



29 August 2022

**CLAUSE BY CLAUSE SUMMARY OF WRITTEN SUBMISSIONS RECEIVED ON THE PROTECTION OF CONSTITUTIONAL DEMOCRACY
AGAINST TERRORIST AND RELATED ACTIVITIES AMENDMENT BILL, 2022 [B15-2022]**

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1. INTRODUCTION

The Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill, 2022 [B15-2022] (“the Bill”), is intended to update the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (No. 33 of 2004) (“principal Act”) to:

- Include developments in international law;
- give effect to certain Constitutional Court judgments; and
- address challenges experienced with conducting investigations and prosecutions.

In summary, the proposals in the Bill aim to:

- 1) Amend certain definitions in the principal Act.



- 2) Insert some new offences related to maritime and aviation security.
- 3) Address the problem of foreign terrorist fighters.
- 4) Shift the responsibility for the publication of United Nations Security Council Resolutions in a notice in the *Gazette*.

In more detail, the Bill provides for:

- offences related to terrorist training and the joining and establishment of terrorist organisations;
- offences related to foreign travel and attempts to leave the Republic under certain circumstances;
- offences in respect of the possession and distribution of publications with unlawful terrorism related content;
- authorisation to be obtained from the Director of Public Prosecutions in respect of the investigation and prosecution of certain offences;
- the issuing of warrants for the search and cordoning off of vehicles, persons and premises;
- a direction requiring the disclosure of a decryption key and the effect of a direction to disclose a decryption key;
- the removal of, or making inaccessible, publications with unlawful terrorism related content; and to provide for matters connected therewith.

Links:

- [Click here](#) for a copy of the **Bill**.
- [Click here](#) for a copy of the **principal Act**.
- [Click here](#) for the **research analysis** of the Bill.
- Links to the public submissions are included below.

This paper provides a summary of the public submissions received on the Bill in preparation for the meeting of the Portfolio Committee on Police on 31 August 2022.

2. PUBLIC SUBMISSIONS RECEIVED

The call for public submissions was opened on 12 August 2022 and closed on 19 August 2022. The call for submissions was published in all official languages in a national and regional newspapers. The Portfolio Committee on Police received five public submissions on the Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill, 2022 [B15-2022], including the following:

- 1) Afriforum (Hurter Spies Attorneys made the submission on behalf of Afriforum). Click [here](#) to access the submission.
- 2) The Banking Association South Africa (BASA).¹ Click [here](#) to access the submission.
- 3) The International Committee of the Red Cross (ICRC). Click [here](#) to access the submission and [here](#) for the PowerPoint presentation.

¹ BASA declined the invitation to make an oral presentation to the Committee as their written submission is substantial.



- 4) The Sussex Terrorism and Extremism Research Network (STERN). Click [here](#) to access the submission and [here](#) for the PowerPoint presentation.
- 5) Mr. C Nel.² Click [here](#) to access communication with Mr. Nel.

3. CLAUSE-BY-CLAUSE SUMMARY

The table below provides a clause-by-clause summary of the written submissions received on the Bill.

Explanatory note:

- *Words in bold type in square brackets indicate omissions from existing enactments.*
- *Words underlined with a solid line indicate insertions in existing enactments.*

3.1. Clauses 1: Definitions

The submissions expressed concern about the following definitions changed by the Bill:

- Property
- Terrorist activity
- Entity
- Electronic communications service provider

The ICRC proposed the retention of section 1(4) in terms of humanitarian support.

CLAUSE 1	ORGANISATION	COMMENT
“Property”	Afriforum	The section was already overbroad and vague. The expansion thereof has exacerbated the problem.
'property' means money or any other movable, immovable, corporeal or incorporeal thing, and includes any rights, privileges, claims and securities and any interest therein	BASA	1) The definition of 'property' in the form prior to its proposed amendments, is already all-encompassing definition and would

² Mr. Nel indicated that he would like to make an oral presentation to the Committee. The Committee's Secretariat requested that he also submit a short written summary or presentation. Mr. Nel indicated that he will attempt this but will reconsider making an oral presentation as he does “not feel comfortable doing so over a non-secure internet communication site.” As a written piece was not received, a summary is not included in this paper.



