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432 National Key Points and Strategic Installations Bili, 2007: For general information and comment

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GENERAL NOTICE

NOTICE 432 OF 2007**NATIONAL KEY POINTS AND STRATEGIC INSTALLATIONS BILL, 2007**

The Minister for Safety and Security intends to review and amend the National Key Points Act, 1980 (Act No.102 of 1980). A draft National Key Points and Strategic Installations Bill is hereby published for general information and comment from interested parties.

IMPORTANT NOTE: This is merely a working document which is used to obtain the input of interest groups. The finalisation of the draft National Key Point and Strategic Installation Bill, will ultimately be done after the consultation process has been concluded. Parliamentary committees will also be involved in the process.

NO PART OF THE CONTENT OF THIS DOCUMENT OR ANY ALTERATION THEREOF MAY BE CONSIDERED AS A COMMITMENT TO THE FINAL PROVISIONS OF THE BILL

Kindly note that as this is a working document certain technical correction with regard to the numbering, spacing and general layout still need to be done.

Any comments, contributions or proposals on the Bill may be submitted within 6 weeks from the date of publication of this Notice in writing to the following;

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PRETORIA

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REPUBLIC OF SOUTH AFRICA

NATIONAL KEY POINT AND STRATEGIC INSTALLATIONS BILL

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

(MINISTER FOR SAFETY AND SECURITY)

[B - 2007]

BILL

To provide for the declaration of National Key Points, including Strategic Installations and Places of Importance; to provide for the declaration of a Complex; to regulate the measures and standards for safeguarding thereof; repeal of laws; and for matters connected therewith.

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

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CHAPTER 1**INTERPRETATION, OBJECT AND APPLICATION OF ACT****Definitions**

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

"area" means any soil or water surface, whether with a building, installation or structure thereon or not, and includes air space;

"boundary" means the boundary of a National Key Point, Strategic Installation or Place of Importance as determined by the Minister;

"complex" means more than one National Key Point, Strategic Installation or Place of Importance as declared under section 4;

"essential services" means essential services as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995);

"Government Security Regulator" means a component of the South African Police Service, who will be responsible to administer this Act;

"incident" means any occurrence, terrorism or any other criminal activity or any other conduct which endangers, compromise, disrupts or threatens a National Key Point, Strategic Installation or Place of Importance;

"institution" means any state department as defined in section 329 of the Constitution of the Republic of South Africa, 1996, including any public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"Joint Planning Committee" (JPC) is a committee constituted in terms of section 17 to effectively plan and coordinate all activities concerning the proper safeguarding of a National Key Point, Strategic Installation or Place of Importance;

"JOC" means a joint operational centre;

"Minister" means the Minister for Safety and Security;

"Minister's Advisory Committee" is a committee appointed by the Minister in terms of section 12 to determine, declare, downgrade and deal with any non-compliance of a National Key Point, Strategic Installation or Place of Importance;

"National Key Point" means any place or area which has been declared as such under section 4(1);

"owner" in relation to a place or area declared as a National Key Point, Strategic Installation or Place of Importance under section 4, means—

- (a) the person registered as the owner of the land constituting such place or area; or
- (b) the person who by virtue of any right acquired from a person referred to in paragraph (a), lawfully occupies such place or area; or
- (c) where the person referred to in paragraph (a) or (b) is unavailable, a minor, insolvent, insane or otherwise legally incompetent, an executor, administrator, guardian, trustee, liquidator, curator or other person who

controls the estate and assets of that person or represents him or her;

or

- (d) where the State owns or occupies such place or area the head of the department under control of which the place, area is; or
- (e) any person under whose direct control or management such place, a area or anything in transit is;

"place" means any premises, building, structure, installation or industrial complex;

"Place of Importance" means any place or area which has been declared by the Minister under section 4(3) for a specific period of time;

"physical security appreciation" means the process to determine the security threat analysis encompassing physical security appraisal, topographical security analysis and security appreciation analysis;

"security" means, but is not limited to -

- (a) information security, including document security;
- (b) physical security measures for the protection of the National Key Point, Strategic Installation and Place of Importance;
- (c) information and communication technology security;
- (d) personnel security;
- (e) contingency planning; and
- (f) administration, provisioning and organisation of the security function of a National Key Point, Strategic Installation or Place of Importance;

