



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 298

2012

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 12 of 2012:    Prevention and Combating of Terrorist Activities Act, 2012.

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Act No. 12, 2012

**PREVENTION AND COMBATING OF TERRORIST  
ACTIVITIES ACT, 2012****ACT**

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

*(Signed by the President on 5 December 2012)*

**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 for the time being having the management of an airport or, in relation to a particular airport, the management of 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;

“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 a person, the person who is for the time being the pilot in command of the aircraft;

“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;

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

“delisted” means the removal by the United Nations Security Council of the names of an organisation or person that appears on the sanctions list of the United Nations Security Council;

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“deproscribe” means the removal of a name of an organisation or person that appears in a notice issued under section 41(2);

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

“funds” for purposes of this Act means -

- (a) cash;
- (b) assets;
- (c) real or personal property of any description, whether tangible or intangible, however acquired;
- (d) an interest in any real or personal property, however acquired;
- (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; and
- (f) any letter or document conferring or containing any evidence of rights in respect of any security;

“Inspector-General” means the Inspector-General of Police referred to in Article 116 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 has the capability, to cause death, serious bodily injury or material 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 damage through the release, dissemination or impact of toxic chemicals, biological 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 -

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

“prescribed” means prescribed by regulation;

“proscribed” means as proscribed by the Minister in collaboration with the Security Commission in terms of section 41;

“register” means the register maintained under section 45;

“sanctions list” means a list of names of persons and or organisations that have been designated by the United Nations Security Council under Chapter VII of the United Nations Charter, or under the authority of the United Nations Security Council, to be an organisation or person or a person or organisation associated with such a person or organisation against whom Member States of the United Nations must take those actions for the preventing or combating of any terrorist activity specified in Resolutions of the said Security Council;

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

“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;

“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 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, instill 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

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- (b) 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);

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

“weapon” means, any object, including a biological or chemical agent or substance, made or modified to be used to injure, disable or kill a person or cause substantial damage to property, 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.

(2) Despite any provision of this Act or any other law to the contrary, any act committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces in accordance with the principles of international law, is not considered a terrorist activity, as defined in subsection (1).

(3) Despite any provision to the contrary in any other law, but subject to subsection (2), a political, philosophical, ideological, racial, ethnic, religious or any similar motive, is not considered to be a justifiable defence in respect of an offence created in terms of 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\$10 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

**Offences associated or connected with financing of specified offences**

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

- (a) deals with, enters into or facilitates any transaction 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, collected, used, possessed, owned or provided for the-

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- (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 person or organisation listed as contemplated under section 21; or
  - (iv) benefit of a proscribed organisation,
- (b) provides financial or other services in respect of funds referred to in paragraph (a),

commits an offence and is liable to a fine not exceeding N\$5 million or to a period of imprisonment not exceeding 30 years or to both such fine and such imprisonment.

(2) Any person who knows or ought reasonably to have known or suspected that funds 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 or control 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 person or organisation listed as contemplated in section 21 or a proscribed 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 anyone 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\$1 million or to a period of imprisonment not exceeding 20 years, or to both such fine and such imprisonment.

- (3) For purposes of this section –
- (a) “specified offence”, means -
    - (i) an offence specified in this Act; or
    - (ii) any activity outside Namibia which constitutes an offence under the law of another state and which would have constituted an offence referred to in subparagraph (i), had that activity taken place in Namibia;

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- (b) “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 a customer:
- (i) acceptance of deposits and other repayable funds from the public;
  - (ii) lending;
  - (iii) financial leasing;
  - (iv) transferring money or value;
  - (v) issuing and managing means of payment;
  - (vi) financial guarantees and commitments;
  - (vii) trading in –
    - (aa) money market instruments;
    - (bb) foreign exchange;
    - (cc) exchange, interest rates and index instruments;
    - (dd) transferable securities; or
    - (ee) commodity futures trading.
  - (viii) participation in securities issues and the provision of financial services related to such issues;
  - (ix) individual and collective portfolio management;
  - (x) safekeeping and administration of cash or liquid securities on behalf of other persons;
  - (xi) otherwise investing, administering or managing funds or money on behalf of other persons;
  - (xii) underwriting and placement of life insurance and other investment related insurance;
  - (xiii) money and currency changing;
  - (xiv) any other similar service.

