

**REPUBLIC OF NAMIBIA**

**NATIONAL ASSEMBLY**

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**PREVENTION AND COMBATING OF  
TERRORIST AND PROLIFERATION  
ACTIVITIES BILL**

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*(As read a First Time)*

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*(Introduced by the Minister of Safety and Security)*

**[B. 5 - 2014]**

## **BILL**

**To provide for the offences of terrorism and proliferation and other offences connected or associated with terrorist or proliferation activities; to provide for measures to prevent and combat terrorist and proliferation activities; to provide for measures to give effect to the international conventions, Security Council Resolutions, instruments and best practices concerning measures to combat terrorist and proliferation activities; to provide for measures to prevent and combat the funding of terrorist and proliferation activities; to provide for investigative measures concerning terrorist and proliferation activities; to provide for measures to proscribe persons and organisations that conduct terrorist and proliferation activities; and to provide for incidental matters.**

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

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PART 1  
INTRODUCTORY PROVISIONS

**Definition and interpretation**

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

“accountable institution” means an accountable institution listed in Schedule 1 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“airport operator”, when applied within the context of Part 3, means the person managing an airport or, in relation to a particular airport, the managing that airport;

“armed conflict” for purposes of this Act includes any armed conflict for political gain between -

- (a) the armed forces of foreign states;
- (b) the armed forces of a foreign state and dissident armed forces or other armed groups; and
- (c) armed groups;

“arms embargo” means the actions taken by the Minister in terms of section 27 or 47;

“business interest” means the acquisition of any ownership interest in, or entering into a joint venture with any legal entity registered or incorporated in Namibia or elsewhere, inclusive of foreign branches and representative offices of such legal entities and having any correspondent relationships with such legal entities;

“captain”, in relation to an aircraft, means the member of the flight crew designated as captain of the aircraft by the operator thereof, or failing such designation, the pilot in command of the aircraft;

“Centre” means the Financial Intelligence Centre established by section 7 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“continental shelf” means the continental shelf referred to in Article 76 of the United Nations Convention on the Law of the Sea, 1982 adopted on 30 April 1982 by the United Nations Conference on the Law of the Sea;

“combating a terrorist activity”, includes all efforts and measures related to the prevention, uncovering and halting of terrorist activities as well as those related to the minimizing of losses caused by any terrorist activity;

“competent authority” means the Namibian Police Force, the Anti-Corruption Commission, the Namibia Central Intelligence Service, the Prosecutor-General, the Centre and any other authority that may, in terms of any law, investigate unlawful activities;

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

“Customs and Excise” means a division in the Ministry responsible for finance that is entrusted with customs and excise responsibilities as envisaged by the Customs and Excise Act, 1989 (Act No. 20 of 1998);

“delisted” means the removal by the Security Council of the names of a designated person, organisation or country from any sanctions list of the Security Council;

“deproscribe” means the removal of a name of an organisation or person that appears in a notice issued under section 44(5);

“designated person, organisation or country” means any person, group, undertaking, entity or country designated on a United Nations Sanctions List by or under the authority of the Security Council as being subject to United Nations sanctions;

“designation or listing” means the identification of a person, an organisations or a country that is subject to targeted financial sanctions pursuant to -

- (a) Security Council resolutions 1267 (1990) and 1889 (2011) and its successor resolutions;
- (b) Security Council resolutions 1888 (2011) and its successor resolutions;

- (c) Security Council resolution 1373 (2001) and its successor resolutions;
- (d) Security Council resolution 1718 (2006) and its successor resolutions;
- (e) Security Council resolution 1737 (2006) and its successor resolutions; and
- (f) any future Security Council resolutions which impose targeted sanctions in the context of terrorism, the funding of terrorism or proliferation of weapons which has the ability to cause mass destruction and the funding thereof;

“economic resources” means assets of every kind, whether movable or immovable, tangible or intangible, actual or potential, which are not funds but potentially of being used to obtain funds, goods or services, and includes internet hosting or related services, patents, trademarks, copyrights, trade names, franchises, goodwill, and other forms of intellectual property;

“explosive” means any explosive as defined in section 1 of the Explosives Act, 1956 (Act No. 26 of 1956);

“Financial Intelligence Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“focal point” means a focal point established under Security Council Resolution 1730 (2006);

“freeze” means the prohibition of the use, transfer, conversion, disposition or movement of any funds, economic resources, property or other assets that are owned or controlled by designated persons or entities on the basis of, and for the duration of the validity of an action initiated by the Security Council in accordance with applicable Security Council resolutions;

“freeze of economic resources”, includes preventing their use to obtain funds, goods, or services in any way, including the selling, hiring or mortgaging them;

“freezing order” means the actions taken by the Minister in terms of section 23 or 45;

“funding of proliferation” means the provision of funds, assets or financial services which are used, in whole or in part, for proliferation activity;

“funding of terrorism” means the provision of funds, assets or financial services which are used, in whole or in part, for terrorist activity as contemplated in section 2;

“funds” means -

- (a) cash;
- (b) assets of every kind, including any financial interest that accrues to such assets;
- (c) real or personal property of any description, whether tangible or intangible, however acquired;
- (d) any interest in any real or personal property, however acquired, including legal documents or instruments in any form, electronic or digital, evidencing title to, or interest in such assets;

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- (e) any type of financial resource, including cash or the currency of any State, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form;
  - (f) any letter or document conferring or containing any evidence of rights or interest in respect of any security, including legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in such security; and
  - (g) includes the provision of any financial services pertaining such funds to designated person, organisation or country;

“Inspector-General” means the Inspector-General of Police referred to in Article 119 of the Namibian Constitution;

“internationally protected person” means any person who enjoys immunities and privileges in terms of the Vienna Convention on Diplomatic Relations of 1961;

“lethal device” means -

- (a) an explosive or incendiary weapon or device which is designed or manufactured, or as the capability to cause death, serious bodily injury or material structural or environmental damage; or
- (b) a weapon or device which is designed or manufactured, or has the capability to cause death, serious bodily injury or substantial material structural or environmental damage through the release, dissemination or impact of toxic chemicals, biological, nuclear or chemical agents or toxins or similar substances, or radiation or radioactive material;

“life imprisonment” means imprisonment for the rest of the natural life of a convicted person without parole;

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

“Minister” means the Minister responsible for safety and security;

“organisation” means an entity, group or undertaking which -

- (a) has an objective to carry out, is carrying out, plans to carry out or causes to be carried out any terrorist or proliferation activity;
- (b) promotes or encourages the commission of any terrorist or proliferation activity;
- (c) facilitates the commission of any terrorist or proliferation activity;
- (d) is a proscribed organisation; or
- (e) is an organisation designated by the Security Council under Chapter VII of the UN Charter and by the relevant sanctions committees under the authority of the Security Council;

“person” means a natural or legal person;

“prescribed” means prescribed by regulation;

“proliferation activity” means the manufacture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling, supply, sale or use of nuclear, ballistic, chemical, radiological or biological weapons or any other weapon capable of causing mass destruction, and their means, of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), including technology, goods, software, services or expertise, in contravention of this Act or, where applicable, international obligations derived from relevant Security Council Resolutions;

“proscribed” means the domestic designation by the Security Commission of -

- (a) a person or organisations that committed, prepared to commit, attempted to commit, threatened to commit, participated in or facilitated the commission of a terrorist activity, proliferation activity or the funding of such activity; or
- (b) a person or an organisation that is acting on behalf of, at the direction of, or in association with persons or organisations mentioned in paragraph (a) above.

“register” means the register maintained in terms of section 50;

“sanctioned items” means all prohibited items appearing on relevant sanctions lists issued by the Security Council or its relevant committees under applicable Security Council Resolutions aimed at combating of terrorist and proliferation activities and the funding of such activities;

“Sanctions Committee” means a subsidiary organ established by the Security Council for the performance of its functions, and includes the Security Council Committees established pursuant to Resolutions 1267 (1999) and 1989 (2011), 1988 (2011), 1718 (2006) and 1737 (2006), respectively;

“sanctions list” means a list established and maintained by or under the authority of the Security Council comprising persons, groups, undertakings, entities or countries subject to United Nations sanctions which are enforcement measures, not involving the use of arms;

“Security Commission” means the Security Commission established under Article 114 of the Namibian Constitution;

“Security Council” means the United Nations Security Council;

“ship” means a waterborne craft or structure of any type irrespective of the manner of propulsion or movement thereof, including a non-displacement craft and a submarine or other underwater vehicle, but does not include a vessel propelled by oars;

“special notice” means an alert to national law enforcement agencies worldwide that certain Security Council Sanctions apply to designated persons or organisations and to assist national law enforcement agencies to take appropriate action in accordance with their national laws;



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“terrorist activity” means -

- (a) any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, or group of persons or which causes or may cause damage to public or private property, natural resources, the environment or cultural heritage and is calculated or intended to -
  - (i) intimidate, instil 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;
  - (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency;
  - (iii) create general insurrection in a State; or
- (b) any act which constitutes an offence within the scope of, and as defined in one of the following treaties -
  - (i) the Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
  - (ii) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
  - (iii) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);
  - (iv) the International Convention against the Taking of Hostages (1979);
  - (v) the Convention on the Physical Protection of Nuclear Material (1980);
  - (vi) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988);
  - (vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005);
  - (viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005);
  - (ix) International Convention for the Suppression of Terrorist Bombings (1997); and
  - (x) International Convention for the Suppression of the Financing of Terrorism (1999);

- (xi) International Convention for the Suppression of Acts of Nuclear Terrorism (2005);
  - (xii) Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (2010); and
  - (xiii) Protocol Supplementary on the Convention for the Suppression of Unlawful Seizure of Aircraft (2010);
- (c) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) or (b);
  - (d) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act; or
  - (e) the payment of ransom to designated persons or organisations, except where such payment is approved or authorised by any government to secure the safety of a national of that country;

“travel ban” refers to the actions taken by the Ministry responsible for immigration and border control in terms of sections 26 and 48;

“vehicle” means a motor vehicle as defined in section 1 of the Motor Vehicle Theft Act, 1999 (Act No. 12 of 1999); and

“weapon” means, any object, including a biological, chemical, nuclear, ballistic or radiological agent or substance, made or modified to be used to injure, disable or kill a person or cause substantial damage to property or the environment, or to cause a person to fear that someone may be injured, disabled or killed or substantial damage may be caused to property by that use or any other object, possessed or carried, which is likely to cause serious bodily injury or substantial damage to property if used to commit assault on a person or used to cause damage against property or the environment.

(2) Despite any provision to the contrary in any other law, a political, philosophical, ideological, racial, ethnic, religious or any similar motive, is not considered to be a justifiable defence in respect of an offence under this Act.