"**security compliance audit**" means an annual process to determine the standard of security and compliance thereof and to make recommendations for *corrective* steps to be taken;

"**security limit**" means the temporary moving of the boundary of a National Key Point, Strategic Installation or Place of Importance for a predetermined time;

"**security risk matrix**" in terms of this Act means a quantifiable process to determine the strategic *value* of a place, area or institution and declaration thereof;

"**Strategic Installations**" means any institution which has been declared by the Minister under section 4(5); and

"**this Act**" includes any subordinate legislation issued in terms of a provision of this Act.

CHAPTER 2

OBJECT AND APPLICATION OF ACT

Objects of Act

2. **The** objects of this Act are to ensure-
 - (a) efficient and *effective* control over; and
 - (b) optimum security at

National Key Points, Strategic Installations and Places of Importance, after being declared as such by the Minister in terms of section 4.

Application of Act

3. (1) This Act applies to all places or areas declared as National Key Points, Strategic Installations and Places of Importance.
- (2) In the event of any inconsistency between this Act and any other law in force at the commencement of this Act, other than the Constitution, this Act prevails.
- (3) Notwithstanding the provisions in the Disaster Management Act, 2002 (Act No. 57 of 2002) all emergency services must assist in an emergency at a National Key Point, Strategic Installation or Place of Importance, when so requested by the South African Police Services, without a disaster being declared in the *Gazette*. In the event of a major incident, emergency services will not be bound by municipal boundaries.

CHAPTER 3

POWERS OF THE MINISTER

Powers of the Minister to declare National Key Points, Strategic Installations and Places of Importance

4. (1) The Minister may, subject to subsection (2), declare any privately owned place or area, as a National Key Point if its-

-
- (a) safety and security is of paramount importance;
 - (b) loss, damage, disruption or immobilisation may endanger or compromise the general administration or provision of essential services;
 - (c) loss may disadvantage the Republic nationally or internationally; or
 - (d) safety and security has an impact on the delivery of essential services.
- (2) Before the Minister may declare a National Key Point as contemplated in subsection (1)-
- (a) the Government Security Regulator must, after consultation with the institution conduct a security risk matrix in order to determine and quantify the level of importance of such a place or area; and
 - (b) the Minister's Advisory Committee must evaluate the security risk matrix results and furnish the Minister with a recommendation on the proposed declaration of the area or place as a National Key Point.

- (3) Subject to subsection (4), the Minister may declare any place or area, whether privately or publicly owned, as a Place of Importance for a specified period which will upon the expiration of such period cease to exist if-
- (a) its safety and security is of paramount importance;
 - (b) its loss, damage, disruption or immobilisation may endanger or compromise the general administration or provision of essential services;
 - (c) its loss may disadvantage the Republic nationally or internationally; or
 - (d) its safety and security has an impact on the delivery of essential services.
- (4) Before the Minister may declare a Place of Importance as contemplated in subsection (3) the South African Police Service must after consultation with the institution conduct a security risk matrix in order to determine and quantify the level of importance of such a place or area.
- (5) Subject to subsection (6), the Minister may declare any publicly owned place or area as a Strategic Installation **if-**

- (a) its safety and security is of paramount importance;
 - (b) its loss, damage, disruption or immobilisation may endanger or compromise the general administration or provision of essential services;
 - (c) its loss may disadvantage the Republic nationally or internationally; or
 - (d) its safety and security has an impact on the delivery of essential services.
- (6) Before the Minister may declare a Strategic Installation-
- (a) the South African Police Service must furnish the Minister with security risk matrix results; and
 - (b) the Minister's Advisory Committee must evaluate the security risk matrix results and furnish the Minister with a recommendation on the proposed declaration of the area or place as a Strategic Installation.
- (7) (a) The owner of any place, area or institution which have been declared as a National Key Point, Strategic Installation or Place of Importance must be notified in writing of such declaration by the Minister.

