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GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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OFFICE OF THE PRESIDENT

No. 1546.

6 October 1995

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 86 of 1995: State of Emergency Act, 1995.

KANTOOR VAN DIE PRESIDENT

No. 1546.

6 Oktober 1995

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 86 van 1995: Wet op Noodtoestand, 1995.

ACT

To provide for the declaration of a state of emergency; to empower the President to make regulations in consequence of such a declaration; and to provide for incidental matters.

*(English text signed by the President.)
(Assented to 28 September 1995.)*

PREAMBLE

WHEREAS section 34 of the Constitution provides that a state of emergency shall be proclaimed prospectively under an Act of Parliament, and shall be declared only where the security of the Republic is threatened by war, invasion, general insurrection or disorder or at a time of national disaster and if the declaration of a state of emergency is necessary to restore peace or order;

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

Declaration of state of emergency

1. (1) The President may, subject to section 34(1) of the Constitution, by proclamation in the *Gazette* declare a state of emergency in the Republic or any part thereof. 5
(2) A proclamation referred to in subsection (1) shall include a brief description of the circumstances necessitating such declaration.

Emergency regulations

2. (1)(a) The President may, subject to section 34 of the Constitution, in respect of an area in which a state of emergency has been declared under section 1, and for as long as the proclamation declaring the state of emergency remains in force, by proclamation in the *Gazette* make regulations to deal effectively with a war, invasion, general insurrection or disorder or national disaster, or with circumstances which have arisen or are likely to arise as a result thereof. 10

(b) The President shall take measures aimed at ensuring that the contents of such regulations shall be made known to the public through such means, in addition to the proclamation in the *Gazette*, as may be appropriate. 15

(2) The President may at any time withdraw a proclamation made under section 1 or 2(1). 20

(3)(a) Without derogating from the generality of the powers conferred upon the President by subsection (1), such regulations may provide for— 20

- (i) the empowering of such persons or bodies as may be specified therein to make orders, rules and by-laws for any purpose for which the President is authorised by subsection (1) to make regulations, and to prescribe penalties for any contravention of or failure to comply with the provisions of such orders, rules or by-laws; and 25

- (ii) the imposition of penalties specified therein for any contravention of or failure to comply with any provision of the regulations or any directions issued or conditions prescribed under the regulations, which penalties may include the confiscation of any goods, property or instruments by means of which or in connection with which the offence has been committed. 30

(b) No term of imprisonment provided for in terms of or under any regulation contemplated in this section, shall exceed three years.

WET

Om voorsiening te maak vir die verklaring van 'n noodtoestand; om die President te magtig om na aanleiding van sodanige verklaring regulasies uit te vaardig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 28 September 1995.)*

AANHEF

AANGESIEN artikel 34 van die Grondwet bepaal dat 'n noodtoestand prospektief kragtens 'n Parlements wet verklaar word, en slegs verklaar word waar die veiligheid van die Republiek deur oorlog, inval, algemene oproer of wanorde bedreig word of ten tyde van 'n nasionale ramp, en indien die verklaring van 'n noodtoestand noodsaaklik is om vrede of orde te herstel;

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:

Verklaring van noodtoestand

1. (1) Die President kan, behoudens artikel 34(1) van die Grondwet, 'n noodtoestand
5 in die Republiek of enige deel daarvan by proklamasie in die *Staatskoerant* verklaar.
- (2) 'n Proklamasie bedoel in subartikel (1) moet 'n kort beskrywing van die omstandighede wat sodanige verklaring noodsaak, insluit.

Noodregulasies

2. (1)(a) Die President kan, behoudens artikel 34 van die Grondwet, ten opsigte van
10 'n gebied waarin 'n noodtoestand kragtens artikel 1 verklaar is, en solank die proklamasie waarby die noodtoestand verklaar is, van krag is, by proklamasie in die *Staatskoerant* regulasies uitvaardig ten einde 'n oorlog, inval, algemene oproer of wanorde of 'n nasionale ramp, of omstandighede wat daaruit voortgespruit het of waarskynlik daaruit sal voortspruit, doeltreffend te hanteer.
- 15 (b) Die President moet stappe doen wat daarop gemik is om te verseker dat die inhoud van sodanige regulasies aan die publiek bekend gemaak word deur middel van sodanige wyse, bykomend tot die proklamasie in die *Staatskoerant*, as wat gepas mag wees.
- (2) Die President kan te eniger tyd 'n kragtens artikel 1 of 2(1) uitgereikte
20 proklamasie intrek.
- (3)(a) Sonder om afbreuk te doen aan die algemeenheid van die bevoegdheid wat by subartikel (1) aan die President verleen word, kan bedoelde regulasies voorsiening maak vir—
- (i) die verlening aan die daarin vermelde persone of liggame van die bevoegd-
25 heid om bevele, reëls en verordeninge uit te vaardig vir 'n doel waarvoor die President by subartikel (1) gemagtig word om regulasies uit te vaardig, en om strawwe voor te skryf vir 'n oortreding van of versuim om te voldoen aan die voorskrifte van bedoelde bevele, reëls of verordeninge; en
- (ii) die oplegging van die daarin vermelde strawwe vir 'n oortreding van of
30 versuim om te voldoen aan 'n voorskrif van die regulasies of enige bevele uitgevaardig of voorwaardes voorgeskryf kragtens die regulasies, welke strawwe die verbeurdverklaring kan insluit van goedere, eiendom of instrumente waarmee of in verband waarmee die oortreding gepleeg is.
- (b) Geen termyn van gevangenisstraf waarvoor ingevolge of kragtens 'n regulasie in
35 hierdie artikel beoog, voorsiening gemaak word, mag drie jaar te bowe gaan nie.

