

Wednesday, 22 March 2023]

No 39—2023] FIFTH SESSION, SIXTH PARLIAMENT

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

WEDNESDAY, 22 MARCH 2023

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ANNOUNCEMENTS

National Assembly

The Speaker

1. Draft Bills submitted in terms of Assembly Rule 276(2)

- (1) **Prevention of Illegal Eviction from and Unlawful Occupation of Land Amendment Bill, 2023**, submitted by Ms E L Powell, MP.

Referred to the **Portfolio Committee on Human Settlements, Water and Sanitation**.

2. Membership to Committees

- (1) The following committee membership changes have been made by the Economic Freedom Fighters:

Portfolio Committee on Home Affairs

Discharged: Tito, Mrs L
Discharged: Mogale, Mr T [Alternate]

Appointed: Tetyana, Mr Y
Appointed: Tito, Mrs L [Alternate]

Portfolio Committee on Basic Education

Discharged: Thembekwayo, Dr SS [Alternate]
Appointed: Mokgotho, Mrs S [Alternate]

National Council of Provinces

The Chairperson

1. Referral to Committees of papers tabled

- (1) The following papers are referred to the **Select Committee on Public Enterprises and Communication** for consideration:
- (a) Annual Report of the National Conventional Arms Control Committee (NCACC) for the year ended December 2022, tabled in terms of section 23(1)(c) of the National Conventional Arms Control Act, 2002 (Act No 41 of 2002).
 - (b) 2022 Fourth Quarterly Report of the National Conventional Arms Control Committee (NCACC) for October – December 2022, tabled in terms of section 23(1) (c) of the National Conventional Arms Control Act, 2002 (Act No 41 of 2002).

TABLINGS

National Assembly and National Council of Provinces

1. The Minister in The Presidency

- (a) Work Programme (Annual Performance Plan) of Statistics South Africa (Book 1) for 2023/24.
- (b) Technical Indicator Descriptions of Statistics South Africa (Book 2) for 2023/2024.

2. The Minister of Justice and Correctional Services

- (a) Amendments to the Legal Aid Manual, tabled in terms of section 24(2)(a) of the Legal Aid South Africa Act, 2014 (Act No 39 of 2014).

National Assembly

1. The Speaker

Please note: The following entry (a) replaces the entry under Tablings No 1(b) in the name of The Speaker, published in ATC No 38 (Announcements, Tablings and Committee Reports) dated 20 March 2023, published on page 6.

- (a) Letter from the Minister of Defence and Military Veterans, dated 13 March 2023, to the Speaker of the National Assembly, informing members of the Assembly of the employment of the South African National Defence Force (SANDF) for service to render assistance to the National Department of Health in order to mitigate the effects of the industrial action in the Republic of South Africa.



MINISTRY OF DEFENCE AND MILITARY VETERANS
Republic of South Africa

13 March 2023

Honourable Speaker,

**THE EMPLOYMENT OF THE SOUTH AFRICAN NATIONAL DEFENCE FORCE TO
RENDER ASSISTANCE TO DEPARTMENT OF HEALTH IN ORDER TO MITIGATE
THE EFFECTS OF THE INDUSTRIAL ACTION IN THE REPUBLIC OF SOUTH
AFRICA FROM 08 MARCH 2023 UNTIL 30 MARCH 2023**

This serves to inform the National Assembly that I have authorised the employment of 2800 members of the South African National Defence Force (SANDF) for service to render assistance to the National Department of Health.

The employment of the members of the SANDF was authorised in accordance with section 18(1)(c) of the Defence Act, Act 42 of 2002.

The employment will be over the period 08 March 2023 until 30 March 2023. The total number of SANDF member to be employed is 2800.

The estimated cost for this operation from over the said period is R 83 264 992

I will communicate this report to members of the National Council of Provinces and wish to request that you bring the contents hereof to the attention of the National Assembly.

Regards

Ms Thandi Ruth Modise
Minister of Defence and Military Veterans: MP

Ms Nosiviwe-Noluthando Mapisa-Nqakula, MP
Speaker of the National Assembly
Parliament of the Republic of South Africa
P.O. Box 15
CAPE TOWN
8000

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Justice and Correctional Services on the Certificate of Exemption submitted to the National Assembly for approval, in terms of section 46(4)(a) of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No 70 of 2002), dated 22 March 2023

The Portfolio Committee on Justice and Correctional Services, having considered the Certificate of Exemption submitted to the National Assembly for approval, in terms of section 46(4)(a) of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No 70 of 2002), reports as follows:

1. On 15 March 2023, the Minister of Justice and Correctional Services (“the Minister”) submitted a Certificate of Exemption for approval by the National Assembly in terms of section 46(4)(a) of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (RICA). On the same date, the matter was referred to the Committee for consideration and report.
2. Broadly, the Regulation of the Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 (RICA or the Act) regulates the interception of direct communications and electronic communications and the provision of communication-related information.
3. In terms of section 45(1) of the Act, no person may manufacture, assemble, possess, sell, purchase or advertise any listed equipment. Listed equipment means any equipment that is mainly designed to intercept communications that the Minister declares as listed equipment by notice in the Gazette. In terms of Government Notice No R1263 of 29 December 2005, various instruments, devices and equipment have been declared to be listed equipment.
4. However, section 45(2) of the Act provides for exceptions, in particular that the prohibition does not apply to any law enforcement agency which manufactures, assembles, possesses, sells, purchases or advertises listed equipment under the authority

of a certificate of exemption issued for that purpose by the Minister under section 46 of the Act.

5. In terms of section 46(1)(a)(iii) of the Act, the Minister may exempt any law enforcement agency from the prohibited acts of possessing and purchasing listed equipment, on application and in consultation with the cabinet members responsible for communications, defence, intelligence services and policing (“the relevant Ministers”), for such period and on such conditions as the Minister determines.
6. The Act requires the Minister to be satisfied that an exemption is in the public interest or special circumstances exist which justify the exemption; and, in the case of manufacturing, or assembling of listed equipment, that the purpose for which it will be manufactured or assembled is reasonably necessary.
7. The certificate of exemption must also specify the scope, period and conditions of the exemption.
8. In terms of section 46(3)(a) of RICA, a certificate of exemption must be published in Gazette and becomes valid on the date of publication.
9. However, in terms of section 46(4)(a) of the Act, the Minister must table the certificate of exemption in the National Assembly for approval prior to publication in the Gazette.
10. In his letter to the Speaker, dated 10 March 2023, the Minister of Justice and Correctional Services explains that the Minister of Police had applied for the SAPS, in terms of section 46(1)(a) of the Act, to be exempted from the prohibited acts of possessing, purchasing, manufacturing, and assembling of listed equipment referred to in section 45(1) of RICA.
11. The Minister of Police had motivated for an exemption on the basis that:
 - a) Although the SAPS had during 2010, 2011 and 2012 applied to be exempted, these applications were unsuccessful since approval of some of the relevant Ministers could not be obtained.

- b) The SAPS uses listed equipment to investigate, combat and prevent serious crime.
 - c) The intelligence division of SAPS designs, builds and manufactures some categories of listed equipment.
 - d) Extensive controls are in place to regulate the use of listed equipment.
 - e) The listed equipment is only used to intercept communications in accordance with the provisions of RICA.
 - f) The exemption is in the public interest since the possession and use of listed equipment is necessary to investigate, combat and prevent serious criminal activities.
12. The Minister states that the necessary consultation with the relevant Ministers has taken place. The Ministers indicated their support for the application and approved that the certificate of exemption be issued.
13. The certificate issued includes certain conditions to regulate the use and prevent the abuse of the listed equipment and applies for a period of five years. The conditions also obligate the Minister of Police to table a report in Parliament containing information on the number of authorisations issued for the use of the equipment; the categories of listed equipment used; and any unauthorised use of listed equipment and the response to such use.
14. The Committee acknowledges the critical role that the interception of communications plays in securing our State, maintaining public order and, so, ensuring the safety of the Republic and its people. For this reason, the Committee accepts the need for the SAPS to be issued with the certificate of exemption that permits it to possess, purchase, manufacture and assemble the listed equipment, subject to conditions.
15. However, the covert interception of communications of the type that RICA permits is highly invasive of privacy. In this regard, the Committee notes the judgement of the Constitutional Court in the matter of *AmaBhungane Centre for Investigative Journalism NPC and Another v Minister of Justice and Correctional Services and Others; Minister of Police v AmaBhungane Centre for Investigative Journalism NPC and Others* (4 February 2021) in which the Constitutional Court found RICA to be unconstitutional to the extent that it fails to provide the adequate safeguards to protect the right to

privacy, as buttressed by the rights of access to courts, freedom of expression and the media, and legal privilege. The Court suspended the declaration of invalidity for three years in order that Parliament may rectify the constitutional defect.

Recommendation

16. The Committee recommends that the National Assembly approve the Certificate of Exemption submitted for approval, in terms of section 46(4)(a) of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No 70 of 2002).
17. Furthermore, the Committee urges the Minister to prioritise the tabling of legislation that overhauls RICA to address the identified constitutional defects and any other gaps that have arisen since the Act was passed.

Report to be considered.