

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 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 Government Notice aside. In terms of this Notice the provisions of section 4(1) and (2) of the Dangerous Weapons Act, 1968 (Act 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 former Republic of South Africa).

1.3 On 10 November 2010 a Government Notice withdrawing Government Notice R. 409 (Transkei) (and thereby giving effect to the Constitutional Court's order) was 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, 1968 (Act No. 71 of 1968) (Transkei), the Dangerous Weapons Act, 1982 (Act No. 28 of 1982) (Bophuthatswana), the Dangerous Weapons Act, 1968 (Act No. 71 of 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 is 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

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 an unlawful purpose.

3.2 **Clause 3**

Clause 3(1) repeals, in whole, all the Dangerous Weapons Acts presently in force in the areas mentioned in paragraph 1.4.

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 or 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.