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

**4.** 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 -

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- (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;
- (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 their 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 the safety of maritime navigation**

**5.** (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;
- (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

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- (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 any 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;  
(d) exclusive economic zone of Namibia, determined and defined in section 4,

of that Act.

**Taking of hostages**

**6.** A person who seizes or detains another person with the intention to, or with the threat to, endanger such person’s life, physical integrity or freedom 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**

**7.** (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 any person is pursuant to international law 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.

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ACTIVITIES ACT, 2012****Offences relating to fixed platforms**

**8.** (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**

**9.** A person who—

- (a) possesses or demands radioactive material;
- (b) designs, manufactures, possesses or demands the possession of a device capable of emitting radioactive material; or
- (c) damages a nuclear facility in a manner which releases or risks the release of radioactive material,

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and who has, by virtue of such possession, demand, design, manufacture or destruction, the intention of inducing economic, property or environmental 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, commits an offence and is liable to life imprisonment.

**Arrangements for retention or control of funds belonging to or controlled by person involved in terrorist activity**

**10.** (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 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\$1 million or to imprisonment for a period not exceeding 20 years.

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

commits an offence and is liable to a fine not exceeding N\$1 million or to imprisonment for a period not exceeding 20 years, or to both such fine and such imprisonment.

**Recruitment of persons as members of organisations or to participate in terrorist activity**

**11.** A person who knowingly agrees to recruit, or recruits, another person to-

- (a) be a member of a terrorist organisation; or
- (b) participate in the commission of any terrorist activity,

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

**Membership of organisation involved in terrorist activity**

**12.** A person who is or who attempts to be a member of a an organisation involved in any terrorist activity commits an offence, and is liable to imprisonment for a period not exceeding 20 years.

**Use and possession of funds for terrorist activity**

**13.** A person who -

- (a) uses funds or any part thereof to commit a terrorist 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 activity,

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

**Attendance at place used for training in terrorist activity**

**14.** 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 activity;
- (b) for the purposes of committing or preparing to commit a terrorist activity or for any purposes connected with the commission or preparation of any terrorist 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 activity,

commits an offence and is liable to a fine of N\$10 million or to imprisonment for a period not exceeding 20 years, or to both such fine and such imprisonment.

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

**15.** (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

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- (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 to services or damage to property, that any noxious or hazardous substance, lethal device, explosive or other similar thing has been or will be sent from one place to another by post, rail or by any other means, or is present or will be placed anywhere, commits an offence and is liable to a fine of N\$1 million or to a period of imprisonment not exceeding 20 years, or to both such fine and such imprisonment.

(3) For the purposes of this section “substance” includes any biological or chemical 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**

**16.** (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, 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) Any citizen of Namibia, or person ordinarily resident within 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 activity**

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

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**18.** 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 activity, commits an offence and is liable to a fine not exceeding N\$1 million or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment.

**Collection of information**

**19.** (1) A person who possesses, or makes a record of or collects information likely to be used in the preparation of the commission or attempted commission of a terrorist activity, commits an offence and is liable to imprisonment for a period not exceeding 10 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 State or organisation**

**20.** 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 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 44,

commits an offence and is liable to a fine not exceeding N\$1 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****Notice of listed and delisted persons and organisations**

**21.** (1) The Security Commission, in addition to their functions ascribed in terms of the Security Commission Act, 2001 (Act No. 18 of 2001), upon receipt of a list issued under Chapter VII of the Charter of the United Nations by the Security Council of the United Nations listing a person or organisation or a person associated with that person or organisation, as being a person or organisation against

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whom Member States of the United Nations must take actions in order to combat or prevent any terrorist activity, must -

