

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**SCHEDULE****CHAPTER 1****DEFINITIONS AND INTERPRETATION****Definitions**

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|---|----|
| 1. (1) In this Act, unless the context indicates otherwise —  | 25 |
| (i) “ <b>appropriate government body</b> ”, with reference to section 15, means an appropriate government body as defined in section 1 of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996);  |    |
| (ii) “ <b>Convention offence</b> ” means—   |    |
| (a) an offence, created in fulfilment of the Republic’s international obligations in terms of instruments dealing with terrorist and related activities, referred to in Part 2 of Chapter 2;  | 30 |
| (b) an offence referred to in section 56(1)(h) of the Nuclear Energy Act, 1999 (Act No. 46 of 1999); or   |    |
| (c) an offence referred to in section 2(1) or (2) of the Civil Aviation Offences Act, 1972 (Act No.10 of 1972);   | 35 |
| (iii) “ <b>Director of Public Prosecutions</b> ” means a Director of Public Prosecutions appointed under section 13(1) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);  |    |
| (iv) “ <b>entity</b> ”, with reference to sections 3, 4, and 14 (in so far as it relates to the aforementioned sections), 22, 23 and 25, means a natural person, or a group of two or more natural persons (whether acting in the furtherance of a common purpose or conspiracy or not), or a syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation, or any incorporated association or organisation or other legal person, and includes, where | 40 |
|   | 45 |

- appropriate, a cell, unit, section, sub-group or branch thereof or any combination thereof;
- (v) **“explosive”**, with reference to the definition of **“explosive or other lethal device”** in this section, and sections 5 and 13, means an explosive referred to in section 1 of the Explosives Act, 2003 (Act No. 15 of 2003); 5
- (vi) **“explosive or other lethal device”**, with reference to sections 5 and 13, means—
- (a) an explosive or incendiary weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or material damage; 10
- (b) a weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material; or 15
- (c) any weapon of mass destruction, as defined in section 1 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993);
- (vii) **“fixed platform”**, with reference to sections 6 and 15, means an artificial island, installation, or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for economic purposes, but does not include a ship; 20
- (viii) **“infrastructure facility”**, with reference to the definition of **“terrorist activity”** in this section and section 5, means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications; 25
- (ix) **“instruments dealing with terrorist and related activities”**, means any of the following instruments:
- (a) *The Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963; 30
- (b) *the Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970;
- (c) *the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, concluded at Montreal on 23 September 1971;
- (d) *the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents*, adopted by the General Assembly of the United Nations on 14 December 1973; 35
- (e) *the International Convention Against the Taking of Hostages*, adopted by the General Assembly of the United Nations on 17 December 1979;
- (f) *the Convention on the Physical Protection of Nuclear Material*, adopted at Vienna on 26 October 1979; 40
- (g) *the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, adopted at Montreal on 24 February 1988;
- (h) *the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 1988, adopted at Rome on 10 March 1988; 45
- (i) *the Protocol for the Suppression of Unlawful Acts against the Safety of fixed Platforms on the Continental Shelf*, 1988, adopted at Rome on 10 March 1988;
- (j) *the Convention on the Marking of Plastic Explosives for the Purpose of Detection*, signed at Montreal on 1 March 1991; 50
- (k) *the International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on 15 December 1997;
- (l) *the Convention on the Prevention and Combating of Terrorism*, adopted by the Organisation of African Unity at Algiers on 14 July 1999; or 55
- (m) *the International Convention on the Suppression of the Financing of Terrorism*, adopted by the General Assembly of the United Nations on 9 December 1999;
- (x) **“international organisation”**, with reference to the definitions of **“inter-governmental organisation”**, **“internationally protected person”** and **“terrorist activity”** in this section, means an international organisation of states, and includes an intergovernmental organisation; 60

- (xi) **“intergovernmental organisation”**, with reference to the definitions of **“international organization”**, **“internationally protected person”**, **“State or government facility”** and **“terrorist activity”** in this section, and section 7, means an international organisation established by the governments of states; 5
- (xii) **“internationally protected person”**, with reference to section 8, means—
- (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in the Republic, as well as members of his or her family accompanying him or her; or 10
- (b) any representative or official of a State or any official or other agent of an international organisation or intergovernmental organisation or of an intergovernmental character who, at the time when and in the place where a crime against him or her or his or her official premises, his or her private accommodation or his or her means of transport is committed, is entitled, pursuant to international law to special protection from any attack on his or her person, freedom or dignity, as well as members of his or her family forming part of his or her household; 15
- (xiii) **“judge”** means a Judge of the High Court; 20
- (xiv) **“Minister”** means the Minister for Safety and Security;
- (xv) **“National Commissioner”** means the National Commissioner of the South African Police Service appointed in terms of section 207(1) of the Constitution;
- (xvi) **“National Director”** means the National Director of Public Prosecutions appointed in terms of section 179(1) of the Constitution; 25
- (xvii) **“place of public use”**, with reference to section 5, includes those parts of any building, land, street, waterway or other location that are at any time accessible or open to members of the public, whether continuously, periodically or occasionally; 30
- (xviii) **“police official”** means a **“member”** as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), and with reference to section 24, includes a member of the South African National Defence Force employed in co-operation with the South African Police Service in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and maintenance and preservation of law and order within the Republic, as contemplated in section 19(1) of the Defence Act, 2002 (Act No. 42 of 2002); 35
- (xix) **“property”** means real or personal property of any description, and whether tangible or intangible and includes—
- (a) an interest in any real or personal property; 40
- (b) funds, cash, assets or any other property, tangible or intangible, however acquired;
- (c) any type of financial resource, including cash or the currency of any State, bank credits, traveller’s cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form; or 45
- (d) any letter or document conferring or containing any evidence of rights in respect of any security;
- (xx) **“public transportation system”**, with reference to section 5, means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo; 50
- (xxi) **“ship”**, with reference to the definition of **“fixed platform”** in this section and section 10, means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles or other floating craft, but does not include—
- (a) a warship;
- (b) a ship owned or operated by a State; or
- (c) a ship which has been withdrawn from navigation or laid up;
- (xxii) **“specified offence”**, with reference to section 4, 14 (in so far as it relates to section 4), and 23, means— 60