## PART 2

### OFFENCES AND PENALTIES

#### **Offence of terrorism and funding of terrorist activities**

**2.** (1) Subject to this Act, a person who, in or outside Namibia, directly or indirectly, engages in any terrorist activity commits the offence of terrorism and is liable to life imprisonment.

(2) A person who by any means, in or outside Namibia, directly or indirectly, provides, solicits or collects funds intending, knowing or having reasonable

grounds to believe that such funds is to be used, in whole or part, to carry out any terrorist activity regardless of whether such funds or part thereof were actually used to commit a terrorist activity, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### **Offence of proliferation and funding of proliferation activities**

3. (1) Subject to this Act, a person who, in or outside Namibia, directly or indirectly engages in any proliferation activity commits the offence of proliferation and is liable to life imprisonment.

(2) A person who by any means, in or outside Namibia, directly or indirectly, provides financial services or solicits or collects funds intending, knowing or having reasonable grounds to believe that such funds is to be used in whole or part, to carry out any proliferation activity, regardless of whether such funds or part thereof were actually used to commit a proliferation activity, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### **Offences associated or connected with funding of specified offences**

4. (1) A person who intentionally, directly or indirectly, in whole or in part, and by any means or method -

- (a) deals with, enters into or facilitates any transaction, or enables the acquisition of a business interest, or performs any other act in connection with funds, which such person knows or ought reasonably to have known or suspected to have been acquired, owned collected, used, possessed, owned or provided for the -
  - (i) commission or facilitation of a specified offence;
  - (ii) benefit of, or on behalf of, or at the direction of, or under the control of a person that commits or attempts to commit or facilitates the commission of a specified offence;
  - (iii) benefit of a designated person, organisation or country;
  - (iv) benefit of a designated country where reasonable grounds exists to suspect a violation of the Security Council sanction; or
  - (v) benefit of a proscribed person or organisation; or
- (b) provides financial or other services in respect of funds, acquisition of a business interest, referred to in paragraph (a),

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(2) A person who knows or ought reasonably to have known or suspected that funds or a business interest are being acquired, collected, used, possessed, owned

or provided for purposes as contemplated in subsection (1) and enters into, or becomes concerned in an arrangement which in any way has or is likely to have the effect of -

- (a) facilitating the retention, control or transfer of ownership of such funds by or on behalf of -
  - (i) a person that commits or attempts to commit or facilitates the commission of a specified offence; or
  - (ii) a designated or proscribed person or organisation;
- (b) converting such funds;
- (c) concealing or disguising the nature, source, location, disposition or movement of such funds, the ownership thereof or any interest a person may have therein;
- (d) removing such funds from a jurisdiction; or
- (e) transferring such funds to a nominee,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

- (3) For purposes of this section -

“specified offence”, means -

- (a) an offence specified in this Act; or
- (b) any activity outside Namibia which constitutes an offence under the law of another state and which would have constituted an offence referred to in paragraph (a), had that activity taken place in Namibia;

“financial services” means any person or organisation who conducts as a business one or more of the following activities or operations for or on behalf of another person -

- (a) acceptance of deposits and other repayable funds from the public;
- (b) lending;
- (c) financial leasing;
- (c) transferring money or value;
- (e) issuing and managing means of payment;
- (f) financial guarantees and commitments;
- (g) trading in -
  - (i) money market instruments;

- (ii) foreign exchange;
- (iii) exchange, interest rates and index instruments;
- (iv) transferable securities; or
- (v) commodity futures trading;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) person and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) otherwise investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment related insurance as well as general insurance or re-insurance;
- (m) money and currency changing;
- (n) provision of financial assistance and grants; or
- (o) any other similar service, including brokering service.

**Performing act of violence at airport or destroying or damaging facilities of airport**

**5.** A person who with the intention of inducing economic damage or social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint -

- (a) performs an act of violence against any person on board an aircraft, while such aircraft is in flight, and such act of violence is intended to endanger the safety of that aircraft or that of passengers and crew on such aircraft;
- (b) destroys an aircraft in service or causes damage to such an aircraft, which damage is intended to render such aircraft incapable of flight or to endanger its safety in flight;
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or a substance which is likely to destroy or cause damage to such aircraft or which is intended to render it incapable of flight or to endanger its safety in flight;
- (d) destroys or damages air navigation facilities or interferes with its operation and which destruction, damage or interference is likely to endanger the safety of any aircraft in flight; or

- (e) communicates information which he or she knows to be false, with the intention of endangering the safety of any aircraft in flight,

commits an offence, and is liable to -

- (i) imprisonment for a period not exceeding 30 years; or
- (ii) life imprisonment, where the commission of such offence resulted in the death of any person.

### **Endangering safety of maritime navigation**

**6.** (1) A person who, in respect of a ship registered in Namibia, or which is within the territorial waters of Namibia, with the intention of inducing environmental or economic damage or social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint -

- (a) uses force, threat or any other form of intimidation to seize or exercises control over such ship;
- (b) performs any act of violence against a person on board such ship and such act of violence is intended to endanger the safe navigation of that ship or the lives of passengers and crew on board of such ship;
- (c) destroys such a ship or any part thereof or causes damage to such ship or to its cargo and which damage is intended to endanger the safe navigation of that ship;
- (d) places or causes to be placed on such ship or any part thereof, by any means whatsoever, a device or substance which is intended to destroy or cause damage to that ship or its cargo or which is intended to endanger the safe navigation of that ship;
- (e) destroys or seriously damages maritime navigational facilities or interferes with their operation, and which destruction, damage or interference is likely to endanger the safe navigation of any ship; or
- (f) communicates information which he or she knows to be false, with the intention of endangering the safe navigation of such ship,

commits an offence and is liable to -

- (i) imprisonment for a period not exceeding 30 years; or
- (ii) life imprisonment, where the commission of such offence resulted in the death of a person.

(2) For the purposes of this section, and subject to section 5 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), "territorial waters of Namibia" means the -

- (a) territorial sea of Namibia, determined and defined in section 2;
- (b) internal waters of Namibia, determined and defined in section 3;
- (c) contiguous zone of Namibia, determined and defined in section 3A; and
- (d) exclusive economic zone of Namibia, determined and defined in section 4,

of that Act.

### **Taking of hostages**

7. A person who seizes or detains another person with the intention to, or with the threat to, endanger the life, physical integrity or freedom of such person for the purpose of inducing social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint as an explicit or implicit condition for the release of such person held hostage, commits an offence and is liable to imprisonment for a period not exceeding 30 years.

### **Protection of internationally protected persons**

8. (1) A person who, perpetrates or attempts to perpetrate or threatens to perpetrate an attack on the person, liberty or property of an internationally protected person, commits an offence and is liable to -

- (a) imprisonment for a period not exceeding 15 years; and
- (b) in the case where a deadly or dangerous weapon was used in the commission or attempted commission of the offence, to imprisonment for a period not exceeding 25 years.

(2) If in any proceedings in a court of law any question arises as to whether or not pursuant to international law any person is entitled to special protection from any attack on his or her person, freedom or dignity, a certificate under the hand or issued under the authority of the Permanent Secretary: Foreign Affairs stating any fact relating to that question is prima facie evidence of that fact.

### **Offences relating to fixed platforms**

9. (1) A person who, with the intention of inducing environmental damage, economic or social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint -

- (a) seizes or exercises control, by force, threat or by any other form of intimidation, over a fixed platform on the continental shelf or the exclusive economic zone of Namibia, as determined in terms of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act No. 3 of 1990), or any fixed platform on the High Seas;
- (b) performs an act of violence against a person on board such a fixed platform where such act of violence is likely to endanger the platform's safety;

- (c) destroys such a fixed platform or causes damage to it, which damage is likely to endanger its safety;
- (d) places or causes to be placed on such a fixed platform, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or likely to endanger its safety;
- (e) damages or destroys any offshore installation belonging to the Republic of Namibia; or
- (f) injures or kills any person in connection with the commission or the attempted commission of any of the offences referred to in subsections (a) to (e),

commits an offence and is liable to -

- (i) imprisonment for a period not exceeding 30 years; or
- (ii) life imprisonment, where the commission of such offence resulted in the death of any person.

(2) For the purposes of this section “fixed platform”, means an artificial island, installation, or structure permanently attached to the sea-bed belonging to or under control of Namibia for the purpose of exploration of resources or for economic purposes, but does not include a ship.

### **Nuclear terrorism**

- 10.** A person who unlawfully -
- (a) receives, uses, possesses, transfers, alters, disposes or demands radioactive material;
  - (b) designs, manufactures, possesses or demands the possession of a device capable of emitting radioactive material;
  - (c) carries, sends or moves radioactive material, in, into or out of Namibia, or steals, robs, or fraudulently obtains, radioactive material; or
  - (d) damages a nuclear facility in a manner which releases or risks the release of radioactive material,

and who, by virtue of such use, possession, transfer, alteration, disposition, theft, robbery, fraud, demand, design, manufacture or destruction, has the intention of -

- (i) causing death or serious bodily injury;
- (ii) inducing substantial economic, property or environmental damage or social terror, or
- (iii) intimidating or coercing any person, government, body or international organization or institution to do or refrain from doing any act or to adopt or abandon a political, religious or ideological standpoint,



commits an offence and is liable to life imprisonment.

**Arrangements for retention or control of funds belonging to or controlled by persons involved in terrorist or proliferation activities**

**11.** (1) A person who intentionally enters into, or becomes concerned in, an arrangement which facilitates the acquisition, retention or control of funds belonging to or controlled by or on behalf of a person involved in any terrorist or proliferation activity -

- (a) by concealment;
- (b) by removal of such funds out of jurisdiction;
- (c) by transfer to a nominee; or
- (d) in any other way,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years.

- (2) A person who knows or should have known that he or she -
- (a) deals, directly or indirectly, with any funds of designated persons or organisations;
  - (b) acquired or possesses funds of designated persons or organisations;
  - (c) enters into, or facilitates, directly or indirectly, any transaction in respect of funds of designated persons or organisations;
  - (d) converts, conceals or disguises funds of designated persons or organisations;
  - (e) provides financial or other services in respect of funds of designated persons or organisations at the direction of designated persons or organisations; or
  - (f) controls any funds on behalf of designated persons or organisations,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

**Recruitment of persons as members of designated organisations or to participate in terrorist or proliferation activities and harbouring of persons involved in terrorist or proliferation activities**

**12.** (1) A person who knowingly agrees to recruit, or recruits, another person to -

- (a) be a member of a designated organisation; or

(b) participate in the commission of any terrorist or proliferation activity, commits an offence and is liable to imprisonment for a period not exceeding 30 years.

(2) A person who knowingly harbours or conceals, or agrees to harbour or conceal, a person involved in terrorist or proliferation activities commits an offence and is liable to imprisonment for a period not exceeding 30 years.

