



Prevention and Combating of Terrorist and Proliferation Activities Act 4 of 2014

What does the law do?

This law provides measures to combat terrorist activities and the spread of weapons of mass destruction, as well as the funding of these activities.

What is the purpose of the law?

In the wake of the terrorist attacks in the United States on 11 September 2001 and additional terrorist attacks around the world, the United Nations (UN) Security Council adopted a resolution that gives all countries in the UN a duty to create legal frameworks to combat terrorism and the financing of terrorism.¹ Namibia has also joined the International Convention for the Suppression of Terrorism, which includes a duty to make it a crime to finance terrorism. The idea behind the Namibian law is to provide security agencies with improved tools to combat terrorism and the financing of terrorism, including the power to freeze and take away assets that might be linked to terrorism.

The **United Nations** is an organisation that brings together almost every country in the world for international cooperation. When nations become members of the UN, they agree to the UN Charter, an agreement that sets out basic principles of international relations. The **UN Security Council** is a smaller body that takes primary responsibility for maintaining international peace and security. It is made up of 15 members of the UN. There are five permanent members (China, France, the Russian Federation, the United Kingdom and the United States). Ten other nations are elected by all of the UN members to be on the Security Council for two-year terms. Namibia was a member of the Security Council during 1999-2000.

When did the law come into force?

1 July 2014. There was an earlier version of this law, the *Prevention and Combating of Terrorist Activities Act 12 of 2012*. The 2012 law was enacted in a rush because of international pressure on Namibia to get a law on terrorism in place. The government later discovered that the 2012 law did meet all of the relevant international standards, so a revised version was passed by Parliament in 2014.

What is “terrorist activity”?

The law contains a long definition of “terrorist activity”. It includes any criminal act that might endanger persons, property, natural resources, the environment or cultural heritage, where the activity is intended to cause terror. “Causing terror” means –

- trying to force government or any institution or person to act in a certain way
- disrupting public services
- causing general revolt in a country.

Terrorist activity also includes any act aimed at killing or seriously injuring civilians in a time of armed conflict, with the aim of intimidating the population, or forcing a government or an international organisation to act in a particular way. It also includes crimes that are defined in a long list of international treaties relating to terrorism.



¹ [United Nations Security Council Resolution 1373 \(2001\)](#)



In addition, terrorist activity includes promoting, aiding or encouraging terrorism, and paying ransom to specified groups (with the exception of ransom paid by a government to protect one of its citizens).



What is “proliferation activity”?

The law defines “*proliferation activity*” to include a wide variety of actions involving any weapon that can cause mass destruction, along with materials related to such weapons. This category of weapons includes nuclear weapons, chemical weapons and biological weapons along with others. The activities that are covered include making, possessing, transporting, selling and using such weapons, as well as a range of other activities.

New crimes

The law creates many new crimes aimed at common forms of terrorism in the world today. Some of the crimes are described here. The law is aimed at covering involvement in every aspect of terrorism – including funding, training, planning and carrying out terrorist acts.

- It is a crime to engage in a terrorist or proliferation activity, directly or indirectly.
- It is a crime to use, or threaten to use, any weapon that could cause mass destruction.
- It is a crime to plant poisonous or dangerous substances or explosive devices for purposes of terrorism. The penalty for these crimes is life in prison.
- It is a crime to knowingly give a false alarm about the planting of dangerous devices or explosive items, where the false information could lead to terror, disruption of services or damage to property. The penalty is a fine of up to N\$100 million or prison for up to 30 years, or both.
- It is a crime to be involved in funding a terrorist or proliferation activity, inside or outside Namibia, whether or not the funds were actually used for these purposes. The penalty is a fine of up to N\$100 million or prison for up to 30 years, or both.