- (b) The owner of a National Key Point or Place of Importance, if privately owned, must be informed of the implications of section 24D of the Income Tax Act, 1962 (Act No. 58 of 1962).

Power of Minister to declare a Complex

5. (1) When, in the opinion of the Minister, and on recommendation of the Minister's Advisory Committee it will contribute to the safeguarding of two or more National Key Points or Strategic Installations, if certain steps in respect of their security are taken jointly by their owners, he or she may declare those National Key Points or Strategic Installations, a Complex, irrespective of whether -
- (a) one of the National Key Points or Strategic Installations, adjoins any other; and
- (b) the steps contemplated will be taken at or on the National Key Points or Strategic Installations.
- (2) Before the Minister may declare a Complex as contemplated in subsection (1) the South African Police Service must after consultation with the institution-
- (a) determine the security dependency of the Complex;

- (b) determine the boundaries of the Complex; and
 - (e) conduct a security appreciation matrix of the Complex.
- (3) The owner of a National Key Point or Strategic Installation included in a Complex must forthwith be notified thereof by written notice, as well as of the name and address of each of the owners of the National Key Point or Strategic Installation, included in the Complex.
- (4) The inclusion of a National Key Point or Strategic Installation in a Complex, does not exempt the owner of that National Key Point or Strategic Installation from any obligation in terms of this Act.

Furnishing Minister with Information

- 6. (1) The Minister may, with a view to the exercise of a power granted to him or her by this Act, order any person in writing to furnish him or her within a specified time with any information at his or her disposal relating to or in connection with any place or area.
- (2) Any person who—
 - (a) in response to an order referred to in subsection (1) furnishes information which is false or incorrect in any material respect; or

- (b) makes known any information furnished in terms of subsection (1) to any person, except for the purposes of this Act or as a witness in a court of law during a prosecution in terms of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period of 20 years, or to both such fine and such imprisonment.
- (3) The provisions of subsection (2) shall not prohibit the disclosure of information-
- (a) by any person in so far as it is strictly necessary for the performance of his or her functions in regard to his or her employment in connection with, or his or her ownership of, the place concerned; and
- (b) when authorised by the Minister.

Power of Minister to take over duties of owners

7. (1) The Minister may at any time, on behalf of and in consultation with the owner of a National Key Point Strategic Installation, Place of Importance or Complex, take or cause to be taken any or all of the steps which in his or her opinion are or may become necessary in respect of their security and the owner is liable for the cost thereof to such extent as the Minister may determine.

- (2) When the Minister takes or causes to be taken steps under paragraph (1) of this section, he or she may take over the obligations of the owner or owners concerned arising from any contract or contracts with a third party or third parties, with the consent of that third party or those third parties, if in the opinion of the Minister the fulfilment of the contract or contracts will contribute to the security of the National Key Point, Strategic Installation, Place of Importance or Complex concerned.

Appointment of committees and remuneration of members

8. (1) (a) The Minister may appoint such persons or committees as he or she may deem fit to report to him or her, to advise him or her, or to exercise any power conferred on him or her under this Act, except a power excluded in terms of section 9.
- (b) Any such committee must, subject to the directions of the Minister, determine its own procedure.

Delegations of Powers

9. The Minister may on such conditions as he or she deems fit, in writing, empower any person to exercise any of the powers conferred on him or her by this Act, except powers referred to in sections 8,11 or 23.

Entry upon places and areas

10. The Minister or any person authorised thereto by him or her may enter upon any place or area so as to-

- (a) exercise any power granted to him or her by this Act;
- (b) verify any information furnished in terms of section 6;
- (c) gather information which is required to enable him or her to execute any authority conferred to him or her by this Act;
- (d) verify any steps being or to be taken in terms of this Act.