### **Membership of organisation involved in terrorist or proliferation activities**

**13.** A person who is or who attempts to be a member of a an organisation involved in any terrorist or proliferation activity commits an offence, and is liable to imprisonment for a period not exceeding 30 years.

### **Use and possession of funds for terrorist or proliferation activities**

**14.** A person who -

- (a) uses funds or any part thereof to commit a terrorist or proliferation activity; or
- (b) possesses funds or part thereof and intends that such funds or part thereof be used, or ought to have known or suspect that the funds or part thereof may be used or attempted to be used, to commit a terrorist or proliferation activity,

commits an offence and is liable to imprisonment for a period not exceeding 30 years.

### **Attendance at place used for training in terrorist or proliferation activities**

**15.** A person who -

- (a) knowingly attends at any place, whether in Namibia or outside Namibia, where any instructions or training concerning weapons training are offered for purposes connected with the commission or preparation of any terrorist or proliferation activity;
- (b) for the purposes of committing or preparing to commit a terrorist or proliferation activity or for any purposes connected with the commission or preparation of any terrorist or proliferation activity, receives or provides instructions or training; or
- (c) invites another to receive or to provide instruction or training in preparation for the commission or attempted commission of any terrorist or proliferation activity,

commits an offence and is liable to a fine of N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

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**Offence concerning placement or sending of noxious or hazardous substances, lethal devices, explosives or other similar things and offence concerning making of hoaxes relating to placement or sending of noxious or hazardous substances, lethal devices, explosives or other similar things**

**16.** (1) A person who, with the intention of inducing environmental or property damage, economic or social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint -

- (a) places any noxious or hazardous substance, lethal device, explosive or other similar thing in any place; or
- (b) sends any noxious or hazardous substance, lethal device, explosive or other similar thing from one place to another by post, rail or any other means whatsoever,

commits an offence and is liable to life imprisonment.

(2) A person who, knowing such information to be false, directly or indirectly communicates in any manner and knows or ought reasonably to know that such information, when communicated may result in social terror, disruption of services or damage to property, that a noxious or hazardous substance, lethal device, an explosive or other similar thing -

- (a) has been or will be sent from one place to another by post, road, rail, air or by any other means; or
- (b) is present or will be placed anywhere,

commits an offence and is liable to a fine of N\$100 million or to a period of imprisonment not exceeding 30 years, or to both such fine and such imprisonment.

(3) For the purposes of this section “substance”, includes any biological, chemical, nuclear, ballistic or radiological agent and any other natural or artificial substance whatever its form, origin or method of production.

(4) On the conviction of a person for an offence under subsection (2), the court by which the person is convicted may order that person, in addition to any other penalty imposed upon him or her, to pay compensation for damages suffered in relation to any employed emergency or investigative response.

**Offence relating to weapons**

**17.** (1) A person who, inside or outside Namibia, with the intention of inducing environmental damage, economic or social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint, uses or threatens to use, a weapon designed to kill, harm or infect people, including a delivery system designed, adapted or intended to deliver such weapon against -

- (a) a citizen of Namibia or a person ordinarily resident in Namibia, whether such person is in or outside Namibia;

- (b) any person within Namibia; or
- (c) any property that is owned, leased or used by the State or any office, ministry or agency of Namibia, whether the property is within or outside Namibia,

commits an offence and is liable to life imprisonment.

(2) A citizen of Namibia, or person ordinarily resident in Namibia, or a person within Namibia who, unlawfully and intentionally uses or threatens, to use a weapon as intended in subsection (1) outside Namibia, commits an offence and is liable to life imprisonment.

#### **Directing activities of organisation involved in terrorist or proliferation activities**

**18.** A person who directs at any level the activities of an organisation which is involved in the commission of any terrorist or proliferation activity commits an offence and is liable to life imprisonment.

#### **Possession of article for purposes of terrorist or proliferation activities**

**19.** A person who possesses an article in circumstances, which give rise to a reasonable belief that the possession is for a purpose connected with the commission or attempted commission, preparation or instigation of a terrorist or proliferation activity, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

#### **Collection of information**

**20.** (1) A person who possesses, collects or makes a record of, or collects information likely to be used in the preparation of the commission or attempted commission of a terrorist or proliferation activity, commits an offence and is liable to imprisonment for a period not exceeding 30 years.

(2) In this section “record”, includes a photographic or electronic record.

(3) A court that convicts a person of an offence under this section may order the forfeiture of any document or record containing information of the kind mentioned in subsection (1).

(4) Before making an order under subsection (3) a court must give an opportunity to be heard to any person, other than the convicted person, who claims to be the owner of or who is otherwise interested in anything which can be forfeited under subsection (3).

#### **Prohibition of rendering foreign military assistance to foreign States or organisations**

**21.** A person within Namibia or elsewhere who offers to render any foreign military assistance, other than humanitarian or civilian assistance aimed at relieving the plight of civilians in an area of armed conflict, or any mercenary activities or related

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services to a foreign state, organ of a state, group of persons or other organisation or person, unless -

- (a) in the execution of State powers; or
- (b) he or she has been granted authorisation to offer such assistance in terms of section 49,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### PART 3

#### MEASURES TO IMPLEMENT RESOLUTIONS OF UNITED NATIONS SECURITY COUNCIL

##### **Notification of designated persons or organisations by Security Council**

**22.** The Permanent Mission of the Republic of Namibia to the United Nations must, without delay, submit to the Ministry responsible for foreign affairs all designations made by the Security Council or relevant Sanctions Committees, as well as any sanctions list issued in connection therewith.

##### **Publication of sanctions list and issuance of freezing orders in respect of persons or organisations designated by Security Council**

**23** (1) The Ministry responsible for foreign affairs must, without delay, upon receipt of a sanctions list under section 22, submit such sanctions list to the Minister who must, without delay -

- (a) publish the sanctions list by notice in the *Gazette* and, when necessary, in any other expeditious means of publication the Minister thinks appropriate; and
- (b) issue the freezing order of -
  - (i) any funds, assets or economic resources that are owned or controlled directly or indirectly by the designated person or organisation, without such funds or assets necessarily tied to a particular terrorist act, plot or threat;
  - (ii) all funds, assets or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or organisations;
  - (iii) funds, assets or economic resources derived or generated from funds or other assets owned or controlled, directly or indirectly, by a designated person or organisation, including interests that may accrue to such funds, or other assets;
  - (iv) funds, other assets or economic resources of persons or organisations acting on behalf of, or at the direction of, designated persons or organisations; or

- (v) any funds or assets held in a bank account, as well as any additions that may come into such account after the initial or successive freezing.

(2) All persons and institutions referred to in section 24(2) must inform the Financial Intelligence Centre, within a prescribed period, of any assets frozen or actions taken in terms of a freezing order.

(3) A person who claims to have a *bona fide* right to funds or assets frozen in terms of subsection (1) may apply to the Minister for the exclusion of his or her interest from the freezing order.

(4) An application referred to in subsection (3) must be accompanied by a sworn statement setting out -

- (a) the nature and extent of the right, title or interest of the applicant in the funds or assets concerned;
- (b) the time and circumstances of the acquisition by the applicant of the right, title or interest in the funds or assets; and
- (c) any additional facts supporting the application, which assist the Minister to make an assessment on the *bona fide* ownership or interest in the frozen funds.

(5) Any person or organisation which has taken any freezing action under this section must ensure the reasonable preservation of funds and other assets in the manner as prescribed.

(6) Any person, organisation or institution that fails to comply with a freezing order issued in terms of subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

#### **Circulation of designations of persons or organisations by Security Council and any sanctions list issued in connection therewith**

**24.** (1) The Minister responsible for foreign affairs must, without delay, upon receipt of a designation or sanctions list under section 22, submit such designation or sanctions list to the Director of the Centre, or his or her authorized representative.

(2) The Director of the Centre or his or her authorized representative after receiving the sanctions list or the designation referred to in subsection (1), must, without delay, circulate the list using electronic mail, facsimile or any other expeditious means of communication to -

- (a) all accountable institutions listed in Schedule I of the Financial Intelligence Act;
- (b) all supervisory bodies listed in Schedule II of the Financial Intelligence Act;

- (c) all reporting institutions listed in Schedule III of the Financial Intelligence Act;
- (d) all regulatory bodies listed in Schedule IV of the Financial Intelligence Act; and
- (e) any other person, business, public body, office, Ministry, government institution or competent authority as the Director, considers appropriate.

**Prohibition of making funds available to or on behalf of designated persons, organisations or countries**

**25.** A person to whom a designation or list has been communicated in terms of section 24(2) or any other person who knows or ought reasonably to know or suspect that he or she either directly or indirectly makes any funds, bulk cash, economic resources or any other assets or financial or related services, directly or indirectly, wholly or jointly available to or on behalf of or for the benefit of -

- (a) a designated person, organisation or country;
- (b) a person or organisation controlled or owned directly or indirectly by a person organisation or country mentioned in paragraph (a); or
- (c) a person, organisation or country acting on behalf, or at the direction, of a person, organisation or country mentioned in paragraph (a),

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

**Issuance of travel bans in respect of persons or organisations designated by Security Council**

**26** (1) The Minister responsible for foreign affairs must, without delay upon receipt of a designation or sanctions list under section 22, submit such designation or sanctions list to the Minister responsible for immigration and border control, who must, without delay, cause -

- (a) the prevention of entry into or transit through Namibia of designated persons and their biological or adoptive parents and children with the exception that -
  - (i) Namibian citizens may not be denied entry into Namibia, be required to depart from Namibia or be allowed to exit Namibia; and
  - (ii) this subsection does not apply where entry or transit is necessary for the fulfilment of a judicial process, for humanitarian reasons, or to honour a request received from the relevant Security Council Sanctions Committee to allow entry or transit or to attend meetings at the United Nations Headquarters;
- (b) where appropriate, the expulsion from the Republic of Namibia of a national of a designated country -

- (i) working on behalf of or at the direction of a designated person or organisation for purposes of terrorist or proliferation activities or the funding of such activities; or
- (ii) assisting in the evasion of sanctions or violation of applicable Security Council Resolutions,

for purposes of repatriation to his or her country of origin, unless the presence of the person is required for fulfilment of judicial proceedings, medical, safety, or other humanitarian purposes.

(2) Where the Minister responsible for immigration and border control detects the entry into or transit through Namibia of a designated person, he or she must inform the Security Commission.

(3) The Security Commission must upon a notification under subsection (2), via diplomatic channel, inform the relevant Security Council Sanctions Committee of such entry into or transit through Namibia.