(c) Any order, rule, by-law or regulation made pursuant to the declaration of a state of emergency under section 1, expires—

- (i) when withdrawn by the President;
 - (ii) if the state of emergency is not extended by the National Assembly as contemplated in section 34(2) of the Constitution; or 5
 - (iii) if revoked by the National Assembly as contemplated in section 3.
- (4) Nothing in this section shall authorise the making of any regulation whereby—
- (a) any duty to render compulsory military service other than that provided for in the Defence Act, 1957 (Act No. 44 of 1957), is imposed; or
 - (b) any law relating to the qualifications, nomination, election or tenure of office 10 of members of Parliament or a provincial legislature, or to the sittings of Parliament or a provincial legislature, or to the powers, privileges or immunities of Parliament or a provincial legislature, or of the members or committees thereof, is amended or suspended.

(5) Whenever any regulation made under subsection (1) provides for the summary arrest and detention of any person, and any person has been arrested in pursuance thereof in an area in which a state of emergency has been declared, he or she may, subject to section 34(6) and (7) of the Constitution, be detained under that regulation at any place within or outside the said area: Provided that detention outside the said area, if applicable, is permissible only when it is reasonably necessary for the restoration of 20 peace or order or if a suitable facility for detention is not available in the area where a state of emergency has been declared.

(6) Any regulation made under subsection (1) and any order, rule or by-law made under such a regulation and which relate to the detention of any person arrested in an area in which a state of emergency has been declared or to the place of detention of such 25 a person, shall in relation to the detention of that person at a place outside the said area, apply at and in relation to the place where the person is detained as if that place were within the aforesaid area.

(7) Regulations made under subsection (1) regulating the detention of persons, shall make provision for such international humanitarian organisations as are recognised by 30 the Republic to have access to such persons in order to assess their conditions of detention.

Parliamentary review

3. In addition to the powers referred to in section 34(2) of the Constitution, the National Assembly may— 35

- (a) revoke any measure taken, or regulation made, under section 2;
- (b) make any recommendation to the President in respect of any such measures or regulations.

Repeal of laws

4. The laws specified in the Schedule are hereby repealed to the extent set out in the 40 third column thereof.

Short title

5. This Act shall be called the State of Emergency Act, 1995.

(c) Enige bevel, reël, verordening of regulasie wat ingevolge die verklaring van 'n noodtoestand kragtens artikel 1 gemaak is, verval—

- (i) wanneer dit deur die President ingetrek word;
- (ii) indien die noodtoestand nie deur die Parlement verleng word nie soos beoog in artikel 34(2) van die Grondwet; of
- (iii) indien dit deur die Nasionale Vergadering herroep word soos beoog in artikel 3.

(4) Die bepalinge van hierdie artikel magtig nie die uitvaardiging van enige regulasies nie waarby—

- (a) 'n ander verpligting tot die verrigting van militêre diens opgelê word as dié waarvoor die Verdedigingswet, 1957 (Wet No. 44 van 1957), voorsiening maak; of
- (b) 'n wet aangaande die kwalifikasies, nominasie, verkiesing of dienstryd van lede van die Parlement of 'n provinsiale wetgewer, die sittings van die Parlement of 'n provinsiale wetgewer of die bevoegdhede, voorregte of immuniteite van die Parlement of 'n provinsiale wetgewer of van die lede of komitees daarvan, gewysig of opgeskort word.

(5) Wanneer 'n kragtens subartikel (1) uitgevaardigde regulasie voorsiening maak vir die summere arrestasie en aanhouding van enige persoon, en iemand uit hoofde daarvan in hegtenis geneem is in 'n gebied waarin 'n noodtoestand verklaar is, kan hy of sy, behoudens artikel 34(6) en (7) van die Grondwet, kragtens so 'n regulasie op enige plek binne of buite bedoelde gebied aangehou word: Met dien verstande dat aanhouding buite die voormelde gebied, indien van toepassing, geoorloof is slegs indien dit redelikerwys nodig is vir die herstel van vrede of orde of indien 'n geskikte fasiliteit vir aanhouding nie binne die gebied waarin die noodtoestand verklaar is, beskikbaar is nie.

