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## ACT NO. 3 OF 2018

**Prevention and Suppression of Terrorism Act, 2018**

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#### SCHEDULE - ANTI-TERRORISM TREATY LIST

## ACT NO. 3 OF 2018

**Prevention and Suppression of Terrorism Act, 2018**

An Act to make provision for the prevention and suppression of terrorism and its connected acts; the implementation of international instruments relating to combating of terrorism; and related matters.

Enacted by the Parliament of Lesotho.

## PART I - PRELIMINARY

**Citation and commencement**

1. This Act may be cited as the Prevention and Suppression of Terrorism Act, 2018 and shall come into operation on the date of publication in the Gazette.

**Interpretation**

2. In this Act, unless the context otherwise requires -

“accountable institution” has the meaning assigned to it under the Anti-Money Laundering and Proceeds of Crime Act, 2008<sup>1</sup>;

“aircraft in flight” means an aircraft at any time from the moment when all its external doors are closed following embarking until the moment when any such door is opened for disembarkation; while in the case of forced landing the flight shall be deemed to continue until the Competent Authorities take over the responsibility for the aircraft, persons and property on board;

“aircraft in service” means an aircraft from the beginning of the preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing, and the period of service may extend for the entire period during which the aircraft is in flight;

“biological, chemical and nuclear (BCN) weapons” means -

- (a) biological weapons which are -

- 
- (i) microbial or other agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
  - (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;
- (b) chemical weapons which are, together or separately -
- (i) toxic chemicals and their precursors, except where intended for -
    - (aa) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes; or
    - (bb) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
    - (cc) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
    - (dd) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes;
  - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties or those toxic chemical specified in paragraph (i), which would be released as a result of the employment of such munitions and

devices;

- (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in paragraph (ii);
- (c) nuclear weapons and other nuclear explosive devices or means of delivery designed to use weapons and devices for hostile purposes or in armed conflict;

“communication” means a communication received or transmitted by post or a telegraphic, telephonic or other communication received or transmitted by electricity, magnetism or other means;

“Consolidated List” means the list of individuals, groups, undertakings and entities subject to the sanctions and measures imposed by the United Nations Security Council;

“convention offence” means an offence, created in fulfillment of the international obligation of Lesotho in terms of instruments dealing with terrorist and related acts;

“counter terrorism convention” means any of the instruments set out in the Schedule;

“Court” means the High Court of Lesotho;

“entity” includes an entity, a group, trust, partnership, fund, a company or organisation or other legal person;

“explosive or other 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 substantial material damage; or
- (b) a weapon or device that is designed or has the capability to cause death, serious bodily injury of substantial



material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials;

“fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes;

“funds” includes property or assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable however acquired, and legal documents or instruments in any form, including electronic or digital evidencing title to or interest in such assets;

“forfeiture order” means an order applied for under sections 49 and 51;

“IAEA” means the International Atomic Energy Agency;

“internationally protected person” means -

- (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a head of Government or a Minister of Foreign Affairs, whenever such person is in a foreign State, as well as members of his family who accompany him;
- (b) any representative or official of a State or any official or agent of an international organization of an intergovernmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

“Minister” means the Minister responsible for home affairs;

“operator” in relation to an aircraft, means the owner or person for the time being in charge or command or control of the aircraft;



“property” means proceeds from the commission of a terrorist act, property which has been, is being, or is likely to be used to commit a terrorist act, property which has been, is being or is likely to be used by a terrorist group, or property owned or controlled by or on behalf of a terrorist group or property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act; and

“specified entity” means an entity or person declared as such by the Minister under section 34;

“terrorist act” means an offence provided for under Chapter 2 of Part II or an act or omission which -

- (a) endangers the life of another person;
- (b) involves death or serious bodily injury to a person;
- (c) violates physical integrity of freedom of a person;
- (d) involves damage to national key points, property, natural resource or the environmental cultural heritage, whether public or private;
- (e) creates a serious risk to the health or safety of the public or a section of a public;
- (f) involves the use of weapons;
- (g) involves introducing into environment, distributing or exposing the public to any -
  - (i) dangerous, hazardous, radioactive or harmful substance;
  - (ii) toxic chemical;
  - (iii) microbial or other biological agent or toxin;
- (h) involves serious disruption to any system or the provision of services directly related to essential



infrastructure;

(i) involves the manufacture, acquisition, possession, development, transportation, transfer and use of nuclear, chemical or biological weapons and their means of delivery, and is carried out with the aim of, or by its nature and context is reasonably regarded as being aimed at -

(i) intimidating or causing fear among members of the public or section of the public;

(ii) compelling a government or an international organisation to do, or refrain from doing, any act;

(iii) advancing a political, ideological, religious, or other cause, but does not include an act or omission which -

(aa) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in paragraph (b), (c), (e) or (f); or

(bb) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict;

“weapon” includes a firearm, explosive, chemical, biological or nuclear weapon.

