

Institute for Security Study: Proposal

COUNTER-TERRORISM BILL

BILL

To give effect within the Republic to the relevant international instruments relating to terrorism; to provide for offences relating to terrorist acts; and for measures designed to combat terrorism; and to provide for matters connected therewith.

PREAMBLE

WHEREAS there is a world-wide occurrence of acts of terrorism in all its forms and manifestations;

AND WHEREAS terrorism is an international problem which can only be eradicated with the full and committed cooperation of all member states of the United Nations and the African Union;

AND WHEREAS the member states of the United Nations have solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed;

AND WHEREAS terrorist acts are under any circumstances unjustifiable, no matter what considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature may be invoked to justify them;

AND WHEREAS terrorism is condemned in a number of international instruments which place an obligation on States to adopt legislation to give effect to those instruments;

AND WHEREAS the Republic supports the efforts of the international and regional communities to eliminate terrorism;

AND WHEREAS the Republic recognises its obligation to prevent its territory becoming a stage for the planning, organisation or execution of terrorist acts and its obligation to prevent terrorist elements from infiltrating or taking up residence on its soil, or being received, harboured, trained, or funded, or offered any kind of help or facilities;

AND WHEREAS terrorism presents a serious threat to the security of the Republic and the safety of the public;

AND WHEREAS the United Nations Security Council has adopted resolutions binding on member states of the United Nations, to combat terrorism and in particular terrorist bombings and the financing of terrorism;

AND WHEREAS the United Nations has urged all states to enact appropriate domestic legislation necessary to implement the provisions of relevant conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts and to co-operate with and provide support and assistance to other States and relevant international and regional organisations to that end;

AND WHEREAS the Republic shares the commitment to prevent and combat terrorism with the African Union and the Non-Aligned Movement as expressed in various resolutions as well as the Organisation of African Unity's Convention on the Prevention and Combating of Terrorism;

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 acts; and to carrying out its obligations in terms of the international conventions on terrorism;

AND RECOGNIZING that the struggles waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts

AND WHEREAS legislation is necessary in the Republic to prevent and combat terrorism, to criminalise terrorist acts, the financing of terrorist acts and the giving of support to terrorists, and to ensure that the jurisdiction of South African courts enables it to bring to trial the perpetrators of terrorist acts,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER 1
INTERPRETATION
Definitions**

1. In this Act, unless the context indicates otherwise—

“**accountable institution**” means a person referred to in Schedule 1 to the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

“**continental shelf**” means the continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

“**Director**” means a Director of Public Prosecutions as defined in section 1 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);

“**Financial Intelligence Centre**” means the Financial Intelligence Centre established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

“**internationally protected person**” means a person who enjoys immunities and privileges in terms of sections 3 to 6 of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), or on whom such immunities and privileges have been conferred in terms of section 7 of that Act;

“**judge**” means a Judge of the High Court;

“**Minister**” means the Minister for Safety and Security;

“**National Commissioner of Police**” means the National Commissioner as referred to in the South African Police Service Act, No. 68 of 1995;

“**National Director**” means the National Director of Public Prosecutions appointed in terms of section 179(1) of the Constitution;

“**police officer**” means a member of the South African Police Service as defined in the South African Police Service Act, 1995 (Act No. 68 of 1995), and includes a member of the South African National Defence Force while deployed in the Republic on police functions as contemplated in section 3(2)(b) of the Defence Act, 1957 (Act No. 44 of 1957);

“**property**” means any asset of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital evidencing title to, or interest in, such assets including but not limited to bank credits, travellers cheques, money orders, shares, securities, bonds, drafts, and letters of credit.

“**terrorist act**” means any act which is a violation of the criminal laws of the Republic and which -

- a) endangers the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:
 - (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - (iii) create general insurrection in a State.
- b) is any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (b) (i) to (iii).
- c) is designed or intended to disrupt any computer system or the provision of services directly related to governmental computer systems, communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
- d) involves releasing into the environment or any part thereof of distributing or exposing the public or any part thereof to –
 - (i) any dangerous, hazardous, radioactive or harmful substance; or
 - (ii) any toxic chemical; or
 - (iii) any microbial or other biological agent or toxin

Notwithstanding subsections (a) – (d), an act which disrupts any services and is committed in pursuance of a protest, demonstration or stoppage of work, shall be deemed not to be a terrorist act within the meaning of this definition so long and so long only as the act is not intended to result in any harm.

