THIS LETTER OF OBJECTION IS SUBMITTED IN AGREEMENT BY ALL OF THE UNDERSIGNED ORGANISATIONS. CONTACT DETAILS FOR EACH ORGANISATION CAN BE FOUND BY EACH RELEVANT SIGNATORY BELOW.

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6 December 2022

Recipient: National Parliament of South Africa
Select Committee - Security and Justice
Hon. Ms S Shaikh (Chairperson)
Mr G. Dixon (Comm. Sec.)
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OBJECTION: POCDATARA - AMENDMENT BILL
PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORISM AND RELATED ACTIVITIES - ACT 33 OF 2004

1) Removal of Chapter 1. Subsection 4 - Self Determination.
2) The Above Removal in The Context of Old Powers Misdirected.
3) New Excessive Powers.

Dear Select Committee on Security and Justice,

We write to you on behalf of human rights activists, South African citizens and/or organisations that believe in, advocate, protect or promote the right to self-determination.

We believe that the amendments in their current form leave the door open for misinterpretation of the Act in such a way that individuals or organisations that protect or promote the right to self-determination in South Africa could be classified as terrorists.

Over 25,000 South African citizens and organisations have lodged objections to many of the proposed amendments to the Act. We do not believe that these objections were appropriately addressed, and that the Bill in its current form is unconstitutional.

1. OBJECTION TO THE REMOVAL OF: (POCDATARA)
Definitions and Interpretation: Chapter 1. Subsection 4 - Self-Determination.

In particular, we object to the removal of Chapter 1. Subsection 4, which defines and protects the constitutional right to self-determination from being incorrectly interpreted as terrorism.

We note that the Red Cross, DearSA, as well as Afriforum, amongst others, have also raised serious concerns surrounding the dangers of the removal of this subsection, as provided below:

Protection of Constitutional Democracy against Terrorist and Related Activities
Definitions and Interpretation:
Chapter 1. Subsection 4 (Self-determination)

> *"(4) Notwithstanding any provision of this Act or any other law, any act committed 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,* ***in accordance with the principles of international law, especially 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,* ***shall not****, for any reason, including for purposes of prosecution or extradition,* ***be considered as a terrorist activity****, as defined in subsection (1)."*

This section was intentionally included in the original Act, under "*Definitions and Interpretation*", for the exact purpose of making it clear to all, the public and the courts, that self-determination is NOT to be defined or interpreted as terrorism.

There can be no logical reason to remove this entire section. Its removal creates confusion within the intent of the law, and thereby suggests that acts of self-determination could be confused as acts of terrorism.

Since its very inception in the Act, Chapter 1. Subsection 4 has helped to define the law surrounding terrorism and to help ensure that acts of self-determination are not misinterpreted as terrorism. It therefore provided clarity and the correct interpretation to the law.

Nothing is gained by its removal. Its removal is arbitrary and dangerous as it could lead to the persecution of acts protected in the constitution, such as self-determination.

Therefore, it must not be removed.

To reiterate the extent to which self-determination is to be protected, defended and guaranteed in law:

- *The African Charter on Human and Peoples' Rights;*
- *The United Nations Charters;*
- *Article 1 of the International Covenant on Civil and Political Rights;*
- *1948 The Universal Declaration of Human Rights (UDHR);*
- *1966 The International Covenant on Economic, Social, and Cultural Rights, and the Covenant on Civil and Political Rights (the "Twin Covenants");*
- *Section 235 of the South African Constitution, and binding the SA government to international law by Sections 39(1), 231, 232 and 233.*

In complete opposition to the above, the removal of Subsection. 4 does nothing to strengthen the definition of terrorism - as the Bill was intended to do - instead it weakens the definition, provides less clarity, and creates confusion in the interpretation of the law.

If there is a specific part of the subsection that the Committee is concerned with then that specific part should be addressed. But removal of the entire subsection protecting the right to self-determination goes against the intended interpretation of the law and may result in conflict with Section 235 of the South African constitution, as well as international law.

The South African Police Service (SAPS) are knowingly overburdened in terms of manpower and resources, by removing this subsection, individuals and organisations that are promoting the right to self-determination, and in many cases have been doing so legally and peacefully for many years, may all of a sudden be misconstrued as engaging in terrorist activity.

This could misdirect and overburden SAPS even further in the pursuit of inappropriate claims of terrorism, and even worse, could illegitimately classify law abiding citizens and organisations as terrorists.

