

**REPUBLIC OF NAMIBIA**

**NATIONAL COUNCIL**

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**COMBATING OF THE ABUSE  
OF DRUGS BILL**

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*(As passed by the National Assembly)*

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# BILL

To provide for the prohibition of the consuming, possession of, and the trafficking in drugs; to provide for acts relating to equipment and chemicals useful for the manufacture of drugs; to provide for additional powers of members of the Police; and to provide for matters incidental thereto

## ARRANGEMENT OF SECTIONS

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## SCHEDULES

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:-

### Definitions

1. (1) In this Act, unless the context indicates otherwise –

“analogue” in relation to a drug means any substance having a chemical structure substantially similar to that drug and psychoactive effects substantially similar to that drug;

“cultivate” includes planting, sowing, scattering seeds, nurturing, tending or harvesting, and also includes the separating of opium, cocaine, cannabis and cannabis resin from the plant from which they are obtained;

“consume” includes inhale, inject into the human body, masticate, smoke, snuff, chew, drink, swallow, apply to the human body or perform any other action which will or may have the effect that any chemical is absorbed into the human body;

“controlled matter” means any controlled chemical or controlled equipment listed in Schedule 1;

“dangerous dependence-producing substance” means any substance or plant listed in Part 1 of Schedule 2 and an analogue of such a substance as well as a plant from which such a substance or analogue can be manufactured and a preparation containing such a substance or analogue;

“dependence-producing substance” means any substance or plant listed in Part 2 of Schedule 2 and an analogue of such a substance as well as a plant from which such a substance or analogue can be manufactured and a preparation containing such a substance or analogue;

“drug” means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance;

“instrument for illicit drug use” means anything designed primarily or intended under the circumstances to be used in connection with the consumption of a drug or to facilitate the consumption of a drug;

“literature for illicit drug use” means any printed matter or video describing or depicting, and designed primarily or intended under the circumstances to promote, encourage or advocate the illegal production, preparation or consumption of drugs;

“manufacture” means to carry out any process by which a drug is produced and includes, extracting, refining, formulating, preparing, mixing, compounding and transforming it into another drug, as well as making a drug into dosage form and packing a drug;

“medicinal purposes” in relation to a drug, means “medicinal purposes” as defined in the Medicines Act;

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“Medicines Act” means the Medicines and Related Substances Act, 1965 (Act No. 101 of 1965), until the Medicines and Related Substances Control Act, 2003 (Act No. 13 of 2003) is put into operation, after which it means the latter Act;

“member of the Police” means any member of the Force as defined in section 1 of the Police Act, 1990 (Act No. 19 of 1990);

“Minister” means the Minister responsible for policing;

“place of entertainment” includes any premises, vehicle, vessel or aircraft, or any part thereof, used for or in connection with any exhibition, show, performance, dance, amusement, game, competition or sport whether open to the general public or not;

“plant” includes any portion of a plant;

“possess” in relation to a drug, includes to keep or to store the drug, or to have it in custody or under control or supervision;

“premises” means any land, building, dwelling, flat, room, shop, office, structure, vehicle, vessel or aircraft or any movable structure and includes any part thereof;

“preparation” means a solution or mixture in whatever physical state, containing a drug or other substance;

“prescribed” means prescribed by regulations made under this Act;

“prescription” means a written direction or oral instruction by a medical practitioner or other person authorised by the Medicines Act to issue a prescription, that a stated amount of a drug be dispensed for the person named therein;

“sell” includes –

- (a) to import, offer, advertise, keep, expose, transmit, consign, convey or deliver for sale;
- (b) authorise, direct or allow a sale or prepare or possess for the purposes of a sale;
- (c) barter, exchange, supply or dispose of to any person whether for a consideration or otherwise; and
- (d) distribute (whether or not the distribution is made for consideration,

and “sale” and “sold” have corresponding meanings;

“this Act” includes regulations made thereunder;

“trafficking” means being involved directly or indirectly in the buying, selling or supplying of drugs and includes the commission of an offence under this act in circumstances suggesting that the person concerned has performed an act referred to in this definition;

“undesirable dependence-producing substance” means any substance or plant listed in Part 3 of Schedule 2 and an analogue of such a substance as well as a plant from which such a substance or analogue can be manufactured and a preparation containing such a substance or analogue

(2) Any reference to any health profession or person practising such profession is a reference to a person who is registered to practise that profession or otherwise practises it lawfully in Namibia.

