

OFFICE OF THE PRESIDENT

No. 1546.
6 October 1995

NO. 86 OF 1995: STATE OF EMERGENCY ACT, 1995

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

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.

(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.

(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.

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

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

- (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

- (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.

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

(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
- (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 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 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 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 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-

- (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 third column thereof.

Short title

5. This Act shall be called the 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 1986	The whole Act,
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 CISKI

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