CLAUSE 1	ORGANISATION	COMMENT
<p>and all proceeds thereof, <u>or any digital representation of perceived value, such as a crypto-currency, that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account, or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012);</u>"</p>		<p>include any digital representation of perceived value, which would include i.e. crypto assets, fiat currency and securities.</p> <p>2) The term 'money' in its broadest sense would include any tangible or intangible thing that functions as a means of exchange or debt settlement, a measure of value, a unit of account or as a store of value, and accordingly would include -</p> <ul style="list-style-type: none"> a) Cash or currency, being physical coins and notes, as contemplated in the South African Reserve Bank Act of 1989 ('SARB Act'). b) A credit against an account held at a bank and which is convertible to cash or currency by the bank on demand. c) Electronic money or e-money, as contemplated in the SARB's position paper on electronic money, which is defined as <i>"Monetary value represented by a claim on the issuer. This money is stored electronically and issued on receipt of funds, is generally accepted as a means of payment by persons other than the issuer and is redeemable for physical cash or a deposit into a bank account on demand."</i> d) Virtual or digital currency (e.g. Ripple). In the SARB's position paper on Virtual Currencies, it is defined as <i>"a digital representation of value that can be digitally traded and functions as a medium of exchange, a unit of account and/or a store of value, but does not have legal tender status."</i> <p>3) If there is concern as to whether virtual or digital currency constitutes 'money', and hence the proposed inclusion of the following in the definition of property, which defines 'digital representation of perceived value', as being <i>that can be traded or transferred electronically within a community of users of the</i></p>



CLAUSE 1	ORGANISATION	COMMENT
		<p><i>internet who consider it as a medium of exchange, unit of account, or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012);"</i></p> <p>Proposal: BASA proposes the deletion of the words set out below:</p> <p><i>'property' means money or any other movable, immovable, corporeal or incorporeal thing, and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof, or any digital representation of perceived value, such as a crypto-currency, that can be traded or transferred electronically within a community of users of the internet who consider it as a medium of exchange, unit of account, or store of value and use it for payment or investment purposes, but does not include a digital representation of a fiat currency or a security as defined in the Financial Markets Act, 2012 (Act No. 19 of 2012);"</i></p> <p>b) As an alternative if not in support of the above, cross reference the definition of crypto-asset as proposed in Schedule 1 to the FIC Act (which is currently under review).</p> <p>4) In relation to the definition of crypto asset (mentioned above), noting that within the next 12 – 18 months a crypto asset is contemplated as being declared a financial product, consideration to be given to deleting the following wording from the said definition 'or a security as defined in the Financial Markets Act' to</p>



CLAUSE 1	ORGANISATION	COMMENT
<p>(iv) causes serious risk to the health or safety of the public or any segment of the public;</p> <p>(v) causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultural heritage, whether public or private;</p> <p><u>(vA) causes the destruction of or substantial damage or interference to an information infrastructure or any part thereof;</u></p> <p>(vi) is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to—</p> <p>(aa) a system used for, or by, an electronic system, including an information system;</p> <p>(bb) a telecommunication service or system;</p> <p>(cc) a banking or financial service or financial system;</p> <p>(dd) a system used for the delivery of essential government services;</p> <p>(ee) a system used for, or by, an essential public utility or transport provider;</p> <p>(ff) an essential <u>or critical</u> infrastructure [facility], <u>information infrastructure, or a critical infrastructure complex;</u> or</p> <p>(gg) any essential <u>service designated as such in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), or essential emergency services, such as police, medical or civil defence services;</u></p>		<ul style="list-style-type: none"> • Cases such as narcoterrorism show limits of ideological motive. • Most groups in Africa today are hybrid.



CLAUSE 1	ORGANISATION	COMMENT
<p>(vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; [or] (viii) creates a serious public emergency situation or a general insurrection in the Republic [,]; <u>or</u> (ix) is the offence of—</p> <p><u>(aa) unlawful access in terms of section 2 of the Cybercrimes Act;</u></p> <p><u>(bb) unlawful interception of data in terms of section 3 of the Cybercrimes Act;</u></p> <p><u>(cc) unlawful interference with data or a computer program in terms of section 5 of the Cybercrimes Act;</u></p> <p><u>(dd) unlawful interference with a computer data storage medium or a computer system in terms of section 6 of the Cybercrimes Act;</u></p> <p><u>(ee) unlawful acquisition, possession, provision, receipt or use of password, access code or similar data or device in terms of section 7 of the Cybercrimes Act;</u></p> <p><u>(ff) unlawful use or possession of a software or hardware tool for purposes of committing the offences listed in items (aa) to (ee); or</u></p> <p><u>(gg) cyber extortion in terms of section 10 of the Cybercrimes Act, which is committed with the intention to facilitate or to commit an act referred to in subparagraphs (i) to (viii) of this paragraph.</u></p> <p>whether the harm contemplated in [paragraphs] subparagraphs [(a)](i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to [(viii)] (ix) was committed by way of any means or method; and</p>		