### **Application of this Act with regard to Medicines Act**

2. The provisions of this Act apply in addition to, and not in substitution for, the provisions of the Medicines Act or any regulation made thereunder.

### **Consumption and possession of drugs**

3. (1) Unless the act in question is lawful as provided by subsection (2), (3), (4), (5) or (6), any person who possesses or consumes –

- (a) a dangerous dependence-producing substance, commits an offence and is on conviction liable to the penalty specified in subsection (7);
- (b) an undesirable dependence-producing substance, commits an offence and is on conviction liable to the penalty specified in subsection (7);
- (c) a dependence-producing substance, commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

(2) The possession or consumption of a drug is lawful if the person concerned is a patient who has acquired or bought that drug in accordance with the Medicines Act and he or she uses that drug for medicinal purposes under the care or treatment of the person who prescribed or provided that drug under that Act.

(3) The possession of a drug is lawful if the person concerned has acquired or bought that drug in accordance with the Medicines Act and he or she possesses it with the intent to administer that drug to a person or animal for medicinal purposes under the care or treatment of the person from whom the drug was bought or by whom it was prescribed.

(4) The possession of any drug is lawful if the person concerned is a medical practitioner, veterinarian, dentist, nurse, midwife, nursing assistant, pharmacist, veterinary assistant, veterinary nurse, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, or any other person contemplated in the Medicines Act or any regulation made thereunder, who has acquired, bought, imported, cultivated, collected or manufactured, or uses or is in possession of, or intends to administer, supply, sell, transmit or export that drug in accordance with the requirements or conditions of the said Act or regulation, or any permit issued to him or her under the said Act or regulation.

(5) The possession of any drug is lawful if the person concerned is an employee of a pharmacist, a manufacturer of, or wholesale dealer in pharmaceutical products, or an importer or exporter of such products who has acquired, bought, imported, cultivated, collected or manufactured, or uses or is in possession of, or intends to supply, sell, transmit or export any such drug in the course of his employment and in accordance with the requirements or conditions of the Medicines Act or any regulation made thereunder, or any permit issued to such pharmacist, manufacturer of, or wholesale dealer in, importer or exporter of pharmaceutical products under the said Act or regulation.

(6) The possession of a drug is lawful if the person concerned is involved with law enforcement or the prevention of crime and such possession is an integral part of law

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enforcement or the prevention of crime: Provided that such possession and all actions relating to the handling and accounting for such drug is in accordance with written instructions issued by the Minister and the provisions of this Act.

(7) Subject to section 38 a person who contravenes section (1)(a) or (1)(b) is liable to –

- (a) in the case of a first conviction, to imprisonment of not less than 20 years without the option of a fine;
- (b) in the case of a subsequent conviction, for a period not less than 30 years without the option of a fine.

### **Trafficking**

4. (1) Any person who traffics in any drug, unless the possession of that drug is lawful in terms of section 3(2), 3(3), 3(4), 3(5) or 3(6) for both the buyer and the seller, commits an offence and is on conviction liable to the penalties set out in subsection (2).

(2) Subject to section 38 a person who contravenes subsection (1) or section 5 is liable to –

- (a) in the case of a first conviction to imprisonment of not less than 30 years without the option of a fine;
- (b) in the case of a subsequent conviction, for a period not less than 40 years without the option of a fine.

### **Import and export of drugs**

5. Any person who –

- (a) imports from Namibia;
- (b) exports from Namibia;
- (c) transports through Namibia for the purposes of export or import; or
- (d) causes any consignment of drugs to be diverted to or from Namibia,

unless the import or export in question is lawful under the Medicines Act, commits an offence and is on conviction liable to the penalties specified in section 4(2).