(4) Any person, organisation or institution that fails to comply with a travel ban issued in terms of subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### **Issuance of arms embargo in respect of persons or organisations designated by Security Council**

**27** (1) The Minister responsible for foreign affairs must, without delay upon receipt of a designation or sanctions list under section 22, submit such designation or sanctions list to the Minister who must, without delay, cause prevention of the direct or indirect supply, sale, brokering or transfer to designated persons, organisations or countries of all types of arms and related materials -

- (a) by Namibian citizens or residents of Namibia;
- (b) by Namibian citizens outside Namibia;
- (c) using Namibian flagged vessels or aircraft or aircraft registered in Namibia.

(2) Any person, organisation or institution that fails to comply with an arms embargo issued in terms of subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(3) For purposes of this section “arms and related materials”, includes weapons, ammunition, military vehicles and equipment, paramilitary equipment, spare parts for such arms, vehicles or equipment, and technical advice, service, assistance, or training related to military activities.



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### **Postponement, suspension or cancellation of operation of resolution adopted or listing done by Security Council**

**28.** (1) If the Security Council takes any decision which has the effect of postponing, suspending or cancelling the operation of a resolution adopted by it or a listing done by it, either in whole or in part, any measures that the Government of Namibia has taken to give effect to such a resolution, must immediately cease to have effect or its operation postponed or suspended, in whole or in part, except if such cessation, postponement or suspension will or is likely to prejudice the national security of Namibia.

(2) The Minister must, by notice in the *Gazette* and in any other appropriate expeditious means of publication, on the instructions of the Security Commission, publish the particulars of the decisions of the Security Council communicated to the Government of Namibia, pertaining matters contained in this section.

### **Request for delisting by persons or organisations designated by Security Council**

**29.** (1) A designated person or organization ordinarily residing or present in Namibia, claiming -

- (a) not to be the person or organisation on the designation list; or
- (b) to be incorrectly designated,

may, in accordance with the guidelines and procedures of the Security Council, submit a written request to the Security Council to be delisted from the sanctions list.

- (2) The request to be delisted under subsection (1) is directed to -
- (a) the United Nations Office of the Ombudsperson, through the prescribed address, in respect of a person or organisation designated under Resolution 1267 (1999);
  - (b) the Focal Point for de-listing established pursuant to UNSCR 1730 (2006), through the prescribed address; or
  - (c) any other relevant focal point or committee established by the Security Council to deal with delisting requests.

### **Actions taken in respect of delisted persons and organisations**

**30** (1) A freezing order, arms embargo or travel ban issued in respect of any designated person, organisation or country lapses automatically once such person, organisation or country is delisted.

(2) Upon being notified, via diplomatic means, of a delisting done by the Security Council, the Security Commission must instruct the Minister to -

- (a) publish, by notice in the *Gazette* and, when necessary, in any other expeditious means of publication the Minister thinks appropriate, the names and particulars of the persons, organisations or countries that have been delisted;

- (b) forward the names and particulars of the persons, organisations or countries that have been delisted to the Director of the Centre or his or her authorized representative who must immediately circulate the names of delisted persons, organisations or countries using electronic mail, facsimile or any other expeditious means of communication to -
- (i) all accountable institutions listed in Schedule I of the Financial Intelligence Act;
  - (ii) all supervisory bodies listed in Schedule II of the Financial Intelligence Act;
  - (iii) all reporting institutions listed in Schedule III of the Financial Intelligence Act;
  - (iv) all regulatory bodies listed in Schedule IV of the Financial Intelligence Act; and
  - (v) any other person, business, public body, office, Ministry, government institution or competent authority as the Director considers appropriate,

with the notification that the freezing orders, travel ban, or arms embargo in respect of such person, organisation or country has lapsed.

**Communication to Security Council Sanctions Committees regarding actions taken in respect of designated or delisted persons and organisations or non-compliance observed**

- 31.** The Government of Namibia must -
- (a) communicate all actions taken in terms of designated or delisted persons, organisations or countries, via diplomatic means, within a prescribed period of taking such action, to the relevant Security Council 1267 (1999), 1989 (2011), 1988 (2011), 1718 (2006), 1738 and 1730 Sanctions Committees;
  - (b) where appropriate, notify relevant Sanctions Committees of the Security Council of any non-compliance noticed in respect of Security Council sanctions.

**Requests to release funds or portion of funds that has been frozen on humanitarian grounds**

- 32.** (1) A person whose funds has been affected by the freezing order issued in accordance with section 23 may submit a request to the Minister to have such funds or a portion of such funds released to cover the following -
- (a) necessary and basic expenses, including payments for rent or mortgage, foodstuffs, monthly family expenses, medicines and medical treatment, taxes, insurance premiums and public utility charges;

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- (b) expenses exclusively for payment of reasonable professional fees, or reimbursement of incurred expenses associated with the provision of legal services;
  - (c) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources;
  - (d) necessary for extraordinary expenses; and
  - (e) in respect of funds frozen under UNSCR 1718 and 1737 -
    - (i) expenses necessary to honour, any judicial, administrative or arbitral lien or judgement;
    - (ii) payments due under contracts entered into prior to the listing of such person or entity, provided -
      - (aa) that it has been determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in the relevant Security Council resolution;
      - (ab) that it has been determined that the payment is not directly or indirectly received by a person or entity designated pursuant to UNSCR 1737; and
      - (ac) 10 working days prior notification of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, has been given to the 1737 Sanctions Committee.

(2) The request to have funds released for expenses outlined in subsection 1(a), (b), (c) and (e), are assessed by the Minister within the prescribed period, and if favourably considered, the request is directed to the relevant Sanctions Committee established pursuant to Security Council Resolutions 1267 (1999), 1988 (2011) or 1989 (2011) for its decision.

(3) The Minister may, within 48 hours from date of submission of the request to the relevant Committee in terms of subsection (2) and in the absence of any negative decision received from such Committee, authorise the release of funds as applied for under subsection (1).

- (4) The request to have funds released as outlined in subsection (1)(d) is -
  - (a) assessed by the Minister and if favourably considered, the request is forwarded to the relevant Sanctions Committee for its approval; and
  - (b) authorised by the Minister upon receipt of approval from the relevant Sanctions Committee.

**Security Council Resolution 1373 (2001): International Cooperation, Designation, Freezing and Restraining of Funds at Request of Third State**

**33.** (1) A foreign state, pursuant to Resolution 1373 of the Security Council calling on states to cooperate with one another in the prevention of any terrorist activity and the funding thereof, requesting Namibia to -

- (a) designate a person or organisation or persons or organisations associated with such persons or organisation, mentioned in the foreign request, as -
    - (i) persons designated by the requesting state who committed, attempted to commit, conspired to commit, aided and abetted to commit terrorist activities or participated in, or facilitated the commission of terrorist activities;
    - (ii) organisation designated by the requesting state who committed, attempted to commit, conspired to commit, aided and abetted terrorist activities or participated in, or facilitated the commission of terrorist activities;
    - (iii) organisations owned or controlled directly or indirectly by such persons or organisations; or
    - (iv) persons and organisations acting on behalf of, or at the direction of such persons or organisations.
  - (b) must submit such request via prescribed channels to the Minister responsible for justice.
- (2) A request outlined in subsection (1) must -
- (a) be in writing;
  - (b) contain a statement or statements detailing the facts on which it is reasonably believed that the person or organisation, or persons or organisations who are associated with such person or organisation, whose funds is to be restrained, or who is to be so designated or to whom arms embargoes and travel bans must apply, is engaged in any terrorist activity, or associated with any terrorist activity;
  - (c) contain a statement or statements detailing the basis on which it is believed that the funds to be restrained are either the proceeds of unlawful activities, associated with any terrorist activity, or instrumentalities of intended terrorist activities;
  - (d) contain the full particulars of the person or organisation affected, to establish the identity, location and whereabouts of the person or organisation with reasonable certainty;
  - (e) contain a reference to persons who may also have an interest in the funds and the nature of such interest, where known, as well as particulars pertaining to the identity and location of said persons or organisations, where known; and

- (f) contain a statement or statements detailing any criminal proceedings concluded, pending or contemplated against the person in the requesting state.

(3) The Minister responsible for justice, if satisfied on reasonable grounds that the request referred to in subsection (1) be granted, must, within the prescribed period, forward the request with such observations as the Minister may think appropriate, to the Minister and the Security Commission for its determination.

(4) If the information provided is, in the opinion of the Minister responsible for justice, insufficient to make a determination on the desirability of granting the request, the Minister must, within the prescribed period, request further particulars from the requesting country.

(5) If the Security Commission is satisfied, on reasonable grounds, that the requested assistance referred to in subsection (1) be granted, it must proscribe such person or organisation, and instruct the Minister to, without delay, by notice in the *Gazette*, and, when necessary, in any other expeditious means of publication the Minister thinks appropriate -

- (a) publish the notice of proscription; and
- (b) cause the freezing of -
  - (i) any funds or assets that are owned or controlled by the proscribed person or organisation, without such funds or assets necessarily being tied to a particular terrorist act, plot or threat;
  - (ii) all funds or assets that are wholly or jointly owned or controlled, directly or indirectly, by proscribed persons or organisations;
  - (iii) funds or assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by proscribed persons or organisations, including any interest that may accrue to such funds, or other assets; and
  - (iv) funds or other assets of persons or organisations acting on behalf of, or at the direction of, proscribed persons or organisations.

(6) Where a proscribed person or organisation is present in Namibia the Minister must also notify such person or organisation of the proscription, together with a statement of reasons for the proscription.

(7) All persons and institutions referred to in Schedules I, II, III and IV of the Financial Intelligence Act, must report to the Centre, within a prescribed period, any assets frozen or actions taken in terms of a freezing order contemplated in subsection (1).

(8) Any person who claims to have a *bona fide* right to funds or assets frozen in terms of subsection (1) can within a prescribed period apply to the Minister for the exclusion of his or her interest from the freezing order.

(9) An application referred to in subsection (8) is accompanied by a sworn statement setting out -

- (a) the nature and extent of the applicant's right, title or interest in the funds or assets concerned;
- (b) the time and circumstances of the applicant's acquisition of the right, title or interest in the funds or assets; and
- (c) any additional facts supporting the application which can assist in the determination of such rights.

(10) Any person, organisation or institution that fails to comply with a freezing order issued in terms of subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

(11) The process for release of funds on humanitarian and other grounds provided for in section 32 is applicable to this section.

(12) If a person or organisation is proscribed in terms of subsection (5) wants to challenge the decision by the Security Commission, sections 44(6), (7), (8) (9), (10) and (11) apply with the necessary changes in this situation.

(13) The Security Commission must further instruct the Minister and the Minister responsible for immigration and border control to impose arms embargoes and travel bans, as provided for in sections 26 and 27, on such designated person and organisations.