CLAUSE 1	ORGANISATION	COMMENT
<p>(b) which is intended, or by its nature and context, can reasonably be regarded as being intended, in whole or in part, directly or indirectly, to—</p> <p>(i) threaten the unity and territorial integrity of the Republic;</p> <p>(ii) intimidate, or to induce or cause feelings of insecurity within, the public, or a segment of the public, with regard to its security, including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population; [or]</p> <p>(iii) unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a segment of the public, or a domestic or an international organisation or body or intergovernmental organisation or body, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles [,]; <u>or</u></p> <p><u>(iv) further the objectives of an entity engaged in terrorist activity,</u></p> <p>whether the public or the person, government, body, or organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; [and</p> <p>(c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological or philosophical motive, objective, cause or undertaking;]"; and</p> <p>(s) by the deletion of subsection (4).</p>		



CLAUSE 1	ORGANISATION	COMMENT
<p>“Electronic communications service provider”</p> <p><u>'electronic communications service provider' means electronic communications service provider as defined in section 1 of the Cybercrimes Act;</u></p>	<p>BASA</p>	<p>1) Clarify if section 1(e) is limited to ‘independent’ service providers that operate such service as an only (sole) service – an independent Mobile Network Operator, or also applicable where this is provided as a service offering by another type of business, e.g., in collaboration with a primary 'electronic communications service provider'?</p> <p>2) Clarify what is considered “who is deemed to be licensed”. Does this extend to a telecommunications service provided which comprises of a Mobile Virtual Network Operator (MVNO), which is characterised as a mobile virtual network operator that does not operate under its own license and does not have the infrastructure to provide mobile services to its customers. Instead, it leases wireless capacity from pre-existing Mobile Network Operator (MNO).</p> <p>3) The clarity on this item will impact on comments below as this definition links to additional provisions of the Amendment Bill, to wit proposed section 3A that creates offences in relation to 'electronic communications service provider'.</p>
<p>“Entity”</p> <p>" 'entity', with reference to sections 3, 4, and 14 (in so far as it relates to the aforementioned sections), 22[,] and 23 [and 25], means a natural person, or a group of two or more natural persons (whether acting in the furtherance of a common purpose or conspiracy or not), or a syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation, or any</p>	<p>BASA</p>	<p>BASA suggests that it must be clear that an “entity” that has subsequently been removed from a Resolution of the United Nations Security Council (deleted section 25) and from a notice announced by the Minister of Finance under section 26A(1) of the Financial Intelligence Centre Act 38 of 2001 (the FIC Act), or from a notice given under section 26A(3) by the Director referred to in section 1 of the Financial Intelligence Centre Act will not be considered an “entity”.</p>



CLAUSE 1	ORGANISATION	COMMENT
<p>incorporated association or organisation or other legal person, and includes, where appropriate, a cell, unit, section, subgroup or branch thereof or any combination thereof, and <u>also any entity referred to in a Resolution of the United Nations Security Council and announced in a notice by the Minister of Finance under section 26A(1) of the Financial Intelligence Centre Act, or in a notice given under section 26A(3) by the Director referred to in section 1 of the Financial Intelligence Centre Act;</u>"</p>		<p>2) Per paragraph 2.4 of the Memorandum on the Objects of POCDATARA Amendment Bill, all UN Security Council Resolutions, which include financial sanctions, must be published by the Minister of Finance in accordance with section 26A(1) of the FIC Act. BASA is in agreement with the above interpretation and requirements of section 26A(1). Therefore, the Minister does not have a discretion to publish or not publish.</p> <p>3) Noting the above requirement, any UN Security Council Resolution, as amended (by the removal and/ or insertion of 'entity' (as defined) names, would also be required to be published in terms of section 26A(1).</p> <p>4) In light of the above, it is unclear as to the purpose of section 26A(3)(a) – (b), as any such notice contemplated in these sections may only be done pursuant to a notice as gazetted under section 26A(1). The intention hereof would never be for the purposes of amending an initial UN Security Council Resolution only – as subsequent UN Security Council Resolutions would be issued amending (adding or removing) sanctions and / or 'entities' in or from the UNSC Resolution.</p> <p>5) Furthermore, noting the concern expressed in the Memorandum, regarding the delay in publication of notifications of entities listed in the UN Security Council Resolution by the President in terms of POCDATARA, a similar concern is noted in relation to the publication by the Minister of Finance as contemplated in section 26A(1) of the FIC Act. Noting that 'entities'/ accountable institutions should not be prejudiced by the</p>