- (a) the offence of terrorism referred to in section 2, an offence associated or connected with terrorist activities referred to in section 3, a Convention offence, or an offence referred to in section 13 or 14 (in so far as it relates to the aforementioned sections); or
- (b) any activity outside the Republic which constitutes an offence under the law of another state and which would have constituted an offence referred to in paragraph (a), had that activity taken place in the Republic;
- (xxiii) **“State or government facility”**, with reference to section 5, includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity of the Republic or by employees or officials of an intergovernmental organisation in connection with their official duties;
- (xxiv) **“terrorist activity”**, with reference to this section and sections 2, 3 and 17(2), means—
- (a) any act committed in or outside the Republic, which—
- (i) involves the systematic, repeated or arbitrary use of violence by any means or method;
  - (ii) involves the systematic, repeated or arbitrary release into the environment or any part of it or distributing or exposing the public or any part of it to—
    - (aa) any dangerous, hazardous, radioactive or harmful substance or organism;
    - (bb) any toxic chemical; or
    - (cc) any microbial or other biological agent or toxin;
  - (iii) endangers the life, physical integrity or physical freedom of, or violates the physical freedom of, or causes serious bodily injury to or the death of, any person, or any number or group of persons;
  - (iv) causes serious risk to the health or safety of the public or any segment of the public;
  - (v) causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultural heritage, whether public or private;
  - (vi) is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to—
    - (aa) a system used for, or by, an electronic system, including an information system;
    - (bb) a telecommunication service or system;
    - (cc) a banking or financial service or financial system;
    - (dd) a system used for the delivery of essential government services;
    - (ee) a system used for, or by, an essential public utility or transport provider;
    - (ff) an essential infrastructure facility; or
    - (gg) any essential emergency services, such as police, medical or civil defense services;
  - (vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; or
  - (viii) creates a serious public emergency situation or a general insurrection,
- whether the harm contemplated in paragraphs (a)(i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to (viii) was committed by way of any means or method; and
- (b) which is intended, or by its nature and context, can reasonably be regarded as being intended, in whole or in part, directly or indirectly, to—
- (i) threaten the unity and territorial integrity of a State;
  - (ii) intimidate, or to induce or cause feelings of insecurity within, the public, or a segment of the public, with regard to its security,

- including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population; or
- (iii) unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a segment of the public, or a domestic or an international body, organisation or intergovernmental organisation or institution, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles, whether the public or the person, government, body, or organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; and
- (c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological or philosophical motive, objective, cause or undertaking;
- (xxv) **“terrorist and related activities”** means any act or activity related to or associated or connected with the commission of the offence of terrorism, or an offence associated or connected with a terrorist activity, or a Convention offence, or an offence referred to in sections 11 to 14.
- (2) For purposes of this Act, **“act”** includes **“omission”**.
- (3) For purposes of paragraphs (a)(vi) and (vii) of the definition of **“terrorist activity”**, any act which is committed in pursuance of any lawful advocacy, protest, dissent or industrial action and does not involve action resulting in the harm contemplated in paragraphs (a)(i) to (vi) of that definition, shall not be regarded as a terrorist activity within the meaning of that definition.
- (4) Notwithstanding any provision of this Act or any other law, any act committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, in accordance with the principles of international law, especially the international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter, shall not, for any reason, including for purposes of prosecution or extradition, be considered as a terrorist activity, as defined in subsection (1).
- (5) Notwithstanding any provision in any other law, and subject to subsection (4), a political, philosophical, ideological, racial, ethnic, religious or any similar motive, shall not be considered for any reason, including for purposes of prosecution or extradition, to be a justifiable defense in respect of an offence of which the definition of terrorist activity forms an integral part.
- (6) For the purposes of this Act a person has knowledge of a fact if—
- (a) the person has actual knowledge of that fact;
  - (b) the person fails to obtain information to confirm or refute the existence of that fact; or
  - (c) the person believes that there is a reasonable possibility of the existence of that fact.
- (7) For the purposes of this Act a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both—
- (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
  - (b) the general knowledge, skill, training and experience that he or she in fact has.

## CHAPTER 2

### OFFENCES AND PENALTIES

#### PART 1

#### Offence of terrorism and offences associated or connected with terrorist activities

##### Offence of terrorism

2. (1) Any person who engages in a terrorist activity is guilty of the offence of terrorism.

(2) For purposes of subsection (1) and section 3 the expression “**engages in a terrorist activity**”, includes—

- (a) the commission, performance or carrying out of;
- (b) the facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of; 5
- (c) the performance of an act in preparation for or planning of; or
- (d) instructing, directly or indirectly, the—
  - (i) commission, performance, carrying out of;
  - (ii) facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of; or 10
  - (iii) performance of an act in preparation for or planning of,

a terrorist activity, and the expressions “**to engage in a terrorist activity**” and “**engagement in a terrorist activity**”, shall be construed accordingly.

### **Offences associated or connected with terrorist activities**

3. (1) Any person who— 15

- (a) does anything which will, or is likely to, enhance the ability of any person or entity to engage in a terrorist activity, including to provide or offering to provide a skill or an expertise;
- (b) enters or remains in any country; or
- (c) makes himself or herself available, 20

for the benefit of, at the direction of, or in association with any person or entity engaging in a terrorist activity, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of enhancing the ability of such person or entity to engage in a terrorist activity, is guilty of the offence associated with a terrorist activity. 25

(2) Any person who— 25

- (a) provides or offers to provide any weapon to any other person for use by or for the benefit of, a person or entity;
- (b) solicits support for or gives support to a person or entity;
- (c) provides, receives or participates in training or instruction, or recruits a person or entity to receive training or instruction; 30
- (d) recruits any person or entity;
- (e) collects or makes a document; or
- (f) possesses a thing,

connected with the engagement in a terrorist activity, and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected, is guilty of an offence connected with terrorist activities. 35

## **PART 2**

### **Convention Offences**

#### **Offences associated or connected with financing of specified offences** 40

4. (1) Any person who, directly or indirectly, in whole or in part, and by any means or method—

- (a) acquires property;
- (b) collects property;
- (c) uses property; 45
- (d) possesses property;
- (e) owns property;
- (f) provides or makes available, or invites a person to provide or make available property;
- (g) provides or makes available, or invites a person to provide or make available any financial or other service; 50
- (h) provides or makes available, or invites a person to provide or make available economic support; or
- (i) facilitates the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support, 55

intending that the property, financial or other service or economic support, as the case may be, be used, or while such person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part—

- (i) to commit or facilitate the commission of a specified offence; 5
- (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence; or
- (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25, 10

is guilty of an offence.

(2) Any person who, directly or indirectly, in whole or in part, and by any means or method—

- (a) deals with, enters into or facilitates any transaction or performs any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided— 15
  - (i) to commit or facilitate the commission of a specified offence;
  - (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence; or 20
  - (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25; or

- (b) provides financial or other services in respect of property referred to in paragraph (a), 25

is guilty of an offence.

(3) Any person who knows or ought reasonably to have known or suspected that property is property referred to in subsection (2)(a) and enters into, or becomes concerned in, an arrangement which in any way has or is likely to have the effect of—

- (a) facilitating the retention or control of such property by or on behalf of— 30
  - (i) an entity which commits or attempts to commit or facilitates the commission of a specified offence; or
  - (ii) a specific entity identified in a notice issued by the President under section 25;

- (b) converting such property; 35

- (c) concealing or disguising the nature, source, location, disposition or movement of such property, the ownership thereof or any interest anyone may have therein;

- (d) removing such property from a jurisdiction; or

- (e) transferring such property to a nominee, 40

is guilty of an offence.

