



# civilian secretariat for police service

Department:  
Civilian Secretariat for Police Service  
**REPUBLIC OF SOUTH AFRICA**

Private Bag X922, PRETORIA, 0001, 268 Lilian Ngoyi Street ,Fedsure Building, 2nd Floor, PRETORIA, 0001  
WEB: [www.policesecretariat.gov.za](http://www.policesecretariat.gov.za)

Ms T Joemat-Petterson MP  
Chairperson: Portfolio Committee on Police  
P O Box 15  
CAPE TOWN  
8000

Dear Honourable Chairperson

## **RESPONSES TO QUESTIONS RAISED DURING THE BRIEFING OF THE PORTFOLIO COMMITTEE ON POLICE ON 21 SEPTEMBER 2022**

On 21 September 2022, the Civilian Secretariat for Police Service briefed the Portfolio Committee on Police on further responses by the Department on additional submissions by the International Committee of the Red Cross (“ICRC”) as well as the Legislative schedule for the remainder of the 6th Parliament.

Subsequent to the briefing, Honourable Members of the Portfolio Committee on Police raised questions and the purpose of this letter is to respond to these:

1. Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill, 2022 (“POCDATARA Bill”)

### **Question**

Is a Humanitarian exemption clause not supported, as a result of the fear that terrorist organizations may pretend to be a humanitarian organization and hide behind the clause?

### **Response**

The exemption provided for in section 1(4) of the principal Act, is not supported, as it is contrary to Article 6 of the Terror Financing (“TF”) Convention that states that “Each State Party shall adopt such measures as may be necessary, including where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are **under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.**”

South Africa will therefore not meet both the Financial Action Task Force (“FATF”) standard as well as the TF Convention requirements if any exemption is inserted in the definition. The deletion of the exemption in clause 1(4) is crucial to addressing the deficiency relating to the financing of the terrorism offence.

The insertion of an exemption clause would only be necessary if the ICRC was indulging in activities falling within the ambit of the terror financing offence. In fact none of its activities could be construed as amounting to Terror Financing. An exemption only applies when one wants to exempt certain persons from breaking the law.

In addition, the humanitarian activities are more appropriately dealt with under the Non Profit Organisation Act, which governs charitable organisations rather than justifying humanitarian activities through a carve out.

## **Question**

Are there any examples of humanitarian organizations that have abused their privileges whilst operative in a place of conflict?

## **Response**

Please see the below extracts from the FATF REPORT: Emerging Terrorist Financing Risks, October 2015, which provide examples of abuse under the guise of humanitarian aid:

a) The 2014 FATF Non Profit Organisation (“NPO”) Typology report identified ongoing terrorist abuse in the global NPO sector. However, a few jurisdictions noted an increase in the misuse of some NPO’s providing humanitarian assistance, either to raise funds, or to move funds to countries neighbouring a crisis zone. While no definitive conclusions

can be drawn by these limited examples, according to Australia, charities and NPO's which operate in crises and war zones are at increased risk of being infiltrated and exploited by terrorist groups in these areas. Australia has also advised that funds sent to Syria and neighbouring countries for humanitarian aid are at increased risk of being used for financing terrorism if they are sent through less-established or start-up charities and NPOs that do not have proper due diligence measures/controls in place, according to the cases identified by Australia.

b) Case study 10: Cash couriers over a period of three consecutive days.

Three individuals declared a total amount of some EUR 90 000 in cash to customs officials at the airport in Brussels. The funds are said to originate from NPO A from Germany as part of humanitarian aid in Burundi, Benin and Zimbabwe. The three couriers are all Belgian nationals and have been living in Belgium for a long time. Accounts were held by the three individuals. A Belgian coordinating body of a radical Islamic organisation transferred money to these accounts. Over a period of one year a total amount of nearly EUR 20 000 was withdrawn in cash. Some EUR 10 000 was transferred to Turkey. According to the German FIU, NPO A was one of the largest Islamic organisations in Germany. NPO A is said to be linked with NPO B, which had been banned in Germany for allegedly supporting a terrorist organisation. All of NPO B's board members also played a major role in NPO A. According to information from the Belgian intelligence services the three individuals referenced above are known to be involved in local branches of a radical Islamic organisation. Given the nature of the transactions and the links between the two NPO referenced above, Belgian authorities suspect that at least part of the funds described above could have been used to support terrorist activities. Source: Belgium

c) The use of organised crowdfunding techniques also represents an emerging TF risk. Crowdfunding is an Internet-enabled way for businesses, organisations, or individuals to raise money, from donations or investments, from multiple individuals. Crowdfunding websites allow people to easily set up a fundraising page and collect donations. Yet, crowdfunding is vulnerable to exploitation for illicit purposes, including instances where the true purpose of the funding campaign is masked. Individuals and organisations seeking to fundraise for terrorism and extremism support may claim to be engaging in legitimate charitable or humanitarian activities and may establish NPOs for these purposes. Several cases indicate that the end-use of funds collected through

crowdfunding and social networks was not known to donors. As well as raising funds for TF purposes, crowdfunding techniques could also be used to transfer funds abroad by avoiding regulated financial entities.

d) Case study 22: Charity prosecuted for terrorist financing, thanks to social media.