- (a) assess the list and instruct -
  - (i) the Minister to take such steps as set out in section 24 in order to freeze the funds, of listed individuals or organisations, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction and ensuring that neither these nor any other funds are made available, directly or indirectly for such persons' benefit, by Namibian nationals or by persons within the territory;
  - (ii) the Ministry responsible for immigration and border control, on the prevention of entry into or transit through Namibia of these individuals, but Namibian citizens may not be denied entry or be required to depart from Namibia, and this subparagraph does not apply where entry or transit is necessary for the fulfilment of a judicial process;
  - (iii) the Ministry responsible for safety and security, on the prevention of the direct or indirect supply, sale, or transfer to these individuals or organisations of all types of arms and related material-
    - (aa) from Namibia; or
    - (bb) by Namibian citizens outside Namibia; or
    - (cc) using Namibian flag vessels or aircrafts;
- (b) notify and inform a listed person or organisation of the designation and include in this notification, a narrative summary of the reasons for designation, provide a description of the effects of designation, as well as outlining the Security Council Committee's prescribed procedures for considering delisting requests;
- (c) before instructing the Minister to take action under subsection (1)(a)(i), determine which part of the funds of listed individuals or organisations are necessary for -
  - (i) basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatments, taxes, insurance premiums, public utility charges; or
  - (ii) payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
  - (iii) fees or service charges for routine holding or maintenance of frozen funds,

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and notify the Committee established pursuant to relevant United Nations Security Council Resolutions of the intention to authorise, where appropriate, access to such funds, assets or resources;

- (d) communicate actions taken by Namibia to the United Nations Security Council, through the Ministry responsible for foreign affairs;
- (e) authorise within three days, upon written application made by any listed person or organisation in writing, any person to make funds available for extraordinary expenses: provided that-
  - (i) it notifies the relevant Committee of the United Nations Security Council of such intent;
  - (ii) no negative decision by the relevant Committee of the United Nations Security Council was received within three days of such notification.

(2) The Security Commission must transmit to the United Nations Security Council, delisting requests received from a listed organisation or person, or an organisation or person associated with that organisation or person, in accordance with the prescribed procedures.

(3) When the Security Council of the United Nations delist any organisation or person, or an organisation or person associated with that organisation or person that was previously listed, the Minister, by notice in the *Gazette* and in any other appropriate expeditious means of publication, on the recommendation of the Security Commission, must publish the names and particulars of the persons or organisations that have been delisted, including any other list that was previously issued before the commencement of this Act.

(4) For the purposes of this Part, a Minister referred to in this Part, the Security Commission, the State, an accountable institution or any other person performing a function or power exercised in good faith to give effect to Namibia's compliance with the United Nations Security Council Resolutions, is not liable for anything in relation to the performance of such a function or exercise of such a power.

(5) If the Security Council of the United Nations takes any decision which has the effect of postponing, suspending or cancelling the operation of a resolution adopted by it, either in whole or in part, any measures that the State of Namibia might have taken to give effect to such a resolution, must also cease to have effect or its operation must be 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.

(6) The Minister must, by notice in the *Gazette* and in any other appropriate expeditious means of publication, on the advice of the Security Commission, publish the particulars of the decisions referred to in subsection (5).

(7) 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, assistance, or training related to military activities.

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**Request by persons or organisations listed by the United Nations Security Council**

**22.** (1) A Namibian citizen or a person ordinarily residing in Namibia, claiming not to be a member of an organisation or a person, or a person or organisation associated with that person or organisation, appearing on the sanctions list of the United Nations Security Council, may in addition to section 21(2) and in accordance with the Guidelines of the United Nations Security Council, submit a written request to the United Nations Security Council to be delisted from the sanctions list.

(2) The request to be delisted is directed to the United Nations Security Council, or directly to the applicable Sanctions Committee and is submitted via the Security Commission for onward transmission to the United Nations Security Council or such sanctions committees.

(3) A Namibian citizen residing in Namibia claiming not to be a member of an organisation or person or a person or organisation associated with that person, or entity appearing on the sanctions list of the United Nations Security Council may in addition to section 21(2) –

- (a) seek diplomatic protection from the Government of Namibia in his or her endeavours to be delisted from the sanctions list; or
- (b) make representations either on his or her own behalf or the organisation to the Minister or the President of Namibia requesting the Government of Namibia to engage the United Nations Security Council with a view to have that person or organisation delisted on the sanctions list of the United Nations Security Council.