#### **Offences relating to explosive or other lethal devices**

5. Any person who intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transport facility, a public transportation system, or an infrastructure facility, with the purpose, amongst others, of causing— 45

- (a) death or serious bodily injury; or
- (b) extensive damage to, or destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss,

is guilty of an offence relating to explosive or other lethal devices. 50

#### **Offences relating to hijacking, destroying or endangering safety of a fixed platform**

6. Any person who intentionally—

- (a) seizes or exercises control over a fixed platform by force or any other form of intimidation;
- (b) performs an act of violence against a person on board a fixed platform, which act is likely to endanger the safety of that fixed platform; 55
- (c) (i) destroys such a fixed platform; or
- (ii) causes damage to it, which damage is likely to endanger the safety of that fixed platform;

- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance, which is likely to destroy that fixed platform or likely to endanger its safety; or
  - (e) injures or kills any person in connection with the commission of any of the acts referred to in paragraphs (a) to (d),
- is guilty of an offence relating to the hijacking, destroying or endangering of a fixed platform.

#### **Offences relating to taking a hostage**

7. Any person who intentionally—
- (a) seizes or detains; and
  - (b) threatens to kill, to injure or to continue to detain,
- any other person (hereinafter referred to as a hostage), in order to compel a third party, namely a State, an intergovernmental organisation, a natural or juridical person, or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, is guilty of an offence of taking a hostage.

#### **Offences relating to causing harm to internationally protected persons**

8. Any person who, knowing that a person is an internationally protected person, intentionally—
- (a) murders or kidnaps or otherwise violently attacks the person or liberty of that person; or
  - (b) executes a violent attack upon the official premises, the private accommodation or the means of transport of that person, which attack is likely to endanger his or her person or liberty,
- is guilty of an offence relating to causing harm to an internationally protected person.

#### **Offences relating to hijacking an aircraft**

9. Any person who intentionally, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of an aircraft and with the purpose of—
- (a) causing any person on board the aircraft to be detained against his or her will;
  - (b) causing any person on board the aircraft to be transported against his or her will to any place other than the next scheduled place of landing of the aircraft;
  - (c) holding any person on board the aircraft for ransom or to service against his or her will; or
  - (d) causing that aircraft to deviate from its flight plan,
- is guilty of an offence of hijacking an aircraft.

#### **Offences relating to hijacking a ship or endangering safety of maritime navigation**

10. Any person who intentionally—
- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;
  - (b) performs any act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;
  - (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;
  - (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or causes damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;
  - (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such acts are likely to endanger the safe navigation of a ship;
  - (f) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship; or
  - (g) injures or kills a person, in connection with the commission of any of the acts set forth in paragraphs (a) to (f),
- is guilty of an offence relating to hijacking a ship or endangering the safety of maritime navigation.

**PART 3****Other offences****Offences relating to harbouring or concealment of persons committing specified offences**

11. Any person who harbours or conceals any person, whom he or she knows, or ought reasonably to have known or suspected, to be a person who has committed a specified offence, as referred to in paragraph (a) of the definition of “**specified offence**”, or who is likely to commit such an offence, is guilty of an offence. 5

**Duty to report presence of person suspected of intending to commit or having committed an offence and failure to so report** 10

12. (1) Any person who—

(a) has reason to suspect that any other person intends to commit or has committed an offence referred to in this Chapter; or

(b) is aware of the presence at any place of any other person who is so suspected of intending to commit or having committed such an offence, 15

must report such suspicion or presence, as the case may be, or cause such suspicion or presence to be reported to any police official.

(2) Any person who fails to comply with the provisions of subsection (1)(a) or (b), is guilty of an offence.

(3) Upon receipt of a report referred to in subsection (1), the police official involved, must take down the report in the manner directed by the National Commissioner, and forthwith provide the person who made the report with an acknowledgement of receipt of such report. 20

(4) (a) The National Commissioner must within three months of the commencement of this Act, publish the direction contemplated in subsection (3) in the *Gazette*. 25

(b) Any direction issued under subsection (3) must be tabled in Parliament.

**Offences relating to hoaxes**

13. (1) (a) Any person who, with the intention of inducing in a person anywhere in the world a false belief that a substance, thing or device is, or contains, or is likely to be, or contains a noxious substance or thing or an explosive or other lethal device— 30

(i) places that substance, thing or device in any place; or

(ii) sends that substance, thing or device from one place to another, by post, rail or any other means whatsoever,

is guilty of an offence.

(b) Any person who, directly or indirectly, communicates any information, which he or she knows, or ought reasonably to have known or suspected, or believes to be false, with the intention of inducing in a person anywhere in the world a belief that a noxious substance or thing or an explosive or other lethal device is likely to be present (whether at the time the information is communicated or later) in or at any place, is guilty of an offence. 35 40

(2) For the purposes of this section “**substance**” includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production).

**Threat, attempt, conspiracy and inducing another person to commit offence**

14. Any person who— 45

(a) threatens;

(b) attempts;

(c) conspires with any other person; or

(d) aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person, 50

to commit an offence in terms of this Chapter, is guilty of an offence.

## CHAPTER 3

## PROVISIONS RELATING TO OFFENCES AND PENALTIES

## PART 1

*Provisions relating to offences***Jurisdiction in respect of offences**

5

15. (1) A court of the Republic has jurisdiction in respect of any specified offence as defined in paragraph (a) of the definition of “**specified offence**”, if—

- (a) the accused was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic; or 10
- (b) the offence was committed—
  - (i) in the territory of the Republic;
  - (ii) on board a vessel, a ship, an off-shore installation, or a fixed platform, or an aircraft registered or required to be registered in the Republic at the time the offence was committed; 15
  - (iii) by a citizen of the Republic or a person ordinarily resident in the Republic;
  - (iv) against the Republic, a citizen of the Republic or a person ordinarily resident in the Republic;
  - (v) on board an aircraft in respect of which the operator is licensed in terms of the Air Services Licensing Act, 1990 (Act No. 115 of 1990), or the International Air Services Act, 1993 (Act No. 60 of 1993); 20
  - (vi) against a government facility of the Republic abroad, including an embassy or other diplomatic or consular premises, or any other property of the Republic; 25
  - (vii) when during its commission, a national of the Republic is seized, threatened, injured or killed;
  - (viii) in an attempt to compel the Republic to do or to abstain or to refrain from doing any act; or
  - (c) the evidence reveals any other basis recognised by law. 30

(2) Any act alleged to constitute an offence under this Act and which is committed outside the Republic by a person other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in the Republic if that—

- (a) act affects or is intended to affect a public body, any person or business in the Republic; 35
- (b) that person is found to be in South Africa; and
- (c) that person is for one or other reason not extradited by South Africa or if there is no application to extradite that person.

