

# REVIEWS LEGAL INDUSTRY



In this edition, **Bulelwa Mabasa**, Director and Head of the Land Reform, Restitution and Tenure practice at **Werksmans**, talks about her career, the legal framework on Land in the country, and the impacts of this matter in the South African economy and foreign investments.

### States' duties: Protecting Human Rights vs implementing Counter-terrorism measures

Internationally, all States have a right and a duty to take effective counter-terrorism measures to prevent and deter future terrorist attacks and prosecute those responsible for carrying out such acts to fulfil their obligations under human rights laws to protect the life and security of individuals in their jurisdictions.

In July 2022, South Africa's Police Minister Bheki Cele introduced the Protection of Constitutional Democracy Against Terrorist and Related Activities Amendment Bill. This amendment bill is part of SA's efforts to fix shortcomings identified by the global anti-terrorism and anti-money laundering standards body, the Financial Action Task Force (FATF) and to bring the existing Protection of Constitutional Democracy against Terrorist and Related Activities Act, Act 33 of 2004 ("principal act") in line with developments in international law and Constitutional Court judgments. The Bill aims to amend the principal act to delete, amend and insert certain definitions to:

- i) Align SA's statutory framework with international instruments,
- ii) Provide for offences related to terrorist training and the joining and establishment of terrorist organizations,
- iii) Provide for offences related to foreign travel and attempts to leave the Republic under certain circumstances,
- iv) Provide for offences in respect of the possession and distribution of publications with unlawful terrorism-related content,
- v) Provide for authorization to be obtained from the Director of Public Prosecutions in respect of the investigation and prosecution of certain offences,
- vi) Provide for the issuing of warrants for the search and cordoning off of vehicles, persons and premises,
- vii) Provide for a direction requiring the disclosure of a decryption key and the effect of a direction to disclose a decryption key,
- viii) Provide for the removal of, or making inaccessible, publications with unlawful terrorism-related content, and
- ix) Provide for matters connected therewith.

On 7 September 2022, SA's Parliament's Portfolio Committee on Police confirmed receipt of various initial inputs in virtual public hearings on the Bill. The deadline for submissions of public comments was on 9 September 2022. Following the public hearings there are concerns about the proposed amendments. For instance, Afriforum, one of the organizations that submitted public comments, believes



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that some of the amendments unfairly infringe existing human rights of South Africans. These concerns highlight the tension between countering terrorism and a State's duty to protect and promote human rights. That is because all measures taken to combat terrorism must themselves also comply with the State's obligations under international law, particularly international human rights law. (Office of the United Nations High Commissioner for Human Rights (OHCHR), Fact Sheet No. 32).

Just as terrorism impacts on human rights, so too can measures adopted by States to counter-terrorism. According to OHCHR, effective counter-terrorism measures and the protection of human rights are complementary and mutually reinforcing objectives, which must be pursued together as part of a State's duty to protect individuals within their jurisdiction. However, in a limited set of exceptional national circumstances, some restrictions on the enjoyment of certain human rights may be permissible, provided that a number of conditions are fulfilled, and the State is at all times complying with its obligations under international human rights law. Therefore, if the amendments pass and there are allegations that they infringe human rights, it is important to know that the onus will be on the SA government to show that the measures taken fall within the permissible aims under international human rights law.





## Practice Area News

**Hawks pounce on Potchefstroom couple. Johan le Grange represents Ben Otto** (68), the Director of RSA Search (Pty) Ltd. Otto was arrested on 21 September 2022 and is charged with 69 charges of fraud and 31 charges of money-laundering to the value of R65 million. Otto appeared in the Potchefstroom Magistrates Court on 21 September 2022 where he was released on bail of R10 000. The case is adjourned until 23 November 2022 for further investigation.

**Extradition Bill, 2022.** The current **Extradition Act No 67 of 1962** is outdated.

It is not in line with the Constitution of SA and modern extradition practices. It does not provide for all procedures which are currently followed internationally and for the series of mechanisms for international cooperation in criminal matters concerned with extradition, mutual legal assistance, the transfer of criminal proceedings and/or convicted persons, recognition of decisions of foreign criminal jurisdictions, the freezing or seizure of assets, and cooperation between law enforcement agencies.

The Department of Justice and Constitutional Development has published a draft Extradition Bill for public comment on 22 August 2022. The **deadline for submissions** was on 4 October 2022.

It is envisioned that the Bill will address the above deficiencies. The Department explained that all comments will be considered and evaluated, and the draft Bill will be redrafted, taking these inputs into account, whereafter the Bill will be sent to Cabinet for approval for introduction into Parliament.

We are of the view that it is only through effective international cooperation that complex and high-profile white-collar crime and corruption cases can be successfully investigated and prosecuted.

## In the Firm

**Global reach. Local Grasp.** The Diaz Reus South Africa office is part of a global network of international law offices ("DRT Alliance") that provides clients seamless access to legal services throughout the U.S., Canada, Latin America, Eastern and Western Europe, Asia, Africa and the Middle East.

Diaz Reus attorneys are well known for helping companies, government entities and individuals transact business and resolve legal disputes at home and abroad.

