

REPUBLIC OF SOUTH AFRICA

DANGEROUS WEAPONS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35815 of 23 October 2012)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B 37—2012]

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GENERAL 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.

BILL

To provide for certain prohibitions and restrictions in respect of the possession of a dangerous weapon, firearm or replica or imitation firearm; to repeal the Dangerous Weapons Acts in operation in the areas of the erstwhile South Africa, Transkei, Bophuthatswana, Venda and Ciskei, as those areas were constituted immediately before 27 April 1994; to amend an Act; and to provide for matters connected therewith.

Preamble

WHEREAS the Constitution of the Republic of South Africa, 1996, entrenches the right to security of persons and the right to be free from all forms of violence;

AND WHEREAS the Constitution of the Republic of South Africa, 1996, guarantees the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. In this Act, unless the context otherwise indicates—
 - “**dangerous weapon**” means any object, other than a firearm, designed as a 5
weapon and capable of producing death or seriously bodily harm;
 - “**firearm**” bears the same meaning as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), and includes a muzzle loading firearm or an airgun as defined in the said Act;
 - “**imitation firearm**” means an imitation firearm as defined in section 1 of the 10
Firearms Control Act, and “**replica**” has a corresponding meaning.

Prohibition of possession of dangerous weapons, firearms and replicas or imitations firearms

2. (1) Any person who is in possession of—
 - (a) any dangerous weapon; or 15
 - (b) any firearm, replica or imitation firearm,under circumstances which may raise a reasonable suspicion that the person intends to use the dangerous weapon, firearm, replica or imitation firearm for unlawful purpose, is

guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(2) In determining whether a person intends to use the dangerous weapon, firearm, replica or imitation firearm for an unlawful purpose, all relevant factors, including but not limited to, the following must be taken into account:

- (a) The place and time where the person is found;
- (b) the general behaviour of the person, including the making of any threat or intimidatory behaviour;
- (c) the manner in which the dangerous weapon, firearm, replica or imitation firearm is carried or displayed;
- (d) whether the possession of the dangerous weapon, firearm, replica or imitation firearm was within the context of drug dealing, gang association or any organised crime activity; or
- (e) whether the person in whose possession the dangerous weapon, firearm, replica or imitation firearm was found, was at the time part of a group of persons who were also in possession of dangerous weapons, firearms, replicas or imitation firearms.

Repeal of laws

3. The laws specified in the Schedule are hereby repealed to the extent indicated in the third column thereof.

Amendment of Regulation of Gatherings Act, 1993

4. The Regulation of Gatherings Act, 1993 (Act No. 205 of 1993), is hereby amended—

- (a) by the substitution in section 8 for subsection (4) of the following subsection:

“(4) **[Participants]** No participants at a gathering or demonstration **[shall abide by any law in respect of the carrying of dangerous weapons,]** may have in his or her possession—

 - (a) any airgun, firearm, imitation firearm or any muzzle loading firearm, as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000), or any object which resembles a firearm and that is likely to be mistaken for a firearm; or
 - (b) any dangerous weapon, as defined in the Dangerous Weapons Act, 2012, or any other object that is likely to cause injury to a person or damage to property,

unless the responsible officer has approved under specific conditions the possession of any article mentioned in paragraphs (a) and (b) during a gathering or demonstration, for cultural or religious purposes or historical enactments and the convener and marshals, if any, shall take all reasonable steps to ensure that **[the said laws are]** this section is complied with.”; and
- (b) by the substitution in section 13(1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) **[Dangerous Weapons Act, 1968 (Act No. 71 of 1968)]** Dangerous Weapons Act, 2012; or”.

Short title and commencement

5. This Act is called the Dangerous Weapons Act, 2012, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE***Laws repealed******(Section 5)***

No. and year of law	Short title	Extent of repeal	
Act No. 71 of 1968	Dangerous Weapons Act, 1968	The whole	5
Act No. 71 of 1968 (Transkei)	Dangerous Weapons Act, 1968	The whole	
Act No. 71 of 1968 (Venda)	Dangerous Weapons Act, 1968	The whole	
Act No. 71 of 1968 (Ciskei)	Dangerous Weapons Act, 1968	The whole	
Act No. 71 of 1982 (Bophuthatswana)	Dangerous Weapons Act, 1982	The whole	10