Performance of function in terms of this Act

11. Any member of the South African Police Service may be compelled to perform functions in terms of this Act as if they are functions which must be performed in terms of the South African Police Service Act, 1995 (Act No. 68 of 1995):
Provided that any functions so performed shall be deemed to have been performed in terms of the South African Police Service Act

CHAPTER 4

POWERS OF COMMITTEES

*Part A**Minister's Advisory Committee*

Minister's Advisory Committee

12. There is hereby established a committee to be known as the Minister's Advisory Committee.

Composition of committee

13. (1) The committee shall consist of no more than 20 permanent members appointed by the Minister, on the recommendation of the executive authority of the relevant state department or chief executive officer of the institution concerned.
- (2) The chairperson of the committee shall be appointed by the Minister.
- (3) If a member vacates his or her office his or her membership automatically ceases to exist.
- (4) The members of the committee must-

- (a) be knowledgeable about the strategic operational nature of National Key Points, Strategic Installations, Places of Importance;
 - (b) understand the economic value and importance of National Key Points, Strategic Installations, Places of Importance; or
 - (c) be in possession of an appropriate qualification and relevant experience in the field of expertise.
- (5) The Minister will appoint members on the basis of the recommendation relating to the categories of places, areas or institution that have already been declared National Key Points, Strategic Installation or Places of Importance for the purpose of achieving equal representation of institutions.
- (6) The chairperson may co-opt any additional members to attend the meetings of the committee to provide advice with regard to their relevant field of expertise.

Functions of committee

14. The functions of the committee are to advise the Minister on-

- (a) the determination of National Key Points, Strategic Installations and Places of Importance for him or her to declare it as such;

- (b) the security status of all National Key Points, Strategic Installations and Places of Importance;
- (c) any non-compliance with this Act and on the steps to be taken;
- (d) the downgrading of National Key Points and Strategic Installations in terms of the criteria and standards issued in terms of section 23; and
- (e) National Key Points and Strategic Installations to be declared a Complex contemplated in terms of section 5.

Removal of members

15. A member of the Minister's Advisory Committee may at any time be removed from the committee by the Minister on account of-

- (a) misconduct;
- (b) inability to perform his or her duties effectively;
- (c) permanent incapacity;
- (d) engaging in corrupt activities;
- (e) any changes in the line function; or

- (f) security breach.

Proceedings of committee

- 16.** (1) The committee must meet at least three times a year and must determine the date and place of its meetings.
- (2) The chairperson may at any time convene an extraordinary meeting of the committee to be held at a time and place determined by him or her.
- (3) If the chairperson is absent from a specific meeting of the committee, the members present must elect a chairperson from the members present to act as chairperson for that meeting.
- (4) The committee determines its own procedure for its meetings.
- (5) The quorum for a meeting of the committee is a majority of its members.
- (6) The decision of a majority of the members of the committee present at any meeting thereof is the decision of the committee, and in the case of an equality of votes, the chairperson has a casting vote in addition to his or her deliberative vote.

PartS**Joint Planning Committee****Joint Planning Committee**

17. (1) A Joint Planning Committee must be established for each National Key Point, Strategic Installation, Place of Importance and Complex.
- (2) The owner of a National Key Point, Strategic Installation or Place of Importance must convene and chair the Joint Planning Committee quarterly.

Composition of Joint Planning Committee

18. (1) The Government Security Regulator must determine permanent members of the Joint Planning Committee.
- (2) Members of the Joint Planning Committee must consist of at least 6 persons and should comprise of representatives of security agencies, disaster management agencies, all emergency response services and must include representatives from the following sectors:
- (a) The South African Police Service;

- (b) Chief security officer of the National Key Point Strategic Installation or Place of Importance concerned;
 - (c) National Intelligence Agency;
 - (d) Emergency services;
 - (e) Disaster Management Services; or
 - (f) representatives of other institutions which the chairperson may deem necessary.
- (3) The chairperson may appoint any *representative* referred to in subsection (2) to serve as a deputy chairperson, except the chief security officer.

Removal of members

19. A member of the Joint Planning Committee may at any time be *removed* from the committee by the chairperson on account of-

- (a) misconduct;
- (b) inability to perform his or her duties effectively;
- (c) permanent incapacity;

(d) engaging in corrupt activities; or

(e) security breach.