The financing of terrorism often involves complex chains of transactions, so it is necessary for the law to cover as many points of involvement as possible. It is a crime to be involved with funds or business interests connected to any terrorist or proliferation activity. This includes providing many kinds of financial services. It is also a crime to be involved with funds or business interests that help persons or organisations identified by Namibia’s Security Commission as being involved with terrorism. The same is true where the funds or business interests violate international sanctions, or benefit countries, persons or organisations identified by the UN Security Council as being subject to international sanctions. The crimes relating to funding and business interests apply to anyone who reasonably should have known or suspected that they were related to terrorism. The penalty for any of these crimes is a fine of up to N\$100 million or prison for up to 30 years, or both.

Other crimes are aimed at various actions that facilitate terrorism or proliferation activities. It is a crime –

- to be a member of an organisation involved in these activities
- to direct the activities of an organisation involved in these activities
- to take part in training connected to these activities
- to possess anything connected to these activities
- to collect information in aid of these activities
- to recruit persons into these activities
- to hide persons involved in these activities or give them a safe place to stay.

It is also a crime to give military assistance to a foreign government or organisation without permission from Namibia’s Ministry of Defence – although there is an exception for humanitarian or civilian assistance aimed at helping civilians in an area of armed conflict.

In addition, there are some specific crimes aimed at stopping terrorist activities that involve airports, ships, fixed platforms at sea (such as oil or gas drilling rigs), radioactive materials, the taking of hostages or the safety of diplomats, their families and (in some cases) their staff.

Namibia’s **Security Commission** is set up by Article 114 of the Namibian Constitution. The members are –

- the Chairperson of the Public Service Commission
- the Chief of the Defence Force
- the Inspector-General of Police
- the Head of the Intelligence Service
- the Commissioner-General of Correctional Service
- two members of the National Assembly, appointed by the President on the National Assembly’s recommendation.

Supporting United Nations sanctions relating to terrorism



Because Namibia is a member state of the UN, it has a duty to comply with the decisions of the UN Security Council. The Security Council uses a range of peaceful measures to combat threats to international peace, in the hope of avoiding armed force. One of its tools is to impose sanctions against specific countries, companies, groups or individuals. These can include limitations on economic activity and trade in items such as weapons, the freezing of funds and travel bans. Some of its sanctions are aimed specifically at preventing terrorism and proliferation. The UN publishes a list of the sanctions that are in force, so that all of its member countries can apply them. It also has procedures for removing a person, organisation or country from the sanctions list.

This law gives the Namibian government tools to ensure that persons and institutions in Namibia do not violate UN sanctions aimed at preventing terrorism. All organisations and individuals that are subject to these sanctions are published in the *Government Gazette*. Then any funds or assets belonging to them are frozen, and it becomes a crime to provide them with economic resources or financial services, or to supply them with arms of any kind. Travel bans are enforced against persons on this list and their immediate family members, where they are not Namibian citizens.

The *Government Gazette* is a daily government publication that anyone can subscribe to. You can find all of Namibia's *Government Gazettes* on the [LAC website](#).

Identifying additional people and organisations for sanctions in Namibia

Namibia can also act on its own to identify organisations and individuals that could be linked to terrorism. If the Minister responsible for safety and security believes that a person or organisation is involved in terrorist or proliferation activities, the Minister must request Namibia's Security Commission to "*proscribe*" them. This has an effect similar to being placed on the UN sanctions list. As at the international level, there is also a procedure for seeking to be removed from the Namibian list. A list of the persons and organisations proscribed by Namibia must be circulated in Namibia, and published in the *Government Gazette*. The Namibian government may propose to the UN Security Council that these persons or organisations should also be added to the UN sanctions list.



Investigative powers

The police have certain specific powers for dealing with suspected terrorist and proliferation activities. They can close roads, stop vehicles and search them without a warrant if the search is related to the objectives of this law and the delay involved in getting a warrant would defeat the purpose of the search. The person in question must be told the reason for the search, and the search must not be "excessively intrusive" in the light of the crime involved. Police can also arrest anyone driving or controlling the vehicle without a warrant. They can search persons, places and containers without a warrant, for articles that could be used in connection with terrorist or proliferation activities. The Inspector-General can apply to a judge for a warrant to intercept communications to gather information about terrorist or proliferation activities. The warrant can give police permission to enter a place and install a monitoring device.

