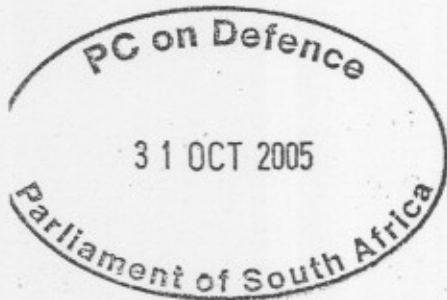


October 31, 2005



SA SPECIAL FORCES LEAGUE
SA SPESIALE MAGTE BOND



To Whom it may concern.

In response to:

The proposed amendments to the prohibition of the mercenary activity and prohibition and regulation of certain activities in an area of armed conflict Bill, 2005.

This document is compiled from comments made by various members of our organization who are also in this instance a large group who will feel the impact directly if the bill is passed in the current format.

It is my duty as Chairman of this organization also to comment on the general feeling of some of the members of this very special group of people as they perceived to have been ignored and short-changed by the previous government and if the bill is passed in its current format it is no different as they are not only being denied from making a living via honest avenues, albeit by using their specialized skills, they are also being criminalized if their applications are not processed timeously.

The SA Special Forces League's wish is to work more closely with all the relevant agencies and committees to ensure that the proposed bill is fair and justifiable in its content.

The SA Special Forces League do not support mercenary type activities and are more than willing to assist with any plan to curb such activities, whilst in the same breath are also willing to assist with potentially providing people who can serve in such validated type activities which are humanitarian and conducive to positive outcomes.

I include herewith some comments made by members and humbly request that the issue be looked at taking all of the issues mentioned into consideration.

Comments and Member Comments here below:

Most of the people employed in Iraq works for the US Dept Of Defense with a DOD number thus if any of the employees will be taken to court the US Dept of Defense will probably defend them as employees.

Most of the people protect personnel and logistical convoys which is geared towards the upgrade and reconstruction of Iraq.

This is contributing to foreign income into SA as well as providing jobs for people with special skills that they cannot apply such in SA at the moment.

The proposed bill seems to make provision for mercenaries but not for law abiding people wishing to apply their trade and receive honest income.

Discrimination.

One the one hand the proposed bill prohibits certain activities, but on the other hand sanctions the very same activities in certain circumstances.

The application of the bill will cause severe problems and certain rules of evidence will have to be amended. This is unacceptable and will cause uncertainty.

Offences i r o the bill will be committed outside the RSA. Prosecution will be conducted in the RSA. This will be very expensive due to the fact that witnesses will have to be brought to SA and in one way or the other be compelled to testify in SA.

Our courts do not have the authority to compel foreign persons to testify here.

• **CONSTITUTION Chapter 2 (Act 108 of 1996)**

The starting point must be Chapter 2 – the Bill of Rights

Freedom of association

18. Everyone has the right to freedom of association.

Freedom of movement and residence

21. (1) Everyone has the right to freedom of movement.

(2) Everyone has the right to leave the Republic.

Freedom of trade, occupation and profession

22. Every citizen has the right to choose their trade, occupation or profession freely.

The practice of a trade, occupation or profession may be regulated by law.

- MERCENARY

We agree on the current (FMA) Foreign Military Assistance Bill (Act 15 of 1998) concerning this issue. However there are a few terms that need to be clarified because nowhere could clear definition of it be found.

- What is the legal definition of a mercenary ?

In the Protocol Additional to the Geneva Conventions(GC) of 12 August 1949, and relating to the Protection of Victims of International Armed onlicts (Protocol I), 8 June 1977 it is stated:

Art 47. Mercenaries

A mercenary is any person who:

- (a) is specially recruited locally or abroad in order to fight in an armed conflict;
- (b) does, in fact, take a direct part in the hostilities;
- (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
- (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
- (e) is not a member of the armed forces of a Party to the conflict; and

(f) has not been sent by a State, which is not a Party to the conflict on official duty as a member of its armed forces.