“ **terrorist entity**” means a person, group, trust, partnership, fund or an unincorporated association or organization”

CHAPTER 2
MEASURES RELATING TO OFFENCES

2. Convention Offences

(1) Seizure or Exercising Control of an Aircraft

Any person who, unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of an aircraft as contemplated in the *Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)* and the *Convention for the Suppression of Unlawful Seizure of Aircraft (1970)* with the intent to-

- (a) cause any person on board the aircraft to be detained against his or her will;
- (b) cause 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) hold any person on board the aircraft for ransom or to service against his or her will;
or
- (d) cause that aircraft to deviate from its flight plan, commits an offence, and is liable on conviction to imprisonment for life.

(2) Performing Acts of Violence on or Damaging or Destroying an Aircraft

1. Any person commits an offence as contemplated in the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)* if he or she unlawfully and intentionally:
 - (a) performs an act of violence against a person on board an aircraft in flight if that act is likely to endanger the safety of that aircraft; or
 - (b) destroys an aircraft in service or causes damage to such an aircraft which renders it incapable of flight or which is likely to endanger its safety in flight; or
 - (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or
 - (d) destroys or damages air navigation facilities or interferes with their operation, if any such act is likely to endanger the safety of aircraft in flight; or
 - (e) communicates information which he knows to be false, thereby endangering the safety of an aircraft in flight.
2. Any person also commits an offence if he or she:
 - (a) attempts to commit any of the offences mentioned in paragraph 1 of this Article; or is an accomplice of a person who commits or attempts to commit any such offence.

(3) Performing an Act of Violence at an Airport or Destroying or Damaging the Facilities of an Airport

Any person commits an offence as contemplated in the *Protocol for the Suppression of Unlawful Acts of Violence Serving International Civil Aviation (1988)* if he or she unlawfully and intentionally, using any device, substance or weapon:

- (a) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving international civil aviation or aircraft not in service located thereon or disrupts the services of the airport, if such an act endangers or is likely to endanger safety at that airport

(4) Endangering the Safety of Maritime Navigation

Any person who, in respect of a ship registered in the Republic or within the territorial waters of the Republic or maritime navigational facilities unlawfully and intentionally as contemplated in the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988)*,—

- (a) seizes or exercises control over such a ship by force or threat thereof or any other form of intimidation;
- (b) performs any act of violence against a person on board such ship if that act is likely to endanger the safe navigation of that ship;
- (c) destroys such a ship or causes damage to such ship or to its cargo which is likely to endanger the safe navigation of that ship;
- (d) places or causes to be placed on such ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause 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 act is likely to endanger the safe navigation of such ship; or
- (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 such ship; commits an offence and is liable on conviction –
 - (i) to imprisonment for a period not exceeding 20 years; or
 - (ii) if the death of any person results from any act prohibited by this section, to imprisonment for life.

(5) Offences Relating to Fixed Platforms

1. Any person who unlawfully and intentionally as contemplated in the *Protocol for the Suppression of Unlawful Acts against the safety of Fixed Platforms located on the Continental Shelf (1988)*—

- (a) seizes or exercises control over a fixed platform on the continental shelf, or the exclusive economic zone or any fixed platform on the High Seas while it is located on the continental shelf of the Republic, by force or threat thereof or by any other form of intimidation;
- (b) performs an act of violence against a person on board such a fixed platform if that act is likely to endanger the platform's safety;
- (c) destroys such a fixed platform or causes damage to it which is likely to endanger its safety;
- (d) places or causes to be placed on such 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;
- (e) injures or kills any person in connection with the commission or the attempted commission of any of the offences referred to in paragraphs (a) to (d); or
- (f) damages or destroys any off-shore installation referred to in section 1 of the Maritime Traffic Act, 1981 (Act No. 2 of 1981), commits an offence.

2. A person convicted of an offence referred to in subsection (1) is -

- (a) liable on conviction to a fine or to imprisonment for a period not exceeding 20 years;
- (b) in the case where death results from the commission of the offence, liable on conviction to imprisonment for life.

(6) Taking of Hostages

Any person, who, in the Republic as contemplated in *International Convention against the Taking of Hostages (1979)* -

- (a) detains any other person, hereinafter referred to as a hostage; and
- (b) in order to compel a State, international governmental organisation or a natural or juristic person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage, commits an offence, and is liable on conviction to imprisonment for life.

(7) Protection of Internationally Protected Persons

1. A person who murders or kidnaps an internationally protected person is guilty of an offence, as contemplated in the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973)*, and is liable on conviction to imprisonment for life.

