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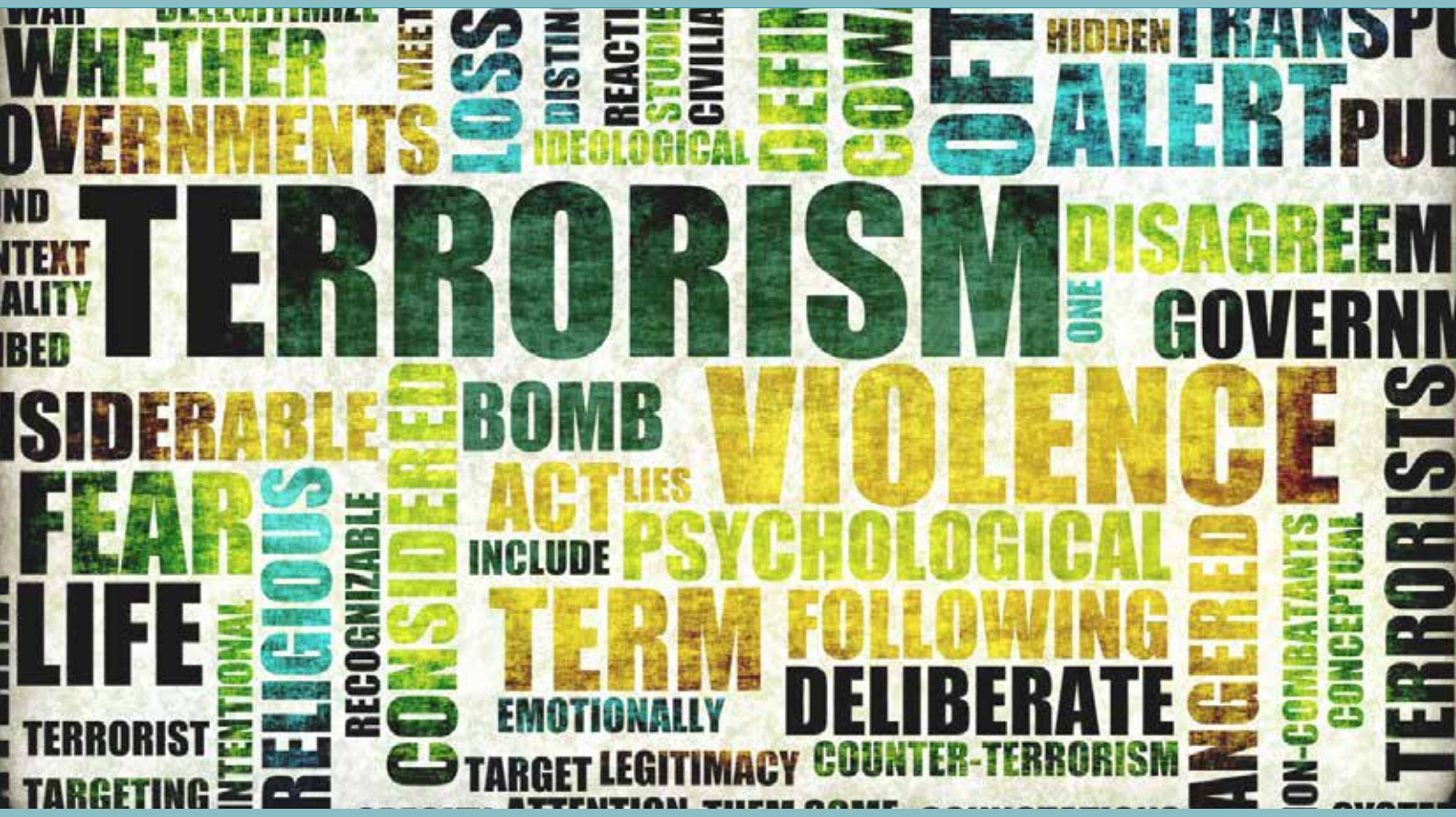

RUSHED and ILL-CONSIDERED

Namibia's Anti-Terrorism Law

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By

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Many countries around the world have revamped, extended or introduced anti-terrorism legislation since the September 11 2001 terrorist attacks in the US and subsequent attacks around the world, such as Madrid (2004) and London (2005). Following '9/11', the United Nations Security Council adopted Resolution 1373, which obliges member states to create legal frameworks to counter terrorism, including criminalising the financing of terrorism. Many governments have since introduced measures that extend security agencies' powers of investigation, arrest and detention, and to various extents limit civil liberties. In addition, such laws often include wide-ranging definitions of 'terrorism' and 'terrorist activities'. Such reforms have also sought to bring domestic laws in conformity with international conventions, treaty obligations, and UN Security Council resolutions, particularly on issues such as the financing of terrorist activities and the freezing of assets belonging to proscribed individuals.