### **Sale of controlled matter**

6. Any person who sells or otherwise provides any controlled matter while he or she knows or believes or ought reasonably to have known or suspected that the matter in question is used in relation to the unlawful manufacture of any drug or in relation to any other process relating to a drug, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).

### **Instruments and literature for illegal consumption of drugs**

7. Any person who imports, exports, manufactures, promotes, sells or in any other manner provides instruments or literature for illegal consumption of drugs, commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Cultivation of plants**

8. Any person who cultivates any plant that is a drug or from which a drug can be extracted, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).

### **Attempts and other forms of secondary liability**

9. Any person who attempts to commit, or who aids, abets, solicits, incites, compounds, urges, encourages or does any act preparatory directly or indirectly to, or in furtherance of, the commission of, an offence under this Act, or who conspires with any other person to commit such offence, commits an offence and is on conviction liable to the penalty prescribed for the offence in question by this Act.

### **Unlawful obtaining of drug or prescription**

10. (1) Any person who asks, seeks or obtains a drug or a prescription for a drug from a person who may lawfully provide it and who fails to disclose to that person particulars of every drug or prescription issued to him or her by a different person within the preceding 30 days, commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

(2) Any person who sells, supplies or acquires a drug on presentation of a prescription, if that person knows or ought reasonably to know or suspect that the prescription is forged, unlawfully altered, cancelled, issued more than six months before presentation, or has been obtained under the circumstances referred to in subsection (1), commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Facilitating abuse of drugs**

11. (1) Any person, except as permitted by or authorised under this Act, who publishes or displays or cause or permit to be published or displayed, anything promoting or encouraging the use of any drug for any purpose other than a lawful purpose, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).

(2) Any owner, occupier or person in charge of any place used or accessible to the public who causes or permits there the unlawful consumption of any drug, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).

(3) Any person who knowingly and unlawfully add to the food or drink of another person without the consent of that person any drug, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).



(4) Any person who issues a prescription for a drug while he or she knows or reasonably ought to have known or suspected that the person intends to or is likely to use that drug for purposes other than medicinal purposes, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).

#### **Supply of toxic chemical inhalant to persons**

12. Any person who provides any toxic chemical inhalant to any other person while he or she knows or ought reasonably to know or suspect that it is being acquired for the purpose of consumption, commits an offence and is on conviction liable to the minimum sentences specified in section 3(7).

#### **Facilitating abuse via computerised data networks**

13. Any person who enters, or causes to be entered into a computerised data exchange network accessible in Namibia any data while he or she knows or on reasonable grounds ought to know or suspect that its effect will be to permit, incite, facilitate or promote the unlawful cultivation, manufacture, supply or consumption of any drug, commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

#### **Interfering with seized substances and samples**

14. Any person who –
- (a) interferes with the taking, handling or any process connected with any seized substance or any sample thereof; or
  - (b) interferes with, or falsifies the results of any analysis,

with the intention of unlawfully interfering with the investigation or prosecution of an offence under this Act, commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

#### **Control measures to combat illegal acts**

15. (1) In order to minimise the possibility –
- (a) that any controlled matter is diverted from lawful use to the unlawful manufacture of any drug in Namibia or elsewhere;
  - (b) that any drug is diverted from lawful use,

the Minister may prescribe the control measures specified in subsection (2).

(2) The regulations which the Minister may make for the purposes specified in subsection (1) may –

- (a) provide that all or a specified class of the manufacturers, sellers or users of a specified class of controlled matter or of all or a specified class of drugs must register in the prescribed manner with the prescribed institution or body;