(4) When submitting a request for delisting to the United Nations Security Council, the Security Commission may on behalf of the Government of Namibia support a request for delisting if there are reasonable grounds to show that the person or organisation making the request, is not connected to any terrorist activity.

(5) Upon submitting a request for delisting to the United Nations Security Council or upon receipt of a response from the United Nations Security Council, the Security Commission must notify the person that made the request of the submission or the response of the United Nations Security Council.

**Prohibition of making funds available to or on behalf of listed person or organisation, or a person or organisation associated with either of them**

**23.** Any person who knows or ought reasonably to know or suspect that he or she either directly or indirectly makes any funds available to or on behalf of or for the benefit of –

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

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commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment.

**Issuance of freezing orders in respect of persons or organisations listed by the United Nations Security Council**

**24.** (1) A High Court may, on *ex parte* application by the Minister to a judge in camera, make an order prohibiting any person from engaging in any conduct, or obliging any person to cease any conduct, concerning funds in respect of which there are reasonable grounds to believe that the funds is owned or controlled by or on behalf of, or at the direction of a person or organisation or a person or organisation associated with that person or organisation, as being a person or organisation listed by the Security Council of the United Nations, against whom Member States of the United Nations must take actions in order to combat or prevent any terrorist activity.

(2) An order made under subsection (1) may include an order to freeze any such funds.

(3) A High Court may make an interim order under subsection (1) pending its final determination of an application for such an order.

(4) On an application made under subsection (1), the Court may, where the circumstances so require –

- (a) appoint a suitable person to take control of, and manage or otherwise deal with, the whole or a part of the funds, in accordance with the directions of the Court;
- (b) require any person having possession of the funds to give possession thereof to the person appointed under paragraph (a).

(5) An order issued under this section can be served or circulated to any person, organisation or institution affected by this order by facsimile or any other means of communication.

(6) A person, organisation or institution that fails to comply with the terms of a freezing order commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment.

(7) Any interest that may accrue to funds subject to a freezing order, remains part of the funds.

**Release of funds on humanitarian and other grounds**

**25.** (1) The High Court of Namibia may, on the application of an affected person or organisation, order that the restraint of funds referred to in section 24 does not apply to funds and other financial assets or economic resources that the Court determines to be –

- (a) necessary for basic expenses, including payments for rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;

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- (b) exclusively for payment of reasonable professional fees, 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; or
- (d) necessary for extraordinary expenses.

(2) Upon an order for release of funds granted by the High Court in terms of subsection (1) the Minister must communicate the court order to the United Nations Security Council or applicable Sanctions Committees.

**Lapsing, rescission and varying of freezing orders**

**26.** (1) The Minister may at any time apply to a judge in camera to rescind or vary an order issued under section 24.

(2) A person affected by an order made in terms of section 24(1) may at any time apply to a judge in camera to rescind or vary such an order.

(3) An order granted by the High Court which freezes the funds of a person or organisation under section 24, automatically lapses if such person or organisation is confirmed to be erroneously listed or is subsequently delisted by the United Nations Security Council or the Sanctions Committees.

**Orders for disposal of funds**

**27.** (1) The Minister may make an application to the High Court for a preservation order in respect of funds frozen in terms of section 24 or section 42.

(2) Property preserved under subsection (1) must be dealt with in accordance with the direction of the High Court.

(3) The Minister may make an application to the High Court for a disposal order in respect of funds frozen in terms of section 24 or section 42, which application may include an application for forfeiture.

(4) Notice of an application under subsection (3) must be given to all persons having an interest in the funds referred to in subsection (3).

(5) If the court is satisfied, on a balance of probabilities, that funds, which is the subject of the application, is funds referred to in section 24(1) or section 42(1), the court must order that such funds be disposed of as directed by the Court.

(6) If the Court is satisfied that a person referred to in subsection (4) –

- (a) has an interest in the funds which is the subject of the application;
- (b) has exercised reasonable care to ensure that the funds is not funds referred to in section 28(1), would not be used to commit or facilitate the commission of an act of terrorism and would not be used by a proscribed organisation; and

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(c) is not a member of a proscribed organisation,

the Court must order that the interest may not be affected by the order and must declare the nature and extent of the interest in question.