(6) 'n Kragtens subartikel (1) uitgevaardigde regulasie en enige bevel, reël of verordening kragtens so 'n regulasie uitgevaardig wat betrekking het op die aanhouding van iemand wat in hegtenis geneem is in 'n gebied waarin 'n noodtoestand verklaar is of op die plek van aanhouding van so iemand, is met betrekking tot die aanhouding van so iemand op 'n plek buite voormelde gebied, van toepassing by en met betrekking tot die plek waar so iemand aangehou word asof bedoelde plek binne voormelde gebied geleë is.

(7) Regulasies uitgevaardig kragtens subartikel (1) wat die aanhouding van persone reël, moet voorsiening maak vir toegang tot sodanige persone deur sodanige internasionale humanitêre organisasies as wat deur die Republiek erken word ten einde die omstandighede van hul aanhouding te bepaal.

Hersiening deur Parlement

3. Bykomend tot die bevoegdhede bedoel in artikel 34(2) van die Grondwet, kan die Nasionale Vergadering—

- (a) enige maatreël getref of regulasie gemaak kragtens artikel 2, herroep;
- (b) enige aanbeveling aan die President maak in verband met sodanige maatreëls of regulasies.

Herroeping van wette

4. Die wette vermeld in die Bylae word hierby herroep in die mate in die derde kolom daarvan aangedui.

Kort titel

5. Hierdie Wet heet die Wet op Noodtoestand, 1995.

Act No. 86, 1995

STATE OF EMERGENCY ACT, 1995

SCHEDULE**LAWS REPEALED****LAWS OF THE REPUBLIC**

No. and year of law	Short title	Extent of repeal
Act No. 3 of 1953	Public Safety Act, 1953	The whole
Act No. 62 of 1955	General Law Amendment Act, 1955	Section 31
Act No. 44 of 1957	Defence Act, 1957	Section 103
Act No. 76 of 1962	General Law Amendment Act, 1962	Section 16
Act No. 77 of 1963	Defence Amendment Act, 1963	Section 21(a) and (b)
Act No. 79 of 1976	Internal Security Amendment Act, 1976	Section 10
Act No. 67 of 1986	Public Safety Amendment Act, 1986	The whole
Act No. 132 of 1992	Defence Amendment Act, 1992	Sections 29(b) and 36

LAWS OF THE FORMER REPUBLIC OF BOPHUTHATSWANA

No. and year of law	Short title	Extent of repeal
Act No. 32 of 1979	Internal Security Act, 1979	Sections 27 to 29 inclusive

LAWS OF THE FORMER REPUBLIC OF TRANSKEI

No. and year of law	Short title	Extent of repeal
Act No. 30 of 1977	Public Security Act, 1977	Sections 44 and 45

LAWS OF THE FORMER REPUBLIC OF Ciskei

No. and year of law	Short title	Extent of repeal
Decree No. 19 of 1993	National Security Decree, 1993	Sections 14 to 17 inclusive

LAWS OF THE FORMER REPUBLIC OF VENDA

No. and year of law	Short title	Extent of repeal
Act No. 3 of 1953	Public Safety Act, 1953, as amended	The whole

BYLAE**WETTE HERROEP****WETTE VAN DIE REPUBLIEK**

No. en jaar van wet	Kort titel	Omvang van herroeping
Wet No. 3 van 1953	Wet op Openbare Veiligheid, 1953	Die geheel
Wet No. 62 van 1955	Algemene Regswysigingswet, 1955	Artikel 31
Wet No. 44 van 1957	Verdedigingswet, 1957	Artikel 103
Wet No. 76 van 1962	Algemene Regswysigingswet, 1962	Artikel 16
Wet No. 77 van 1963	Wysigingswet op Verdediging, 1963	Artikel 21(a) en (b)
Wet No. 79 van 1976	Wysigingswet op Binnelandse Veiligheid, 1976	Artikel 10
Wet No. 67 van 1986	Wysigingswet op Openbare Veiligheid, 1986	Die geheel
Wet No. 132 van 1992	Wysigingswet op Verdediging, 1992	Artikels 29(b) en 36

WETTE VAN DIE VOORMALIGE REPUBLIEK VAN BOPHUTHATSWANA

No. en jaar van wet	Kort titel	Omvang van herroeping
Wet No. 32 van 1979	Wet op Binnelandse Veiligheid, 1979	Artikels 27 tot en met 29

WETTE VAN DIE VOORMALIGE REPUBLIEK VAN TRANSKEI

No. en jaar van wet	Kort titel	Omvang van herroeping
Wet No. 30 van 1977	Wet op Openbare Veiligheid, 1977	Artikels 44 en 45

WETTE VAN DIE VOORMALIGE REPUBLIEK VAN CISKEI

No. en jaar van wet	Kort titel	Omvang van herroeping
Dekreet No. 19 van 1993	Nasionale Veiligheidsdekreet, 1993	Artikels 14 tot en met 17

WETTE VAN DIE VOORMALIGE REPUBLIEK VAN VENDA

No. en jaar van wet	Kort titel	Omvang van herroeping
Wet No. 3 van 1953	Wet op Openbare Veiligheid, 1953, soos gewysig	Die geheel

