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GENERAL NOTICE

NOTICE 606 OF 2011

DEPARTMENT OF POLICE

DRAFT DANGEROUS WEAPONS BILL, 2011

Following the decision of the Constitutional Court in the matter of S v Thunzi and S v Mlonzi (Case CCT/81/09), the Minister of Police intends to introduce a draft Dangerous Weapons Bill, 2011, to Parliament, in order to repeal and substitute the Dangerous Weapons Acts in operation in the areas of the erstwhile Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei, and to provide for matters connected therewith.

The attached draft Bill is hereby submitted for public comments, in order to finalise it for submission to Cabinet to obtain approval to introduce the Bill to Parliament.

Interested persons are invited to submit written comments on the draft Bill within 30 days from the date of publication of this notice to:

Postal Address:

Major General PC Jacobs
Legal Services
South African Police Service
Private Bag X94
PRETORIA
0001

Street Address:

Room No. 340
3rd Floor
Presidia Building
255 Pretorius Street
Cnr. Paul Kruger and Pretorius Street
PRETORIA
0001

E-mail: jacobspc@saps.org.za

REPUBLIC OF SOUTH AFRICA

DANGEROUS WEAPONS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. of 2011)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B —2011]

BILL

To provide for certain prohibitions and restrictions in respect of the import, possession, manufacture, sale or supply of certain objects; to repeal and substitute the Dangerous Weapons Acts in operation in the areas of the erstwhile Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei, as those Republics were constituted immediately before 27 April 1994; and to provide for matters connected therewith.

Definitions

1. In this Act, unless the context otherwise indicates-

'dangerous weapon' means-

- (a) any object, other than a firearm made or modified to be used —
 - (i) to injure or disable a person; or
 - (ii) to cause a person to fear that someone will be injured or disabled by that use; or
- (b) any other object possessed or carried, which is likely to cause serious bodily injury if it was used to commit an assault;

'firearm' means a firearm, a muzzle loading firearm or an airgun as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000);

'gathering' includes any assembly, concourse or procession of any number of persons;

'Minister' means the Cabinet member responsible for policing;

'replica or imitation of a firearm' includes any object or any toy gun, soft-airgun "BB" gun or paintball gun that resembles a real firearm to such a degree that it is likely to be mistaken for a real firearm and without any distinguishing colour or feature to indicate that it is not a real firearm.

Prohibition of the possession of dangerous weapons, firearms and certain other objects

2. (1) Any person who is in possession of or carries-

- (a) any dangerous weapon; or
 - (b) any replica or imitation of a firearm,
- under circumstances which may raise a reasonable suspicion that the person

intends to use the dangerous weapon or replica or imitation of a firearm for an unlawful purpose shall, unless he or she can provide a reasonable explanation for his or her possession or the carrying thereof, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(2) When considering whether an explanation referred to in subsection (1) is reasonable, the place and time where the person is found, the general behaviour of the person, the manner in which the dangerous weapon or the replica or imitation of a firearm is carried or displayed and the lawfulness of the presence of the person at or in the place where he or she is apprehended, shall be taken into account.

(3) In this section an explanation that a dangerous weapon or a replica or imitation of a firearm is possessed or carried for private defence is not regarded as a reasonable explanation in circumstances where such weapon or replica or imitation of a firearm on reasonable grounds may pose a real danger or threat to any other person at or in a public place.

(4) The Minister may from time to time by notice in the *Gazette* and subject to such terms, conditions, restrictions, directions or exemptions as may be specified in such notice or as may be provided for therein, prohibit any person or any person belonging to any class of persons specified in such notice, from being in possession at any time or during any period so specified and either generally or at or in any place or area so specified or at a specified gathering or at any gathering belonging to any class specified in such notice, of any object belonging to a class, type, kind or category of object which, in the opinion of the Minister, is a dangerous weapon and which is specified in such notice.

(5) The Minister may, notwithstanding anything to the contrary in any law contained, from time to time by notice in the *Gazette* and subject to such terms, conditions, restrictions, directions or exemptions as may be specified in such notice or as may be provided for therein, prohibit any person or any person belonging to any class of persons specified in such notice, from being in possession at any time or during any period so specified and either generally or at or in any place or area so specified or at a specified gathering or at any gathering belonging to any class specified in such notice, of any firearm, or a replica or imitation of a firearm, in general or any firearm, or a replica or imitation of a firearm, belonging to a class, type, kind or category specified in such notice.

