

## **SOUTH AFRICAN HUMAN RIGHTS COMMISSION**

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**2 September 2004**

**Parliament of South Africa  
NCOP Select Committee on Security and Constitutional Affairs  
Attention: Chairperson, The Hon. K Mokoena  
PO Box 15  
CAPE TOWN  
8000**

Dear Mr. Mokoena

**Re: The Protection of Constitutional Democracy against Terrorism and Related Activities Bill 2004**

The South African Human Rights Commission (SAHRC) has monitored and actively participated in the legislation making process of the Protection of Constitutional Democracy against Terrorism and Related Activities Bill (the Bill).

In June 2003, the SAHRC took part in the public hearings and delivered its submissions to the Safety and Security Portfolio Committee in the National Assembly. It is noted that the Bill was finalized and adopted by a joint sitting of the Safety and Security, Justice and Constitutional Development Portfolio Committees in the National Assembly on 13 November 2003. It is further noted that the NCOP Select Committee on Security and Constitutional Affairs is currently dealing with the Bill.

A large number of amendments have been made to the Bill since its introduction in parliament. Many of these amendments are welcomed. Some have taken note and account of the concerns that the SAHRC raised regarding the Bill. The SAHRC is still concerned about a couple of issues in the Bill. Noting that there is not the opportunity to present these concerns during public hearings, we record our concerns herein and request the Committee consider them. The comments relate to the [B12B-2003Reprint] version of the Bill and they are the following:

Know your rights. Know where you stand

**Chairperson:** J Kollapen; **Deputy Chairperson:** Z Majodina; **Commissioners:** K Govender, T Manthata, L Wessels; C McClain-Nhlapo; **Chief Executive Officer:** L Mokate

*1. The definition of terrorism*

The definition has been substantially altered taking into account many of the concerns of the SAHRC. However, section 1(xxiv)(3) still does not provide for actions that may be unlawful yet do not amount to terrorism. For example, industrial action that has not followed the procedures laid down to bring it within the parameters of lawful protest. It is recommended that further attention be given to this issue and that the removal of the word lawful from the definition be considered. An alternative would be to consider replacing the word unlawful with the words bona fide.

Whilst the SAHRC is of the view that in our current constitutional democracy the clause as it presently stands would not be used to curb unlawful yet bona fide protest, from a principled position, it is cautious to ensure that we do not have provisions on our statute books that could be abused in the future under a different dispensation.

*2. Section 25 Notification by President in respect of entities identified by United Nations Security Council*

The SAHRC welcomes the removal of previous provisions contained in the Bill that provided for the declaration of a terrorist organization. It is noted that section 25, in accordance with our international law obligations, will recognize entities identified by the United Nations Security Council as being terrorist organizations.

The section does not however, detail the implications of and the obligations created when an organization is identified by way of Proclamation in the Gazette. This may give rise to a situation wherein citizens unwittingly act in contravention of our international law obligations. Such actions may also constitute offences in terms of the Bill.

The obligations created for the State and citizens by Section 25 are onerous. It essentially brings into effect the obligations set out in UN Security Council Resolution 1373(2001) and related Resolutions. The SAHRC therefore suggests that a further sub clause be added to section 25 stating that the Proclamation shall refer to the relevant United Nations Security Council Resolutions and detail the obligations contained in such Resolutions and which the Proclamation gives effect to.

We request that your committee take these comments into consideration during its deliberations on the Bill.

Yours faithfully  
**Jody Kollapen**  
**Chairperson**  
**South African Human Rights Commission**

**Pp Judith Cohen**  
**Parliamentary Officer**  
**South African Human Rights Commission**