(7) A person who claims an interest in funds that has been disposed of and who has not been given notice under subsection (4) may make an application to the Court to vary or set aside an order made under subsection (5) not later than 60 days after the day on which the disposal order was made.

(8) Pending the determination of an appeal against a disposal order made under this section, funds frozen under sections 24(1) and (2) continues to be frozen, and any person appointed to manage, control or otherwise deal with the funds continues in that capacity.

(9) This section does not affect the operation of any other provision of this Act in respect of disposal.

(10) Upon delisting of an individual or organisation that has been erroneously listed by the United Nations Security Council the State must, where the court has made a disposal order of forfeiture in favour of the State, reimburse such individual or organisation the current market value of such forfeited funds.

(11) The release of funds as referred to in subsection (5) in favour of a deceased's or insolvent estate or a defunct organisation is dealt with in terms of the succession, insolvency and companies laws of Namibia.

**Requests to the United Nations Security Council to release funds or a portion of funds that has been frozen**

**28.** (1) A person whose funds has been affected by the freezing order issued in accordance with section 24 may in addition to section 25, submit a request to the United Nations Security Council to have such funds or a portion of such funds released on humanitarian grounds.

(2) The request to have funds released is directed to the United Nations Security Council, but is submitted via the Security Commission for onward transmission to the United Nations Security Council.

(3) A Namibian citizen residing in Namibia that has been affected by the freezing order issued in accordance with section 24, may in addition to section 25, make representations either on his or her own behalf or the organisation to the Security Commission or the President of Namibia requesting the Government of Namibia to engage the United Nations Security Council with a view to have the frozen funds or a portion of such funds released on humanitarian grounds.

(4) When submitting a request to the United Nations Security Council to have frozen funds released, the Security Commission may on behalf of the Government of Namibia support a request for release if there are humanitarian grounds warranting release.

(5) Upon submitting a request to the United Nations Security Council to have the frozen funds released or upon receipt of a response from the United Nations

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Security Council, the Security Commission must notify the person that made the request of the submission or of the response of the United Nations Security Council.

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

**29.** (1) Where a foreign state, pursuant to a resolution by the United Nations Security Council calling on states to cooperate with one another in the prevention and suppression of the financing of any terrorist activity, requests Namibia to restrain the funds and other financial assets or economic resources of-

- (a) persons designated by the requesting state as persons who commit, or attempt to commit, terrorist activities or participate in, or facilitate the commission of terrorist activities;
- (b) organisations owned or controlled directly or indirectly by such persons; or
- (c) persons and organisations acting on behalf of, or at the direction of such persons and organisations, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and organisations,

such request is submitted to the Minister responsible for justice via the central authority for mutual legal assistance.

- (2) A request for assistance must contain -
  - (a) a statement or statements detailing the facts on which it is believed that the person whose funds is to be restrained, is engaged in any terrorist activity, or associated with any terrorist activity;
  - (b) 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;
  - (c) the full particulars of the person affected, to establish that person's identity and location with reasonable certainty;
  - (d) 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, where known;
  - (e) a statement or statements detailing any criminal proceedings concluded, pending or contemplated against the person in the requesting country.

(3) The Minister responsible for justice, if satisfied that it is desirable and in the interests of justice that such assistance be granted, must, within the prescribed period, forward the request with such observations as the Minister may make, to the Security Commission for its determination.

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(4) If the information provided is, in the opinion of the Minister, 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 so advises, the Minister must immediately proceed in the same manner and using the same process, as set out in section 24, for purposes of freezing identified funds.

(6) The process for *ex parte* applications, determination of order on return date, appeal and the release of funds on humanitarian and other grounds is with the necessary changes applicable to this section.

**Prohibition of procuring, supplying or provision of certain weapons, arms and related material, technical assistance and training**

**30.** Any person who, directly or indirectly -

- (a) supplies, delivers, sells or transfers;
- (b) agrees to supply, deliver, sells or transfers, or
- (c) does any act calculated to promote the supply, delivery, sale or transfer of,

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

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

commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment.