**Prohibition of procuring, supplying, provision, import or export of certain weapons, arms and related materials, sanctioned items and technical advice, services, assistance and training**

**34.** (1) A person from Namibia or elsewhere who, directly or indirectly -

- (a) procures, supplies, delivers, sells, brokers, or transfers, import or export;
- (b) agrees to procure, supply, deliver, sells, brokers, or transfers, import or export; or
- (c) does any act calculated to promote the procurement, supply, delivery, brokering, sale or transfer, import or export of,

sanctioned items, arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, inclusive of technical advice, services, assistance, or training related to military, terrorist or proliferation activities to or from -

- (i) a designated person, organisation or country;

- (ii) a person or organisation controlled or owned directly or indirectly by a person, organisation or country mentioned in paragraph (a); or
- (iii) a person or organisation acting on behalf, or at the direction, of a person, organisation or country mentioned in paragraph (a),

using a Namibian or non-Namibian flagged vessel or aircraft or aircraft registered in Namibia, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

- (2) A person who, directly or indirectly -
  - (a) procure, supplies, delivers, sells, brokers, transfers, import or export;
  - (b) agrees to procure, supply, deliver, sells, brokers, transfers, import or export; or
  - (c) does any act calculated to promote the procurement, supply, delivery, sale, brokering, transfer, import or export of,

non-sanctioned items, to or from, or brokered by -

- (i) a designated person, organisation or country;
- (ii) a person or organisation controlled or owned directly or indirectly by a person, organisation or country mentioned in paragraph (a); or
- (iii) a person or organisation acting on behalf, or at the direction, of a person, organisation or country mentioned in paragraph (a),

using a Namibian or non-Namibian flagged vessel or aircraft registered in Namibia, must -

- (aa) follow the requirements, as appropriate, of the guidelines of applicable Security Council Sanctions Committees;
- (bb) verify the end-use and end-use location of such items;
- (cc) notify the relevant Security Council Sanctions Committee and where relevant, the International Atomic Energy Agency within 10 days of the supply, sale or transfer of such items.

(3) An officer of the Customs and Excise and any other officer of a competent authority in Namibia may -

- (a) search and inspect all cargo to and from a designated country, including cargo on aircrafts or vessels on the high seas, where reasonable grounds exist to suspect a violation of applicable terrorism and terrorism funding or proliferation and proliferation funding Security Council resolutions and sanctions;

- (b) seize any sanctioned items, arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts, where reasonable grounds exists to suspect a violation of applicable terrorism and terrorism funding or proliferation and proliferation funding Security Council resolutions and sanctions; or
- (c) cause the disposal of any sanctioned items, arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts, where reasonable grounds exists to suspect a violation of applicable terrorism and terrorism funding or proliferation and proliferation funding Security Council resolutions and sanctions.

(4) Where a search and inspection on the high seas is refused by a flagged vessel of another State, the Customs and Excise or any other officer of a competent authority, must -

- (a) via the Ministry responsible for foreign affairs request the flag State permission to carry out a cargo search and inspection; and
- (b) where a requested flag State refuse search and inspection under subsection (a), direct such State, via the Ministry responsible for foreign affairs, to instruct the vessel to proceed to an appropriate and convenient port for the required inspection.

(5) An officer of the Customs and Excise and any other officer of a competent authority in Namibia, within the prescribed period, after -

- (a) conducting a search and inspection of cargo under subsection (3)(a);
- (b) seizure of a sanctioned item under subsection (3)(b); or
- (c) disposal of a sanctioned item under subsection (3)(c),

must inform the Minister of such action taken.

(6) A person, organisation and any Customs and Excise official or officer of a competent authority in Namibia, must cause the refusal of any bunkering service to be provided to a vessel or aircraft, where -

- (a) reasonable grounds exists to suspect a Security Council resolutions and sanctions violation; or
- (b) a search or inspection is refused under this section,

except where such services are necessary for humanitarian purposes or until such time as the cargo has been inspected, or seized and disposed of, if necessary.

(7) The Minister must, without delay, inform the Security Commission of any action taken under subsection (2).



(8) The Security Commission must upon being notified by the Minister of the actions taken under this section, inform, via diplomatic channels, within the prescribed period, the relevant Committees of the Security Council of any action taken under this section.

- (9) A person who -
- (a) directly or indirectly, interferes with a Customs and Excise officer or an officer of a competent authority in the exercise of their functions under this section; or
  - (b) provides bunkering services in contravention of this section,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### **Prohibition of landing, entering, docking or departure of certain vessels and flights**

**35.** (1) Except under the authority granted by the Minister, with the consent of the Security Commission and relevant committees of the Security Council -

- (a) an aircraft, wherever registered, may not take off from, land in or fly over Namibia, if its destination is, or if it has taken off from any place, designated by the Security Council;
- (b) an aircraft, wherever registered and designated by the Security Council as being owned, leased or operated by or on behalf of a designated person or organisation may not take off from or, land in or fly over Namibia;
- (c) an aircraft, wherever registered and designated by the Security Council as being owned, leased or operated by or on behalf of a designated country, may not take off from or, land in or fly over Namibia where reasonable grounds exists to suspect a violation of Security Council Resolutions or sanctions;
- (d) a vessel, wherever registered, may not depart from, arrive in or dock in Namibia, if its destination is, or if it has departed from any place designated by the Security Council;
- (e) a vessel designated by the Security Council owned, leased or operated by or on behalf of a designated person, organisation or country, wherever registered, may not depart from, arrive in or dock in Namibia; or
- (f) Any vessel, wherever registered and designated by the Security Council as being owned, leased or operated by or on behalf of a designated country, may not take off from or, land in or fly over Namibia where reasonable grounds exists to suspect a violation of Security Council Resolutions or sanctions.

(2) No re-naming or re-registration of vessels or aircrafts owned or controlled, directly or indirectly, by designated persons, organisations or countries

is allowed in Namibia where the circumvention of the Security Council sanction is intended.

(3) If a vessel or an aircraft is used, re-named or re-registered in contravention of this section, the operator and the captain of the vessel or aircraft, and any other person who assisted them with such contravention, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### **Powers of airport operator**

**36.** (1) For the purpose of enforcing the prohibitions contained in section 35, it is the duty of an airport operator to take all such steps as may be necessary to secure that any aircraft at his or her airport -

- (a) whose captain or operator has indicated an intention to fly the aircraft to a destination designated by the Security Council, or which the airport operator otherwise has reason to suspect is to be flown to such a destination;
- (b) which the airport operator knows or has reason to suspect is designated by the Security Council as owned, leased or operated by or on behalf of a designated person, organisation or country, is prevented from taking off unless permission to do so has been granted under section 35.

(2) Without prejudice to the generality of subsection (1), the steps contemplated in that subsection concerning an aircraft may include -

- (a) the refusal of any service for the aircraft, including refuelling;
- (b) the placing of obstacles in the path of a parked aircraft to prevent it from leaving its parked position; and
- (c) requiring the captain or operator of the aircraft to move it, or to secure that it is moved, to another part of the airport.

(3) A person who, without reasonable excuse, obstructs an airport operator, employees or agents of such airport operator who acts in accordance with this section, or refuses or fails within a reasonable time to comply with a requirement by any such person made in accordance with this section, commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

## **PART 4**

### **INVESTIGATING POWERS AND OTHER ANTI-TERRORISM AND PROLIFERATION MEASURES**

#### **Road closure**

**37.** (1) If the Inspector-General or a member of the Police considers it necessary for the combating of any terrorist activity or proliferation activity, he or she may by order, direct that a specified road be -

- (a) wholly closed;
- (b) closed to a specified extent; or
- (c) diverted in a specified manner.
- (2) A person who interferes with -
  - (a) road closure works; or
  - (b) road closure equipment,

commits an offence and is liable to a fine not exceeding N\$50 million or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment.

- (3) For the purpose of this section -

“road closure equipment” means any apparatus, equipment or other material used in pursuance of an order under subsection (1); and

“road closure works” means works executed in connection with the closure or diversion of a road specified in an order under subsection (1).

### **Search, seizure, arrest and forfeiture**

**38.** (1) Despite anything to the contrary in any other law, but without derogating from any power conferred by section 14(4) and (5) of the Police Act, 1990 (Act No. 19 of 1990), any member of the Police, in the performance of the functions referred to in this Act, whenever such member has reasonable grounds for believing that any person is committing or has committed a terrorist activity or proliferation activity and where delay in obtaining a warrant to search a vehicle or to enter any premises for the purpose of searching such vehicle, carries with it the danger of prejudicing the objects of the search, and if -

- (a) the search is related to the objectives of this Act;
- (b) the search is not excessively intrusive in the light of the offence; and
- (c) the person is informed of the objectives of the search,

may without a warrant -

- (i) search such vehicle or, if such vehicle is on or in any premises, enter such premises for the purposes of searching such vehicle; and
- (ii) arrest any person found in possession of, or control of, or driving such, vehicle and seize such vehicle,

and must as soon as possible bring or remove such person and the vehicle so seized to a police station or charge office.

(2) For the purpose of exercising the powers conferred by subsection (1), a member of the Police may at any time and at any place in Namibia by means of an

appropriate indication or direction, or in any other manner order the driver of a vehicle to bring such vehicle to a stop.

(3) Despite anything to the contrary in any other law contained, any member of the Police, in the performance of the functions referred to in section 13 of the Police Act, 1990 (Act No. 19 of 1990), whenever such member has reasonable grounds for believing that any person is in possession of articles which could be used for or in connection with the commission, preparation or instigation of any terrorist activity or proliferation activity, and where delay in obtaining a warrant to search such person or any container or premises for the purpose of seizing such articles carries with it the danger of prejudicing the objects of the search; and if -

- (a) the search is related to the objectives of this Act;
- (b) the search is not excessively intrusive in the light of the offence; and
- (c) the person is informed of the purpose of the search;

may without warrant -

- (i) search such person or any container or premises; and
- (ii) arrest any person found in possession of such articles and seize such articles, and must as soon as possible bring or convey such articles so seized to a police station or charge office.

(4) Section 30 of the Criminal Procedure Act with regard to the disposal of an article seized under section 20 of that Act applies with the necessary changes in respect of the disposal of such articles seized under subsections (1) or (3) of this section.

(5) To the extent that subsection (1) or (3) authorises the interference with the fundamental right to privacy of a person or the deprivation of the personal liberty of such person by conducting a search or making an arrest under those provisions, such interference or deprivation may only be authorised in the case of such -

- (a) interference, on the grounds of the prevention of crime and the protection of the rights of others as contemplated in Article 13(1) of the Namibian Constitution; or
  - (b) deprivation, on the grounds of the procedures established under this section pursuant to Article 7 of the Namibian Constitution.
- (6) A person who -
- (a) obstructs, hinders, opposes, resists or in anyway, interferes with a member of the Police in the performance of his or her duties or the exercise of his or her powers under this Act;
  - (b) without just cause refuses or fails to comply with a requirement by a member of the Police under this Act; or
  - (c) makes any false statement or representation, or furnishes any false information, to a member of the Police knowing such statement,

representation or information to be false or misleading in any material respect or not believing it to be true,

commits an offence and is liable to a fine not exceeding N\$50 million or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment.