- (b) provide that the sale or manufacture of a specified class of controlled matter or any drug without a licence, registration or a permit granted by the Minister is an offence;
  - (c) prescribe that any specified class of drug or controlled matter may only be imported or exported if the specified permission or authorisation has been granted by the prescribed authority in the country to which it is exported or from which it is imported;
  - (d) prescribe the documentation that must accompany any consignment of that drug or controlled matter or prescribe the forwarding or submission of any such prescribed documentation to the prescribed institution (in the country concerned or in Namibia);
  - (e) prescribe the registers that must be kept or any other method of accounting for any drug or controlled matter;
  - (f) prescribe the manner of, or any matter relating to the storage of any such drug or controlled matter;
  - (g) prescribe any procedure which must be followed in relation to such drug or controlled matter in order to ensure that it is stored securely, all stocks are accounted for accurately or that it does not come into the possession of a person who may not possess it lawfully or who may perform any unlawful act with it.
- (3) In regulations made under subsection (1) the Minister may make a distinction between –
- (a) different countries;
  - (b) different importers and exporters with regard to their commercial experience, the nature of their activities or any other ground that is relevant to the risk of such importer or exporter being involved with the illegal manufacture or distribution of drugs.
- (4) Regulations made under subsection (1) may authorise the institution that may issue permits or licences to attach such terms and conditions to a permit or a licence as it thinks fit, including ones which limit or prohibit imports and exports of specified drugs or controlled matter or specified quantities thereof, to or from specified countries, persons or classes of persons, or during specified periods.

#### **Permits for the conducting of research programmes where drugs are used**

16. (1) The Minister may on a written application made by a person, grant a permit to conduct a research programme that would require the import, possession or consumption of a drug.

(2) The Minister may issue a permit to conduct such a programme if he or she is satisfied that –

- (a) the programme cannot be carried out satisfactorily without the use of the specified drug;

- (b) the programme has scientific merit;
- (c) the applicant is a fit and proper person to conduct the programme; and
- (d) satisfactory arrangements have been made in order to ensure that all drugs are stored securely and are accounted for properly.

#### **Duty to report suspicious orders and transactions**

17. (1) Any person who sells a drug or any controlled matter must report any order or transaction relating to such drug or matter to a member of the Police, if that person knows or on reasonable grounds ought to know or suspect that the person who placed the order or the other party to that transaction has committed or will commit an offence under this Act.

(2) Any person who fails to comply with subsection (1), commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

#### **Safekeeping of drugs**

18. (1) Any person who may import, export, manufacture, administer, supply or possess a drug and who fails while the drug is in his or her custody or control, to keep it or cause it to be kept in a vault, safe or other prescribed secure storage, commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

(2) Any person referred to in subsection (1) who negligently loses any drug, commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

#### **Relaxation of restrictions on disclosure of information**

19. (1) Any person may, notwithstanding anything to the contrary contained in any law, which prohibits him or her –

- (a) from disclosing any information relating to the affairs or business of any other person; or
- (b) from permitting any person to have access to any registers, records or other documents which have a bearing on the said affairs or business,

provide to a member of the Police such information as he or she may consider necessary for the prevention or combating, whether in Namibia or elsewhere, of an offence relating to drugs, or permit any member of the Police to have access to any registers, records or other documents, which may in his or her opinion have a bearing on that offence.

(2) The provisions of subsection (1) are not construed as prohibiting a Minister by whom or any other authority by which, or under whose control any law referred to in that subsection, is administered, or any board, institution or body established by or under such law, from making any other arrangement with regard to the furnishing of information or the granting of access contemplated in that subsection, according to which the information

- (a) by, or on the authority or with the approval of, any such Minister, authority, board, institution or body or any person designated by any such Minister, authority, board, institution or body; and
- (b) subject to the conditions, if any, determined by any such Minister, authority, board, institution, body or person.

### **Obligation to report certain information**

20. (1) If the owner, occupier or manager of any place of entertainment, or any person in control of any place of entertainment or any other premises has reason to suspect that any person in or on such place or premises consumes, has in his or her possession or traffics in any drug in contravention of the provisions of this Act, such owner, occupier, manager or person must –

- (a) as soon as possible report the suspicion to any member of the Police; and
- (b) at the request of the said member of the Police, furnish that member with such information as he or she may have available regarding the person in respect of whom the suspicion exists.