**Denial of entry or transit into the territory of Namibia**

**31.** An immigration officer must deny entry or transit into the territory of Namibia to any listed person except -

- (a) if such a person is a citizen of Namibia;
- (b) where entry or transit is necessary for the fulfillment of a judicial process; or
- (c) where the United Nations Security Council Sanctions Committees has determined that transit is justified.

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**Prohibition of landing or departure of certain flights**

- 32.** (1) Except under the authority granted by the Minister-
- (a) an aircraft, wherever registered, may not take off from, land in or fly over the territory of Namibia, if its destination is, or if it has taken off from any place designated by the United Nations Security Council; and
  - (b) an aircraft designated by the United Nations Security Council owned, leased or operated by or on behalf of a listed person or organisation, wherever registered, may not take off from or land in the territory of Namibia.

(2) If an aircraft is used in contravention of this section, the operator and the captain of the aircraft commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment.

**Powers of airport operator**

**33.** (1) For the purpose of enforcing the prohibitions contained in section 32, 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 United Nations 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 United Nations Security Council as owned, leased or operated by or on behalf of a listed person or organisation,

is prevented from taking off unless permission to do so has been granted under section 32.

(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 refueling service for the aircraft;
- (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, his servants or agents acting in accordance with the provisions of this section, or refuses or fails within a reasonable time to comply with a requirement by any such persons made in accordance with the provisions of this section, commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment.

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## PART 4

## INVESTIGATING POWERS AND OTHER ANTI-TERRORISM MEASURES

**Road closure**

**34.** (1) If the Inspector-General or a member of the Police considers it necessary for the combating of any terrorist 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\$4 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

- (3) For the purpose of this section -
- (a) “road closure equipment” means any apparatus, equipment or other material used in pursuance of an order under subsection (1); and
  - (b) “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**

**35.** (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 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 person 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

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- (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, 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 -

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- (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\$500 000 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 of organisations**

**36.** (1) A person in Namibia must disclose to the Inspector-General information about the existence of any funds in his or her possession or control, which to his or her knowledge, is owned, controlled by a person involved in any terrorist activity or an organisation, within 30 days after he or she becomes aware that he or she possesses or control such funds.

(2) The Inspector-General may disclose to any law enforcement agency of a foreign state any information in its possession relating to any funds owned or controlled by a person involved in any terrorist activity or an organisation, if such information is requested or if the Inspector-General is of the view that the information would be relevant to a foreign state.

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

- (a) that person is willing to testify in court in accordance with such information; or
- (b) in the view of the Prosecutor-General, the information is essential –
  - (i) to prevent any offence under this Act; or
  - (ii) to institute proceedings in respect of any offence under this Act,

and that is in his or her view in the interest of justice that such a person be indemnified against prosecution.

(4) A person who fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$ 500 000 or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment.

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

**37.** (1) Despite anything to the contrary contained 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 authorizing 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 authorize 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;
  - (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 in proceedings for an offence under this Act, as evidence of the truth of its contents despite the fact that it contains hearsay.

(4) Subsections (2) or (3) of this section, 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**

**38.** (1) A warrant contemplated in section 37(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 activity; or

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- (ii) any such terrorist activity cannot be properly investigated in any other manner.

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

- (a) the facts constituting reasonable grounds that necessitate the issuing of a warrant to enable the investigation of a terrorist 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 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

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- (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**

**39.** (1) If a warrant has been issued under section 38(1) for purposes of section 37(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 38(1) for purposes of section 37(2)(b) or (c) a member of the Police force 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 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.