**Duty to disclose information relating to funds owned or controlled by designated persons, organisations or countries**

**39.** (1) A person in Namibia or an institution listed under Schedule I or III of the Financial Intelligence Act must disclose to the Centre in the form and manner prescribed in that Act information about the existence of any funds in his or her or its possession or control, which to his or her or its knowledge, is owned, controlled directly or indirectly by -

- (a) a designated person, organisation or country; or
- (b) a person or organisation involved in any proliferation activity or terrorist activity,

within 12 days after such person or institution becomes aware that the person, organisation or country possesses or control such funds.

(2) If any person voluntarily provides information referred to in subsection (1) to the Centre, that person is not liable for prosecution in respect of any offence by reason of which he or she came to have such information.

(3) A person who fails to comply with this section commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

**Interception of communications and admissibility of intercepted communications**

**40.** (1) Despite anything to the contrary in any other law and subject to subsection (2), the Inspector-General may for the purpose of obtaining evidence of the commission of an offence under this Act, apply *ex parte* to a judge in chambers for the issuance of a warrant for the interception of communications.

(2) A judge to whom an application is made under subsection (1) may issue a warrant authorising the Inspector-General -

- (a) to require a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted or about to be received or transmitted by that communications service provider;
- (b) to authorise a member of the Police or the Namibia Central Intelligence Agency to enter any premises and to install or remove on such premises, any device for the interception and retention of communication if there are reasonable grounds to believe that information concerning the commission of the offence under this Act, or the whereabouts of the person suspected to have committed an offence under this Act, may be obtained; or

- (c) to intercept all postal articles to or from any person, body or organisation affected by the warrant.
- (3) Any information contained in a communication -
  - (a) intercepted and retained pursuant to an order under subsection (2);
  - (b) intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a judge of that foreign state to have been so intercepted and retained,

is admissible as evidence in proceedings for an offence under this Act.

(4) Subsection (2) or (3), in so far as it provides for the limitation on the fundamental right to privacy contemplated in Article 13 of the Namibian Constitution, is enacted upon the authority conferred to by that Article.

### **Issue of warrant**

**41.** (1) A warrant contemplated in section 40(1) may be issued by a judge -

- (a) upon a written application made by the Inspector-General; and
- (b) if the judge is satisfied, on the grounds mentioned in subsection (2) that -
  - (i) the gathering of information concerning any terrorist activity is necessary to enable the police force to properly investigate any such terrorist or proliferation activity; or
  - (ii) any such terrorist or proliferation activity cannot be properly investigated in any other manner.

(2) An application referred to in subsection (1)(a) is accompanied by a supporting affidavit setting out -

- (a) the facts constituting reasonable grounds that necessitate the issuing of a warrant to enable the investigation of a terrorist or proliferation activity;
- (b) that other investigative procedures -
  - (i) has been tried and have failed;
  - (ii) appears to be unlikely to succeed;
  - (iii) would be impractical, due to the urgency of the matter, to carry out an investigation using only those other procedures;
  - (iv) would not work, as without a warrant it is likely that information of importance with respect to terrorist or proliferation activities would not be obtained;

- 
- (c) the type of postal article or communication proposed to be intercepted, the type of information, records documents or other material proposed to be obtained or removed and the powers to be exercised for that purpose;
  - (d) the identity of the person, body or organisation, if known, whose communication is proposed to be intercepted or which is in possession of the information proposed to be obtained;
  - (e) the person, body or organisation, or class or classes of persons, bodies or organisations, to which the warrant is proposed to be applied; and
  - (f) the place where the warrant is proposed to be executed, if a general description of that place can be given.

(3) A warrant issued under subsection (1) is issued for a period not exceeding three months at a time, and the period for which it has been issued is specified in that warrant.

(4) The judge who issued a warrant or a judge acting in his or her stead, upon a written application made by the Inspector-General before the expiry of the period or extended period for which the warrant has been issued, may extend that period for a further period not exceeding three months at a time, if the judge is convinced that the extension is necessary for the reasons mentioned in subsection (1)(b).

(5) An application referred to in subsections (1)(a) or (4) is heard, and a warrant is issued -

- (a) without any notice to the person, body or organisation to which the application applies; and
- (b) without hearing the person, body or organisation to which the application applies.

(6) If, upon an application made by the Inspector-General before the expiry of the period or extended period for which a warrant has been issued, the judge who issued the warrant or a judge acting in his or her stead, is convinced that the grounds on which the warrant was issued, have ceased to exist, the judge must cancel the warrant.

### **Execution of warrant**

**42.** (1) If a warrant has been issued under section 41(1) for purposes of section 40(2)(a), the Inspector-General must comply with section 70(8) of the Communications Act, 2009 (Act No. 8 of 2009).

(2) If a warrant has been issued under section 41(1) for purposes of section 40(2)(b) or (c) a member of the Police who executes a warrant or assists with the execution thereof, may at any time enter upon any premises to -

- (a) install, maintain or remove a monitoring device;
- (b) intercept or take into possession a postal article;

- (c) intercept any communication;
- (d) install, maintain, remove a device by means of which any communication can be intercepted;
- (e) search the premises with the purpose of gathering information concerning any terrorist or proliferation activity; or
- (f) examine, copy, photograph or transcribe any record, document or other material on the premises; or remove such record, document or other material from the premises, for as long as is reasonably necessary, for the purposes of examining, copying, photographing or transcribing it, for the purpose of this Act.

(3) If a warrant contemplated in subsection (1) or a copy thereof is handed to the person, body or organisation responsible for -

- (a) any activity or activities mentioned in the warrant; or
- (b) the rendering of any service or services to a person, body or organisation, or class or classes of persons, bodies or organisation, mentioned in the warrant,

by a member of the Police who executes that warrant or assists with the execution of that warrant, the person, body or organisation concerned must as soon as possible comply with the terms of that warrant.

(4) A person who fails to comply with the terms of a warrant referred to in subsection (3) commits an offence and is liable to a fine not exceeding N\$10 million or five years imprisonment, or to both such fine and such imprisonment.

### **Exchange of information relating to terrorist and proliferation organisations and terrorist and proliferation activities**

**43.** The Minister, in collaboration with the Security Commission, may on request made by the appropriate authority of a foreign state, through appropriate channels, disclose to that authority any information in his or her or its possession, or in the possession of any Government department or agency, except information within the domain of the Centre, relating to -

- (a) the actions or movements of organisations or persons suspected of involvement in the commission of any terrorist activity or proliferation activity;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist activities or proliferation activity;
- (c) traffic in explosives or other lethal devices or sensitive materials by organisations or persons suspected of involvement in the commission of any terrorist activity or proliferation activity; or



- 
- (d) the use of communication technologies by persons and organisations involved in terrorist activities or proliferation activities,

if such disclosure, in the opinion of the Minister, is not prejudicial to the national security and interest of Namibia.

### **Proscription of persons and organisations**

**44.** (1) The Minister, if satisfied that reasonable grounds exists to proscribe an person or organisation, must request the Security Commission to proscribe the person or organisation, if the person or organisation -

- (a) committed or participated in any terrorist activity or proliferation activity;
- (b) prepared to commit any terrorist activity or proliferation activity;
- (c) promoted or encouraged any terrorist activity or proliferation activity;
- (d) threatened to commit any terrorist activity or proliferation activity;
- (e) funded any terrorist activity or proliferation activity;
- (f) facilitated the commission of a terrorist activity or proliferation activity;
- (g) acted on behalf of, at the direction of, or in association with persons or organisations involved in terrorist activities or proliferation activities;
- (h) is in any way involved in any terrorist activity or proliferation activity;  
or
- (i) in giving effect to the global effort to prevent and combat terrorism and proliferation, the Minister -
  - (i) has via the Minister responsible for justice, received a request or communication from a foreign state acting under the auspices of the Security Council Resolution 1373 of 2001 or any of its successor resolutions; and
  - (ii) is satisfied that there are reasonable grounds to proscribe the person or organisation mentioned in the request or communication of the foreign state.

(2) The Security Commission, if satisfied that reasonable grounds exist, must proscribe such person or organisation as requested by the Minister under subsection (1).

(3) In each case of proscription, the Security Commission must instruct the Minister to, without delay, publish a notice of proscription in the *Gazette* and, when necessary, in any other expeditious means of publication as the Minister thinks appropriate, and such proscription takes effect from the date of publication or on such date as may be specified in the notice.

(4) Where a proscribed person or organisation is present in Namibia, the Minister must also notify such person or organisation of the proscription, together with a statement of reasons for the proscription.

(5) The Minister, if satisfied on reasonable grounds that a person or organisation is no longer engaged in any terrorist or proliferation activity or the funding thereof, must request the Security Commission to de-proscribe such person or organisation.

(6) The Security Commission, if satisfied that reasonable grounds exist, must -

- (a) de-proscribe such person or organisation as requested by the Minister; and
- (b) instruct the Minister to, without delay, by notice in the *Gazette*, and when necessary by expeditious means of publication the Minister thinks appropriate -
  - (i) publish a notice of de-proscription that must take effect from the date of publication or on such date as may be specified in the notice; and
  - (ii) notify the relevant person or organisation if such person or organisation is present in Namibia.

(7) Within 30 days of publication in the *Gazette*, a proscribed person or organisation may make a written application in the prescribed manner to the Security Commission for the revocation of the order of proscription made under subsection (1).

(8) The Security Commission before considering an application for the revocation of the order of proscription must request a recommendation from the Minister.

(9) If, on an application made under subsection (7), and after considering the recommendation of the Minister, the Security Commission -

- (a) decides that reasonable grounds for revocation exists, it must revoke the order of proscription and instruct the Minister to publish a notice of revocation in the *Gazette*; or
- (b) decides that no reasonable grounds for revocation exists, it must refuse the application and must, within 30 days of receiving the application, instruct the Minister to inform the applicant of its decision.

(10) Within 60 days of receiving information of the decision referred to in subsection (9)(b), the applicant may apply to a judge for review of that decision.