CLAUSE 1	ORGANISATION	COMMENT
		<p>delay in publication in instances where sanctions and/ or entities have been amended.</p> <p>Proposal: BASA suggests that the following wording be considered:</p> <p>“entity”, with reference to sections 3, 4, and 14 (in so far as it relates to the aforementioned sections), 22, and 23 and 25, means a natural person, or a group of two or more natural persons (whether acting in the furtherance of a common purpose or conspiracy or not), or a syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation, or any incorporated association or organisation or other legal person, and includes, where appropriate, a cell, unit, section, sub-group or branch thereof or any combination thereof, and also any entity referred to in a Resolution of the United Nations Security Council and announced in a notice by the Minister of Finance under section 26A(1) of the Financial Intelligence Centre Act, [and] or in a notice given under section 26A(3) by the Director referred to in section 1 of the Financial Intelligence Centre Act.</p> <p>Alternatively, BASA suggests the deletion of the words: “in a notice given under section 26A(3) by the Director referred to in section 1 of Financial Intelligence Centre Act.”</p>
<p>Proposed retention on section 1(4) <i>S1(4) reads: 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,</i></p>	<p>ICRC</p>	<p>An International Humanitarian Law (IHL) saving clause separates the law applicable to the conduct that occurs in peace time from the conduct that occurs during an armed conflict:</p>



CLAUSE 1	ORGANISATION	COMMENT
<p><i>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).</i></p>		<ul style="list-style-type: none"> • If the conduct qualified as ‘terrorist’ occurs in peace time, IHL would not apply. • If the conduct occurs within the context of an international or a non-international armed conflict, it will not be governed by the counter-terrorism legislation and IHL will govern the situation as the <i>lex specialis</i>. • Inclusion of an IHL Saving clause is consistent with South Africa’s obligations under international law. • Allows national liberation movements not to be classified as “terrorist groups” under domestic counter-terrorism legislation. • Similar IHL Saving clauses are included in counter-terrorism legislation of Ethiopia, Chad, the United Kingdom, Ireland, New Zealand and Canada. • Also recommended by AU Model Anti-Terrorism law and UNSC Resolution 2462 (2019).

3.2. Clauses 2 and 3: Offences associated or connected with terrorist activities

CLAUSE	ORGANISATION	COMMENT
<p>Clause 2 Clause 2 proposes to amend section 3 of the principal Act (<i>Offences associated or connected with terrorist activities</i>) by providing for an offence in respect of entering, <u>departing from</u>, or <u>transiting through</u> or remaining in any country, for purposes of joining or supporting terrorist groups, in other words, to address <u>“Foreign Terrorist Fighters”</u>.</p>	<p>STERN</p>	<p>The amendment proposes to add the following regarding training for terrorist-related activities:</p> <p>(4) A person commits an offence if he or she receives training and is aware that such training is, wholly or partly, provided for purposes connected with the commission or preparation of terrorist activities or Convention offences.</p> <p>Proposal:</p>