> "In Africa, some governments have used the threat of terrorism as a pretext for introducing draconian legislation aimed more at suppressing political opponents and journalists than dealing with actual terror suspects."

In Africa, some governments have used the threat of terrorism as a pretext for introducing draconian legislation aimed more at suppressing political opponents and journalists than dealing with actual terror suspects. For example, Swaziland has used the Suppression of Terrorism Act to crackdown on political protest against the rule of King Mswati III.[1] In Ethiopia dozens of journalists and political activists have been arrested or sentenced under the Anti-Terrorism Proclamation of 2009.[2] A new anti-terrorism law introduced in Kenya in late 2014 has been challenged in court. Kenya faces a significant terror threat from Somalia-based terrorist group al-Shabaab, which has launched a number of deadly attacks in the country. The new law hands Kenyan authorities the power to hold suspects for nearly a year without charge and threatens journalists with up to three years behind bars if their reports "undermine investigations or security operations relating to terrorism".[3]

A FALSE START

Namibia did not join the rush to introduce a prevention of terrorism law post-9/11. The drafting of an anti-terrorism law proceeded haphazardly and with little sense of urgency until it became clear that Namibia's failure to introduce a law could have international repercussions. Prior to 2012, the main piece of Namibian legislation referring to terrorism was the Defence Act (No. 1 of 2002). Chapter VI of the Act deals with national defence, terrorism, armed conflict, internal disorder and other emergencies, and includes a provision for the mobilisation of a reserve force to prevent and suppress terrorism.

Section 1 of the Defence Act defines "terrorism" as:

> *The use of violence against persons or property, or the threat to use such violence, to intimidate or coerce the government, the public or any section of the public in order to achieve or promote any tribal, ethnic, racial, political, religious or ideological objective.*

Only in December 2012 did Namibia follow international trends by introducing an anti-terrorism law: the Prevention and Combating of Terrorist Activities Act – Act

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1 *See 'Suppression of Terrorism Act undermines human rights in Swaziland' http://www.amnesty.org/en/library/info/AFR55/001/2009*
2 *See 'UN Experts Urge Ethiopia to Stop Using Anti-Terrorism Legislation to Curb Human Right', Addis Standard, September 18 2014*
3 *See http://www.aljazeera.com/news/africa/2015/01/kenya-security-law-faces-legal-hurdle-20151214203796518.html*

No. 12 of 2012. In his motivation speech to the National Assembly the then Minister of Safety and Security, Nangolo Mbumba, acknowledged that the lack of an anti-terrorism law rendered Namibia susceptible to terrorist activities and becoming a possible conduit for financing terrorism.

In his speech introducing the Bill on November 20 2012, Minister Mbumba noted that globally terrorist activities had become "more amorphous, less predictable with fewer constraints on the terrorist operations and targets".

To some extent the introduction of an anti-terrorism bill was a delayed reaction to violent attacks by separatists in the Caprivi region (since renamed Zambezi) in 1999. However, in the following decade the government showed little sense of urgency in drawing up anti-terrorism legislation. When he introduced the draft law in late 2012, Minister Mbumba conceded that the development of a bill had "slipped through the cracks" following the creation of the Ministry of Safety and Security in 2005, and work on its drafting only recommenced in 2010.

> "... the overriding factor influencing the urgency and timing of the anti-terrorism bill was the need to comply with international requirements."

Mbumba said the finalisation of an anti-terrorism law had now become urgent because an incident at the Hosea Kutako International Airport in late 2010, when a dummy bomb was discovered,[4] had highlighted the absence of a legal instrument to deal with potential terrorist activity.