### Scope of application

3. The Court shall have jurisdiction over an act or omission which constitutes an offence under this Act regardless of whether the act or omission consti-



tuting an offence took place inside or outside Lesotho if -

- (a) the person who commits the offence is after its commission arrested in Lesotho;
- (b) the offence is committed -
  - (i) within Lesotho;
  - (ii) against Lesotho;
  - (iii) by a citizen or a resident of Lesotho;
  - (iv) against a citizen or a resident of Lesotho;
  - (v) against a property of a resident or citizen of Lesotho;
  - (vi) against a facility or property of Lesotho located in another State;
  - (vii) on board or against an aircraft or ship registered in Lesotho or a ship or an aircraft flying the flag of Lesotho.

## PART II - OFFENCES

### *Chapter 1*

#### *Terrorist acts and offences associated or connected with terrorist acts*

##### **Prohibition of terrorist act**

4. (1) No person shall engage in a terrorist act.

(2) A person who engages in a terrorist act commits an offence and is liable, on conviction, to a period not exceeding 60 years imprisonment or to a fine not exceeding 100,000,000.00 Maloti or both.

(3) If the terrorist act results in death or rape, the person is liable, on conviction, to a sentence of death.

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**Attempt, threat and participation in commission of terrorist act**

5. (1) A person who -
- (a) conspires with another;
  - (b) attempts or threatens;
  - (c) aids, abets, counsels or procures, or by an act or omission in anyway directly or indirectly, knowingly consents or becomes a party to;
  - (d) incites any person,

to commit an offence, or urges or encourages any conduct that constitutes an offence under this Act, commits an offence and is liable, on conviction, to the same penalty as would be applicable if the person were convicted of the offence as a principal offender.

- (2) For the purposes of subsection (1) -
- (a) a person commits an offence of conspiracy if -
    - (i) the person entered into an agreement with any other person or persons that one or more of them will commit the agreed offence;
    - (ii) the person and at least one other party to the agreement intended that the offence will be committed;
    - (iii) the person or at least one other party to the agreement committed an overt act pursuant to the agreement;
  - (b) a person is not guilty of conspiracy if the person -
    - (i) withdrew from the agreement before its execution;

- (ii) made a reasonable effort to prevent the commission of the agreed offence;
  - (iii) as soon as possible after withdrawing, reported the matter to the police;
- (c) a person may be found guilty of conspiracy even though the commission of the offence was impossible.

### Offences relating to hoaxes

6. (1) For the purposes of this section, "substance" includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production).

(2) A person who, with the intention of inducing in a person anywhere in the world a false belief that a substance, thing or device is, or contains, or is likely to be, or contains a noxious substance or thing or an explosive or other lethal device -

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

commits an offence and, on conviction, is liable to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

(3) A person who, directly or indirectly, communicates any information, which he knows, or ought reasonably to have known or suspected, or believes to be false, with the intention of inducing in a person anywhere in the world a belief that a noxious substance or thing or an explosive or other lethal device is likely to be present (whether at the time the information is communicated or later), in or at any place commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

**Soliciting and giving of support to terrorist group or for the commission of terrorist acts**

7. (1) A person who knowingly, in any manner -
- (a) solicits support for, or gives support to, any terrorist group;
  - (b) solicits support for, or gives support to the commission of a terrorist act,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

- (2) Support under subsection (1) includes -
- (a) an offer to provide or the provision of forged or falsified travel documents to a member of a terrorist group;
  - (b) an offer to provide or the provision of a skill or expertise for the benefit of, at the direction of or in association with a terrorist group;
  - (c) entering or remaining in any country for the benefit of, or at the direction of or in association with a terrorist group;
  - (d) providing or collecting funds to finance travel of a person to carry out a terrorist act;
  - (e) organising or facilitating travel or attempted travel of a person to carry out a terrorist act;
  - (f) recruiting and transporting or equipping a person to carry out a terrorist act.