CLAUSE	ORGANISATION	COMMENT
<p>The clause further seeks to provide that it is an offence to support an entity engaged in terrorist activities.</p>		<p>The section should clarify that terrorist training itself is an offence. In the current format, the law can be interpreted to mean that only training for a specific act is criminalised – places the burden on prosecutors to provide that a specific terrorist activity was planned.</p>
<p>Clause 3 Insertion of 3A</p> <p>Clause 3 proposes the insertion of section 3A in the principal Act, which provides for the prohibition of any publications with terrorist related content.</p>	<p>Afriforum</p>	<ul style="list-style-type: none"> • Unjustifiably violates rights to freedom of expression, association, and conscience. • Vulnerable to disproportionate, arbitrary, discretionary abuse. • Overbroad definition and form of intent violates principle of legality.
	<p>STERN</p>	<p>Section 3(2)(e) may raise as a defence based on:</p> <ul style="list-style-type: none"> • the fact that at the time of the person’s action or possession, the person did not know, and had no reason to believe, that the document or record in question contained, or was likely to contain, information of a kind likely to be useful to a person preparing to engage in a terrorist activity; or • the person’s action or possession was for the purposes of - <ul style="list-style-type: none"> ○ carrying out work as a journalist; or ○ academic research. <p>Proposal: May want to adjust the language of legitimate defence to broaden it to “exercising a profession in the public interest such as”.</p>
	<p>ICRC</p>	<ul style="list-style-type: none"> • Absence of a clause within POCDATRA to exempt from criminalisation exclusively humanitarian action carried out by humanitarian and impartial organizations is concerning. • The wording of the Bill currently may unintentionally criminalise the provision of humanitarian assistance:



CLAUSE	ORGANISATION	COMMENT
		<ul style="list-style-type: none"> ○ Section 3(2)(b) of POCDATRA could potentially criminalise provision of medical assistance to wounded people in areas controlled by a Non-State Armed Group. ○ Section 3(2)(c) of POCDATRA could potentially criminalise IHL trainings to members of a group classified as a terrorist.
	BASA	<p>1) Section 3A(2)(d) is very onerous, especially for electronic communications service providers – the offence lies in “enables them to obtain, read, listen to, or look at such a publication” whereas such a provider may only provide the access mechanism but has no control over what content is accessed through its service. If the provider for example, enables broad internet access, and the user then chose to search and access prohibited material, the provider will be on the wrong side of the law – this is too wide a provision, especially in view of sub-section (4).</p> <p>2) Given the nature of the services of accountable institution/s (see above), this could be directly applicable to them and impact business operations as it would potentially require content screening. This could have massive impact; may require additional due diligence/screening; changes to processes, etc.</p> <p>Proposal by BASA:</p> <p>1) It is proposed that the content of the proposed section 3A(2)(d) which states <i>‘provides a service to others that enables them to obtain, read, listen to, or look at such a publication, or to acquire it by means of a gift, sale or loan,</i> be deleted.</p>



CLAUSE	ORGANISATION	COMMENT
		<p>2) In the absence of its deletion, we propose the following amendment –</p> <p><i>(d) provides a service to others that enables them to obtain, read, listen to, or look at such a publication, or to acquire it by means of a gift, sale or loan.</i></p> <p>3) In the event that section 3A(2)(d) is not deleted, it is recommended that a new provision be drafted or amendment be made to draft section 3A(5) to allow the defence contemplated in section 3A(5)(a) to apply in relation to section 3A(2)(d) as well.</p>

3.3. Clauses 4 to 10: Convention Offences

CLAUSE	ORGANISATION	COMMENT
<p>Clause 4 Clause 4 proposes the amendment of section 4 of the principal Act (<i>Offences associated or connected with financing specified offences</i>) by providing that it is an offence to facilitate the retention or control of property on behalf of, or for the benefit of, a specific entity identified by a Resolution of the United Nations Security Council and which is announced by the Minister of Finance in terms of section 26A(1) of the Financial Intelligence Centre Act, or in a notice given by the Director of the Financial Intelligence Centre in terms of section 26A(3) of the Financial Intelligence Centre Act.</p>	<p>BASA</p>	<p>Please see comment above related to the definition of “entity”.</p>



CLAUSE	ORGANISATION	COMMENT
<p>Clause 5: Insertion of 4A Clause 5 seeks to insert section 4A (<i>New: Offences relating to attempt to leave Republic</i>) in the principal Act, in order to provide for an offence in respect of an attempt to leave the Republic for the benefit of, at the direction of, or in association with a terrorist group.</p>	<p>Afriforum</p>	<p>Unjustifiable violation of freedom of movement and unnecessary duplication of pre-existing offence captured in other legislation.</p>