A popular definition is: "~~Motivated solely~~ by a desire for monetary or material gain and hired for service in a foreign army. According to this definition all the South Africans serving in the British Army, and or any other country's defence force are mercenaries just by the mere fact that they serve whether in a combat role or not.

o Private Military Companies (PMC's) vs Private Security Companies (PSC's).
We did a quick search on the Web and found the following : "**Private military contractors or private military companies (PMC's)**

o are companies that provide logistics, manpower, and other expenditures for a military force. Contractors are civilians authorized to accompany a force in the field and, generally, cannot be the intentional object of military attack (1949 Geneva Conventions). Contractors *cannot* be engaged in direct support of military operations (otherwise, they may be targeted). Some critics consider private military contractors to be mercenaries legitimizing their trade behind the veil of a corporate entity.

We could not find a similar definition for PSC's. The majority of South Africans in Iraq work for PSC's providing security to civilian companies. There are a few involved in companies that might per definition be PMC's but that is open for argument from those involved and is not for this debate.

• Terrorism. It is nowhere mentioned in the FMA but paragraph (2)(a)(iv) "resistance against occupation, aggression or domination by alien or foreign forces;" might be argued to construe terrorism although many definitions of terrorism / terrorists exist.

In November, 2004, a UN panel defined terrorism as: "Any action intended to cause death or serious bodily harm to civilians, non-combatants when the purpose of such act, by its nature or context, is to intimidate a population or compel a government or an international organization to do or to abstain from doing any act."

I certainly think para (2)(a)(iv) can be countered using the Terrorism Act 33 of 2004:

Nowhere in the existing FMA or the proposed FMA are there any definitions regarding "mercenary", "terrorist / terrorism", "combatant" etc. If this is properly defined I cannot see the reason for including "security services" (under paragraph 1 "Definitions and interpretation"), paragraph 4 "Prohibition and regulation of enlistment of South Africans in foreign armed forces" and paragraph 5 "Prohibition and regulation of humanitarian assistance in area of armed conflict".

The impression is, because there are no proper definitions, that the "gill net" is used to cover all eventualities without thinking clearly about the consequences.

There are only two countries internationally that have laws as embodied in this bill, namely South Africa and France. It is suspected that France has a bill of this nature to facilitate, amongst others, the deployment of the French Foreign Legion.

What is South Africa's objective/aim?

The South African Government appears to be criminalizing/alienating those involved in legitimate activities abroad, instead of proactively attempting to include those involved to pursue interests of a mutual nature in South Africa. According to the Constitution we all have a right to choose a desired occupation. Is this Bill not infringing on our constitutional rights?

Definitions within this act are vague. What is the difference between "mercenary activities" and "security services rendered"? If this Act is passed and as per paragraph 7 of the Bill, application for authorisation is made, what guarantee is there that the applicants will timeously receive a reply? Contracts of this nature often occur at short notice. Government is definitely not in a position to, within a short period of time, process/approve applications of this nature. The government has not given any indication as to how, what and where it will build this capacity to deliver if the bill is passed.

The below-mentioned refers:

'this Act' includes the regulations made in terms of section 12.

(2) Notwithstanding any provision of this Act or any other law, no act shall for any reason or purpose be considered as assistance or service, as defined in subsection (1), if such act is –

(a) committed during a struggle waged by peoples in the exercise or furtherance of their legitimate right to –

(i) national liberation;

(ii) self-determination;

(iii) independence against colonialism; or

(iv) resistance against occupation, aggression or domination by alien or foreign forces; and

(b) in accordance with the principles of international law, especially 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*

Absurd – what then is the difference between a freedom fighter and a mercenary?

