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GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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PRESIDENT'S OFFICE

No. 1561. 21 November 1997

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

No. 64 of 1997: State of Emergency Act, 1997

KANTOOR VAN DIE PRESIDENT

No. 1561. 21 November 1997

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

No. 64 van 1997: Wet op Noodtoestand, 1997.

ACT

To provide for the declaration of a state of emergency; to empower the President to make regulations in pursuance of any such declaration; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 37 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that a state of emergency may be declared only in terms of an Act of Parliament, and only when the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency and the declaration is necessary to restore peace and order;

*(English text signed by the President.)
(Assented to 13 November 1997.)*

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

Declaration of state of emergency

1. (1) Subject to the provisions of section 37 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the President may by proclamation in the *Gazette* declare a state of emergency in the Republic or in any area within the Republic. 5
- (2) The reasons for the declaration of the state of emergency shall be stated briefly in the proclamation.
- (3) The President may at any time withdraw the proclamation by like proclamation in the *Gazette*. 10

Emergency regulations

2. (1) (a) The President may, in respect of the Republic or of any area in which the state of emergency has been declared and for as long as the proclamation declaring the state of emergency remains of force, by proclamation in the *Gazette* make such regulations as are necessary or expedient to restore peace and order and to make adequate provision for terminating the state of emergency, or to deal with any circumstances which have arisen or are likely to arise as a result of the state of emergency. 15
- (b) In addition to the publication of the regulations in the *Gazette*, the President shall cause the contents of the regulations to be made known to the public by appropriate means. 20
- (2) Without derogating from the generality of the powers conferred by this section, regulations may provide for—
 - (a) the empowering of such persons or bodies as may be specified therein to make orders, rules and bylaws for any of the purposes for which the President is authorised by this section to make regulations, and to prescribe penalties for any contravention of or failure to comply with the provisions of such orders, rules or bylaws; 25
 - (b) the imposition of such penalties as may be specified therein for any contravention of or failure to comply with the provisions of the regulations or any directions issued or conditions prescribed by or 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
- (3) No provision of this section shall— 35

WET

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

AANHEF

NADEMAAL artikel 37 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), bepaal dat 'n noodtoestand slegs ingevolge 'n Parlements wet verklaar mag word, en slegs wanneer die voortbestaan van die nasie deur oorlog, 'n inval, algemene oproer, wanorde, 'n natuurramp of 'n ander openbare noodgeval bedreig word en die verklaring nodig is om die vrede en orde te herstel;

*(Engelse teks deur die President geteken.)
(Goedgekeur op 13 November 1997.)*

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

Verklaring van noodtoestand

1. (1) Behoudens die bepalings van artikel 37 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), kan die President by proklamasie in die *Staatskoerant* 'n noodtoestand in die Republiek of in 'n gebied binne die Republiek verklaar.
- (2) Die redes vir die verklaring van die noodtoestand moet kortliks in die proklamasie vermeld word.
- 10 (3) Die President kan te eniger tyd die proklamasie by dergelike proklamasie in die *Staatskoerant* intrek.

Noodregulasies

2. (1) (a) Die President kan, ten opsigte van die Republiek of van 'n gebied waarin die noodtoestand verklaar is en vir solank as die proklamasie van krag bly wat die noodtoestand verklaar, by proklamasie in die *Staatskoerant* die regulasies uitvaardig wat nodig of dienstig is om die vrede en orde te herstel en om voldoende voorsiening te maak vir die beëindiging van die noodtoestand, of om te handel met omstandighede wat as gevolg van die noodtoestand ontstaan het of waarskynlik sal ontstaan.
- (b) Benewens die afkondiging van die regulasies in die *Staatskoerant*, moet die President die inhoud van die regulasies op toepaslike wyse aan die publiek bekend laat maak.
- (2) Sonder om afbreuk te doen aan die algemeenheid van die bevoegdheid wat by hierdie artikel verleen word, kan die regulasies voorsiening maak vir—
 - 25 (a) die verlening aan die persone of liggame wat daarin vermeld word van die bevoegdheid om bevele, reëls en verordeninge uit te vaardig vir 'n doel waarvoor die President by hierdie artikel 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;
 - 30 (b) die oplegging van die strawwe wat daarin vermeld word vir 'n oortreding van of versuim om te voldoen aan die voorskrifte van die regulasies of enige bevele uitgevaardig of voorwaardes voorgeskryf by of kragtens die regulasies, welke strawwe die verbeurdverklaring kan insluit van goedere, eiendom of instrumente waarmee of in verband waarmee die misdryf gepleeg is.
- (3) Geen bepaling van hierdie artikel—