3.4. Clause 12: Duty to report

CLAUSE	ORGANISATION	COMMENT
<p>Clause 12 Clause 12 proposes to amend section 12 of the principal Act (<i>Duty to report presence of person suspected of intending to commit of having committed an offence and failure too so report</i>) by providing that no duty of secrecy or confidentiality, or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance by an accountable institution, supervisory body, reporting institution as defined in the Financial Intelligence Centre Act or any other person.</p> <p>In terms of common law, the clause proposes the right to legal professional privilege as between attorney and client in respect of communications made in confidence between the attorney and client for the purposes of legal advice or litigation which is pending or which has commenced; or a third party and an attorney for the purposes of litigation which is pending or has commenced.</p>	<p>BASA</p>	<p>Whilst there is no hierarchy in legislation, section 12(9) by creating the obligation to comply with this section, notwithstanding an obligation imposed by legislation creates a hierarchy without substantiation, therefore.</p> <p>In relation to reference to “reporting institutions”, note that once the amendments to Schedule 1 to the FIC Act are effective, the reference to “reporting institution” may/ will be no longer applicable.</p> <p>Proposal: BASA proposes that section 12(9) be reworded as follows:</p> <p>“For the purposes of this Act, no duty of secrecy or confidentiality or any other restriction on the disclosure of information, may affect the duty of compliance with this section by an accountable institution, supervisory body or reporting institution as defined in section 1 of the Financial Intelligence Centre Act, or any other person.”</p>



3.5. Clauses 18 to 20: Investigating powers and freezing orders

CLAUSE	ORGANISATION	COMMENT
<p>Clause 18 Clause 18 proposes to substitute section 23 of the principal Act as a consequence of the proposed repeal of section 25 (see below relating to publication and Parliamentary supervision) and expands on the ambit of, and what may be contained in:</p> <ul style="list-style-type: none"> • a freezing order • the making of ancillary orders • the publication of orders • the appointment of a <i>curator ad litem</i> • interim orders 	<p>Afriforum</p>	<ul style="list-style-type: none"> • 'Reasonably be regarded' introduces a form of negligence as sufficient '<i>mens rea</i>' for criminal liability. • Overextends the power of police officials. • Likely to lead to complex litigation. • Soon to be dealt with in specialist amendments to FICA.
	<p>BASA</p>	<p>See comment above relating to the definition of an 'entity'.</p>
<p>Clause 20 Clause 20 proposes the insertion of section 24A in the principal Act, which provides for the application for a <u>decryption direction</u> by an officer of the Directorate in terms of section 21 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).</p> <p>The clause further proposes the insertion of section 24B in the principal Act, which provides that a member of the Directorate may apply to a competent court for an order to <u>disable access to an internet or social media site</u> with unlawful terrorism related content.</p>	<p>Afriforum</p>	<ul style="list-style-type: none"> • Potential for abuse as seen with RICA legislation. • Potentially unjustifiable violation of the right to privacy, given nebulous definition of 'terrorist activity' and relaxed burden of proof. • Impractical as it duplicates similar but tempered processes already tested and accepted by judiciary. • Likely to lead to litigation.



3.6. Clause 21: Resolutions of UN Security Council

CLAUSE	ORGANISATION	COMMENT
Clause 21 Deletion of sections 25 and 26	Afriforum	<ul style="list-style-type: none">• Repeal of S26 is an unjustifiable violation of separation of powers doctrine.• S26A of Financial Intelligence Centre Act makes no provision for tabling of announcement/designation in Parliament. <p><i>Note: As stated in the analysis of the Bill, Parliament does not have the power to amend resolutions of the UN Security Council.</i></p>

4. CONCLUSION

The majority of the public submissions agree that the amendments to the POCDATARA are long overdue. The majority of concerns stem from Clause 1 that seeks to amend various definitions in the POCDATARA.

5. REFERENCES

Afriforum (2022). *Parliamentary submission - Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Bill (GG No: 46649 - 1/07/2022)*.

Sussex Terrorism and Extremism Research Network (STERN) (2022). *STERN Submission to the South African National Assembly Portfolio Committee on Police regarding Amendments to the Protection of Constitutional Democracy Against Terrorist and Related Activities Act*.

The Banking Association South Africa (BASA) (2022). *The Banking Association South Africa's submission on the Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Bill*.

The International Committee of the Red Cross (ICRC) (2022). *Submission regarding proposed amendments to Protection of Constitutional Democracy Against Terrorist and Related Activities Act, South Africa*.



Mr. Nel (2022). *Protection of Constitutional Democracy against Terrorist and Related Activities Amendment Bill*. Email correspondence.