Functions of Committee

20. (1) The functions of the Joint Planning Committee in relation to National Key Points, Strategic Installation, Place of Importance or Complex are-

(a) to develop a security policy and plan;

(b) to conduct a physical security appreciation annually in order to determine security risks and provide guidelines which the owner must adhere to, in order to eliminate such risks;

(e) to ensure implementation and monitoring of security measures at National Key Points;

(d) to conduct a security compliance audit;

(e) to evaluate the safeguarding of and emergency plans for the National Key Points;

- (f) to execute a full emergency exercise annually in order to ensure that emergency procedures and contingency plans are effective and executable;
 - (g) to provide guidelines to the owners with regard to minimum security standards;
 - (h) to extend the security limit of a National Key Point;
 - (i) to determine any other measure that will enhance security at the National Key Point;
 - (j) a member of the South African Police Service attending the Committee must report any concern to the Government Security Regulator to act upon;
- (2)
- (a) The members of the JPC must give line functions inputs at the meeting to ensure minimum standards; and
 - (b) The chairperson must activate the JOe in the case of a major incident if necessary.

Proceedings of committee

21. (1) The committee must have at least four meetings a year at such times and places as the committee may determine.

- (2) The chairperson may at any time convene an extraordinary meeting of the committee to be held at a time and place determined by him or her.
- (3) If the chairperson is absent from a specific meeting of the committee, the deputy must act as chairperson for that meeting.
- (4) The procedure of the meetings of the committee will be prescribed by the Minister.
- (5) The quorum for a meeting of the committee is a majority of its members.
- (6) Decision making must be determined or taken by the line function representatives of the committee.

CHAPTERS

POWERS AND DUTIES OF OWNERS IN RELATION TO A NATIONAL KEY POINT STRATEGIC INSTALLATION, PLACE OF IMPORTANCE OR COMPLEX

Powers and duties of owners

22. (1) On receipt of a notice referred to in section 4, the owner of the National Key Point Strategic Installation, Place of Importance or Complex concerned must, at his or her own expense take steps as prescribed by the Minister in respect of their security.

- (2) If the said owner fails to take the said steps, the Minister may by written notice order him or her to take, within a period specified in the notice and at his or her own expense, such steps in respect of the security of the said National Key Point, Strategic Installation, Place of Importance or Complex, as may be specified in the notice.
- (3) (a) If the said owner without reasonable cause refuses or fails to take steps specified in the notice referred to in subsection (2), within the period specified therein he or she is guilty of an offence and liable on conviction to a fine not exceeding R 1 000 000 or to imprisonment for a period of 20 years, or to both such fine and imprisonment.
- (b) If the said owner refuses or fails to take the steps specified in the said notice within the period specified therein, the Minister may take or cause steps to be taken, irrespective of whether the owner was charged or *convicted* in connection with that refusal or failure, and the Minister may *recover* the cost thereof from that owner to such an extent as the Minister may determine.
- (4) (a) The Minister may after consultation with the owners of National Key Points or Strategic Installations, included in a Complex, order them by written notice to take, within a period specified in the notice and at their expense, such joint steps in respect of their security as may be specified in the notice, and to determine

within a period specified in the notice on the proportion in which each is responsible for the cost thereof.

- (b) If the owners are unable to determine within the period specified the said proportion, the Minister may determine that proportion.
- (5) If an owner referred to in subsection (4), without reasonable cause refuses or fails to take the steps for which he or she is responsible within the period specified in the notice, or delays, frustrates or renders them impossible, irrespective of whether any other owner with or without reasonable cause refuses or fails to take such steps for which he or she is responsible within the period concerned, or delays, frustrates or renders them impossible-
- (a) the first-mentioned owner shall be guilty of an offence and liable on conviction to a fine not exceeding R 1 000 000 or to imprisonment for a period of 20 years or both to such fine and imprisonment;
- (b) the Minister may take or cause steps to be taken, as well as the steps which any other owner was unable to take as a result of the first-mentioned owner's refusal or failure to take the said steps, irrespective of whether the owner has been charged or convicted in connection with that refusal or failure, and the Minister may recover the cost of those steps from all the owners on whose behalf they were taken in the proportion in which they

were responsible for the cost or to such extent as he may determine.

- (6) The provisions of this Act shall not prevent any owner of any place or area which have been declared a National Key Point, Strategic Installation or Place of Importance from taking or causing to be taken, in addition to any steps required or ordered in terms of this Act, such measures as he or she may consider necessary for the efficient security of that National Key Point, Strategic Installation or Place of Importance and any goods thereon or therein.

