

CX. SOUTH AFRICA¹¹³

SUMMARY OF LEGISLATION OF SOUTH AFRICA RELATED TO TERRORISM

(a) Internal Security Act 1982 (Act No. 74 of 1982)

Section 54 (1) of the Act provides that:

Any person who with intent to –

- (a) overthrow or endanger the State authority in the Republic;**
- (b) achieve, bring about or promote any constitutional, political, industrial, social or economic aim or change in the Republic; or**
- (c) induce the Government of the Republic to do or to abstain from doing any act or to adopt or to abandon a particular standpoint;**

in the Republic or elsewhere –

- (i) commits an act of violence or threatens or attempts to do so;**

¹¹³ Transmitted to the Secretariat by that Government on 24 December 2001 (S/2001/1281, enclosure), on 8 July 2002 (S/2002/792, enclosure) and on 30 January 2003 (S/2003/272, enclosure). Information was also provided in respect of the following: the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); the Aliens Control Act, 1991 (Act No. 96 of 1991); the International Air Service Act, 1993 (Act No. 60 of 1993); the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972); the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); the Armaments Development and Production Act, 1968 (Act No. 57 of 1968); the Arms and Ammunition Act, 1969 (Act No. 75 of 1969); the Intimidation Act, 1982 (Act No. 72 of 1982); the State of Emergency Act, 1997 (Act No. 64 of 1997); the Explosives Act, 1956 (Act No. 26 of 1956); the Judicial Matters Amendment Act, 1998 (Act No. 34 of 1998), (paramilitary training); the Criminal Procedure Act, 1977 (Act No. 51 of 1977); the Merchant Shipping Act, 1957 (Act No. 57 of 1951); the Nuclear Energy Act, 1999 (Act No. 46 of 1999); the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993); the Defence Act, 1957 (Act No. 44 of 1957); the National Key Points Act, 1980 (Act No. 102 of 1980); the Protection of Information Act, 1982 (Act No. 84 of 1982); the Civil Protection Act, 1977 (Act No. 67 of 1977) the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993); the Films and Publications Act, 1996 (Act No. 65 of 1996) (hate and war speech); the Riotous Assemblies Act, 1956 (Act No. 17 of 1956); the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992); the Firearms Control Act, 2000 (Act No. 60 of 2000); the Extradition Act, 1962; Financial Intelligence Centre Act, 2001; the Non-profit Organisations Act, 1997 (Act 71 of 1997); and the Income Tax Act, 1962 (Act 58 of 1962).

(ii) performs any act which is aimed at causing, bringing about, promoting or contributing towards such act or threat of violence, or attempts, consents or takes any steps to perform such act;

(iii) conspires with any other person to commit, bring about or perform any act or threat referred to in paragraph (i) or act referred to in paragraph (ii), or to aid in the commission, bringing about or performance thereof; or

(iv) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about or perform such act or threat,

shall be guilty of the offence of terrorism and liable on conviction to the penalties provided for by law for the offence of treason.

The application of section 54 of the Internal Security Act is restricted in two important aspects. First, it is aimed at criminalizing terrorist acts directed against the constitutional order of the Republic of South Africa. Secondly, the Act only relates to an act of violence and therefore does not address other forms of terrorism, such as bio-terrorism and cyber terrorism or the funding of terrorism.

(b) Regulation of Foreign Military Assistance Act 1998 (Act No. 15 of 1998)

The Act prohibits any person within South Africa and elsewhere from rendering any foreign military assistance to any person unless he or she has been granted authorisation by the National Conventional Arms Control Committee (NCACC), in consultation with the Minister of Defence. The NCACC is a Ministerial controlling committee that was established by an August 1995 Cabinet decision to oversee South Africa's conventional arms control policies and related arms transactions, in consultation with the Minister of Defence.

The Act provides that any person who contravenes a provision of the Act (i.e. by providing unauthorised military assistance) shall be guilty of an offence and liable on conviction to a fine or to imprisonment or both.

Foreign Military Assistance is broadly defined and includes military or military-related services, attempts, encouragement, incitement or solicitation. Regulated services include advice or training, personnel, financial, logistical, intelligence or operational support; personnel recruitment; medical or para-medical services; security services; any action aimed at overthrowing a State or undermining its constitutional order or any other action.