However, the overriding factor influencing the urgency and timing of the anti-terrorism bill was the need to comply with international requirements. During 2005 Namibia had undergone evaluation by the East and Southern African Anti-Money Laundering Group (ESAAMLG) on whether its domestic measures to tackle money laundering and the financing of terrorism matched the required international standards and best practices. Namibia came up short. A further report in 2010 found that Namibia had not made sufficient progress in addressing the 2005 recommendations. Consequently, in May 2011 the government came up with an action plan which included the ratification of the United Nations International Convention for the Suppression of the Financing of Terrorism (ratified on April 26 2012) and the enactment of legislation to criminalise terrorism financing and ensure compliance with international standards by November 2012.

In particular, Namibia was in danger of falling foul of the stipulations of the Financial Action Task Force (FATF), an inter-governmental organisation seeking to develop policies to combat money laundering and terrorism financing. The government was told by the FATF in 2011 to tighten its laws with regards to financing of terrorist activities and money laundering. Namibia was also put on the spot for having a law that lacked mechanism for freezing and confiscating terrorist assets, which resulted in Namibia being rated as non-compliant with international rules.

As a result of FATF recommendations, the Financial Intelligence Act (Act 3 of 2007) was repealed and replaced with a new Act with the same name just a few weeks before the Anti-Terrorism Bill appeared in Parliament towards the end of 2012.

Facing international pressure to have anti-terrorism legislation in place, Parliament rushed through the Prevention and Combating of Terrorist Activities Bill. On top of the undue haste with which Parliament approached the draft legislation, no

[4] *For further details see 'Airport bomb scare 'a hoax'', Namibian Sun, November 22 2010.*

consultations with civil society took place. As a result, crucial elements of the Bill, such as the definition of terrorist activities and the powers to intercept communications, were never discussed either within the Parliamentary chambers or in any other public forums prior to the Bill's tabling.

The Bill was dealt with over only two days – November 20 in the National Assembly and November 28 in the National Council.

Ignatius Shixwameni, MP for the All People's Party, made clear that the Bill had not been made available to the House prior to its tabling – meaning that MPs had to process almost 40 pages of a complex piece of legislation and be able to make constructive and meaningful input while only having the time it took for the Minister to motivate the Bill to assess it (when presumably they should also have been listening to his speech). In total only seven MPs spoke during the debate on the Bill. In Namibia's House of Review, the National Council, only one contribution was made. This was by MP Ndapewoshali Nangula Nambili, who briefly spoke about what the Bill intended to achieve before concluding by supporting it. The Bill was approved unanimously in both the National Assembly and National Council.

‘... for the second (in 2014) time government missed an opportunity to consult more broadly and in particular to discuss other aspects of the Bill that may have had constitutional implications.’

SECOND ATTEMPT

After the Prevention and Combating of Terrorist Activities Act became a law, just before Christmas 2012, little more was heard of it until the National Assembly was once again asked to urgently pass a revised version in June 2014. Apparently, the 2012 version of the Act did not meet all the international requirements.

The Namibian reported at the time[5] that National Assembly MPs had to approve the amendments to the law on the same day the amendment bill was tabled to ensure Namibia would not face international sanctions. A FATF meeting in France was due to review Namibia's status on 22 June 2014, which meant the Bill had to be passed by 17 June 2014.

According to the speech of Deputy Minister of Safety and Security Erastus Utoni, who motivated the changes, FATF had objected to two aspects of the 2012 law. Firstly, the clauses that exempted liberation movements from the law were not in line with the UN International Convention on the Suppression of the Financing of Terrorism. Secondly, FATF advised that use of a judicial process for freezing the assets of listed individuals, as set out in the 2012 law, was not in keeping with UN Security Council Resolutions 1267, 1988 and 1989 which required the immediate freezing of such assets.

Deputy Minister Utoni said that the Governor of the Bank of Namibia, the Chairperson of the Security Commission, the Minister of Justice, the Attorney General, FATF, the implementing committees for UNCRs 1267, 1988, 1989, 1373, 1718 and 1737, and ESAAMLG were consulted over the amendments.

However, for the second time government missed an opportunity to consult more broadly and in particular to discuss other aspects of the Bill that may have had constitutional implications. The main motivation for the urgency in bringing the amendments to Parliament was the fear of international opprobrium and possible sanctions if Namibia did not meet certain globally recognised standards.

[5] *Nam in sanctions scare by Shinovene Immanuel, The Namibian, June 20 2014*

SUMMARY OF THE LAW

The Prevention and Combating of Terrorist and Proliferation Activities Act (Act No. 4 of 2014) sets out:

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.