October 31, 2005

1. The wording of paragraphs 1-3 of the explanatory memorandum of the proposed bill clearly states that the sole aim of the proposed amendments is to increase the number of prosecutions and convictions under the Act.
2. Instead of making an effort to streamline the Bill or address the legalities of the issue; the Department of Defense intends to plug the holes of the considered deficiencies in the Act. At the moment, this Bill and any amendment thereto is a patchwork of 'don'ts'; instead of a well-constructed framework of 'do's' in line with the constitution.
3. As the UK and the USA have a well-defined legal infrastructure regarding PMC's and the various definitions the SA Government battles with; surely it would be wise for the SA Government to scrutinise their applications and restrictions and model parts of our legislation thereupon.
4. The Bill proposes to address, redefine and improve the definitions of armed conflict, assistance or service, security services, mercenary et al. This is good, provided it stays in line with internationally accepted definitions and the SA Constitution.
5. Paragraph 5.a. of the explanatory memorandum is worrying. It can be interpreted that ex-SA soldiers can not work in Iraq but are allowed to legitimately execute an armed struggle for national liberation and self-determination , even against the South African government!

6. The Constitutional rights of the individual have been mentioned several times and should remain the strongest line of consideration when actions such as this are contemplated.
7. The fast tracking of this Bill over e.g. the Rape Legislation – unchanged since 1957 and pending change since 2001 – is dubious and casts doubt over the sincerity, transparency and intention of the government. The DA has questioned this fast-tracking in the media as the proper protocol for passing a new Bill in government has not been followed.
8. How will the tradesmen be affected? A large number of South Africans is working in Iraq in a non-military capacity?
9. No specific statistics are recorded but an average of 90 plus private security companies are working in Iraq, mostly British and American and 5 SA companies. All these contracts are legal and approximately 30 of these companies are registered with the Iraqi Minister of Interior (MOI) as well as the Private Security Company Association of Iraq (PSCAI).
10. The number of South Africans working in Iraq totals an average of 5 000, the third largest representative with UK second and USA first.
11. A definite distinction should be made between an individual fighting someone else's war for monetary gain resulting in situations like the EG fiasco; the employee of a reputable, registered US or UK company and the fly-by-night South African companies working in Iraq involved in shady dealings.

12. The total of 5 000 men each average an income of R1m per annum. 90% of this income flows into South Africa and is invested in South Africa, be it in property or in investments.

13. From a social viewpoint, the following problems are foreseen if the Government succeeds in forcing through the proposed Bill in the current format:

- A potential rise in illegal activities. These men have to survive and support their families. If the legal means of doing this is stopped, an increase in traditional 'mercenary' activities can probably be expected.
- A rise in the unemployment figure. South Africa already has vast unemployment figures with enormous social implications but there is a difference between unemployed, frustrated, unschooled workers and unemployed, frustrated, well trained soldiers.
- It is assumed that a fair percentage of the men involved already suffer from PTSD sustained from their military background (unfortunately no statistics on this is available from the SANDF). This proposed legislation and resultant job losses could be the catalyst of domestic violence, an increase in right-wing activities and vigilantism which the League is trying to avoid at all cost.

14. South Africa is seen as the leader of Africa. To take a radical step like this, in direct conflict with the Constitution, South Africa will lose face to the rest of the world, particularly the USA and the UK who have enlightened legislation regarding the matter.

15. We believe that it is not wise to oppose the Bill as a whole, but rather to assist in ensuring that traditional 'Mike Hoare' mercenary activities remain illegal and is dealt with in a proper manner within the legal system when it occurs. At the same time input from the relevant parties will hopefully ensure that any trained soldier can

October 31, 2005

exercise his constitutional rights and be able to work freely anywhere in the world, with reasonable internationally accepted boundaries.

On the point of international relief work, most South Africans are doing just this and most of the people are working in support of either US or UN funded projects.

The South African Government will be denying us to earn a legitimate income !!!

The unconstitutional right of the Government to limit and restrict South Africans to work in conflict areas !!!

The right of the individual to work for legitimate organizations (according to international laws).

In conclusion it is our wish to support the go ahead of a bill that will protect those of our members who are earning an honest living and help with the creation of a stable base where they can operate from without being regarded as criminals.

Please feel free to contact me if any other information or comment is required.

Kind regards,

Chris Greyling

Chairman: SA Special Forces League.

Contact detail: 082 4593032 Cell

E-mail greyli@iafrica.com