In its consideration of applications related to foreign military assistance, the NCACC is guided by the Act. Any person wishing to obtain authorisation, or seeking to obtain approval of an agreement or arrangement for the rendering of foreign military assistance, needs to submit an application to the NCACC. In this

regard, the Act contains criteria for the granting or refusal of such authorisations and approvals, stipulating that these may not be granted if, amongst others, the authorisation or approval would “be in conflict with the Republic’s obligations in terms of international law” (Section 7(1)(a)) or if it would “support or encourage terrorism in any manner” (Section 7(1)(d)).

(c) **The Second Criminal Law Amendment Act, 1992 (Act No. 126 of 1992)**

This Act, together with and the Regulation of Foreign Military Assistance Act, 1998 (Act No. 15 of 1998), controls the establishment in South African territory of para-military groups. Section 13 of the Second Criminal Law Amendment Act prohibits the organizing, training, equipping or arming of any organization if the purpose of that organization is to usurp some or all of the functions of either the South African Police Service or the South African National Defence Force. Any person who contravenes the provisions of this section shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years

(d) **Territorial application**

As a general principle, South African law does not establish extra-territorial jurisdiction. However, extra-territorial jurisdiction is provided for in specific legislation, which would apply to South African nationals outside South African territory or foreign nationals currently in South Africa. Legislation, which provides for extra-territorial jurisdiction relevant to the combating of terrorist acts, includes:

- The Regulation of Foreign Military Assistance Act, 1998, which provides that no person may “within the Republic or elsewhere” render foreign military assistance.
- The Civil Aviation Offences Act, 1972, (Act No. 10 of 1972) which provides in section 3 that South African courts shall have jurisdiction over crimes committed on board South African aircraft anywhere in the world. In addition the courts will have jurisdiction over crimes committed on board any other aircraft if the aircraft lands in South Africa and the perpetrator is still on board or if the lessee of an aircraft has his principle place of business in the Republic or if the perpetrator is present in the Republic.
- The Prevention of Organized Crime Act, 1998 which provides in section 2 for the jurisdiction of the courts over a person who “within the Republic or elsewhere” commits an offence relating to racketeering activities (which is defined as the planned, ongoing, continuous or repeated involvement in any [serious] offence listed in the schedule to the Act).

- The Internal Security Act, 1982 which provides in section 54 for jurisdiction of the Courts over a person "... in the Republic or elsewhere ..." who committed an act of terrorism against the constitutional sovereignty of the Republic.

CXI. SPAIN¹¹⁴

SUMMARY OF LEGISLATION OF SPAIN RELATED TO TERRORISM

The Spanish Penal Code, which was approved pursuant to Organic Law 10/1995 of 23 November 1995, punishes any act of collaboration with armed groups or terrorist organizations or groups (article 576). The recruitment of members would constitute a form of collaboration.

In addition, Organic Law 7/2000, of 23 December 2000 provides for special measures in cases involving persons under 18 years of age who commit terrorist offences.

Article 573 of the Penal Code provides penalties for the storing of weapons or munitions and the possession or storage of explosive, flammable, incendiary or asphyxiating substances or devices or components thereof, as well as their manufacture, trafficking, transport or supply, in any form, and the mere placement or use of such substances or of other means or contrivances for achieving the same purpose by persons acting at the service of or in collaboration with armed groups, organizations, or terrorist groups.

Article 575 of the Penal Code¹¹⁵ deals with fund-raising and the financing of terrorism in general. Anyone who attempts a crime against property in order to obtain funds for the armed groups, organizations or terrorist groups, or to further their purposes shall be punished with a penalty at the level next highest to the one prescribed for the offence committed, without prejudice to the enforcement of such penalties as are applicable under the article for acts of collaboration.

¹¹⁴ Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1246, enclosure), on 26 June 2002 (S/2002/778, enclosure) and on 30 May 2003 (S/2003/628, appendix). Information was also provided in respect of the following: legislation concerning steps to prevent procurement of weapons; the Law 5/1984 of 26 March 1984, on the right of asylum and the status of refugees, as amended by Law 9/1994 of 19 May 1994; the law on the rights and freedoms of foreigners in Spain and their social integration (Organic Law 4/00 of 11 January 2000, amended by Organic Law 8/00 of 22 December 2000); the passive extradition law of 21 March 1985; and prevention of money laundering (Law 19/1993, of 28 December 1993).

¹¹⁵ As amended by Organic Law 7/2000 of 22 December 2000.