(3) Any offence committed in a country outside the Republic as contemplated in subsection (1) or (2), is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed— 40

- (a) at the place where the accused is ordinarily resident;
- (b) at the accused person’s principal place of business.

(4) Where a person is charged with conspiracy or incitement to commit an offence or as an accessory after that offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator, inciter or accessory acted or, in case of an omission, should have acted. 45

(5) Whenever the National Commissioner receives information from an appropriate government body of a foreign State that a person who is alleged to have committed or is convicted of or is sentenced in respect of any Convention offence in respect of which— 50

- (a) a court in the Republic has jurisdiction as referred to in subsection (1); or
- (b) any court in a foreign State may have jurisdiction,

may be present in the Republic, the National Commissioner must cause such measures to be taken as he or she may deem necessary to investigate the matter. 55

(6) Where it appears on reasonable grounds from the investigation referred to in subsection (5) that extradition or criminal proceedings may be instituted against such

person, that person may be arrested as contemplated in section 40(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), in order to ensure his or her presence at such proceedings.

(7) The National Director must, upon an arrest contemplated in subsection (6), promptly be notified thereof by the police official effecting such arrest. 5

(8) Upon being notified in terms of subsection (7), the National Director must promptly notify any foreign State that might have jurisdiction over the offence in question, either directly or through the Secretary General of the United Nations—

- (a) of the fact that the person is in custody;
- (b) of the circumstances that justify the person's detention; and 10
- (c) whether he or she intends to prosecute the person,

with a view to the surrender of such person to a foreign State for prosecution by that State, should the National Director decline to prosecute.

(9) The provisions of this section must be exercised subject to the provisions of the Extradition Act, 1962 (Act No. 67 of 1962). 15

### **Consent of National Director to institute proceedings and reporting obligations**

16. (1) No prosecution under Chapter 2 may be instituted without the written authority of the National Director.

(2) The National Director must communicate the final outcome of the proceedings promptly to— 20

- (a) the Secretary General of the United Nations, so that he or she may transmit the information to other members of the United Nations, if a person is prosecuted for an offence referred to in section 4, 5, 7 or 8;
- (b) the Council of the International Civil Aviation Organization, if a person is prosecuted for an offence referred to in section 9; or 25
- (c) the Secretary General of the International Maritime Organization, if a person is prosecuted for an offence referred to in section 6 or 10.

### **Evidential matters and exclusions**

17. (1) If in any proceedings in a court of law any question arises as to whether or not any person is an internationally protected person, or is pursuant to international law entitled to special protection from any attack on his or her person, freedom or dignity, a certificate under the hand or issued under the authority of the Director General of the Department of Foreign Affairs, stating any fact relating to that question, is *prima facie* evidence of that fact. 30

(2) A person commits an offence under section 2, 3, 4, 11, 12(2) or 14 (in so far as it relates to the aforementioned sections), notwithstanding whether the terrorist activity occurs or not. 35

(3) A person commits an offence under section 3, 4, 11 or 14 (in so far as it relates to the aforementioned sections), whether or not—

- (a) the actions of the accused actually enhance the ability of any person to commit a specified offence; or 40
- (b) the accused knows or ought reasonably to have known or suspected the specific offence that may be committed.

(4) Nothing in section 4 makes it an offence to provide or collect funds intending that they be used, or knowing or while a person ought reasonably to have known or suspected that they are to be used, for the purpose of advocating democratic government or the protection of human rights. 45

(5) If a person reports the presence of a person referred to in section 11, as soon as possible in accordance with section 12, he or she shall not be liable for prosecution, under section 11. 50

(6) A person charged with committing an offence under section 4 may raise as a defence the fact that he or she had performed any act in connection with the property in question, or allowed or facilitated the performance of any act in connection with that property, solely for the purpose of preserving the value of that property.

(7) A person who acts reasonably in taking or omitting to take measures to comply with section 4(2) shall not be liable in any civil action arising from having taken or omitted to have taken those measures, if the person proves that he or she took all reasonable steps to satisfy himself or herself that the relevant property was not owned, 55

controlled or possessed by, or on behalf of or for the benefit of or at the direction of, an entity referred to in the said section 4(2).

(8) A person is guilty of an offence under section 13(1)(a) or (b), whether or not he or she has any particular person in mind as the person in whom he or she intends to induce the belief in question.

5

## PART 2

### Penalties and matters relating to penalties

#### Penalties

18. (1) Any person who is convicted of an offence referred to in—
- (a) section 2, 5, 6, 7, 8, 9 or 10 is liable— 10
    - (i) in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment for a period up to imprisonment for life;
    - (ii) in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years;
    - (iii) in the case of a sentence to be imposed by any magistrate's court, to a fine 15 or to imprisonment for a period not exceeding five years;
  - (b) section 3 or 11 is liable—
    - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 15 years;
    - (ii) in the case of a sentence to be imposed by any magistrate's court, to any 20 penalty which may lawfully be imposed by that court;
  - (c) section 4, is liable—
    - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine not exceeding R100 million or to imprisonment for a period not 25 exceeding 15 years;
    - (ii) in the case of a sentence to be imposed by any magistrate's court, to a fine not exceeding R250 000,00, or to imprisonment for a period not exceeding five years;
  - (d) section 13(1)(a) or (b), is liable—
    - (i) in the case of a sentence to be imposed by a High Court or a regional court, 30 to a fine or to imprisonment for a period not exceeding 10 years;
    - (ii) in the case of a sentence to be imposed by any magistrate's court, to any penalty which may lawfully be imposed by that court;
  - (e) section 12(2), is liable—
    - (i) in the case of a sentence to be imposed by a High Court or a regional court, 35 to a fine or to imprisonment for a period not exceeding five years;
    - (ii) in the case of a sentence to be imposed by any magistrate's court, to any penalty which may lawfully be imposed by that court;
  - (f) section 14, is liable to the punishment laid down in paragraph (a), (b), (c) (d) 40 or (e) for the offence which that person threatened, attempted or conspired to commit or aided, abetted, induced, instigated, instructed, commanded, counseled or procured another person to commit.
- (2) (a) The court, in imposing a sentence on a person who has been convicted of an offence under section 13(1)(a) or (b), may order that person to reimburse any party incurring expenses incidental to any emergency or investigative response to that 45 conduct, for those expenses.
- (b) A person ordered to make reimbursement under paragraph (a), shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under that paragraph for the same expenses.
- (c) An order of reimbursement under paragraph (a), shall, for the purposes of 50 enforcement, be treated as a civil judgment.

#### Declarations of forfeiture on conviction

19. (1) Whenever any person is convicted of an offence under this Act, the court in passing sentence must, in addition to any punishment which that court may impose in respect of the offence, declare any property which is reasonably believed to have been 55 used—

- (a) in the commission of the offence; or

(b) for the purpose of or in connection with the commission of the offence, and which was seized under any power exercised under section 22, or is in the possession or custody or under the control of the convicted person, to be forfeited to the State.