(2) The owner, occupier or manager of any place of entertainment or any premises who fails to comply with the provisions of subsection (1), commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Additional powers of the Police relating to searches of the person**

21. (1) A search of a person in relation to an offence under this Act may extend to a medical examination by a medical practitioner that is not a member of the Police and which may include an examination inside any orifice of the person concerned or examining the person with x-rays or any other medical imaging system.

(2) If a member of the Police has reason to believe that a person is transporting any drug by concealing it inside his or her body and the person refuses to submit to a medical examination, that member may detain the person for a period not exceeding 48 hours, pending the obtaining of an order from a judge in chambers in terms of subsection (3).

(3) Where a judge in chambers is satisfied, from information on oath, that there are reasonable grounds to believe that a person is transporting any drug by concealing it inside his or her body and the person has refused without reasonable cause to submit to a medical examination, he or she may issue an order–

- (a) directing the person to submit forthwith to such medical examination including X-Ray or other tests as may be reasonably necessary to establish whether the person is transporting a drug inside his or her body;
- (b) authorising the person to be taken in custody by a member of the police to any place stated in the order for the purpose of having the medical examination carried out; and

- (c) authorising any medical practitioner to carry out such examination and to provide such medical treatment and to administer such medication or substance including anaesthesia as specified in the order or to take such steps as he or she may deem reasonable and appropriate in order to achieve such purpose as may be specified in the order.

(4) Any person who without reasonable excuse refuses or fails to submit to a medical examination as directed by an order referred to in subsection (3), commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Destruction of plants**

**22.** (1) Any member of the Police who on reasonable grounds believes that plants, that are a drug or from which a drug can be manufactured, are growing, whether they are being cultivated or not, may, without a warrant and with such assistance and force as is reasonable, enter any place on or in which they are growing and cause them to be destroyed.

(2) It is the duty of any member of the Police who exercises a power under subsection (1), to ensure that such samples of the plants concerned are taken as may be reasonably required in order to prosecute any offence under this Act and that all reasonable steps are taken in order to ensure that sufficient evidence is available to prove the quantity of such drugs at any subsequent criminal proceedings.

(3) The failure to comply with the provisions of subsection (2) does not affect the validity of anything done under subsection (1).

### **Perverting the course of justice**

**23.** (1) Any member of the Police who maliciously exercises any power granted by this Act or exercises any power of arrest, search or seizure in respect of an offence under this Act, commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

(2) Any person who gives information which he or she knows to be false and which has the result that any person is arrested for an offence under this Act, or is searched or any of his or her property is seized in relation to an offence under this Act, commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

(3) Nothing in this section is construed as affecting a claim for, or liability in respect of a wrongful or malicious arrest.

### **Monitoring**

**24.** (1) A judge in chambers may if he or she believes on information provided on oath by a member of the Police –

- (a) that there are reasonable grounds to believe that any person has committed an offence under this Act or is about to commit such an offence; and

- (b) that the monitoring of a specified person would probably yield information that will be useful in order to successfully prosecute any person for an offence under this Act or to prevent the commission of an offence under this Act,

that judge may issue an order authorising such monitoring.

- (2) Monitoring referred to in subsection (1) may include –
- (a) installing any device on any premises where the person to be monitored resides or performs an activity specified in the order;
  - (b) installing any equipment or performing any action that enables the interception or recording of any telecommunications of the person to be monitored;
  - (c) installing any software or any equipment on or with relation to a computer system that will probably be used by the person to be monitored in order to monitor any activity performed by that person with relation to that system, or in order to obtain any key or password or other information that may be necessary to retrieve or decrypt any information stored or available to that system; and
  - (d) intercepting and examining any or specified items that are sent by mail to, or by the person to be monitored (including the opening, re-sealing and seizure of such items).

(3) Subject to subsection (4), an order under subsection (1) may only authorise monitoring for a period of 21 days and may be extended only if a judge in chambers considers it in the interest of justice and not contrary to the broader public interest to grant the extension.

(4) An order under subsection (1) may refer to one or more specified items of mail or to one or more specified events that will occur at a specified time, which may be more than 21 days in the future or will in the probable course of post be received more than 21 days in the future.