Part 1 of the Act sets out the definitions and interpretations used in the law.

Part 2 deals with offences falling under the definition of terrorist activities and their corresponding penalties. Offences include terrorism, funding terrorist activities; damaging facilities of an airport; endangering the safety of marine navigation; taking hostages; nuclear terrorism; membership of a terrorist organisation; recruitment of persons to participate in terrorist activities; and attendance at a place used for training in terrorist or proliferation activities.

> ‘Any 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.’

Any 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. A person involved in funding terrorist activities is liable to a fine not exceeding N$100 million or imprisonment for a period not exceeding 30 years, or such a fine and incarceration.

Part 3 provides for measures to implement resolutions of the UN Security Council. These include: publication of sanctions list and issuance of freezing orders; issuance of travel bans; issuance of an arms embargo in respect of persons or organisations designated by Security Council; communication to Security Council Sanctions Committees regarding actions taken in respect of designated persons and organisations; and prohibition of landing, entering, docking or departure of certain vessels and flights.

Part 4 deals with investigating powers and other anti-terrorism and proliferation measures. These include: search, seizure, arrest and forfeiture; duty to disclose information relating to funds owned or controlled by designated persons, organisations or countries; interception of communications and admissibility of intercepted communications; proscription of persons and organisations; issuance of freezing orders in respect of funds belonging to or controlled by proscribed persons and organisations; and travel bans on proscribed persons or organisations.

Part 5 covers jurisdiction and procedural matters which inter alia include: jurisdiction of the High Court in respect of offences, bail in respect of offences and powers of court with regard to recalcitrant witnesses.

Part 6 sets out general provisions dealing with participation in commission of ancillary offences; indemnity; regulations; delegation; and repeal and amendment of laws, among others.

A QUESTION OF DEFINITION

Internationally, a number of concerns have been raised about legal measures introduced to prevent and combat terrorism since 9/11. These include:

- The criminalisation of 'inciting' and/or 'threatening' terrorism.
- The criminalisation of the 'glorification' or 'promotion' of terrorism.
- Detention without charge or trial (and sometimes in secret) for lengthy, even indefinite periods.
- The introduction of extensive and secret powers of surveillance.
- Control orders which can be placed on individuals to primarily control movement and restrict activity even when such individuals have not been convicted of a crime.
- Outlawing (proscribing) of groups labelled as terrorist.
- Particular measures targeting foreign nationals suspected of terrorist activities.
- Use of closed courts and in camera proceedings.
- Gagging orders on the media that restrict reporting on terrorism-related incidents and matters.
- Introduction of new police powers e.g. stop-and-search, secret searches of property, right to detain without charge.
- Restrictions on the right to protest and demonstrate.

> '... Namibia's anti-terrorism law appears to be less restrictive than many other international examples. However, certain aspects of the law are deeply worrying and could still undermine basic human rights set out in Namibia's Constitution.'

Taking these concerns into account, Namibia's anti-terrorism law appears to be less restrictive than many other international examples. However, certain aspects of the law are deeply worrying and could still undermine basic human rights set out in Namibia's Constitution.

The Act defines "terrorist activity" as:

(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, organising, 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;

> "There is no academic or legal consensus on the exact definition of terrorism or terrorist activities."

There is no academic or legal consensus on the exact definition of terrorism or terrorist activities. Terrorism expert Walter Laqueur had counted over 100 definitions of terrorism. Laqueur concluded that the "only general characteristic generally agreed upon is that terrorism involves violence and the threat of violence".[6]

Definitions of terrorism have become more complex over time (compare the 44-word definition in Namibia's Defence Act of 2002 with the 500-word definition of terrorist activity in the 2014 Prevention and Combating of Terrorist and Proliferation Activities Act). As definitions have lengthened, more ambiguities have been introduced. This is

6 *Walter Laqueur, The New Terrorism: Fanaticism and the Arms of Mass Destruction, New York: Oxford University Press, 1999, p. 6.*

certainly the case in Namibia. Human rights activists often claim that legal definitions of terrorist activity are overly broad and therefore prone to being interpreted and implemented in ways that undermine civil liberties.