(2) The court which makes a declaration of forfeiture of property referred to in subsection (1), must order the registrar of the High Court concerned or clerk of the Magistrate's Court for the district concerned to forthwith publish such declaration calling upon interested parties through the media and by notice in the Gazette. 5

(3) Anything forfeited under subsection (1) must, if it was seized under any power exercised under section 22, be kept or, if it is in the possession or custody or under the control of the convicted person, be seized and kept— 10

(a) for a period of 45 days after the date of the notice published in the *Gazette*; or

(b) if any person referred to in section 20(1) has, within the period contemplated in paragraph (a), made an application to the court concerned regarding his or her interest in such thing, until a final decision has been rendered in respect of any such application. 15

### Interests of third parties

**20.** (1) A declaration of forfeiture in terms of section 19(1) does not affect any interest, which any person other than the convicted person may have in the property in question, if the former person proves— 20

(a) that he or she acquired the interest in that property in good faith and for consideration, whether in cash or otherwise; and

(b) that—

(i) the circumstances under which he or she acquired the interest in that property were not of such a nature that he or she knew or ought reasonably to have known or suspected that it was property used as contemplated in section 19(1); or 25

(ii) he or she could not prevent the use of that property as contemplated in that section.

(2) (a) Subject to the provisions of subsection (1), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court, may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person, other than the convicted person, who claims that he or she has any interest in the property in question, inquire into and determine any such interest. 30 35

(b) If a court referred to in paragraph (a) finds—

(i) that the property is wholly owned by the applicant, the court must set aside the declaration of forfeiture in question and direct that the property be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State in an amount equal to the value of the property disposed of; or 40

(ii) that the applicant has an interest in the property—

(aa) the court must direct that the property be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of his or her interest therein, but not exceeding the proceeds of the sale; or 45

(bb) if the State has disposed of the property, the court must direct that the applicant be compensated by the State in an amount equal to the value of his or her interest therein.

(3) Any person aggrieved by a determination made by the court under subsection (2), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction. 50

### Evidence in respect of declarations of forfeiture and certain interests 55

**21.** In order to make a declaration of forfeiture under section 19(1) or to determine any interest under section 20(2), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it may deem fit.

CHAPTER 4

INVESTIGATING POWERS AND FREEZING ORDERS

Investigating powers

22. (1) Whenever the National Director has reason to believe that—
- (a) any person may be in possession of information relevant to— 5
    - (i) the commission or intended commission of an alleged offence under Chapter 2; or
    - (ii) any property which—
      - (aa) may have been used in the commission, or for the purpose of or in connection with the commission, of an offence under this Act; 10
      - (bb) may have facilitated the commission of an offence under this Act, or enabled any entity to commit such an offence, or provided financial or economic support to an entity in the commission of such an offence; or
      - (cc) may afford evidence of the commission or intended commission of an offence referred to in subparagraph (i); 15
  - (b) there may be in any building, receptacle or place, or in the possession, custody or control of any entity any property referred to in paragraph (a)(ii); or
  - (c) any entity may be in possession, custody or control of any documentary material relevant— 20
    - (i) to an alleged offence referred to in paragraph (a)(i); or
    - (ii) in respect of any property referred to in paragraph (a)(ii) or (b),
- he or she may, prior to the institution of any civil or criminal proceeding, under written authority direct that a Director of Public Prosecutions shall have, in respect of a specific investigation, the power to institute an investigation in terms of the provisions of 25 Chapter 5 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to the commission or intended commission of an alleged offence referred to in paragraph (a)(i) or any property contemplated in paragraph (a)(ii), or to any property referred to in paragraph (b), or to the possession, custody or control of any documentary material referred to in paragraph (c). 30
- (2) For purposes of subsection (1), a reference in the said Chapter 5 to—
- (a) the “**head of the Directorate of Special Operations**” or an “**Investigating Director**” shall be construed as a reference to a Director of Public Prosecutions authorized under subsection (1): Provided that for purposes of section 28(2)(a) of the said Act, a Director of Public Prosecutions, may only designate a Deputy Director of Public Prosecutions; 35
  - (b) a “**special investigator**” shall be construed as to include a “**police official**”.
- (3) If any property, contemplated in subsection (1)(a)(ii), seized under any power exercised under subsection (1), consists of cash or funds standing to the credit of a bank account, the Director of Public Prosecutions who has instituted the investigation under 40 that subsection, shall cause the cash or funds to be paid into a banking account which shall be opened with any bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and the Director of Public Prosecutions shall forthwith report to the Financial Intelligence Centre established in terms of section 2(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the fact of the seizure of the cash or 45 funds and the opening of the account.

Freezing order

23. (1) A High Court may, on *ex parte* application by the National Director to a judge in chambers, make an order prohibiting any person from engaging in any conduct, or obliging any person to cease any conduct, concerning property in respect of which there are reasonable grounds to believe that the property is owned or controlled by or on behalf of, or at the direction of— 50
- (a) any entity which has committed, attempted to commit, participated in or facilitated the commission of a specified offence; or
  - (b) a specific entity identified in a notice issued by the President under section 25. 55
- (2) An order made under subsection (1) may include an order to freeze any such property.

(3) A High Court may make an interim order under subsection (1) pending its final determination of an application for such an order.

#### **Cordoning off, stop and search of vehicle and person**

24. (1) If, on written request under oath to a judge in chambers by a police official of or above the rank of director, it appears to the judge that it is necessary in order to prevent any terrorist or related activity, the judge may issue a warrant for the cordoning off, and stopping and searching of vehicles and persons with a view to preventing such terrorist or related activity, in a specified area, and such warrant applies for the period specified therein, which period may not exceed 10 days. 5

(2) Under such warrant any police official who identifies himself or herself as such, may cordon off the specified area for the period specified and stop and search any vehicle or person in that area, for articles or things which could be used or have been used for or in connection with the preparation for or the commission or instigation of any terrorist or related activity. 10

(3) The police official may seize any article or thing contemplated in subsection (2), and Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes required by the context in respect of any such article or thing. 15

(4) Section 29 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies in respect of the powers conferred upon police officials in terms of this section.