**Exchange of information relating to terrorist organisations and terrorist activity**

**40.** The Minister, in collaboration with the Security Commission, may on request made by the appropriate authority of a foreign state, through appropriate

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channels disclose to that authority any information in his or her possession or in the possession of any government department or agency, relating to -

- (a) the actions or movements of organisations or persons suspected of involvement in the commission of any terrorist activity;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist activities;
- (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;
- (d) the use of communication technologies by terrorist organisations,

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

**Proscription of individuals or Organisations**

**41.** (1) For the purposes of this Act, the Minister, in collaboration with the Security Commission, may proscribe an individual or organisation, if the individual or organisation -

- (a) commits or participates in any terrorist activity;
- (b) prepares to commit any terrorist activity;
- (c) promotes or encourages any terrorist activity;
- (d) is in any way involved in any terrorist activity;
- (e) in giving effect to the global effort to prevent and combat terrorism, the Minister has received a request or communication from a foreign state acting under the auspices of the United Nations Security Council Resolution 1373 of 2001 or any other similar resolution and the Minister is satisfied that there are reasonable grounds to proscribe an individual or organisation mentioned in the foreign request or communication.

(2) In each case of proscription, the Minister must publish a notice of proscription in the *Gazette* and any other appropriate expeditious means of publication and such proscription takes effect from the date of publication in the *Gazette* or on such date as may be specified therein.

(3) The Minister, in collaboration with the Security Commission, if duly satisfied that an individual or organisation is no longer engaged in any terrorist activity, by notice in the *Gazette*, may deproscribe such individual or organisation proscribed in terms of subsection (1).

(4) Within 30 days of publication in the *Gazette* a proscribed individual or organisation may make a written application to the Minister for the revocation of the order of proscription made under subsection (1).

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- (5) If, on an application made under subsection (4), the Minister -
- (a) decides that there are reasonable grounds for revocation, he or she must revoke the order, and publish a notice of revocation in the *Gazette*; or
  - (b) decides that there are no reasonable grounds for revocation, he or she must refuse the application and must within 30 days of receiving the application, inform the applicant of his or her decision.
- (6) Within 60 days of receiving information of the decision referred to in subsection (5), the applicant may apply, to a judge for review of that decision.
- (7) Upon an application being made under subsection (5) the judge must -
- (a) examine in chambers, any security or intelligence reports considered in recommending or making an order under subsection (1) in respect of the applicant and hear any other information that may be presented by or on behalf of the Minister 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 the information would be prejudicial to the national security of Namibia or will 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 judge's opinion, 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 Minister to revoke the order made under subsection (1) in respect of the applicant.
- (8) A judge may receive in evidence, anything including information obtained from the Government or institution or agency of a foreign state or an international organisation, which in the opinion of the judge, is reliable and relevant, even if the evidence would not otherwise be admissible in law, and may base his or her decision on that evidence.
- (9) The Minister responsible for immigration and border control must prevent the entry into or transit through Namibia of proscribed individuals, but -
- (a) Namibian citizens may not be denied entry or be required to depart from Namibia; and
  - (b) this subsection does not apply where entry or transit is necessary for the fulfilment of a judicial process.

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(10) The Ministry responsible for safety and security must prevent the direct or indirect supply, sale, or transfer to proscribed individuals or organisations, of all types of arms and related material-

- (a) from Namibia; or
- (b) by Namibian citizens outside Namibia; or
- (c) using Namibian flag vessels or aircrafts.

**Issuance of freezing orders in respect of funds belonging to or controlled by a proscribed individual or organisation**

**42.** (1) The High Court on application of the Minister may issue a freezing order to an accountable institution freezing any funds or financial resource including funds derived or generated from property owned or controlled directly or indirectly by a proscribed organisation.

(2) An order issued under this section must prohibit the execution of any transaction concerning the transfer, conversion, disposition or movement of such funds.

(3) An order issued under this section may be served or circulated to an accountable institution by facsimile or any other expeditious means of communication.

(4) An accountable institution served with a freezing order issued under this section must comply with the terms of that order.

(5) An accountable institution that fails to comply with the terms of a freezing order commits an offence and is liable to a fine not exceeding N\$500 000 or, in the case of an individual, to such fine or to imprisonment for a period not exceeding 30 years, or to both such fine and imprisonment.

(6) Any interest that may accrue to funds subject to a freezing order remains part of such funds.

**Power to rescind or withdraw freezing orders**

**43.** (1) The High Court, on application of the Minister may rescind or withdraw a freezing order that was issued in terms of section 24 or section 42 at any time after its issuance.