**Offences associated or connected with financing of terrorist acts**

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

- (a) acquires, collects, uses, possesses or owns funds;
- (b) provides or makes available, or invites a person to provide or make available any funds, financial or other service, or economic support;
- (c) facilitates the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support, intending that the property, financial or other service or economic support, as the case may be, be used, or while the person knows or ought to have reasonably known or suspect that the funds, service or support concerned will be used, directly or indirectly, in whole or in part -
  - (i) to commit or facilitate the commission of a terrorist act;
  - (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of, or owned by an entity which or a person who commits or attempts to commit or facilitates the commission of a terrorist act; or
  - (iii) for the benefit of a specified entity or person,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) A person who, directly or indirectly, in whole or part, and by any means or method -

- (a) deals with, enters into or facilitates any transaction or performs any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided -
  - (i) to commit or facilitate the commission of a specified offence;

- (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence; or
  - (iii) for the benefit of a specified entity or person; or
- (b) provides financial or other services in respect of property referred to in paragraph (a),

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(3) A person who knows or ought reasonably to have known or suspected that the funds are funds referred to in subsection (2)(a) 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) an entity which or a person who commits or attempts to commit or facilitates the commission of a terrorist act; or
  - (ii) a specified entity or person;
- (b) converting such funds;
- (c) concealing or disguising the nature, source, location, disposition or movement of such funds, the ownership in the funds or any interest anyone may have in the funds;
- (d) removing such funds from a jurisdiction; or
- (e) transferring such funds to a nominee,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine exceeding 100,000,000.00 Maloti or both.

**Terrorist financing offence**

9. (1) A person commits an offence of terrorist financing if he by any means, directly or indirectly, unlawfully and willfully, provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part -

- (a) to carry out a terrorist act;
- (b) to finance the travel of individuals who travel to a state other than their state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in terrorist acts or providing or receiving of terrorist training;
- (c) by a terrorist organization; or
- (d) by an individual terrorist.

(2) The offence is committed irrespective of an occurrence of a terrorist act referred to in subsection (1), or whether the funds have actually been used to commit such act.

(3) It shall be an offence -

- (a) to participate as an accomplice in; or
- (b) to organise or direct others to commit;
- (c) to contribute to the commission of, by a group of persons acting with a common purpose, an offence within the meaning of subsection (1).

(4) A person who contravenes this section commits an offence and is liable, on conviction, imprisonment for a term not exceeding 60 years or to a fine not exceeding 100,000,000.00 Maloti or both, and in case of a body corporate a fine 10 times that amount.

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**Harbouring and concealment of persons suspected of committing terrorist acts**

10. (1) A person who harbours or conceals, or causes to be harboured or concealed, or prevents, hinders or interferes with the apprehension of any person, knowing, or having reason to believe, that such a person -

- (a) has committed or is planning or likely to commit a terrorist act;
- (b) is a member of a terrorist group,

commits an offence and is, on conviction, liable to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

(2) A person who has information which he knows, suspects or believes might be of material assistance in -

- (a) preventing the commission by another person of a terrorist act; or
- (b) securing the apprehension, prosecution or conviction of another person for an offence under this Act, and the person fails to disclose such information to a police officer at any police post as soon as reasonably practicable commits an offence and is, on conviction, liable to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

(3) It shall be a defence for a person charged under subsection (2) to prove that he has reasonable excuse for not making the disclosure.

**Membership of terrorist group**

11. (1) A person who is a member of, or professes to be a member of a terrorist group commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) It shall be a defence for a person charged with an offence under

this section to prove that the entity in respect of which the charges are brought was not a terrorist group at or on the date he became a member or professed to be a member of that entity, or that he has not taken part in the activities of that entity after it became a terrorist group.

### **Meetings in support of terrorist group**

12. (1) A person who arranges, manages or assists in arranging or managing a meeting, the purpose of which he knows is to -

- (a) support a terrorist group;
- (b) further the activities of a terrorist group;
- (c) be addressed by a person who belongs or professes to belong to a terrorist group,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

(2) The provisions relating to the commission of offences by individual persons under this Act shall apply, subject to modifications, to terrorist group.

### **Duty to disclose information on terrorist act**

13. (1) A person who has any information which will be of assistance in -

- (a) preventing the commission by another person, of a terrorist act,
- (b) securing the arrest or prosecution of another person for an offence under this Act, or an offence under any other Act where the act or omission also constitutes a terrorist act, shall, immediately upon receiving the information, disclose that information to a police officer.

(2) Nothing in subsection (1) requires the disclosure of any information which is protected by privilege.

(3) No civil or criminal proceedings shall lie against any person for disclosing any information, in good faith, under subsection (1).

(4) A person who fails to comply with subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years and a fine not exceeding 50,000,000.00 Maloti or both.

**Duty to disclose information relating to property of terrorist group or property used for commission of offences under this Act**

14. (1) A person shall, immediately upon receiving the property or information, disclose to the Financial Intelligence Unit established under section 14 of the Money-Laundering and Proceeds of Crime Act, 2008 -

- (a) the existence of any property in his possession or control, which to his knowledge, is terrorist property, or for which there are reasonable grounds to believe is terrorist property;
- (b) the existence of any property in his possession or control, owned or controlled by or on behalf of a specified entity or for which there are reasonable grounds to believe is owned or controlled by or on behalf of a specified entity;
- (c) any information regarding a transaction or proposed transaction in respect of terrorist property; or
- (d) any information regarding a transaction or proposed transaction in relation to which there are reasonable grounds to believe may involve terrorist property.