In terms of the definition in the 2014 Act, the scope of "any act committed by a person with the intention of instilling terror" is very wide and hard to pin down. For example, a media report could have a frightening effect on the public, but this may be because the events being described in the report are frightening. If a media report induces feelings of fear in a readership or audience could a journalist or editor be accused of "instilling terror"? The possibility of such broad interpretations by law enforcement officers and the courts raises the spectre of the law being abused to persecute journalists or other members of the public who may publish or post contentious material.

> "While it may not have been the intention of the legal drafters to target demonstrators, journalists or citizens expressing themselves, definitions in law should be worded with extreme care and in a manner that rules out the possibility of loose or even malicious interpretation."

Concerns about the broadness and vagueness of the definition are also prompted by the notion that terrorist activity includes "any act which is calculated or intended to 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." The laxity in this wording is of such magnitude that it could be interpreted as applying to any protest or demonstration aimed at influencing government, any other body, or the public. Robustly applying public pressure, for example through a noisy but peaceful demonstration, for a change in policy could be interpreted as an attempt to "force" or "induce" such a change. Even a demonstration that may turn violent would not necessarily constitute "terrorist activity" and should be dealt with under public order laws.

Similarly, an act that seeks to change an established position of any institution could also conceivably be in the form of a newspaper article, radio broadcast, or Facebook post. While it may not have been the intention of the legal drafters to target demonstrators, journalists or citizens expressing themselves, definitions in law should be worded with extreme care and in a manner that rules out the possibility of loose or even malicious interpretation. All such clauses should be measured against the Constitution to ensure they do not transgress the Bill of Rights.

The danger of anti-terrorist legislation being used to deny a fundamental right is underlined by the law's postulation that terrorist activity would include acts that "disrupt any public service, the delivery of any essential service to the public or to create a public emergency". This would appear to apply to many labour strikes. Could a picket by striking workers at a public institution be understood as terrorism? Could a blockade by taxi drivers outside a municipal office be regarded as a terrorist activity? The wording of the definition of "terrorist activity" in the Act does make such scenarios plausible.

Furthermore, the definition in the Act goes far beyond criminalising direct involvement in terrorist activity. Instead it refers to "promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising, or procurement of any person, with the intent to commit" what is earlier defined as a "terrorist activity".

The use of indistinct words and phrases like "promotion", "sponsoring", "contribution to", "command", "aid", "encouragement", "attempt" and

"organising" in connection with the already loose definition of "terrorist activity" creates opportunities for abuse of the law to target not just the main protagonists in protests, opposition and criticism but also others who might be seen to be aiding or encouraging them. The effect of this legal laxity could have far-reaching implications for the media, civil society and the citizenry in general.

The problem in any law with lax and vague definitions of what constitutes criminality is that all the other actions and responses outlined in the law could be applied in a manner that undermines fundamental human rights. For example any person or organisation linked to "terrorist activity" as defined in the Act could be "proscribed" or effectively banned.[7] Conceivably this could mean a media house, labour union, or civil society organisation. In addition people or organisations who simply "associate" with a proscribed person or body could also be proscribed.

> "Perhaps most tenuously Section 44 ends by stating that any person or organisation "in any way involved in any terrorist activity or proliferation activity" can be proscribed. The Minister can also act on a request from a foreign state to proscribe persons or organisations."

OTHER CONCERNS

Part 4 of the Act dealing with Investigating Powers and Other Anti-terrorism and Proliferation Measures details a wide range of potentially necessary but also sometimes problematic interventions by the State. In some cases what might be considered normal rights and permissions are suspended.

In section 38(1) the police are given the right to enter and search a vehicle or premises without a warrant if there are reasonable grounds for suspecting terrorist activity. However, there are also attempts in Part 4 to ensure the constitutional rights of those affected by the police's actions are protected. If the right to privacy and/or liberty is affected through searches and arrests then such interference or deprivation may only be authorised 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. Similarly, interception and monitoring of communications can only be authorised taking cognisance of Article 13(1) which states:

> *No persons shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.*

In terms of section 40 of the Act, the Inspector-General of the Police may, for the purpose of obtaining evidence of an offence, apply to a judge *ex parte* (without other affected parties being present) for a warrant for the interception of communications. The judge can order a communications service provider to intercept and retain a specified communication or communications of a specified description.