2) The Removal Of The Right To Self-Determination Taken In The Context Of Old Powers Misdirected; And 3) AMENDMENTS B-15B: New Excessive Powers

In the limited time we have available to meet the deadline to submit objections as provided for by the Committee (6 December, 2022), we will not be able to compose here a comprehensive list of legal problems with interpreting the powers envisioned in the old Act taken in the context of the removal of any substantive recognition of and protection for the right to self-determination, or the broad concerns related to the blatant government overreach implicit in many of the new amendments proposed.

In this regard, this objective is not exhaustive, and we reserve our right to expand on this and object to any further such matters in the future. However, as a matter of urgency we will attempt to address the issues we believe must be addressed without delay.

In "Amendments B-15B" pg6 a)(iiiA), it states that terrorism is "*any act*", which "*is calculated to overthrow the government…*", and such terms as "overthrow" are left open to interpretation without any context of self-determination. This could result in the most basic democratic process of a political party in favour of self-determination electorally defeating/"overthrowing" the national ruling party being interpreted as an act of terrorism.

Furthermore, the above peaceful political acts taken in conjunction with pg7 b)i) which states terrorism is any act which "*threatens the unity or territorial integrity of the Republic*", could also misconstrue self-determination as terrorism. And on pg7 b)ii) the net is cast so unreasonably wide so as to include the sharing of any ideas which "*may cause feelings of insecurity*"… in a *"person, government.. or institution.*"

The above is made even worse on pg7 c) where it confuses matters further by stating that terrorism is any activity as contemplated above "*which is committed… for the purpose of the advancement of a… political, religious, ideological or philosophical motive, objective, cause or undertaking.*"

The principles of international order were set out in a 2018 report (A/HRC/3763) to the General Assembly of the United Nations and the Human Rights Council. Section 14(h) categorically states that the principle of territorial integrity has external application and a state cannot use the principle of territorial integrity to deny or hollow out the right to self-determination.

It is as if the above amendments have been constructed either with malicious intent or without any conscious understanding of the right to self-determination, the right to free speech, political protest, and a basic principle of democracy which is to protect the right to a plurality of opinions and opposition voices which keep a government accountable.

The above is obviously not an unacceptable outcome or interpretation, but one that becomes possible with the inclusion of ambiguous and broad definitions, and by the removal of any reference to the right to self-determination.

For example, the right to self-determination was specifically signed and agreed upon by the president of South Africa, Thabo Mbeki, as well as Constand Viljoen of the Freedom Front, and its principles have been promoted by many political parties in the country over the years, such as the IFP and others.

The Cape Independence Party (CAPEXIT) has been officially and legally registered with the Electoral Commission (IEC) since 2007. They are democratically elected, hold seats in government, and have been peacefully promoting the principles of self-determination and contesting elections in South Africa for over 15 years.

Similarly, parties like the CCC (Cape Coloured Congress), UIM (United Independent Movement), and organisations like the CIAG (Cape Independence Advocacy Group), ULA (United Liberty Alliance), CapeXit NPC, UCS CTA (Cape Transitional Authority), CIG (Cape Independence Group) and SSoGH (Sovereign State of Good Hope), amongst others have all been legally promoting the right to the self-determination of the Cape.

To provide yet more examples, organisations like Dear South Africa (DearSA), and the recently formed WC Devolution Working Group which include organisations such as the DA, ACDP, FF+, CAPEXIT, Afriforum, Cape Forum, Sakeliga, SAAI as well as many internationally renowned and well respected economists, lawyers and businessmen who all believe in forms of self-determination such as federalism/devolution.

The absurdity of the proposed amendments to the POCDATARA Act is that, if enacted in its current form, all of the above organisations and their supporters could now potentially be classified as terrorists.

If this is the intention of the amendments to the Act then the national government of South Africa would be openly stating to all of its citizens, and the world, that South Africa is no longer a constitutional democracy, but rather a one-party tyrannical dictatorship.

The above is surely not the intention of the proposed amendments to the Act.

Therefore, we kindly request the Select Committee on Security and Justice to reconsider the proposed amendments, to ensure that the right to self-determination remains in the Act, that any ambiguity is removed which may threaten South African democracy, free speech, the right to report and share information freely, protest the government, and oppose its policies.

Sincere regards,

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AND ON BEHALF OF ANY INDIVIDUALS OR GROUPS MENTIONED ABOVE, AND ACROSS SOUTH AFRICA, WHO BELIEVE IN THE RIGHT TO PROMOTE AND PROTECT THE CONSTITUTIONAL RIGHT TO SELF-DETERMINATION.