A charity was created in 2012 to raise funds for humanitarian projects in Palestinian territories and Syria. After a donation campaign, in August 2013, this charity brought two ambulances to Syria with medical material to build a hospital. Pictures were posted on Facebook to attest to the reality of the project and communicate with donors. A month later, the charity made a new call for funds on social networks, indicating that three members of the association planned to bring funds to Turkey. A customs control at a French airport revealed that each of them carried EUR 9 900, below the declaration threshold, but only EUR 6 000 were to be used for the humanitarian project. The remaining funds were to be given to FTFs. In January 2014, an administrative order froze the assets of the association and four of its members. In November 2014, the association was dissolved, and two members were arrested for TF and criminal conspiracy in connection with a terrorist enterprise. Law enforcement authorities used Facebook public messages and pictures as evidence. Source: France

### **Question**

Do other countries have exemption clauses?

### **Response**

Namibia had a similar provision as South Africa in relation to the “armed struggle” exemption and Namibia amended its anti terrorism legislation and the definition of terrorist activity in the PREVENTION AND COMBATING OF TERRORIST AND PROLIFERATION ACTIVITIES ACT NO. 4 OF 2014 is as follows:

“terrorist activity” means—

(a) any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, or group of

persons or which causes or may cause damage to public or private property, natural resources, the environment or cultural heritage and is calculated or intended to—

- (i) intimidate, instil 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,
- (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency,
- (iii) create general insurrection in a State; or

(b) any act which constitutes an offence within the scope of, and as defined in one of the following treaties—

- (i) the Convention for the Suppression of Unlawful Seizure of Aircraft (1970),
- (ii) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971),
- (iii) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973),
- (iv) the International Convention against the Taking of Hostages (1979),
- (v) the Convention on the Physical Protection of Nuclear Material (1980),
- (vi) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988),
- (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005),
- (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005),
- (ix) International Convention for the Suppression of Terrorist Bombings (1997),
- (x) International Convention for the Suppression of the Financing of Terrorism (1999),
- (xi) International Convention for the Suppression of Acts of Nuclear Terrorism (2005),
- (xii) Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (2010), and
- (xiii) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (2010);

(c) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit any act referred to in paragraph (a) or (b);

(d) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act; or

(e) the payment of ransom to designated persons or organisations, except where such payment is approved or authorised by any government to secure the safety of a national of that country”.

2. South African Police Service Amendment Bill (“SAPS Bill”)

**Question**

Is the issue of the Community Police Forum (“CPF”) Structures and their placement and the funding thereof, the only objective in the SAPS Bill?

**Response**

The Bill seeks to align the principal Act with the Constitution and various policies, in particular the National Development Plan, and the Policies on Community Police Forums and a Single Police Service.

The Bill proposes amendments to the Civilian Secretariat for Police Service Act, to provide for the establishment of neighbourhood patrolling and neighbourhood watch associations, community policing forums, district and provincial community policing boards and the National Community Policing Board.

The Bill further proposes amendments to the Regulation of Gatherings Act, to provide that in the instance of a gathering or demonstration, a member of the South African Police Service (“Service”) may only use minimum force which is reasonably necessary and proportional in the circumstances. In addition, deadly force may only be used if there is

a threat of serious bodily harm to the member of the Service or to any other person, which force must only be used when reasonably necessary and proportional in the circumstances. The Bill further addresses the Constitutional Court's finding in the *Mlungwana* judgment that section 12(1)(a) of the Regulation of Gatherings Act is unconstitutional.

### **Question**

How is the funding of CPF's being addressed?

### **Response**

The Civilian Secretariat for Police Service and the South African Police Service are in collaboration, seeking to find solutions around an appropriate funding model for CPFs.

## 3. Independent Police Investigative Directorate Amendment Bill ("IPID Bill")

### **Question**

Why Law Enforcement Agencies are not included in the Bill, whereas the subject is a matter the Minister previously has shown interest in?

### **Response**

A legal opinion was sought from the State Law Advisers on this matter. The State Law Advisers advised that the extension of IPID's oversight mandate to include Law Enforcement Officers appointed by the Municipalities would in terms of section 151 (4) of the Constitution amount to the national government impeding a municipality's right to exercise its powers and performance its functions as provided in section 156 of the Constitution and will therefore not pass Constitutional muster.

The State Law Advisers also advised that the oversight mandate over the conduct of road traffic law enforcement officers are provided for in the National Road Traffic Act, Road Traffic Management Corporation Act and National Road Traffic Code. It is therefore the

State Law Advisers opinion that the oversight mandate of IPID cannot be extended to include oversight over Law Enforcement Agencies.

In light of the Honourable Chairperson's concern around the pace at which the finalization of legislation such as the SAPS Bill and IPID Bill are being addressed, and the subsequent request that these Bills including the POCDATARA Bill, be prioritised, endeavours will be made to meet this request and deal with these Bills as priority Bills, whilst work on the Second Hand Goods Amendment Bill, Stock Theft Amendment Bill and Firearms Control Amendment Bill, will continue.

Kind regards

A handwritten signature in black ink, appearing to read 'T L Ramaru', with a large, stylized flourish at the end.

**MR T L RAMARU**

**ACTING SECRETARY FOR POLICE SERVICE**

**DATE:** 27 September 2022