(6) Any person who is in possession of any object, firearm or replica or imitation of a firearm in contravention of the provisions of any notice issued in terms of subsection (4) or (5), shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1).

(7) The Minister may at any time by notice in the *Gazette* amend or repeal any notice issued in terms of subsection (4) or (5).

Prohibition of the import, manufacture, sale or supply of dangerous weapons and replicas or imitations of firearms

3. (1) The Minister may from time to time by notice in the *Gazette* prohibit the import, manufacture, sale or supply of any object belonging to a class or kind of object which in his or her opinion—

- (a) is a dangerous weapon; or
 - (b) is a replica or imitation of a firearm,
- and which is specified in such notice.

(2) The Minister may by notice in the *Gazette* and subject to such conditions as he or she may determine, exempt any person or class of persons specified in such notice, or any person or class of persons other than any person or class of persons so specified, either generally or under such circumstances as may be so specified and either indefinitely or for such period as may be so specified, from the operation of any or all of the provisions of any notice issued in terms of subsection (1).

(3) Any person who imports, manufactures, sells or supplies any object in contravention of the provisions of any notice issued in terms of subsection (1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

(4) For the purposes of subsections (1) and (3), 'sell' includes to offer for sale, to keep for sale or to keep in a place where goods are sold, offered or kept for sale.

(5) The Minister may at any time by notice in the *Gazette* amend or repeal any notice issued in terms of this section.

Transitional provisions

4. Any notice issued under the Dangerous Weapons Act, 1968 (Act No. 71 of 1968), before the coming into operation of this Act, shall remain in force as if issued under this Act, until amended, repealed or substituted by the provisions of this Act, and the operation thereof is from the date of the coming into operation of this Act, made applicable to every area which immediately before 27 April 1994 formed part of the territory of the Republic of—

- (a) Transkei;
- (b) Bophuthatswana;
- (c) Venda; or
- (d) Ciskei.

Repeal of laws

5. The laws specified in the Schedule are hereby repealed to the extent indicated in the third column thereof.

Short title and commencement

6. This Act shall be called the Dangerous Weapons Act, 2011, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

Schedule**LAWS REPEALED BY SECTION 5**

No. and year of law	Short title	Extent of repeal
Act No. 71 of 1968	Dangerous Weapons Act, 1968	The whole
Act No. 71 of 1968 (Transkei)	Dangerous Weapons Act, 1968	The whole
Act No. 71 of 1968 (Venda)	Dangerous Weapons Act, 1968	The whole
Act No. 71 of 1968 (Ciskei)	Dangerous Weapons Act, 1968	The whole
Act No. 28 of 1982 (Bophuthatswana)	Dangerous Weapons Act, 1982	The whole

MEMORANDUM ON THE OBJECTS OF THE DANGEROUS WEAPONS BILL, 2011

1. BACKGROUND AND PURPOSE

1.1 The Constitutional Court, in *S v Thunzi and S v Mlonzi* (Case CCT 81/09) ("the *Thunzi* case"), found the applicability of section 4 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) (Transkei) ("the Dangerous Weapons Act (Transkei)"), which is similar to section 4 of the Dangerous Weapons Act, 1968 (Act No. 71 of 1968) ("the Dangerous Weapons Act (South Africa)"), in the area of the former Republic of Transkei only to be unconstitutional. The Constitutional Court, in the *Thunzi* case, 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 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 former Republics of South Africa, Transkei, Bophuthatswana, Venda and Ciskei.

1.2 A small joint task team comprising of officials of the Department of Justice and Constitutional Development and the Department of Police drafted the Dangerous Weapons Bill, 2011 ("the Bill"), for promotion during the 2011 Parliamentary session. Except for section 4 of the Dangerous Weapons Act (South Africa), read with section 4 of the Dangerous Weapons Act (Transkei), which was the subject of the *Thunzi* case, the remainder of the Dangerous Weapons Act (South Africa) is being administered by the Minister of Police.

1.3 The Dangerous Weapons Act (South Africa) and related legislation still in force in the areas mentioned in paragraph 1.1, are outdated and it is proposed that a new Dangerous Weapons Bill be introduced, taking into account Constitutional principles as well as present policing needs in respect of the possession and carrying of dangerous weapons and related issues. A huge number of murders, robberies as well as other violent crimes are being committed annually with dangerous weapons such as knives, but also with replicas or imitations of firearms which cannot be easily distinguished from real firearms.