(5) The provisions of this section shall not be construed as affecting the rights of any police official or law enforcement officer to use any other power in any other law in respect of cordoning off, search or seizure. 20

### **CHAPTER 5**

#### **RESOLUTION OF UNITED NATIONS SECURITY COUNCIL**

##### **Notification by President in respect of entities identified by United Nations Security Council** 25

25. The President must, by Proclamation in the Gazette, and other appropriate means of publication, give notice that the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations, has identified a specific entity as being— 30

- (a) an entity who commits, or attempts to commit, any terrorist and related activity or participates in or facilitates the commission of any terrorist and related activity; or
- (b) an entity against whom Member States of the United Nations must take the actions specified in Resolutions of the said Security Council, in order to combat or prevent terrorist and related activities. 35

##### **Parliamentary supervision**

26. Every Proclamation issued under section 25 shall be laid upon the Table in Parliament for its consideration and decision and Parliament may thereupon take such steps as it may consider necessary. 40

### **CHAPTER 6**

#### **GENERAL PROVISIONS**

##### **Amendment and repeal of laws and transitional provisions**

27. (1) The laws set out in the Schedule are hereby amended or repealed to the extent indicated in the fourth column of that Schedule. 45

(2) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Internal Security Act, 1982 (Act No. 74 of 1982), and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects as if this Act had not been passed. 50

(3) An investigation, or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Internal Security Act, 1982, and which occurred after the commencement of that Act but before the commencement of this Act, may be conducted, instituted and continued as if this Act had not been passed.

(4) Notwithstanding the repeal or amendment of any provision of any law by this Act, 5 such provision shall, for the purpose of the disposal of any criminal proceedings, investigation, prosecution or legal proceedings contemplated in subsection (2) or (3), remain in force as if such provision had not been repealed or amended.

**Short title and commencement**

**28.** This Act is called the Protection of Constitutional Democracy against Terrorist 10 and Related Activities Act, 2004, and comes into operation on 31 March 2004 or such earlier date determined by the President by proclamation in the *Gazette*.

## SCHEDULE

## SCHEDULE OF LAWS AMENDED OR REPEALED: SECTION 27

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
67	1962	Extradition Act	<p>1. The insertion of the following new section:—  <b>“Extradition in respect of terrorist and related activities</b>  <b>22.</b> (1) Notwithstanding the provisions of section 15, a re-request for extradition based on the offences referred to in section 4 or 5 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, may not be refused on the sole ground that it concerns a political offence, or an offence connected with a political offence or an offence inspired by political motives, or that it is a fiscal offence.</p> <p>(2) The provisions of this section shall in no way affect the application of sections 11(6)(iv) or 12(2)(iii) of this Act.</p> <p>(3) Promptly, after being detained as contemplated in section 7 or 9 of this Act a person who is not a—  (a) South African citizen;  (b) person ordinarily resident in the Republic; or  (c) citizen of any State,  must be informed that he or she is entitled, and must be permitted—  (i) to communicate without delay with the nearest appropriate representative of—  (aa) the State of which the person is a citizen;  (bb) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides; or  (cc) the State, if any, that is otherwise entitled to protect the person's rights; and  (ii) to be visited by such representative.”.</p>
51	1977	Criminal Procedure Act	<p>1. The insertion in Schedule 5 of the following offences:  “The offences referred to in section 4(2) or (3), 13 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004”.</p> <p>2. The insertion in Schedule 6 of the following offences:  “The offences referred to in section 2, 3(2)(a), 4(1), 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, section 2(1) and (2) of the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), section 26(1)(j) of the Non-Proliferation of Weapons of Mass Destruction Act, 1993(Act No. 87 of 1993) and section 56(1)(h) of the Nuclear Energy Act, 1999 (Act No. 46 of 1999).”.</p>
74	1982	Internal Security Act	1. The repeal of the whole Act.
87	1993	Non-Proliferation of Weapons of Mass Destruction Act	<p>1. The amendment of section 26(1) of the Act by—  (a) the substitution for paragraph (h) of the following paragraph:  “(h) refuses or fails to comply to the best of his ability with any lawful requirement, request or order of an officer or employee of the Department, an inspector or a person authorized by the Council; [or]”.</p> <p>(b) the insertion of new paragraphs (j) and (k):  “(j) intentionally uses, or threatens to use, a weapon of mass destruction against—  (aa) a citizen of the Republic or a person ordinarily resident in the Republic, whether that person is in or outside the Republic;  (bb) any person within the Republic; or  (cc) any property that is owned, leased or used by any such citizen or resident of the Republic or by any public or private body or agency of the Republic, whether the property is within or outside of the Republic, or  (k) threatens, attempts, conspires with any other person, or aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person, to commit an offence referred to in subparagraph (i).”</p> <p>(c) the insertion of a new subparagraph (v):  “(v) in the case of an offence referred to in paragraph (j) or (k), to a fine or to imprisonment for a period up to imprisonment for life”.</p> <p>(d) The insertion of section 26A:</p>

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
			<p><b>"26A.</b> No prosecution under section 26(1)(j) or (k) may be instituted without the written authority of the National Director of Public Prosecutions."</p>
105	1997	Criminal Law Amendment Act	<p>1. By the addition to Part 1 of Schedule 2 of the following item:  <u>"Any offence referred to in section 2, 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, when it is proved that the offence has—</u>  <u>(a) endangered the life or caused serious bodily injury to or the death of, any person, or any number or group of persons;</u>  <u>(b) caused serious risk to the health or safety of the public or any segment of the public; or</u>  <u>(c) created a serious public emergency situation or a general insurrection".</u></p> <p>2. By the addition to Part II of Schedule 2, of the following item:  <u>"Any offence referred to in section—</u>  <u>(a) 2, 5, 6, 7, 8, 9, 10 or 14 (in so far as it relates to the aforementioned sections) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, in circumstances other than those referred to in Part I; or</u>  <u>(b) 4 or 13."</u></p>
121	1998	Prevention of Organised Crime Act	<p>1. The substitution for the long title of the following long title: <u>"To introduce measures to combat organised crime, money laundering and criminal gang activities; to prohibit certain activities relating to racketeering activities; to provide for the prohibition of money laundering and for an obligation to report certain information; to criminalise certain activities associated with gangs; to provide for the recovery of the proceeds of unlawful activity; for the civil forfeiture of criminal [assets] property that [have] has been used to commit an offence, [or assets] property that [are] is the proceeds of unlawful activity or property that is owned or controlled by, or on behalf of, an entity involved in terrorist and related activities; to provide for the establishment of a Criminal Assets Recovery Account; to amend the Drugs and Drug Trafficking Act, 1992; to amend the International Co-operation in Criminal Matters Act, 1996; to repeal the Proceeds of Crime Act, 1996; to incorporate the provisions contained in the Proceeds of Crime Act, 1996; and to provide for matters connected therewith."</u></p> <p>2. The amendment of the preamble by—  <u>(a) the insertion after the tenth paragraph of the following paragraph:</u>  <u>"AND WHEREAS effective legislative measures are necessary to prevent and combat the financing of terrorist and related activities and to effect the preservation, seizure and forfeiture of property owned or controlled by, or on behalf of, an entity involved in terrorist and related activities;"</u>; and  <u>(b) the substitution for the eleventh paragraph of the following paragraph:</u>  <u>"AND WHEREAS there is a need to devote such forfeited assets and proceeds to the combating of organised crime, [and] money laundering and the financing of terrorist and related activities;"</u>.</p> <p>3. The insertion in section 1—  <u>(a) after the definition of "enterprise" of the following definition:</u>  <u>" 'entity' has a corresponding meaning with the expression in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;"</u>  <u>(b) after the definition of "property" of the following definition:</u>  <u>" 'property associated with terrorist and related activities' means property which—</u>  <u>(a) was acquired, collected, used, possessed, owned or provided for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or</u>  <u>(b) has provided financial or economic support to an entity in the commission or facilitation of an offence referred to in paragraph (a);"</u>.</p>