2. A person who commits any other attack upon the person or liberty of an internationally protected person is guilty of an offence and is liable on conviction:

- (a) where the attack causes death—to imprisonment for life;
- (b) where the attack causes grievous bodily harm—to imprisonment for a period not exceeding 20 years; or
- (c) in any other case—to imprisonment for a period not exceeding 10 years.

3. A person who intentionally destroys or damages (otherwise than by means of fire or explosive):

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present; is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 10 years.

4. A person who intentionally destroys or damages (otherwise than by means of fire or explosive):

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present; with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 20 years.

5. A person who intentionally destroys or damages by means of fire or explosive:

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present; is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 15 years.

6. A person who intentionally destroys or damages by means of fire or explosive:

- (a) any official premises, private accommodation or means of transport, of an internationally protected person; or
- (b) any other premises or property in or upon which an internationally protected person is present, or is likely to be present; with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 25 years.

7. A person who threatens to do anything that would constitute an offence against subsections (1) to (6) is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 10 years.

8. For the purposes of this section kidnapping a person consists of leading, taking or enticing the person away, or detaining the person, with intent to hold the person for ransom or as a hostage or otherwise for the purpose of inducing compliance with any demand or obtaining any advantage.

9. Any person who –

- (a) willfully and unlawfully, with intent to intimidate, coerce, threaten or harass, enters or attempts to enter any building or premises which is used or occupied for official business or for diplomatic, consular, or residential purposes by an internationally protected person within the Republic; or
- (b) refuses to depart from such building or premises after a request by an employee of a foreign government or an international organisation, if such employee is authorised to make such request, commits an offence, and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(8) Offences with Regard to Nuclear Matter or Facilities

1. Any person who unlawfully and intentionally as contemplated in the *Convention on the Physical Protection of Nuclear Material (1980)*

- (a) intends to acquire or possesses radioactive material or designs or manufactures or possesses a device, or attempts to manufacture or acquire a device, with the intent
 - (i) to cause death or serious bodily injury; or
 - (ii) to cause damage to property or the environment;
- (b) uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material with the intent
 - (i) to cause death or serious bodily injury;
 - (ii) to cause damage to property or the environment; or
 - (iii) to compel a natural or juristic person, an international organization or a State to do or refrain from doing an act, commits an offence.

2. Any person who

- (a) threatens, under circumstances which indicate the credibility of the threat, to commit an offence referred to in subsection (1)(b); or
- (b) unlawfully and intentionally demands radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force, commits an offence.

3. A person convicted of an offence in terms of this section is liable on conviction to imprisonment for life.

(9) Delivering, placing, discharging or detonating an explosive device or other lethal device

1. Any person who unlawfully and 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 as contemplated in the *International Convention for the Suppression of Terrorist Bombings (1997)* —

- (a) with the intent to cause death or serious bodily injury; or
- (b) with the intent to cause 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, commits an offence, and is liable upon conviction to imprisonment for life.

2. This section does not apply to the military forces of a State -

- (a) during an armed conflict; or
- (b) in respect of activities undertaken in the exercise of their official duties.

(10) Hoaxes involving noxious substances or things or explosives or other lethal devices or weapons of mass destruction

1. A person is guilty of an offence if he or she —

- (a) places any substance or other thing in any place; or
- (b) sends any substance or other thing from one place to another (by post, rail or any other means whatever);
- (c) with the intention of inducing in a person anywhere in the world a belief that it is likely to be (or contain) a noxious substance or other noxious thing or a lethal device or a weapon of mass destruction.

2. A person is guilty of an offence if he or she communicates any information which he or she knows or believes to be false with the intention of inducing in a person anywhere in the world a belief that a noxious substance or other noxious thing or a lethal device or a weapon of mass destruction is likely to be present (whether at the time the information is communicated or later) in any place.

3. A person guilty of an offence under this section is liable on conviction to imprisonment for a period not exceeding 10 years or a fine or both.

4. 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).

5. For a person to be guilty of an offence under this section it is not necessary for him or her to have any particular person in mind as the person in whom he or she intends to induce the belief in question.