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- (a) authorise the making of any regulations which are inconsistent with this Act or section 37 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); or
 - (b) authorise the making of any regulations whereby—
 - (i) provision is made for the imposition of imprisonment for a period exceeding three years; 5
 - (ii) any duty to render military service other than that provided for in the Defence Act, 1957 (Act No. 44 of 1957), is imposed; or
 - (iii) any law relating to the qualifications, nomination, election or tenure of office of members of Parliament or a provincial legislature, the sittings of Parliament or a provincial legislature or the powers, privileges or immunities of Parliament or a provincial legislature or of the members or committees thereof, is amended or suspended. 10
- (4) Regulations governing the detention of persons shall provide for such international humanitarian organisations as may be recognised by the Republic to have access to persons detained under such regulations in order to monitor the circumstances under which such persons are detained. 15
- (5) Whenever any person is detained under any regulation made in pursuance of a state of emergency declared in a particular area, such person shall be detained at any place within that area unless— 20
- (a) no suitable place of detention is available within that area; or
 - (b) the detention of such person at a place outside that area is reasonably necessary to restore peace and order.

Parliamentary supervision

3. (1) A copy of any proclamation declaring a state of emergency and of any regulation, order, rule or bylaw made in pursuance of any such declaration shall be laid upon the Table in Parliament by the President as soon as possible after the publication thereof. 25
- (2) In addition to the powers conferred upon the National Assembly by section 37(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the National Assembly may— 30
- (a) disapprove of any such regulation, order, rule or bylaw or of any provision thereof; or
 - (b) make any recommendation to the President in connection with any such proclamation, regulation, order, rule, bylaw or provision. 35

Lapsing of emergency regulations

4. (1) Any regulation, order, rule or bylaw made in pursuance of the declaration of a particular state of emergency, or any provision thereof, shall cease to be of force and effect—
- (a) as from the date on which the proclamation declaring that state of emergency is withdrawn by the President under section 1(3); 40
 - (b) as from the date on which the National Assembly—
 - (i) resolves under section 37(2)(b) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), not to extend the declaration of that state of emergency; or 45
 - (ii) resolves under section 3(2)(a) to disapprove of any such regulation, order, rule, bylaw or provision, to the extent to which it is so disapproved; or
 - (c) as from the date on which the declaration of that state of emergency lapses as contemplated in the said section 37(2)(b), 50
- whichever is the earlier date.

(2) The provisions of subsection (1) shall not derogate from the validity of anything done in terms of any such regulation, order, rule, bylaw or provision up to the date upon which it so ceased to be of force and effect, or from any right, privilege, obligation or liability acquired, accrued or incurred, as at the said date, under and by virtue of any such regulation, order, rule, bylaw or provision. 55