(5) Notwithstanding any law to the contrary, evidence obtained by means of monitoring performed in accordance with an order made under subsection (1) –

- (a) is admissible in any proceedings relating to an offence under this Act;
- (b) may be communicated to any institution inside or outside Namibia involved with the prosecution or prevention of crime.

(6) Evidence obtained by means of monitoring authorised under subsection (1), may not be excluded only by virtue of the fact that it was not covered by the order made under subsection (1).

#### **Access to computer systems**

25. (1) Where it appears to a magistrate, from information on oath that a computer system in the custody of any person contains data which may be relevant to proving an offence under this Act, that magistrate may order the person having custody or control of that system to give to a member of the Police access to that data.

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- (2) Any person who, without reasonable excuse—
    - (a) fails to give access as ordered;
    - (b) fails to provide reasonable assistance to enable the data to be retrieved and recorded; or
    - (c) deliberately erases such data,

commits an offence and is on conviction liable to a fine not exceeding N\$300 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Disposal of seized drugs**

26. (1) If any drugs have been seized, a member of the Police may apply to a magistrate for a disposal order in respect of those drugs.

(2) An application for a disposal order under subsection (1) must be accompanied with an affidavit of the member making the application, stating all relevant information relating to the application.

- (3) The magistrate may grant the application if in his or her opinion –
  - (a) it is not possible to store the drugs concerned conveniently or safely until the relevant provisions of any other law can be complied with;
  - (b) that the drugs concerned cannot be lawfully possessed by the person from whom they were seized or that if there is a dispute relating to whether that person can lawfully possess the drugs concerned, that adequate information is recorded relating to the value and quantity of such drugs; and
  - (c) that sufficient samples have been retained to ensure that all tests that may be reasonably necessary to do justice in any subsequent criminal proceedings (both for the state and the accused) can be done.
- (4) A disposal order referred to in subsection (1) may –
  - (a) contain instructions relating to the destruction of the drugs concerned;
  - (b) if the drugs may be lawfully possessed by any person, contain instructions for the provision of such drugs to that person, whether for value or not;
  - (c) contain instructions relating to the retaining of samples or the recording of any matter relating to those drugs.

(5) Any document purporting to have been recorded pursuant to instructions forming part of a disposal order is admissible at any legal proceedings and is *prima facie* proof of any matter stated therein.

### **Tipping-off**

27. (1) Any person who without reasonable excuse discloses any information relating to an investigation or other operation in respect of an offence under this Act, to

the person who is the subject of such investigation or operation or to anybody else who may reveal it to that person, except for the purposes of the due administration of justice and enforcement of this Act, commits an offence and is on conviction liable to a fine not exceeding N\$500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Obstructing of the Police**

28. Any person who –
- (a) hinders or obstructs any member of the Police in the exercise of his or her powers of search, seizure or investigation in respect of an offence under this Act;
  - (b) refuses or fails to comply to the best of his or her ability with any requirement or request made by any member of the Police in the exercise of his or her powers of search, seizure or investigation in respect of an offence under this Act; or
  - (c) willfully and knowingly furnishes to any member of the Police information which is false or misleading,

commits an offence and is on conviction liable to a fine not exceeding N\$ 500 000 or imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

### **Proof of street or market value of drugs**

29. In criminal proceedings for an offence under this Act, the evidence of a member of the Police who states in that evidence that he or she has in the recent past carried out duties relating to the investigation of offences relating to drugs –

- (a) as to the street or market value in Namibia of any drug or controlled matter; and
- (b) as to the demand for, availability of and other circumstances pertaining to the sale, supply or distribution of drugs,

is admissible without proof of any expert knowledge of the member concerned, and the court may give such weight to that evidence as it thinks fit.

### **Presumption relating to samples**

30. If in any prosecution for an offence under this Act it is proved that a sample, which was taken from any substance, possesses particular properties, it is presumed that the rest of that substance possesses the same properties, unless admissible evidence is given that raises a reasonable doubt of that fact.