6. The court, in imposing a sentence on a person who has been convicted of an offence under subsection (1), may order that person to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses. A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses. An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

Other Offences and Penalties

- 3.** (1) Any person or terrorist entity who intentionally
- (a) commits or threatens to commit a terrorist act; or
 - (b) conspires with any person to commit or bring about a terrorist act; or
 - (c) incites, commands, aids, advises, encourages or procures any other person to commit or bring about a terrorist act, is guilty of an offence and liable on conviction to imprisonment which may include imprisonment for life.
- (2) Any person who knowingly becomes or remains a member of a terrorist organisation after the date on which it is listed as such is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.
- (3) Any person who knowingly does anything to support a terrorist entity economically or in any other way is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.
- (4) Any person who fails to comply with section 13 or 14 is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment.
- (5) (a) Any person is guilty of an offence if he or she—
- (i) fails to comply with an instruction of a police officer in the exercise of his or her powers under section 7; or
 - (ii) wilfully obstructs a police officer in the exercise of those powers.
- (b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine, or imprisonment for a period not exceeding six months.

Jurisdiction in respect of offences

- 4.** (1) A court of the Republic has jurisdiction in respect of any offence referred to in this Act, if the offence was committed—
- (i) in the territory of the Republic; or
 - (ii) on board a vessel, a ship, an installation in the sea over the continental shelf; or
 - (iii) 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);
 - (iv) by a citizen of the Republic or a person ordinarily resident or domiciled in the Republic;
 - (v) against the Republic or against a government facility of the Republic abroad, including an embassy or other diplomatic or consular premises, or any other property of the Republic; or
 - (vi) against a citizen of the Republic or a person ordinarily resident or domiciled in the Republic;
 - (vii) outside of the Republic, but the accused was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered in the Republic.
- (2) Whenever the National Director receives information that a person who is alleged to have committed an offence under this Act, may be present in the Republic, the National Director must—

- (a) order an investigation to be carried out in respect of that allegation;
- (b) inform any other foreign States which might also have jurisdiction over the alleged offence promptly of the findings of the investigation; and
- (c) indicate promptly to other foreign States, which might also have jurisdiction over the alleged offence, whether he or she intends to prosecute.

(3) If a person is taken into custody to ensure the person's presence for the purpose of prosecution or extradition to a foreign State the National Director must, immediately after the person has been taken into custody, notify any foreign State which might have jurisdiction over the offence in question either directly or through the Secretary-General of the United Nations, of the—

- (a) fact that the person is in custody; and
- (b) circumstances that justify the person's detention.

(4) If the National Director declines to prosecute, he or she must notify any foreign State which might have jurisdiction over the offence in question accordingly.

Mutual Assistance and Information Sharing

5. Exchange of Information Relating to Terrorist Entities and Terrorist Acts

- (a) The Director General of the Department of Justice, or the Minister of Justice may, on a request made by the appropriate authority of a foreign state (as is envisaged in Chapter 2 of the International Cooperation in Criminal Matters Act 75 of 1996), disclose to that authority any information in his or her possession or in the possession of any other government department or agency, relating to any of the following –
 - (i) the actions or movements of terrorist entities or persons suspected of involvement in the commission of terrorist acts in that foreign state;
 - (ii) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts in that foreign state;
 - (iii) traffic in explosives or other lethal devices or sensitive materials by terrorist entities or persons suspected of involvement in the commission of terrorist acts in that foreign state;
 - (iv) the use of communication technologies by terrorist groups;
- (b) The Director General or the Minister of Justice may refuse such a request provided that the disclosure is prohibited by any provision of South African law and more specifically if it is in contravention of the Refugees Act 130 of 1998 or if it will, in the Director General's or the Minister of Justice's view, be prejudicial to national security or public safety.

Bail

- 6.** Notwithstanding anything to the contrary in any law, where an accused is in custody for an offence under this Act, the provisions relating to bail contained in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), should apply.

Power to stop and search vehicle and person

7. (1) If, on application by a police officer of the South African Police Service of or above the rank of director, it appears to the judge that it is necessary in order to prevent terrorist acts, the judge may issue a warrant for the stopping and searching of vehicles and persons with a view to preventing such acts, and such warrant applies for the period specified therein not exceeding 10 days.
- (2) Under such warrant any police officer who identifies himself or herself as such may stop and search any vehicle or person for articles or things which could be used or have been used for or in connection with preparation for or the commission or instigation of any terrorist act.
- (3) The police officer 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.
- (4) Section 29 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies in respect of the powers conferred upon police officers in terms of this section.

Consent of National Director to institute proceedings

8. (1) No prosecution under this Act may be instituted except with the consent of the National Director.
- (2) A person alleged to have committed any offence under this Act may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the National Director has not yet been obtained.