CHAPTER 6

REGULATIONS

Regulations

23. (1) The Minister may make regulations in relation to National Key Points, Strategic Installations, Places of Importance or Complex with regard to-
- (a) the employment or the hiring of the services of security officers by their owners;
 - (b) the requirements to be complied with by persons serving as security officers;

- (c) the content of a training course which security officers who are employed or whose services are hired, must comply with;
- (d) access and egress control;
- (e) the minimum number of security officers necessary;
- (f) the procedure to be followed when submitting an application for appointment as a security officer and any information required for such an application;
- (h) the requirements and procedures for issuing and revoking a certificate of regulation as prescribed;
- (i) determining the grounds which disqualify a security officer from appointment or continued employment at a National Key Point, Strategic Installation, Place of Importance or Complex;
- 0j instructions relating to the use of firearms, weapons and ammunition to security officers and compliance with applicable legislation;
- (k) powers and limitation of security officers;

- (l) the management and administration in respect of its safeguarding, protection and security;
 - (m) the measures and standards for its safeguarding;
 - (n) the role and responsibilities of its security personnel;
 - (o) security training standards;
 - (p) any other ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding the penalties prescribed in section 24.

CHAPTER 7

OFFENCES AND PENALTIES

Offences and penalties

24. (1) Any person who at, on, in connection with or in respect of any National Key Point Strategic Installation, Place of Importance or Complex, performs any act which, if prohibited in terms of this Act, is guilty of an offence and liable to the penalties prescribed for that offence.

(2) Any person who-

- (a) hinders, obstructs or disobey any owner in taking any steps required or ordered in terms of this Act in relation to the efficient security of any National Key Points;
- (b) hinders, obstructs or disobey any person in doing anything required to be done in terms of this Act;
- (e) furnishes in any manner whatsoever any information relating to the security measures applicable at or in respect of any National Key Point or in respect of any incident that occurred there, without being legally obliged or entitled to do so, or without the disclosure or publication of the said information being empowered by or on the authority of the Minister, or except as may be strictly necessary for the performance of this function in regard to his or her employment in connection with, or his or her ownership of, or as may be necessary to protect the place concerned; or
- (d) commits any conduct or action that damages, endangers, disrupts or threatens a National Key Point or part thereof, is guilty of an offence and on conviction liable to a fine not

exceeding R1 000 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

CHAPTER 8

GENERAL AND TRANSITIONAL PROVISIONS

Indemnity against loss or damage

25. (1) The State, the Minister or any person in the service of the State is not liable for any loss or damage as a result of bodily injury, loss of life or damage to property caused by or arising out of or in connection with any act ordered, performed or executed under this Act, unless the person or the Minister was grossly negligent or acted with intent.
- (2) This Act binds the State.

CHAPTER 9

REPEAL OF LAWS, AND SAVING

Repeal of laws, and saving

26. (1) Subject to subsection (2), the laws repealed in Schedule A are hereby repealed to the extent as indicated in the third column thereof.

- (2) Any proclamations, regulation, notice, approval, authority, licence, permit, certificate or document issued, made, given or granted and any other action taken under any provision of a law repealed by this Act, must be regarded as having been issued, made, given, granted or taken under the corresponding provision of this Act.

Short title and commencement

27. This Act is called the National Key Points, Strategic Installations and Places of Importance Act, 2006, and comes into operation on a date fixed by the PreSident by proclamation in the *Gazette*.

SCHEDULE A
LAWS REPEALED
(Section 26)

Number and year of law	Short title	Extent of repeal
Act No.1 02 of 1980	National Key Points Act, 1980	The whole.
Act No. 9 of 1984 (Bophuthatswana)	National Key Points Act, 1984	The whole.
Act No. 26 of 1985 (Transkei)	National Key Points Act, 1985	The whole.
Act NO.9 of 1986 (Venda)	National Key Points Act, 1986	The whole.
Act No. 16 of 1986 (Ciskei)	National Key Points Act, 1986	The whole.