### **Proof of continuity of possession**

31. (1) In criminal proceedings where a person is charged with an offence under this Act, a document purporting to be an affidavit of a person stating that he or she has had custody or possession of any object that has been seized is *prima facie* proof of continuity of possession of that object.



(2) The court may require the person who made the affidavit referred to in subsection (1), to appear before it for examination or cross-examination in respect of the issue of continuity of possession.

#### **Admissibility of official records**

**32.** A copy of any record of a body established by or pursuant to any law or any written statement containing information from the records kept by any such body purporting to be certified by an official having custody of those records, is admissible in evidence in any prosecution for an offence under this Act, and in the absence of evidence to the contrary, is proof of the facts contained in the document, without proof of the signature, expertise or official character of the person purporting to have certified it.

#### **Proof of prohibited import or export of a drug under foreign law**

**33.** A certificate purporting to be issued by any person authorised to conduct criminal prosecutions in a foreign country, stating –

- (a) that the import or export of a specified drug or type of controlled matter is illegal under the specified circumstances under the law of that state; and
- (b) the grounds on which the authority to institute criminal proceedings are claimed to rest,

is admissible in criminal proceedings where any person is charged with an offence under this Act and is *prima facie* proof of such illegality.

#### **Immunity where official powers or functions exercised diligently and in good faith**

**34.** No member of the Police or other person incurs criminal or civil liability in respect of anything done with due diligence and in good faith, in the exercise of any power or the performance of any function under this Act.

#### **Aggravating factors**

**35.** For the purpose of imposing an appropriate sentence in respect of an offence under this Act, a court must consider as an aggravating factor the fact that –

- (a) the convicted person belongs or has belonged to a criminal gang as defined in the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);
- (b) the convicted person has participated in other illegal activities relating to the offence;
- (c) the convicted person has used violence or arms in relation to the offence;
- (d) the convicted person has committed the offence in the exercise of a public office or public duty;
- (e) the convicted person has added any substance to the drug which made it more dangerous;

- (f) the convicted person has made use or has taken advantage of a minor or mentally disabled person in committing the offence;
- (g) the offence has been committed by a health professional or a person responsible for combating the abuse of or trafficking in drugs;
- (h) the offence has been committed in a teaching institution, educational institution, a hospital, another institution where sick people are cared for, a social service facility or in other places where school children or students gather for educational, sport or social activities, or in the immediate vicinity of such institutions or places;
- (i) the offence has been committed in a prison or other penal institution or a military institution;
- (j) the drug was supplied or offered to a minor, a mentally disabled person or a person undergoing treatment for the abuse of drugs; or
- (k) the drug supplied caused death or seriously impaired the health of any person.

#### **Evidence of previous conviction on charge relating to the abuse of drugs**

36. If in any criminal proceedings at which an accused is charged with an offence under this Act, it is proved that a drug was found in the possession of the accused, evidence may at any stage of the proceedings be given that the accused was convicted of an offence involving abuse of drugs within the five years immediately preceding the date on which he or she first appeared in court in respect of the charge concerned, and such evidence may be taken into consideration for the purpose of proving that the accused knew that it is prohibited to be in possession of a drug: Provided that not less than three days' notice in writing must be given to the accused that it is intended to adduce evidence of such previous conviction.

#### **Jurisdiction of magistrate's courts**

37. Notwithstanding anything to the contrary in any other law contained –
- (a) a regional magistrate's court has jurisdiction to impose any penalty that may be imposed in respect of an offence under this Act;
  - (b) a magistrate's court has jurisdiction to impose any penalty that may be imposed for an offence under this Act, except the minimum sentences provided for in section 3(7) and 4(2).

#### **Provisions relating to minimum sentences**

38. (1) If a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence provided for in section 3(7) and 4(2), it must enter those circumstances on the record of the proceedings and may thereupon impose such lesser sentence.

(2) Notwithstanding anything to the contrary in any other law contained, no minimum sentence provided for by this Act may be wholly or partially suspended on a third and subsequent conviction of an offence for which such minimum sentence is prescribed, if that person was at the time of the commission of that offence 18 years of age or older.