CHAPTER 3 INVESTIGATIVE HEARINGS

Order for gathering information

9. (1) Subject to subsection (3), a police officer may, for the purpose of investigating an offence under this Act, apply to a judge for an order for the gathering of information.
- (2) A police officer may make an application under subsection (1) only if the prior written consent of the National Director has been obtained.
- (3) A judge to whom an application is made under subsection (1) may make an order for the gathering of information, which order shall not be valid for longer than 48 hours unless exceptional circumstances apply, if there are reasonable grounds to believe that—
- (a) an offence in terms of this Act will be committed;
 - (b) material information concerning the offence, or information that may reveal the whereabouts of a person suspected by the police officer to commit the offence, is likely to be obtained as a result of the order; and
 - (c) all other reasonably possible avenues for obtaining the information have been tried without success.
- (4) An order made under subsection (3) may—
- (a) allow the examination, on oath or affirmation, of a person named in the order;
 - (b) require the person to attend at a place, mentioned in the order, for the examination and to remain in attendance until excused by the presiding judge;
 - (c) require the person to bring to the examination a particular thing in his or her possession or control and to produce it to the presiding judge;
 - (d) designate another judge as the judge before whom the examination is to take place; and
 - (e) include any other terms or conditions that are desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the purposes of any ongoing investigation.
- (5) A judge may vary the terms and conditions of an order for the gathering of information.

Warrant for arrest

- 10.** (1) A judge contemplated in section 9(3) may issue a warrant for the arrest of the person named in an order for the gathering of information if the judge is satisfied, on information in writing and under oath, that the person—
- (a) is evading service of the order;
 - (b) is about to abscond; or
 - (c) did not attend the examination, or did not remain in attendance, as required by the order.
- (2) A warrant issued under subsection (1) may be executed at any place in the Republic by any police officer having authority.
- (3) A police officer who arrests a person in the execution of a warrant issued under subsection (1) must, without delay, cause the person to be brought before such judge who must promptly inform the person of the reason for being detained in custody.

Detention or release on bail or warning

- 11.** (1) The judge contemplated in section 10(3) may order that the person referred to in section 10 be detained in custody or be released on bail or on warning.
- (2) If the person is to be detained, the judge must inform the person that he or she has the right—
- (a) to retain and instruct a legal practitioner at any stage of the proceedings;
 - (b) to communicate and be visited by his or her—
 - (i) spouse, partner or next of kin;
 - (ii) chosen religious counsellor; and
 - (iii) chosen medical practitioner.

CHAPTER 4 MEASURES TO COMBAT TERRORISM Part 1

Combating Support for Terrorist Entities Listing of terrorist entities

- 12.** (1) The Minister may list an entity to be a terrorist entity by notice in the *Gazette* if that organisation is an international terrorist organisation in terms of a decision of the Security Council of the United Nations.
- (2) Subject to this section, the Minister may also declare an entity to be a terrorist entity by notice in the *Gazette* if there are reasonable grounds for believing that the entity or any of its members on its behalf has—
- (a) claimed responsibility for a terrorist act; or
 - (b) committed a terrorist act; or
 - (c) endangered the security or territorial integrity of the Republic or another state.
- (3) Before acting in terms of subsection (2) the Minister must publish a notice in the *Gazette* stating—
- (a) that he or she intends to list the entity named in the notice as a terrorist entity;
 - (b) the grounds for such listing; and

(c) that the organisation or any member thereof may apply within 30 days to the High Court for an interdict prohibiting the proposed listing.

(4) Any member of the entity contemplated in subsection (3) may, within 30 days after the publication of a notice in terms of subsection (3), apply to the High Court for an interdict prohibiting the proposed listing.

(5) If no application for an interdict has been made within the period of 30 days or if the Court refuses to grant the interdict, the Minister may list the entity as a terrorist entity by notice in the *Gazette*.

Determination by accountable institution

13. Whenever an entity is listed a terrorist entity in terms of section 12, every accountable institution must determine whether it is in possession or control of property owned or controlled by or on behalf of such entity and must, if so, report that fact forthwith to the Financial Intelligence Centre.

Duty to report on property of terrorist entity

14.(1) An accountable institution which or a person who has control over property owned by or on behalf of a terrorist entity or information about a transaction or proposed transaction in respect of such property must, as soon as the person or accountable institution or person learns of this fact, report it to the Financial Intelligence Centre and provide the particulars required by the Centre.