(2) The High Court on application of the Minister may revoke a freezing order that was issued to an accountable institution in respect of a proscribed individual or organisation immediately after such an individual or organisation has been deproscribed.

(3) A revocation or withdrawal of a freezing order can be served or circulated to an accountable institution by facsimile or any other means of communication.

(4) The High Court may, on the application of an affected person, order that the freezing of funds order referred to in section 42 does not apply to funds and other financial assets or economic resources that the Court determines to be -

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- (a) necessary for reasonable basic expenses, including payments for rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) exclusively for payment of reasonable professional fees, 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.

**Authorisation for rendering of foreign military assistance**

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

(2) The Minister 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 so granted.

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

**Register of authorisation**

**45.** (1) The Minister must maintain a register of authorisation issued in terms of section 44.

(2) The Minister must every six months submit a report to National Assembly with regard to authorisations issued.

**Malicious arrest and search**

**46.** (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 of N\$ 15 000 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 the High Court in respect of offences under this Act**

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

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- (a) the perpetrator of the act is arrested in the territory of 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 the territory of Namibia, referred to in paragraph (a);
    - (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;
    - (iv) 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 the territory of 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.

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(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.

(5) Where it appears on reasonable grounds from the investigation referred to in subsection (4) or where the Inspector-General has *via* Interpol received any notice issued and recognised by Interpol in respect of fugitives, indicating that extradition or criminal proceedings may be instituted against such a fugitive, that fugitive may be arrested as contemplated in section 40(1) of the Criminal Procedure Act in order to ensure his or her presence at such proceedings.

(6) After the arrest, the Inspector-General must *via* Interpol promptly notify any foreign State that might have jurisdiction over the offence in question, of the arrest of the fugitive.

**Suspension of sentence**

**48.** 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**

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

**Authority of the Prosecutor-General**

**50.** (1) No trial regarding an offence under this Act may be commenced without the written authority of the Prosecutor-General.

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(2) If a person is prosecuted for an offence under this Act, the Prosecutor-General through the Minister responsible for foreign affairs must communicate the final outcome of the proceedings promptly to the Security Council of the United Nations, so that he or she may transmit the information to other State Parties of the United Nations.

**Evidence by certificate**

**51.** Where in any proceedings for an offence under this Act, a question arises as to whether any thing or substance is a weapon, a hazardous, radioactive 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, radioactive 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**

**52.** (1) For purposes of this act, an application for bail may only be made before the High Court or a regional 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 apply as if the accused is charged with an offence referred to in Schedule 6 of that Act.

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

**53.** (1) Section 189 of the Criminal Procedure Act, applies with the necessary changes in respect of the 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.

(2) The person referred to in subsection (1) who refuses or fails to give the information, may not be sentenced to imprisonment as contemplated in section 189 of the Criminal Procedure Act, unless the judge is of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.

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**PART 6  
GENERAL PROVISIONS**

**Participation in the commission of offence under this Act**

- 54.** A person who -
- (a) attempts to commit;
  - (b) conspires, whether in or outside Namibia to commit;
  - (c) aids, abets, facilitates or counsels the commission of; or
  - (d) incites the commission of,

any offence under this Act, commits an offence and is liable to the same sentence as prescribed for that offence.

**Regulations**

- 55.** (1) The Minister may make regulations relating to -
- (a) any matter, which is required or permitted in terms of this Act to be prescribed;
  - (b) the criteria to be taken into account in the consideration of an application for approval under section 44;
  - (c) the maintenance of the register;
  - (d) the fees payable for an application under section 44;
  - (e) where necessary in certain situations, the full implementation of binding Resolutions of the United Nations Security Council concerning the compliance with measures to prevent or to combat any terrorist activity;
  - (f) generally any matter which may be 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\$4000 or imprisonment for a period not exceeding two years, or both such fine and such imprisonment.

**Delegation**

**56.** The Minister may delegate, in writing, any of the powers conferred on him or her under this Act to any person the Minister may think fit.

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**Short title and commencement**

**57.** This Act is called the Prevention and Combating of Terrorist Activities Act, 2012, and commences on a date determined by the Minister by notice in the *Gazette*.

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