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
			<p>4. The substitution in section 38 for subsection (2) of the following subsection:  “(2) The High Court shall make an order referred to in subsection (1) if there are reasonable grounds to believe that the property concerned—  (a) is an instrumentality of an offence referred to in Schedule 1; <b>[or]</b>  (b) is the proceeds of unlawful activities; or  (c) is property associated with terrorist and related activities.”.</p> <p>5. The substitution in section 50 for subsection (1) of the following subsection:  “(1) The High Court shall, subject to section 52, make an order applied for under section 48(1) if the Court finds on a balance of probabilities that the property concerned—  (a) is an instrumentality of an offence referred to in Schedule 1; <b>[or]</b>  (b) is the proceeds of unlawful activities; or  (c) is property associated with terrorist and related activities.”.</p> <p>6. The substitution for section 51 of the following section:  <b>“Notice of reasonable grounds that property is concerned in commission of offence or associated with terrorist and related activities</b></p> <p><b>51.</b> (1) The National Director may apply to a judge in chambers or a magistrate for an order notifying a person having an interest in or control over property that there are reasonable grounds to believe that such property is an instrumentality of an offence referred to in Schedule 1 or is property associated with terrorist and related activities.  (2) The judge or magistrate shall make an order referred to in subsection (1) if the judge or magistrate is satisfied that there are reasonable grounds to believe that the property concerned is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.  (3) When a judge or magistrate makes an order under subsection (1), the registrar of the High Court concerned or clerk of the Magistrate’s Court for the district concerned shall issue a notice in the prescribed form to the person referred to in the order, informing him or her that there are reasonable grounds to believe that property in which he or she has an interest or over which he or she has control, is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.  (4) A notice issued under subsection (3) shall be served on the person concerned in the manner in which a summons whereby civil proceedings in the High Court are commenced is served.”.</p> <p>7. The substitution in section 52—  (a) for subsection (2A) of the following subsection:  “(2A) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—  (a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities;  or  (b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.”.</p> <p>(b) for subsection (3) of the following subsection:  “(3) (a) If an applicant for an order under subsection (1) adduces evidence to show that he or she did not know or did not have reasonable grounds to suspect that the property in which the interest is held, is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, the State may submit a return of the service on the applicant of a notice issued under section 51 (3) in rebuttal of that evidence in respect of the period since the date of such service.</p>

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
			<p>(b) If the State submits a return of the service on the applicant of a notice issued under section 51 (3) as contemplated in paragraph (a), the applicant for an order under subsection (1) must, in addition to the facts referred to in subsection (2) (a) and (2) (b) (i), also prove on a balance of probabilities that, since such service, he or she has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities."</p> <p>(c) for subsection (4) of the following subsection:  "(4) A High Court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the Court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the Court may determine, to prevent the future use of the property as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities."</p> <p>8. The substitution in section 54 for subsection (8A) of the following subsection: "(8A) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—  (a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities; or  (b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities."</p> <p>9. The substitution in section 68 for paragraph (b) of the following paragraph:  "(b) to advise Cabinet in connection with the rendering of financial assistance to law enforcement agencies in order to combat organised crime, money laundering, criminal gang activities, the financing of terrorist and related activities and crime in general; and"</p> <p>10. The insertion in Schedule 1 after item 32 of the following item:  "32A Any specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;"</p>
46	1999	Nuclear Energy Act	<p>1. The insertion of the following new section 34A.:  <b>Prohibitions relating to nuclear material</b>  "<b>34A.</b> (1) For purposes of this section, "international organisation", has the meaning ascribed to it in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004.  (2) No person may—  (a) intentionally and without lawful authority, receive, possess, use, transfer, alter, dispose of or disperse, nuclear material which causes or is likely to cause death or serious bodily injury to any person or substantial damage to property;  (b) intentionally obtain nuclear material by means of theft or robbery;  (c) intentionally obtain nuclear material by means of embezzlement or fraud;  (d) intentionally demand nuclear material by threat or use of force, or by any other form of intimidation;  (e) intentionally threaten to—  (i) use nuclear material to cause death or serious injury to any person or substantial damage to property;  (ii) commit an act described in paragraph (b) in order to compel a natural or legal person, international organisation or State to do or to refrain from doing any act;</p>

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
			<p>(f) use any nuclear material or device or use or damage a nuclear installation or nuclear plant in a manner which release or risk the release of radio-active material, with the intent to—</p> <p>(i) cause death or serious bodily injury;</p> <p>(ii) cause substantial damage to property or the environment; or</p> <p>(iii) to compel a natural or juristic person, an international organisation or a State to do, to abstain or refrain from doing an act; or</p> <p>(g) attempt, conspire with any other person, or aid, abet, induce, incite, instigate, instruct or command, counsel or procure another person, to commit an offence referred to in paragraphs (a) to (f).”</p> <p>2. The insertion in section 56(1) of the following new paragraph: “(h) performing any act prohibited under section 34A.”.</p> <p>3. The insertion of the following new paragraph in section 56(2): “(d) subsection (1)(h), to a fine or to imprisonment for a period up to imprisonment for life”.</p> <p>4. The insertion of the following new section 56A:</p> <p><b>“Consent of National Director to institute proceedings and reporting obligations</b></p> <p><b>56A.</b> (1) No prosecution under section 56(1)(h) may be instituted without the written authority of the National Director of Public Prosecutions.</p> <p>(2) The National Director must communicate the final outcome of the proceedings promptly to the Director General of the International Atomic Energy Agency if a person is prosecuted for an offence referred to in subsection (1), except where—</p> <p>(a) the offence was committed in the Republic;</p> <p>(b) the offence involved nuclear material used for peaceful purposes in domestic use, storage or transport; and</p> <p>(c) both the alleged offender and the nuclear material remained in the territory of the Republic.”.</p>
38	2001	Financial Intelligence Centre Act	<p>1. The substitution for the long title of the following long title: “To establish a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.”.</p> <p>2. The insertion in section 1—</p> <p>(a) after the definition of “Director” of the following definition: “ ‘entity’ has a corresponding meaning with the expression in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; and</p> <p>(b) after the definition of “supervisory body” of the following definition: “ ‘offence relating to the financing of terrorist and related activities’ means an offence under section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;”</p> <p>3. The substitution in section 3 for subsection (1) of the following subsection: “(1) The principal objective of the Centre is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities and the financing of terrorist and related activities.”.</p> <p>4. The substitution for the heading to Chapter 3 of the following heading: “<b>CONTROL MEASURES FOR MONEY LAUNDERING AND FINANCING OF TERRORIST AND RELATED ACTIVITIES [CONTROL MEASURES]</b>”.</p>