(2) The director of the Centre may direct an accountable institution which has made a report in terms of subsection (1) to report—

- (i) at such intervals as may be determined in the direction, that it is still in possession or control of such property; and
- (ii) any change in the circumstances concerning the accountable institution's possession or control of that property.

Applicability of rules relating to confidentiality

15.(1) Subject to subsection (2), no duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance by an accountable institution or any other person with sections 13 and 14.

(2) Subsection (1) does not apply to the common law right to legal professional privilege as between an attorney and client in respect of communications made in confidence for the purpose of legal advice or litigation which is pending or contemplated or which has commenced.

Protection of person making report

16.(1) No action, whether criminal or civil, lies against an accountable institution or any other person complying in good faith with section 13 or 14.

(2) A person who has made, initiated or contributed to a report in terms of section 13 or 14 or the grounds for such a report, is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

(3) No evidence concerning the identity of a person who has made, initiated or contributed to a report in terms of section 13 or 14 or who has furnished additional information concerning such a report or the grounds for such a report in terms of this Act, or the contents or nature of such additional information or grounds, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

Refusal of Applications for Registration and the Revocation of the Registration of Charities Linked to Terrorist Entities

17. (1) The Minister and the Minister of Finance may sign a certificate refusing and revoking registration of a charity, based on information received including any security or criminal intelligence reports, where there are reasonable grounds to believe that an applicant for registration as a registered charity has made, is making, or is likely to make available, resources directly available to facilitate an act of terrorism.

- (1) A copy of the signed certificate shall be served on the applicant or the registered charity, personally or by registered letter sent to its last known address, with a copy of the certificate.
- (2) The certificate or any matter arising out of it shall not be subject to review or be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with this section.
- (3) Within (30) thirty days of receipt of the copy of the notice under subsection (2), the applicant or the registered charity may make an application to the High Court to review the decision of the Minister.
- (4) Upon the filing of the application under subsection (4), a judge of that court shall-
 - (a) Examine in chambers, the information, including any security or criminal or intelligence reports, considered by the Minister and the Minister of Finance before signing the certificate and hear any evidence or information that may be presented by or on behalf of those Ministers (whether or not such information is admissible in a court of law), and may, on the request of the Minister, hear all or part of that evidence or information in the absence of the applicant or registered charity, or any counsel representing the applicant or the registered charity, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person.
 - (b) Provide the applicant or registered charity with a statement summarizing the information available to the judge so as to enable the applicant or the registered charity to be reasonably informed of the circumstances giving rise to the certificate, without disclosing any information the disclosure of which would, in the judges opinion, be prejudicial to national security or endanger the safety of any person,
 - (c) Provide the applicant or registered charity with a reasonable opportunity to be heard, and
 - (d) Determine whether the certificate is reasonable on the basis of all the information available to the judge or if found not reasonable, quash it.
- (5) A determination under subsection (5) shall not be subject to appeal or review by any court.
- (6) Where the judge determines, under subsection (5), that a certificate is reasonable, or if no application is brought upon the expiry of (30) days from the date of service of the notice, the Minister shall cause the certificate to be published in the Gazette.

- (7) A certificate determined to be reasonable under subsection (5), shall be deemed for all purposes to be sufficient grounds for the refusal of the application for registration of the charity referred to in the certificate or the revocation of the registration of the charity referred to in the certificate.

Where the judge determines that the certificate is not reasonable, he or she shall order the registration or continued registration of the charity.

Part 2

Preservation and Forfeiture of Property of Terrorist Entities

Application of Act 121 of 1998 to property of terrorist entity

18. (1) The Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), applies to property belonging to or controlled by or on behalf of a terrorist organisation.

(2) For the purposes of subsection (1)—

(a) “ instrumentality of an offence” as defined in section 1 of that Act is deemed to include property belonging to or controlled by or on behalf of a terrorist entity listed under section 12; and

(b) “ proceeds of unlawful activities” as defined in section 1 of that Act is deemed to include property belonging to or controlled by or on behalf of a terrorist entity listed under section 12.

CHAPTER 5

GENERAL PROVISIONS

Regulations

19. The Minister may make regulations concerning any—

(a) matter that may or must be prescribed in terms of this Act; and

(b) any other matter which it is necessary or expedient to prescribe for the proper implementation of this Act.

ANNEXURE

(A) The 12 United Nations Conventions on Terrorism

(B) UN Security Council Resolution 1373

(C) Organisation of African Unity Convention on the Prevention and Combating Terrorism