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Adv. J. H. de Lange, MP
Chairperson: Portfolio Committee – Water and Environmental Affairs
National Assembly
Cape Town.

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(Sent per email – additional copy to Committee Secretary for circulation to committee members.)

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Dear Advocate de Lange,

RHINO and ELEPHANT POACHING by CITIZENS of MOZAMBIQUE may be deemed “ACTS of TERRORISM”

Given the atrocious rise in recent acts of poaching, clearly committed by persons from Mozambique, against South Africa’s precious rhino – and last week, an elephant cow from Tembe Elephant Park – it is now imperative that South Africa’s parliament acts quickly and decisively to stem this ‘bloody’ onslaught.

Since your portfolio committee acts as our custodial legislative oversight body, we are writing to you, directly – as an open letter, published via social media – in this grave matter.

Earth Afrika is an informal alliance of NGO’s, conservationists, ecologists, environmental lawyers and active citizens, both inside South Africa, and across our region.

Our legal and legislative research confirms that poaching activities and related wildlife crime may be deemed “Acts of Terrorism”, as interpreted within the context of both South Africa’s own Protection of Constitutional Democracy against Terrorist and Related Activities Act (Act 33 of 2004) and the African Union’s Convention on the Prevention and Combating of Terrorism, as defined by the former Act.

Accordingly, we draw your esteemed attention – and that of your oversight committee – to this extremely critical matter of national security, by way of some brief background information and a suggested ‘action plan’.

LEGAL BACKGROUND

The AU’s Convention – signed and ratified by both SA and Mozambique a decade ago, and formally lodged with the United Nations after adoption – is a primary guiding, multinational instrument, recognized by our own legislation.

In short, this Convention states that:

A “Terrorist act” means:

(a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency ...

It further places critical obligations on “State Parties” in Article 2 – which binds Mozambique indisputably – to, inter alia:

(a) review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences ...

To conclude this synopsis, Article 4 of the Convention requires of “State Parties” to, inter alia:

(a) prevent their territories from being used as a base for the planning, organization or execution of terrorist acts or for the participation or collaboration in these acts in any form whatsoever ...

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In terms of South’s own legislation on this matter, namely the Protection of Constitutional Democracy against Terrorist and Related Activities Act of 2004, defines “Terrorist Activity” as being, inter alia:

(a) any act committed in or outside the Republic, which -

(i) involves the systematic, repeated or arbitrary use of violence by any means or method ...

(v) causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultural heritage, whether public or private ...

(vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy ...

(viii) creates a serious public emergency situation ...

LEGAL INTERPRETATION

Our legislative review indicates that:

1. The deployment of specially trained military personnel of the South African National Defence Force (SANDF) in the Kruger National Park and other environs clearly constitutes a “serious public emergency situation”, especially given the massive resource deployment required to counter this scourge;

2. There is a global, regional and local outcry over the destruction of South Africa’s rich and unique “natural resources” and “environmental heritage” through poaching, thus indicating the gravity of the poaching onslaught;

3. Poaching has now become “systemic” and involves the use of violence, both against nature kind and human kind, as proven by the additional physical threat to life and personal injury for rangers, anti-poaching units and SANDF personnel, which, directly and indirectly, undermines South Africa’s constitutional obligations to the security of its citizens by way of a tacit condonment of such acts of violence and terror, and our nation’s limited responses thereto; and

4. The Department of Water and Environmental Affairs, in conjunction with SA National Parks and other provincial parks, can more than adequately prove to your committee that a significant part of our poaching crime originates from Mozambique soil, and that this respective “State Party’s” government has neither enacted laws, nor taken strong law enforcement counter-measures, to recognize our national, African and global assets and these appalling threats to their future security, as well as our resultant national economic and “war” crisis.

OPINION

Accordingly, our organization strongly believes that an appropriately constituted court of law in South Africa would find that:

(a) The Republic of Mozambique is in material breach of their “State Party” obligations under the AU’s Convention on the Prevention and Combating of Terrorism; and

(b) The Republic of South Africa has neither applied its mind diligently, nor taken strong corrective action, to halt such “terrorist” incursions from Mozambique on our national soil, thereby creating a national security crisis, and must insist – with immediate effect – the SA Police and National Prosecuting Authority give effect to charging parties of such a “terrorist” crime, once apprehended.

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Quick links:

African Union Convention:

<http://treaties.un.org/doc/db/Terrorism/OAU-english.pdf>

Related South African legislation:

<http://www.info.gov.za/view/DownloadFileAction?id=67972>

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PLAN OF ACTION

In this light of this well considered and diverse legal opinion, we – as Earth Afrika – hereby call on the Portfolio Committee for Water and Environmental Affairs, to urgently:

1. Constitute, as soon as possible, a special committee sitting to consider this opinion rendered here and devise remedial actions therefrom;
2. Advise the Minister and the Department of Water and Environmental Affairs of this pending matter;
3. Seek state legal advice on this matter and investigate legislative amendments – if required – to strengthen laws related to “terrorism” involving natural and environmental assets of the state;
4. Advise and liaise with other parliamentary portfolio committees, which are adjunct to this matter, such as the following, in order to devise a cohesive, national strategy:
 - a. Justice and Constitutional Affairs;
 - b. Police;
 - c. Defence and Military Veterans;
 - d. International Relations and Cooperation; and
 - e. Home Affairs;
5. Seek an urgent bilateral meeting with your committee’s counterparts in Mozambique’s parliament to highlight this grave issue and devise collaborative strategies to remedy this situation, urgently; and

6. Direct South Africa's law enforcement agencies to give substance to these "terrorist crimes" immediately and also make national statements to our citizens about the gravity and new focus of such crime prosecutions.

TO CONCLUDE -

Sir, whilst we are clear in our strongly held opinions in this matter, we are acutely aware of strong historical ties with our SADC and African neighbour. Hence, whilst firm, we tender this open letter with due respect, given the gravity of prevailing situation.

Additionally, whilst we are acutely aware that poaching is not singularly linked to multinational, criminal, terrorist gangs emanating from Mozambique, there is a plethora of evidence that this nation plays host – wittingly or unwittingly – to the majority of this costly and 'bloody' threat to our national security and our rich natural treasures.

Thus, we call on you, and your committee, to consider – in serious terms – the substantive summary of opinion and proposed action plan contained herein.

Thank you for your attention thus far.

Sincerely,

Brian Sandberg

(Regional Coordinator – Earth Afrika)

(Sent electronically.)

(Copy posted to <http://vivaafrika.wordpress.com>)