MEMORANDUM ON THE OBJECTS OF THE DANGEROUS WEAPONS BILL, 2012

1. BACKGROUND

- 1.1 In *The State v K W Thunzi and S Mlonzi v The State*, (Eastern Cape Division of the High Court, Mthatha, Case No. 213749), the Court considered the constitutionality of section 4 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) (Transkei) (hereinafter referred to as “the Dangerous Weapons Act (Transkei)”). In terms of the said section 4, provision is made for the imposition of minimum sentences which are applicable to offences involving dangerous weapons and are committed in an area to which the Minister of Justice and Constitutional Development has made the sentences applicable. The High Court did not declare section 4 of the Dangerous Weapons Act (Transkei) to be unconstitutional, but only the applicability thereof in the former Republic of Transkei.
- 1.2 The matter was referred to the Constitutional Court for confirmation. On 5 August 2010 the Constitutional Court handed down judgment in *S v Thunzi and S v Mlonzi* (Case CCT 81/09) (hereinafter referred to as “the Thunzi case”). The Constitutional Court declared Government Notice R.409 published in Government *Gazette* No. 4601 of 7 March 1975 (hereinafter referred to as “Government Notice R. 409 (Transkei)”) to be inconsistent with the Constitution and hence invalid. The Constitutional Court therefore set the notice aside. In terms of this notice the provisions of section 4(1) and (2) of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) (hereinafter referred to as “the Dangerous Weapons Act (South Africa)”), were declared to be applicable to the former Republic of Transkei (which at that stage formed part of the Republic of South Africa).
- 1.3 On 10 November 2010 Government Notices withdrawing Government Notice R.409 (Transkei) (and thereby giving effect to the Constitutional Court’s order) and the above-mentioned Government Notice R.2095 were published in the Government *Gazette*.
- 1.4 The Constitutional Court considered whether there was a constitutional obligation on Parliament to establish uniform legislation on the use of dangerous weapons in the Republic. The Constitutional Court called for further submissions on whether the continued existence of the Dangerous Weapons Act (Transkei), the Dangerous Weapons Act, 1982 (Act No. 28 of 1982) (Bophuthatswana), the Dangerous Weapons Act, 1968 (Venda), and the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) (Ciskei), on our statute books is constitutionally acceptable. In this regard, the Constitutional Court held as follows at paragraph 70 of the judgment:

“A just order in the circumstances of this case requires that we consider the constitutional validity of the legislative scheme currently governing the use of dangerous weapons in South Africa.”

The Constitutional Court required the Speaker of the National Assembly, the Chairperson of the National Council of Provinces and the Minister of Justice and Constitutional Development to notify the Constitutional Court, by 8 November 2011, of the legislative steps that have been taken in fulfilment of their undertaking to rationalise the Dangerous Weapons Acts of the erstwhile Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei.

- 1.5 The Dangerous Weapons Act (South Africa) and related legislation are still in force in the areas mentioned in paragraph 1.4. This legislation is outdated and consequently necessitated the drafting of a new Dangerous Weapons Bill, taking into account Constitutional principles as well as present policing needs in respect of the possession and carrying of dangerous weapons. A huge number of murders and robberies, as well as other violent crimes, are being committed annually with dangerous weapons such as knives. Imitation

firearms have also been found amongst robbery suspects where other members of a group had been armed with real firearms.

2. OBJECTS OF THE BILL

2.1 The Bill therefore seeks to repeal all the existing legislation regulating dangerous weapons in the Republic and to provide for uniform legislation that will apply throughout the Republic. The Bill furthermore seeks to prohibit the possession of dangerous weapons, firearms or replicas or imitation firearms in public. “Dangerous weapon” is defined as meaning “any object, other than a firearm, designed as a weapon and capable of producing death or serious bodily harm.

3. CLAUSE BY CLAUSE ANALYSIS

3.1 Clause 2

3.1.1 Clause 2(1) prohibits the possession of dangerous weapons, firearms or replicas or imitation firearms and provides that any person who is in possession of any dangerous weapon or any firearm, replica or imitation firearm under circumstances which may raise a reasonable suspicion that the person intends to use the dangerous weapon, firearm, replica or imitation firearm for unlawful purposes, is guilty of an offence. The penalty provided for is a fine or imprisonment for a period not exceeding three years.

3.1.2 Clause 2(2) provides for factors which must be taken into account in determining whether a person intends to use the dangerous weapon, firearm, replica or imitation firearm for unlawful purposes.

3.2 Clause 3

Clause 3(1) repeals, in whole, all the Dangerous Weapons Acts presently in force in the Republic and the areas mentioned in paragraph 1.4 which were formerly known as the TBVC states.

3.3 Clause 4

Clause 4 amends the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993), in order to provide for a prohibition on the possession of—

- (a) airguns, firearms, imitation firearms, muzzle loading firearms or any object which resembles a firearm and that is likely to be mistaken for a firearm; and
- (b) dangerous weapons, during gatherings and demonstrations. Exceptions which may be allowed under certain conditions are in respect of cultural, ceremonial and religious purposes and historical enactments.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was drafted by a Task Team consisting of officials from both the Department of Police and the Department of Justice and Constitutional Development. A previous draft Bill was published in the *Government Gazette* for public comments and extensive inputs were received. The Bill had also been consulted with the National Prosecuting Authority.

5. FINANCIAL IMPLICATIONS FOR THE STATE

Only incidental costs pertaining to implementation, such as informing the public and police officers, will be incurred.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Police are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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