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
			<p>5. The insertion after section 28 of the following section:  <b>"Property associated with terrorist and related activities 28A.</b> (1) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of —</p> <p>(a) any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or</p> <p>(b) a specific entity identified in a notice issued by the President, under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004,</p> <p>must within the prescribed period report that fact and the prescribed particulars to the Centre.</p> <p>(2) The Director may direct an accountable institution which has made a report under subsection (1) to report—</p> <p>(a) at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report under subsection (1) had been made; and</p> <p>(b) any change in the circumstances concerning the accountable institution's possession or control of that property."</p> <p>6. The substitution in section 29 for subsection (1) of the following subsection:  "(1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that—</p> <p>(a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;</p> <p>(b) a transaction or series of transactions to which the business is a party—</p> <p>(i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;</p> <p>(ii) is unnecessarily complex, or forms part of an unusual pattern of transactions or has no apparent business or lawful purpose;</p> <p>(iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; <b>[or]</b></p> <p>(iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or</p> <p>(v) relates to an offence relating to the financing of terrorist and related activities; or</p> <p>(c) the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities,</p> <p>must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions."</p> <p>7. The substitution in section 34 for subsection (1) of the following subsection:  "(1) If the Centre, after consulting an accountable institution, a reporting institution or a person required to make a report in terms of section 28, 28A or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or may constitute money laundering or <b>[may constitute]</b> a transaction contemplated in section 29(1)(b) it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the Centre, which may not be more than five days, in order to allow the Centre—</p>

ACT NO.	YEAR	TITLE	EXTENT OF AMENDMENT OR REPEAL
			<p>(a) to make the necessary inquiries concerning the transaction; and</p> <p>(b) if the Centre deems it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions."</p> <p>8. The substitution in section 35(1) for paragraphs (a) and (b) of the following paragraphs, respectively:</p> <p>"(a) that person has transferred or may transfer the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities to the accountable institution or is using or may use the accountable institution for money laundering purposes or for the financing of terrorist acts or for the purpose of any transaction contemplated in section 29(1)(b); or</p> <p>(b) that account or other facility has received or may receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or is being or may be used for money laundering purposes or for the financing of terrorist acts or for the purpose of any transaction contemplated in section 29(1)(b)."</p>
70	2002	Regulation of Interception of Communications and Provision of Communication-related Information Act	<p>1. In the Schedule to—</p> <p>(a) substitute for item 2, the following item:</p> <p>"2. any offence [<b>relating to terrorism</b>] referred to in paragraph (a) of the definition of "specified offence" of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004."; and</p> <p>(b) delete item 3.</p>

## MEMORANDUM ON THE OBJECTS OF THE ANTI-TERRORISM BILL, 2004

### BACKGROUND

1. The South African Law Reform Commission, on request of the Minister for Safety and Security reviewed the Republic's law in respect of terrorism. The report from the Commission indicated the need for new legislation to effectively deal with the prevention, investigation and combating of terrorist and related activities, both of a national and international character. International and regional obligations arising from international instruments relating to terrorist and related activities, and especially resolutions of the Security Council of the United Nations necessitate specific legislation to combat terrorist and related activities, by providing for measures in respect of jurisdiction, combating the financing of terrorism and the enactment of specific offences with penalties which reflect the seriousness of the offences. The Republic has ratified or acceded to all, but three of the 13 international instruments relating to terrorist and related activities, and desires to become party to the other instruments as soon as possible.

There is no universally accepted definition of terrorism. The Convention on the Prevention and Combating of Terrorism, adopted by the Organisation of African Unity has a definition of "**terrorist act**", and also excludes struggles waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, in accordance with the principles of international law, especially the international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, from the definition of "**terrorist**". The Bill does not define terrorism, but defines "**terrorist activity**", and creates an offence of terrorism. The said struggles are also excluded in the Bill from the definition of "**terrorist activity**".

The offence of "**terrorism**" requires proof of a specific motive, as well as a specific intent. The acts which are criminalized in the offence of "**terrorism**", were identified through comparative research.

### OBJECTS

2.1 The Bill seeks to address the above needs by the enactment of an offence of terrorism, Convention offences, offences associated and connected with terrorist activities, offences relating to the harbouring or concealment of those involved in specified offences, an offence for failure to report the presence of persons suspected or intending to commit or having committed an offence, offences relating to hoaxes. A threat, attempt, conspiracy and inducing another person to commit an offence are also criminalized. The Bill provides for an extended extraterritorial jurisdiction, in respect of terrorist and related activities. The Bill removes the political exception in certain cases (terrorist bombings and the financing of terrorist and related activities, of extradition in respect of terrorist and related offences, by amending the Extradition Act, 1962.

2.2 The Bill seeks to introduce measures to enable the Republic to combat the financing of terrorism, by appropriately amending the Prevention of Organised Crime Act, 1998, and the Financial Intelligence Centre Act, 2001, to make those Acts applicable to the combating of terrorist and related activities. Provision is made for civil and criminal asset forfeiture, in respect of terrorist and related activities, the freezing of property related to terrorist and related activities, as well as property of entities in respect of which action must be taken pursuant to Resolutions of the United Nations Security Council under Chapter VII of the Charter of the United Nations. Notice must be given by the President, in the Gazette, of the names of such entities.

2.3 The Bill also seeks to facilitate the investigation of terrorist acts by providing for investigating powers, as well as powers in respect of the cordoning off and search and seizure.

2.4 No prosecution may be instituted in respect of offences committed under this Act, without the written authority of the National Director of Public Prosecutions.

2.5 Parliamentary supervision is provided for in respect of any notice issued by the President, pursuant to resolutions of the Security Council of the United Nations.

2.6 Reporting obligations to the United Nations and other international institutions ensures that interaction between States take place in deciding whether to prosecute or extradite.

### **CONSULTATION**

3. Extensive consultation and public participation took place as part of the review of the South African Law Reform Commission. Extensive public hearings were conducted, before the redraft of the Bill with the participation of the following Parliamentary Committees: Joint Standing Committee on Intelligence, Portfolio Committee for Safety and Security, Portfolio Committee for Finance, Portfolio Committee for Foreign Affairs, and the Portfolio Committee of Justice and Constitutional Development. Extensive interdepartmental consultations took place throughout the drafting process.

### **FINANCIAL IMPLICATIONS FOR STATE**

4. Since use is made of existing structures such as those contained in the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), and the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), no significant financial implications for the State are foreseen.

### **PARLIAMENTARY PROCEDURE**

5. The South African Police Service and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.