2. PROVISIONS OF THE BILL

2.1 Clause 1:

“Minister” is defined as “the Cabinet member responsible for policing”. A definition of “replica or imitation of a firearm” is provided for in the Bill. “Dangerous weapon” is defined to mean—

(a) any object, other than a firearm made or modified to be used —

(i) to injure or disable a person; or

(ii) to cause a person to fear that someone will be injured or disabled by that use; or

(b) any other object possessed or carried, which is likely to cause serious bodily injury if it was used to commit an assault.

The other definitions in the Bill remain unchanged, except for the definition of “firearm” which is now defined to include “a muzzle loading firearm or an airgun”.

2.2 Clause 2:

2.2.1 Clause 2(1) provides that any person who is in possession of or carries any dangerous weapon or any replica or imitation of a firearm under circumstances which may raise a reasonable suspicion that the person intends to use the dangerous weapon or replica or imitation of a firearm for an unlawful purpose shall, unless he or she can provide a reasonable explanation for his or her possession or the carrying thereof, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

2.2.2 Clause 2(2) provides that when considering whether an explanation referred to in subsection (1) is reasonable, the place and time where the person is found, the general behaviour of the person, the manner in which the dangerous weapon or the replica or imitation of a firearm is carried or displayed and the lawfulness of the presence of the person at or in the place where he or she is apprehended, shall be taken into account.

2.2.3 Clause 2(3) provides that an explanation that a dangerous weapon or a replica or imitation of a firearm is possessed or carried for private defence is not regarded as a reasonable explanation in circumstances where such weapon or replica or imitation of a firearm on reasonable grounds may pose a real danger or

threat to any other person at or in a public place.

2.2.4 Clause 2(4) retains the powers of the Minister of Police to prohibit, by notice in the *Gazette*, the possession during certain time periods and at or in certain places or gatherings specified in the notice of objects specified in the notice and which are in the opinion of the Minister dangerous weapons.

2.2.5 In clause 2(5) the powers of the Minister of Police to prohibit, by notice in the *Gazette*, the possession during certain time periods and at or in certain places or gatherings specified in the notice of firearms or a replica or imitation of a firearm are also retained.

2.2.6 Clause 2(6) provides that any person who is in possession of any object, firearm or replica or imitation of a firearm in contravention of the provisions of any notice issued in terms of subsection (4) or (5), shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1).

2.2.7 Clause 2(7) provides that the Minister may at any time by notice in the *Gazette* amend or repeal any notice issued in terms of subsection (4) or (5).

2.3 Clause 3:

Clause 3(1) retains the Minister of Police's powers to prohibit the manufacture, sale or supply of specified objects by notice in the *Gazette* which are in the opinion of the Minister dangerous weapons, with the difference that the Minister will now also be empowered to issue such prohibition in respect of the import of such objects and objects which are a replica or imitation of a firearm.

2.3.1 Clause 3(2) provides that the Minister may by notice in the *Gazette* and subject to conditions, exempt any person or class of persons specified in such notice, or any person or class of persons other than any person or class of persons so specified, either indefinitely or for a specified period, from the operation of any or all of the provisions of any notice issued in terms of subsection (1). In terms of clause 3(5) the Minister may at any time by notice in the *Gazette* amend or repeal any notice issued in terms of this section.

2.3.2 Clause 3(3) provides that any person who imports, manufactures, sells or supplies any object in contravention of the provisions of any notice issued in terms of subsection (1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

2.4 Clause 4:

Clause 4 provides for a transitional measure which keeps in force the existing notices issued under the Dangerous Weapons Act (South Africa), until amended, repealed or substituted. The existing notices were issued only under section 2 of the Dangerous Weapons Act (South Africa) and prohibit the possession of firearms or replicas thereof at specified gatherings or at or in public places; the possession of certain dangerous weapons at specified gatherings or at or in public places and the possession of firearms and dangerous weapons at or in any place under the control of the South African Railways Commuter Corporation.

2.5 Clause 5:

Clause 5, read with the Schedule to the Bill, repeals in whole, all the Dangerous Weapons Acts presently in force in the areas mentioned in paragraph 1.1.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was drafted by a Task Team consisting of officials of both the South African Police Service and the Department of Justice and Constitutional Development.

4. FINANCIAL IMPLICATIONS FOR THE STATE

Only incidental costs pertaining to implementation, such as informing the public and police officers.

5. PARLIAMENTARY PROCEDURE

The South African Police Service is of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.