

The Ceasefire Campaign

Comments on The Prohibition or Restriction of Certain Conventional Weapons Bill, 2007

Ceasefire Campaign Background

The Ceasefire Campaign's aims and objectives are inter alia

- To contribute to disarmament and peace in South and Southern Africa
- To work towards the demilitarization of society and for human rights
- To campaign for a reduction in military spending and the transfer of resources to development and poverty eradication.

The organization has its roots in the anti-apartheid struggle. Prior to the new dispensation, South Africa was a highly militarized society. With the dissolution of End Conscription Campaign and other organizations concerned with conscription, a vacuum existed to address issues of disarmament, demilitarization and peace. The Ceasefire Campaign was then formed by a group of peace activists with the above objectives. The name Ceasefire was inspired by Tokyo Sekwale's order to ceasefire at Chris Hani's funeral.

Introduction

The Bill's purpose is to enact the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, into South Africa Law; and to provide for matters connected therewith.

The Ceasefire Campaign thanks the Committee for the opportunity to comment on the Bill. Notwithstanding some overt omissions, we welcome the purpose of the Bill and South Africa's stated commitments in the preamble.

We are led to believe that some parliamentarians have concerns regarding the impact of the Bill on the South African National Defence Force. In this regard we wish to reassure them that the Bill does not place new restrictions on South Africa outside of the commitments already in existence through South Africa already being a party to the Convention. Furthermore, because internationally there is general agreement about the rules, being a party to the Convention does not put South Africa in a weak position militarily.

Another important point given we wish to make relates to our central role in Africa and the lack of support from Africa for the CCW. Although it may not be possible to include in legislation a commitment to encouraging African states to engage with the

CCW, we would request that an effort be made to attempt to formalise a commitment towards taking the CCW forward on the continent.

Summary

- The Ceasefire Campaign is disappointed at the omission of Protocol V from the legislation and recommends at the very least, an inclusion to commit to the clearance, removal or destruction of explosive remnants of war;
- We also recommend the inclusion of a reference to cluster bombs;
- We advocate the inclusion of the National Conventional Arms Control Act where appropriate;
- We recommend that South Africa not participate in joint or combined operations with states not party to the Convention.

1. Protocol V: Explosive remnants of war

South Africa is still to ratify Protocol V. Although it seems certain that South Africa will do so, the drafters of the Bill are confronted with the conundrum of whether or not to include details of the Protocol. To signal South Africa's intentions and to ensure the Bill covers the contents of the protocol, we recommend

- that the definitions as included in Article 2 of the Protocol be inserted in the definitions section of the Bill;
- a further section be inserted after section 8, committing government to the clearance, removal and destruction of explosive remnants of war;
- interpret and translate into law, the technical annex of Protocol V in a manner that will ensure its objective with regard to best practice for achieving the objectives contained Articles 4, 5 & 9 of the Protocol

2. Cluster munitions

Despite the failure of governments to agree to start negotiations on cluster munitions in the Framework of the Convention on Conventional Weapons, there is a process afoot to address the issue and halt the devastation caused to civilians through these munitions. Protocol V does begin to address the issue through the commitment to address the clearance, removal or destruction of explosive remnants of war and this is even more reason for the inclusion of the protocol in the Bill. However, if South Africa is serious about its commitment to the eradication of cluster munitions which have unacceptable humanitarian consequences, it should take the forward looking step of including a definition of the cluster munitions which are the source civilian deaths and injuries and of a expanding section 7 to ensure that cluster munitions are covered.

3. National Conventional Arms Control Act

Since in terms of section 2(c) one of the objects of the Act is, inter alia, to prohibit the... acquisition and transfer of prohibited weapons, it is odd that the responsibilities of the National Conventional Arms Control Committee are not apparently to be affected by this Act. No reference is made to that Committee in this Act. The control mechanisms are different. There are loop-holes in the Bill that are not in the NCAC Act. For example, the latter specifies "brokering services", "contracting", "marketing" and other "services" in detail, whereas the Bill merely refers to "dealing in" the

weapons defined. The NCAC Act specifies "conveyance" as one of the controlled activities. The Bill does not. "Export" and "import" are differently defined.

The Bill fails to prohibit or restrict the development, transfer etc. of technology relating to prohibited or restricted weapons.

Unlike the NCAC Act, the Bill makes no provision for an inspectorate independent of the Ministry of Defence. The Ceasefire Campaign submits that this is essential. It would be pointless, however, to establish a new inspectorate; that of the NCACC should be held responsible for this function. Similarly, the reporting process should be independent of the Ministry of Defence.

In terms of the NCAC Act the maximum term of imprisonment is 25 years. In terms of section 9 of the Bill, the maximum term is 15 years. Offences under the Bill may at least as serious as those under the NCAC Act; there seems no justification for a lower maximum term.

The development of indiscriminate weapons may be expected to continue to proliferate. Amendments to this Act may take time to be enacted. Government should therefore be empowered to include additional weapons as prohibited or restricted weapons by regulation from time to time. Again, it would seem to be better if this process were overseen by the NCACC.

4. Joint or combined operations

The Bill does not address effectively joint or combined operations. We would therefore like to recommend that South Africa exercise the right **not** to participate in joint or combined operations with any state not party to the convention.

5. Improve wording

1. Section 6(1) is badly drafted. Subparagraphs (a) to (e) are not grammatically parallel. Subparagraphs (a) and (b) relate to "mine, booby-trap or other device", whereas subparagraphs (c) to (e) relate to "use or direct". In particular, it is not clear whether (a) and (b) should be linked by "and" or by "or". We submit it should be "or".

2. In section 7(d) the exception "or are themselves military objectives" makes the subparagraph worthless. We submit that that expression should be deleted.