- (a) magtig die uitvaardiging van regulasies wat met hierdie Wet of artikel 37 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), onbestaanbaar is nie; of
- (b) magtig die uitvaardiging van regulasies waarby—
- 5 (i) voorsiening gemaak word vir die oplegging van gevangenisstraf vir 'n tydperk wat drie jaar te bowe gaan nie;
 - (ii) 'n ander plig om militêre diens te verrig, opgelê word as dié waarvoor die Verdedigingswet, 1957 (Wet No. 44 van 1957), voorsiening maak nie; of
 - 10 (iii) 'n wetsbepaling aangaande die kwalifikasies, nominasie, verkiesing of ampsduur van lede van die Parlement of 'n provinsiale wetgewer, die sittings van die Parlement of 'n provinsiale wetgewer of die bevoegd-hede, voorregte of immunitete van die Parlement of 'n provinsiale wetgewer of van die lede of komitees daarvan, gewysig of opgeskort word nie.
- (4) Regulasies wat die aanhouding van persone reël, moet voorsiening maak vir toegang tot persone wat kragtens sodanige regulasies aangehou word deur die internasionale humanitêre organisasies wat deur die Republiek erken word ten einde die omstandighede te monitor waaronder sodanige persone aangehou word.
- 20 (5) Wanneer 'n persoon aangehou word kragtens 'n regulasie wat uitgevaardig is na aanleiding van 'n noodtoestand wat in 'n bepaalde gebied verklaar is, moet so 'n persoon op 'n plek binne daardie gebied aangehou word tensy—
- (a) geen geskikte plek van aanhouding binne daardie gebied beskikbaar is nie; of
 - 25 (b) die aanhouding van so 'n persoon op 'n plek buite daardie gebied redelikerwys nodig is om die vrede en orde te herstel.

Parlementêre toesig

3. (1) 'n Afskrif van 'n proklamasie wat 'n noodtoestand verklaar en van 'n regulasie, bevel, reël of verordening wat na aanleiding van so 'n verklaring uitgevaardig is, moet deur die President in die Parlement ter Tafel gelê word so gou doenlik na die
- 30 afkondiging daarvan.
- (2) Benewens die bevoegdhede wat by artikel 37(2)(b) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), aan die Nasionale Vergadering verleen word, kan die Nasionale Vergadering—
- (a) so 'n regulasie, bevel, reël of verordening of 'n voorskrif daarvan afkeur; of
 - 35 (b) 'n aanbeveling aan die President in verband met so 'n proklamasie, regulasie, bevel, reël, verordening of voorskrif doen.

Verval van noodregulasies

4. (1) Die regsrag van 'n regulasie, bevel, reël of verordening wat na aanleiding van die verklaring van 'n bepaalde noodtoestand uitgevaardig is, of van 'n voorskrif
- 40 daarvan, verval—
- (a) vanaf die datum waarop die proklamasie wat daardie noodtoestand verklaar deur die President kragtens artikel 1(3) ingetrek word;
 - (b) vanaf die datum waarop die Nasionale Vergadering—
- 45 (i) kragtens artikel 37(2)(b) van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), besluit om nie die verklaring van daardie noodtoestand te verleng nie; of
 - (ii) kragtens artikel 3(2)(a) besluit om so 'n regulasie, bevel, reël, verordening of voorskrif af te keur, vir sover dit aldus afgekeur word; of
 - 50 (c) vanaf die datum waarop die verklaring van daardie noodtoestand verval soos in genoemde artikel 37(2)(b) beoog,
- na gelang van watter datum die vroegste is.
- (2) Die bepaling van subartikel (1) doen nie afbreuk aan die geldigheid van enigiets wat ingevolge so 'n regulasie, bevel, reël, verordening of voorskrif gedoen is tot die datum waarop die regsrag daarvan verval het, of aan 'n reg, voorreg, verpligting of
- 55 aanspreeklikheid wat, soos op genoemde datum, kragtens en uit hoofde van so 'n regulasie, bevel, reël, verordening of voorskrif verkry, opgeloop of aangegaan is nie.

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Repeal of Act 86 of 1995

5. The State of Emergency Act, 1995, is hereby repealed.

Short title

6. This Act shall be called the State of Emergency Act, 1997.

Herroeping van Wet 86 van 1995

5. Die Wet op Noodtoestand, 1995, word hierby herroep.

Kort titel

6. Hierdie Wet heet die Wet op Noodtoestand, 1997.