- (11) Upon an application being made under subsection (10) the judge must -
  - (a) in chambers -

- 
- (i) examine any security or intelligence reports considered in recommending or making an order under subsection (1) in respect of the applicant; and
  - (ii) hear any other information that may be presented by or on behalf of the Minister or the Security Commission and may, hear all or part of that evidence or information in the absence of the applicant or any legal practitioner representing the applicant, if the judge is of the opinion that the disclosure of information would be prejudicial to the national security of Namibia or endanger the safety of any person;
- (b) provide the applicant with a statement summarizing the information available to the judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information, the disclosure of which would, in the opinion of the judge, be prejudicial to the national security of Namibia or endanger the safety of any person;
  - (c) provide the applicant with a reasonable opportunity to be heard; and
  - (d) determine whether the decision is reasonable on the basis of the information available to the judge and if found to be reasonable, make an order compelling the Security Commission to revoke the order made under subsection (1) in respect of the applicant.

(12) A judge may receive in evidence any information which he or she deems appropriate, including information obtained from the Government, private or public institution or business in Namibia, or institution, agency or business of a foreign state or an international organisation, which in the opinion of the judge, is reliable and relevant, and may base his or her decision on such evidence.

(13) Any freezing orders, arms embargoes and travel bans issued in respect of a proscribed person or organisation lapses automatically upon de-proscription.

(14) To enable the Minister and the Security Commission to execute the functions under subsections (1) and (2), the Minister and the Commission have immediate access to all relevant information required to enable the taking of a decision on proscription, regardless of how, where and by whom such information is held.

#### **Issuance of freezing orders in respect of funds belonging to or controlled by proscribed persons and organisations**

**45.** (1) After publication of the notice of proscription in terms of section 44(3), the Minister, by notice in the *Gazette*, must, without delay, issue an order for the freezing of -

- (a) any funds or assets that are owned or controlled by the proscribed person or organisation, without such funds or assets necessarily being tied to a particular terrorist or proliferation act, plot or threat;
- (b) all funds or assets that are wholly or jointly owned or controlled, directly or indirectly, by proscribed persons or organisations;

- (c) funds or assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by proscribed persons or organisations, including any interest that may accrue to such funds, or other assets; or
- (d) funds or other assets of persons or organisations acting on behalf of, or at the direction of, proscribed persons or organisations.

(2) A person or an institution referred to in Schedules I, II, III or IV of the Financial Intelligence Act must report to the Centre within a prescribed period any assets frozen or actions taken in terms of a freezing order contemplated in subsection (1).

(3) A person who claims to have a *bona fide* right to funds or assets frozen in terms of subsection (1) can apply to the Minister for the exclusion of his or her interest from the freezing order.

(4) An application referred to in subsection (3) is accompanied by a sworn statement setting out -

- (a) the nature and extent of the right, title or interest of the applicant in the funds or assets concerned;
- (b) the time and circumstances of the acquisition by the applicant of the right, title or interest in the funds or assets; and
- (c) any additional facts supporting the application.

(5) A person who or an organisation which has taken any freezing action under this section must ensure the reasonable preservation of funds and other assets in the manner as prescribed.

(6) A person whose funds has been affected by the freezing order issued in accordance with subsection (1) may submit a request to the Minister to have such funds or a portion of such funds released to cover the following -

- (a) necessary and basic expenses, including payments for rent or mortgage, foodstuffs, monthly family expenses, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) expenses exclusively for payment of reasonable professional fees, or reimbursement of incurred expenses associated with the provision of legal services;
- (c) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources;
- (d) necessary extraordinary expenses.

(7) The request to have funds released for expenses outlined in subsections 1(a), (b), (c) and (d), is assessed by the Minister within the prescribed period, and if favourably considered, the Minister must authorise the release of funds.

- (8) Any person, organisation or institution that fails to comply with -

- (a) a freezing order issued in terms of subsection (1); or
- (b) with subsection (2),

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

#### **Circulation of domestic proscription list**

**46.** (1) The Security Commission must compile a domestic list which must -

- (a) comprise of proscribed persons or organisations proscribed in terms of section 44(2); and
- (b) include information as prescribed on the proscribed persons or organisations;

(2) The Security Commission must circulate the list compiled in terms of subsection (1) to the Director of the Centre or his or her authorised representative.

(3) The Director of the Centre or his or her authorised representative must, immediately after receiving the list -

- (a) cause its publication on the website of the Centre; and
- (b) circulate the list using electronic mail, facsimile or any other expeditious means of communication to -
  - (i) all accountable institutions listed in Schedule I of the Financial Intelligence Act;
  - (ii) all supervisory bodies listed in Schedule II of the Financial Intelligence Act;
  - (iii) all reporting institutions listed in Schedule III of the Financial Intelligence Act;
  - (iv) all regulatory bodies listed in Schedule IV of the Financial Intelligence Act; and
  - (v) any other person, business, public body, office, ministry, Government institution or competent authority as the Director, considers appropriate.

(4) Section 25 applies with the necessary changes to persons or institutions to whom a domestic list has been communicated.

(5) The Security Commission must review the list annually and where applicable, update it.

(6) After the list has been updated in terms of subsection (5), the Security Commission must cause its circulation in terms of subsections (2) and (3).

(7) The Security Commission must instruct the Minister, if it thinks appropriate, to circulate the list together with the prescribed information and any request which the Security Commission considers relevant, via diplomatic channels, to another State requesting such State to take the actions as specified in the request and in the Security Council Resolutions 1373 (2001) and any of its successor resolutions.

(8) The Security Commission may also, if it thinks appropriate, propose proscribed persons or organisations to the Security Council 1267 (1999) Committee, the 1989 (2011) Committee, the 1988 (2011) Committee, the 1718 Committee or the 1737 Committee for designation, in the prescribed form and manner.

(9) A request for designation under subsection (8) -

- (a) is accompanied by as much relevant information as possible on the proposed name and sufficient identifying information to allow for the accurate and positive identification of persons or organisations for purposes of designation and to the extent possible, the information required by Interpol to issue a Special Notice;
- (b) contains a detailed statement of the case, which may, with the approval of the Security Commission in respect of those parts which the Security Commission thinks appropriate, be releasable;
- (c) a narrative summary of reasons for designation, which may, with the approval of the Security Commission, be released on websites of relevant Committees of the Security Council; and
- (d) contain advise on any consultations held with any relevant Government of a foreign state and any relevant United Nations Assistance Mission to such foreign state.

(10) Once a person or organisation has been designated by relevant Committees of the Security Council, inclusive of the 1267 (1999), 1989 (2011), 1988 (2011), 1718 or 1737 Committee, on the recommendation of the Security Commission, the Security Commission must, within a reasonable period for purposes of submission of delisting petitions, inform the designated person and organisation of -

- (a) the designation and the reasons for the designation; and
- (b) the availability of the United Nations Office of the Ombudsman and any other relevant Security Council Committees.

(11) Once a person or organisation has been designated by the 1988 (2011) Committee on the recommendation of the Security Commission, the Security Commission must inform the designated person or organisation of his or her or its right to have the designation reviewed by the 1988 (2011) Committee in accordance with any applicable guidelines or procedures adopted by that Committee, including those of the focal point mechanism established under Security Council Resolution 1730 (2006).

#### **Arms embargo on proscribed persons and organisations**

**47.** (1) The Ministry must, by issuing an arms embargo, prevent the direct or indirect supply, sale or transfer of all types of arms and related materials -

- 
- (a) from Namibia;
  - (b) by Namibian citizens outside Namibia; or
  - (c) using Namibian flagged vessels or registered aircrafts,

to proscribed persons or organisations.

(2) Any person, organisation or institution that fails to comply with or violates an arms embargo issued in terms of subsection (1) commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

### **Travel ban on proscribed persons and organisations**

**48.** (1) The Minister responsible for immigration and border control must prevent the entry into or transit through Namibia of proscribed persons and their biological or adoptive parents and children, by issuing a travel ban, but -

- (a) Namibian citizens may not -
  - (i) be denied entry into Namibia;
  - (iii) be required to depart from Namibia; or
  - (iii) be allowed to exit Namibia; and
- (b) this subsection does not apply where entry or transit is necessary for -
  - (i) the fulfilment of a judicial process;
  - (ii) humanitarian reasons; or
  - (iii) the honouring of a request received from the relevant Security Council Sanctions Committee to allow entry or transit.

(2) Where appropriate, the Minister responsible for immigration and border control, on the instruction of the Security Commission, must cause the expulsion from Namibia of designated persons or organisations or persons or organisations working for such persons or organisations, where such expulsion is mandatory under applicable Security Council Resolutions.

(3) Where the Minister responsible for immigration and border control detects the entry into or transit through Namibia of a designated person, he or she must inform the Security Commission.

(4) The Security Commission, upon a notification under subsection (3), via diplomatic channels, must inform the relevant Security Council Sanctions Committees of such entry into or transit through Namibia.

(5) Any person, organisation or institution that fails to comply with or violates a travel ban issued in terms of subsection (1) commits an offence and is liable

to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

#### **Authorisation for rendering of foreign military assistance**

**49.** (1) A person who wishes to obtain authority to render military assistance in a foreign country, other than humanitarian or civilian assistance aimed at relieving the plight of civilians in an area of armed conflict, must on payment of the prescribed fees, submit to the Minister responsible for defence an application for authorisation in the prescribed form and manner.

(2) The Minister responsible for defence may refuse an application for authorisation referred to in subsection (1), or grant the application subject to such conditions as he or she may determine, and may at any time withdraw or amend an authorisation previously so granted.

(3) An authorisation granted in terms of this section is not transferable.

#### **Register of authorisations and submission of reports**

**50.** (1) The Minister responsible for defence must maintain a register of authorisations issued under section 49.

(2) The Minister responsible for defence must every six months submit a report to National Assembly with regard to authorisations issued under section 49.

#### **Malicious arrest, search and seizure**

**51.** (1) A person who, purporting to act under this Act, wrongfully and maliciously or without probable cause, arrests or seizes the funds of or under the control of any other person, or effects any search, commits an offence and is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(2) Nothing in this section may be construed as taking away or diminishing any civil right or liability in respect of a wrongful or malicious arrest.