Certain persons and institutions have a duty to provide information to Namibia's Financial Intelligence Centre about funds being used by a person or organisation involved in terrorist or proliferation activities, or in violation of UN sanctions.

The law also provides channels for different countries to share information about terrorism with each other.

The **Financial Intelligence Centre** is an information-gathering body set up by the *Financial Intelligence Act 13 of 2012*. See the separate summary of that law for more information.

Criticism

The Institute for Public Policy Research in Namibia has pointed to the difficulty of defining terrorist activities and associated crimes. The definition used in this statute is very broad and so fails to give clear guidance on what acts are actually covered. In fact, some of the wording is so broad that it could be applied to a media report, a public protest or a labour action intended to influence government



or some other body. Given the special powers of investigation for terrorist activity, the many counter-measures that are authorised and the very high penalties that could be imposed, it would be better if the definitions were tighter and more specific, to rule out “the possibility of loose or even malicious interpretation”. The Institute for Public Policy Research also recommends that the law should include a system for monitoring its implementation, in order to prevent potential abuses of power. They suggest giving this role to an independent monitor or to the Ombudsman.²

Related laws

- **Financial Intelligence Act 13 of 2012:** This law is an additional tool in Namibia’s fight against terrorism. It gives certain persons and institutions a duty to report financial activities that may relate to terrorism, to help law enforcement officials combat this problem. There is a separate summary of this law.
- **Protection of Information Act 84 of 1982:** This law contains rules about the disclosure of information that could endanger State security to a foreign state or a hostile organisation. This includes official codes or passwords, or information about military matters, security matters or steps to prevent or combat terrorism. It is also forbidden to approach, enter or inspect certain “*prohibited places*” for the purpose of harming State security or the interests of Namibia, or to assist someone to do this. “*Prohibited places*” include places used for the defence of Namibia, such as military bases, ships or aircraft, communications facilities, and arms manufacturing or storage facilities. It is also illegal to hide or give safe shelter to someone who is violating the rules in this law. The purpose of these rules is to prevent the collection of information that might aid terrorism or attacks on Namibia. The law is essentially aimed at preventing people from spying on Namibia in ways that might cause the nation harm.



But national security and the interests of the nation can be interpreted so broadly that they can be the basis for trying to prevent the disclosure of important information on political issues or the exposure of corruption. For example, in 2019, the Namibian Supreme Court was asked to decide whether the *Protection of Information Act* would prevent publication of a news story about farms that had been bought with public funds for private use by members of an association with links to the Namibian Central Intelligence Service. The constitutional right to freedom of speech can be limited by law to protect national security. But in this case, the government did not show that the newspaper had violated any laws in getting the information, or that publishing the information would harm national security. So the Court said that the news article could be published. Significantly, the Court also said that matters considered national security must be decided by the courts, noting that sensitive issues can be discussed behind closed doors. But, in an open and democratic society, it is not permitted to prevent courts from examining legal issues by labelling them as matters of national security.

- **Defence Act 1 of 2002:** This law has rules against publishing information that is likely to endanger national security or the safety of members of the Defence Force, or taking photographs or making sketches, plans or models of military premises or installations.
- **Namibia Central Intelligence Service Act 10 of 1997:** This law makes it illegal to expose the identity of informers or intelligence personnel who are engaged in secret operations, and provides for the restriction of public access to intelligence facilities.
- **Correctional Service Act 9 of 2012:** This law makes it illegal to make or publish photographs, films or drawings of a correctional facility.
- **Civil Aviation Act 6 of 2016:** This law makes it illegal to share confidential information about aviation security measures, or to act in any way that could endanger a member of the public at an airport.



² Graham Hopwood, “[Rushed and Ill-considered: Namibia’s Anti-Terrorism Law](#)”, Institute for Public Policy Research, 2015, pages 6-10