



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 476 Cape Town 11 February 2005 No. 27266

THE PRESIDENCY

No. 128

11 February 2005

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 33 of 2004: Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004.



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Act No. 33, 2004 PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST
TERRORIST AND RELATED ACTIVITIES ACT, 2004

(English text signed by the President.)
(Assented to 4 February 2005.)

ACT

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;

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- (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 1998;
- (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 in accordance with such international law 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

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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,

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

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Definitions

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| 1. (1) In this Act, unless the context indicates otherwise — | |
| (i) “ appropriate government body ”, 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); | 35 |
| (ii) “ Convention offence ” 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; | |
| (b) an offence referred to in section 56(1)(h) of the Nuclear Energy Act, 1999 (Act No. 46 of 1999); or | 40 |