### **PART 5**

#### **JURISDICTION AND PROCEDURAL MATTERS**

##### **Jurisdiction of High Court in respect of offences under this Act**

**52.** (1) The High Court has jurisdiction in respect of any offence under this Act, if -

- (a) the perpetrator of the act is arrested in Namibia, on board a ship flying the flag of Namibia or an aircraft registered in Namibia; or
- (b) the act or any part of such act has been or is committed -
  - (i) in Namibia, on board a ship flying the flag of Namibia or on an aircraft registered in Namibia;



- 
- (ii) outside Namibia and the act in question amounts to an offence under this Act;
  - (iii) on a fixed platform located on the continental shelf of Namibia or on board a vessel, a ship flying the flag of Namibia or an aircraft which is registered or ought to be registered under the laws of Namibia at the time the offence is committed;
  - (iii) by a national or group of nationals of Namibia or a person ordinarily resident in Namibia;
  - (v) against a national of Namibia or a person ordinarily resident in Namibia;
  - (vi) outside Namibia and during the commission of that act a national of the Namibia is seized, threatened, injured or killed;
  - (vii) against Namibia or a Namibian government facility, whether such facility is a temporary or permanent facility, and includes an embassy or other diplomatic or consular premises or any other property of Namibia;
  - (viii) by a stateless person or refugee who has his or her habitual residence in Namibia; or
  - (ix) on board an aircraft which is operated by any carrier registered in Namibia;
- (c) Namibia has received an extradition request from a requesting State seeking the surrender of a fugitive located in Namibia in respect of any conduct that would amount to an offence under this Act who for any reason cannot be extradited to such requesting State, or if there is no extradition request made by any State and the fugitive is located in Namibia; or
- (d) the evidence reveals any other basis recognised by law.
- (2) An offence committed in a country outside Namibia as contemplated in this section is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed -
- (a) at the place where the accused is ordinarily resident; or
  - (b) at the principal place of business of the accused person.
- (3) Where a person is charged with conspiracy or incitement to commit an offence or as an accessory after that offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator, inciter or accessory acted or in case of an omission, should have acted.
- (4) Whenever the Inspector-General receives information from an appropriate Government body of a foreign State that a person who is alleged to have

committed, or is convicted of, or is sentenced in respect of any offence in respect of which -

- (a) a court in Namibia has jurisdiction; or
- (b) any court in a foreign State may have jurisdiction, may be present in Namibia, the Inspector-General must cause such measures to be taken as he or she may consider necessary to investigate the matter.

### **Suspension of sentence**

**53.** Despite anything to the contrary in any law, no person, upon conviction of an offence under this Act, may be dealt with under section 297 of the Criminal Procedure Act, if such person was at the time of the commission or attempted commission of that offence 18 years of age or older.

### **Sentence to be served consecutively**

**54.** A sentence, other than one of life imprisonment, imposed on a person for an offence under this Act, runs consecutively to -

- (a) any other punishment imposed on the person, for an offence arising out of the same event or series of events; and
- (b) any other sentence, to which the person is subject at the time the sentence is imposed on the person for an offence under this Act.

### **Communication of outcome of prosecutions**

**55.** If a person is prosecuted for an offence under this Act, the Prosecutor-General through the Minister responsible for foreign affairs must promptly and within a reasonable period communicate the final outcome of the proceedings to the relevant committees of the Security Council, so that information so submitted may be transmitted to other State Parties of the United Nations.

### **Evidence by certificate**

**56.** Where in any proceedings for an offence under this Act, a question arises as to whether anything or substance is a weapon, a hazardous, a chemical, a radioactive, a nuclear, ballistic or a harmful substance, a toxic chemical or microbial or other biological or chemical agent or toxin, a certificate purporting to be signed by an appropriate authority to the effect that the thing or substance described in the certificate is a weapon, hazardous, chemical, radioactive, nuclear or harmful substance, a toxic chemical or microbial or other biological or chemical agent or toxin, is -

- (a) admissible in evidence in the absence of evidence to the contrary; and
- (b) as proof of the facts stated therein.

### **Bail in respect of offences under this Act**

**57.** (1) For purposes of this Act, an application for bail may only be made before the High Court or a regional court magistrate.

(2) Despite any provision to the contrary in any law, where an accused stands trial on a charge under this Act, the provisions relating to bail in the Criminal Procedure Act applies as if the accused is charged with an offence referred to in Schedule 6 of that Act.

#### **Powers of court with regard to recalcitrant witness**

**58.** (1) Section 189 of the Criminal Procedure Act applies in respect of a person who -

- (a) refuses to be sworn in or to make an affirmation as a witness; or
- (b) having been sworn in or having made an affirmation as a witness -
  - (i) refuses to answer any question put to him or her; or
  - (ii) refuses or fails to produce any book, paper or document required to be produced by him or her.

### PART 6

#### GENERAL PROVISIONS

#### **Participation in commission of ancillary offence under this Act**

**59.** A person who -

- (a) attempts to commit;
- (b) threatens to commit;
- (c) prepares to commit;
- (d) conspires, whether in or outside Namibia, to commit;
- (e) aids, abets, facilitates, supports or counsels the commission of; or
- (f) incites the commission of,

any offence under this Act commits an offence and is liable to the same sentence prescribed for such offence by or under this Act.

#### **Indemnity**

**60.** A person, generally or specifically authorised to perform any function in terms of this Act, may not be held liable for anything done or omitted to be done in good faith under this Act, unless such thing is done or omitted to be done due to the gross negligence of such person.

#### **Regulations**

**61.** (1) The Minister may make regulations relating to -

- (a) the criteria to be taken into account in the consideration of an application for approval under section 49;
- (b) the maintenance of the register;
- (c) the fees payable for an application under section 49;
- (d) where necessary in certain situations, the full implementation of binding Resolutions of the Security Council concerning the compliance with measures to prevent or to combat any terrorist activity or proliferation activity; and
- (e) generally any matter, which is required or permitted in terms of this Act to be prescribed, or which the Minister may consider necessary or expedient for the implementation of this Act.

(2) A regulation relating to the payment of a fee must be made with the consent of the Minister responsible for finance.

(3) A regulation made under this Act may prescribe penalties for any contravention or non-compliance with any provision of the regulation not exceeding a fine of N\$50 million or imprisonment for a period not exceeding 15 years, or both such fine and such imprisonment.

### **Delegation**

**62.** The Minister may, in writing, delegate any of the powers conferred on him or her under this Act to the Deputy Minister or Permanent Secretary of the Ministry responsible for the administration of safety and security affairs, except the power to make regulations.

### **Repeal and amendment of laws**

**63.** The laws set out in the Schedule are repealed or amended to the extent set out in Column 3 of the Schedule.

### **Savings provisions**

**64.** Anything done under the Act repealed by section 63 that could be done under a corresponding provision of this Act is deemed to have been done under the corresponding provision.

### **Short title and commencement**

**65.** This Act is called the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014, and commences on a date determined by the Minister by notice in the *Gazette*.

## SCHEDULE

**Laws Repealed and Amended**

(Section 63)

No. and year of law	Short title	Extent of repeal or amendment
Act No. 12 of 2012	Prevention and Combatting of Terrorist Activities Act, 2012	The repeal of the whole
Act No. 13 of 2012	Financial Intelligence Act, 2012	<p data-bbox="692 640 1286 703"><b>1.</b> The substitution for the long title of the following long title:</p> <p data-bbox="692 741 1286 1440"><b>“To provide for the establishment of the Financial Intelligence Centre as the national centre responsible for collecting, requesting, receiving and analysing suspicious transaction reports and suspicious activity reports which may relate to possible money laundering, the financing of terrorism or proliferation; to provide for the objects, powers and functions of the Centre; to provide for the combating of money laundering, the financing of terrorism and proliferation; to provide for the establishment of the Anti-Money Laundering and Combating of the Financing of Terrorism and Proliferation Council, and for its functions; to provide for the registration of accountable and reporting institutions; to provide for the powers and functions of the supervisory bodies; to empower the Minister to appoint an appeal board to hear and decide appeals against decisions of the Centre or supervisory bodies; and to provide for incidental matters.”.</b></p> <p data-bbox="692 1473 1091 1503"><b>2.</b> The amendment of section 1 -</p> <p data-bbox="692 1541 1286 1603">(a) by the insertion after the definition of “establish identity” of the following definition:</p> <p data-bbox="767 1637 1286 1794">“financing of proliferation” means the provision of funds, assets or financial services which are used, in whole or in part, for proliferation, and “funding of proliferation” or “funding of proliferation activities” has the same meaning;”;</p> <p data-bbox="692 1827 1286 1890">(b) by the substitution for the definition of “financing of terrorism” of the following definition:</p> <p data-bbox="767 1924 1286 2018">“financing of terrorism” means the provision of funds, assets or financial services which are used, in whole or in part, for any terrorist activity</p>

		<p>defined in section 1 of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No.....of 2014) and “funding of terrorism” or “funding of terrorist activities” has the same meaning;”;</p> <p>(c) by the insertion after the definition of “proceeds of unlawful activities” of the following definition:</p> <p>“proliferation” means the manu-facture, acquisition, possession, development, export, transshipment, brokering, transport, transfer, stockpiling, supply, sale or use of nuclear, ballistic, chemical, radiological or biological weapons or any other weapon capable of causing mass destruction, and their means of delivery and related materials, including both technologies and dual-use goods used for non-legitimate purposes, including technology, goods, software, services or expertise, in contravention of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No.....of 2014) or, where applicable, <u>international obligations</u>;”;</p> <p>(d) the substitution for the definition of “risk management systems” of the following definition:</p> <p>“risk management systems” means policies, procedures and controls that enables an accountable institution to establish the risk indicators used to characterise clients, products and services to different categories of risk (low, medium or high risk) with the aim of applying proportionate mitigating measures in relation to the potential risk of money laundering or <u>[terrorist] financing of terrorism or proliferation</u> in each category of risk established;”.</p> <p><b>3.</b> The insertion of the words -</p> <p>(a) <u>“or proliferation”</u> after the word “terrorism”, wherever it occurs in the Act;</p> <p>(b) <u>“and Proliferation”</u> after the word “Terrorism” in sections 12(1)(i) and 17.</p> <p><b>4.</b> <u>The substitution for subparagraph (ii) of paragraph (e) of subsection (1) of section 9 of the following subparagraph:</u></p> <p>“(ii) money laundering and <u>[terrorist] financing of terrorism or proliferation</u> investigations, prosecutions and convictions;”.</p>
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		<p><b>5.</b> The substitution for subparagraph (ii) of paragraph (b) of subsection (15) of section 35 of the following subparagraph:</p> <p>“(ii) any terrorist <u>or proliferation activity</u> or financing of terrorism <u>or proliferation</u> related activity.”.</p> <p><b>6.</b> The substitution for subparagraphs (iii) and (iv) of paragraph (a) of subsection (2) of section 37 of the following subparagraphs:</p> <p>“(iii) <u>may be used to commit the offence of terrorism or [terrorist] financing of terrorism or proliferation;</u></p> <p>(iv) <u>is connected to terrorist or proliferation activities or [terrorist] financing of terrorism or proliferation [activities];</u>”.</p> <p><b>7.</b> The substitution of the following subsection for subsection (1) of section 50:</p> <p>“(1) Where a person discloses to the Centre information in terms of section 33, that any proceeds of unlawful activities is used in connection with or derived from money laundering, or <b>[terrorist] financing of terrorism or proliferation</b> or any matter on which that information is based -”.</p>
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