A judge can also 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 suspect terrorist activity. A judge's authorisation can also cover the interception of all postal articles to or from any person, body or organisation affected by the warrant. Information from such interceptions is admissible as evidence. The authorisation for

7 *Proscribed means outlawed or forbidden. The Act states in Section 1 that organisations and individuals are proscribed by the Minister of Safety and Security in collaboration with the Security Commission.*

interception and monitoring can be renewed by a judge on a three-monthly basis. Section 44 deals with the proscription of persons and organisations. The Minister can proscribe a person or organisation if they are involved in terrorist or proliferation activity. However, Section 44 also sets out a number of more tenuous connections to terrorism as being grounds for proscription, such as preparing to commit any terrorist activity. In addition, anyone promoting or encouraging any terrorist activity or acting on behalf of, at the direction of, or in association with persons or organisations involved in terrorist activities or proliferation activities can be proscribed. Perhaps most tenuously Section 44 ends by stating that any person or organisation "in any way involved in any terrorist activity or proliferation activity" can be proscribed. The Minister can also act on a request from a foreign state to proscribe persons or organisations.

> "The Prevention and Combating of Terrorist Activities Act in its present form does have some worrying aspects that should be reviewed."

Once a person or organisation has been proscribed the Minister, according to section 45, can order the immediate freezing of any funds or assets owned or controlled by them, even if such funds or assets are not necessarily linked to terrorism. Proscribed persons and organisations also face travel bans in section 48. 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.

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.

The application of the various sections of Part 4 may be appropriate when dealing with well-grounded suspicions of terrorist activity. However, since the various actions and interventions outlined in Part 4 are predicated to a large extent on the extremely broad definition of "terrorist activity" in section 1, there is a possibility that they can be abused to target the media, civil society, opposition groups and others.

CONCLUSION AND RECOMMENDATIONS

The Prevention and Combating of Terrorist and Proliferation Activities Act does not include some of the more worrying features of other anti-terrorism legislation around the world. For example, the Act does not allow for the prolonged detention of terrorism suspects without charge or trial; it does not feature explicit restrictions on media reporting on terrorism related matters; nor does it explicitly restrict public demonstrations.

It should be acknowledged that no country is immune from the threat of terrorism and that the State, in fulfilling its duty to protect citizens, has a responsibility to introduce effective anti-terrorism laws which comply with international standards.

However, the Prevention and Combating of Terrorist and Proliferation Activities Act in its present form does have some worrying aspects that should be reviewed. This is particularly important as the previous Bills were never adequately reviewed and discussed in public forums or indeed by Parliament.

Much of the problematic nature of the Act stems from a very broad definition of "terrorist activity", which is both vague and inappropriate in parts. The various terrorism-related offences and actions by the State set out in the law spring from this definition. Hence, the Act could be applied in a manner that goes well beyond dealing directly with terrorist activity and impinges on the fundamental human rights set out in Chapter 3 of the Constitution.

Apart from section 51(1), which makes "malicious arrest, search and seizure" an offence in terms of the Act, there are no attempts to put in place any checks or a monitoring system for potential abuses of the Act's extensive powers. The following recommendations are made as a result of this paper's analysis:

- The Act should be referred for public consultation with a view to ensuring it complies with the letter and spirit of the Constitution. A revised version of the Act should then be re-submitted to Parliament where adequate time should be accorded for debate.

- Such consultations and any re-drafting process should carefully weigh the proportionality of the law in relation to level of threat in Namibia and from beyond our borders.

- The definition of "terrorist activity" should be tightened so as to remove all ambiguous and imprecise phraseology in the current version. In addition, the definition should be rewritten to ensure that it cannot be abused to target any legitimate activity that would normally take place in a democracy such as peaceful protests, labour strikes, freedom of expression on social media, and journalism, in particular investigative journalism.

- The use of words like 'promotion' and 'encouragement' in relation to terrorist activity should be removed or more specifically defined so as to avoid possible abuse.

- The manner in which the two draft bills were hastily passed by Parliament indicates that access to information principles were ignored on both occasions. Even MPs did not have prior access to the Bills. Any revised version of the law should be released for public comment and input at least 60 days before tabling in Parliament. As far as possible secret proceedings should be excluded from the Bill and access to information rights built in.

- A revised Act should include a system for monitoring its implementation with a view to preventing abuse of power. This could be carried out through the appointment of an independent monitor or possibly giving such a role to the Ombudsman.

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