(2) The Financial Intelligence Unit shall disclose to the Financial Intelligence Unit of a foreign state or the appropriate authority of a foreign state, as the case may be, any information in its possession relating to any property owned or controlled by or on behalf of a terrorist group, if such information is requested or if the Financial Intelligence Unit in Lesotho is of the view that the information would be relevant to a foreign state.

(3) A financial institution shall report to the Financial Intelligence

Unit and any other body authorised by law to supervise and regulate its activities -

- (a) that it is not in possession or control of any property owned or controlled by or on behalf of a terrorist group every three months;
- (b) that it is in possession or control of any such property, and the particulars relating to the persons, accounts and transactions involved and the total value of the property immediately or within 7 days.

(4) In addition to the requirements of subsection (3), a financial institution shall report to the Financial Intelligence Unit, every transaction which occurs within the course of its activities, and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.

(5) No civil or criminal proceedings shall lie against any person for disclosing any information or reporting, in good faith, under subsection (1) or (2), or (3) or (4).

(6) A person who fails to comply with subsection (1), (3) or (4) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

### **Obstruction of investigation**

15. (1) A person who discloses to another anything which is likely to prejudice or interfere with material information which is likely relevant to an investigation into an offence under this Act, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove -

- (a) that he did not know and had no reasonable cause to suspect that the disclosure was likely to affect the investigation;

- (b) that he had reasonable excuse for interference.

### **Obstruction of justice**

16. (1) A person who carries out an act for the purpose of obstructing or hindering the cause of justice under this Act commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years or a fine of 50,000,000.00 Maloti or both.

(2) A person who -

- (a) uses or threatens to use force;
- (b) intimidates, dissuades or attempts to dissuade another person from giving evidence;
- (c) induces false evidence;
- (d) interferes with the production or giving of evidence;
- (e) promises or offers a benefit, in relation to a witness or any officer for the purpose of interfering with the judicial process commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

### **Retaliation against witnesses**

17. A person who does or omits to do an act against a person or a member of the family of a person in retaliation for the person having given information or evidence under this Act commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Intimidation**

18. A person who, for the purpose of compelling another person -

- (a) to abstain from doing anything that the person has a lawful right to do; or

- (b) to do anything that the person has a lawful right to abstain from doing, under this Act causes that person to reasonably fear for his safety or the safety of anyone known to the person, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### *Chapter 2-Convention offences*

#### **Hostage taking**

19. (1) In this section "third party" means a State, international inter-governmental organisation, a person or group of persons.

(2) A person who -

- (a) seizes or detains;
- (b) threatens to kill, injure or continue to detain, another person in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, in furtherance of the commission of an offence under this Act, commits an offence, and upon conviction is liable to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000 Maloti or both.

#### **Hijacking of aircraft**

20. A person on board an aircraft in flight who unlawfully, by the use of force or by threat or any other form of intimidation, seizes the aircraft or exercise control of it commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

#### **Destroying, damaging or endangering the safety of aircraft**

21. (1) A person who unlawfully and intentionally -

- (a) destroys an aircraft in service or so damages such aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight;
- (b) commits on board an aircraft in flight any act of violence which is likely to endanger the safety of the aircraft, commits an offence.

(2) It shall be an offence for any person who unlawfully and intentionally places, or causes to be placed, on an aircraft in service any device or substance which is likely to destroy the aircraft or is likely to damage it as to render it incapable of flight or as to be likely to endanger its safety in flight.

(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which the commission of any act -

- (a) may constitute an offence under subsection (1); or
- (b) may constitute attempting or conspiring to commit or abetting the commission of such offence.

(4) A person who commits an offence under this section is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

#### **Other acts endangering or likely to endanger the safety of aircraft**

22. (1) A person who unlawfully and intentionally destroys or damages any property to which this section applies or interferes with the operation of such property, where the destruction, damage or interference is likely to endanger the safety of aircraft in flight commits an offence, and is liable, on conviction, to imprisonment of a period not exceeding 60 years or to a fine not exceeding 100,000,000 Maloti or both.

(2) Subsection (1) applies to any property used for the provision of air navigation facilities including land, building or ship so used, and including any apparatus or equipment so used, whether it is on board an aircraft or elsewhere.

(3) Subject to subsection (4), it is an offence for a person to inten-

tionally communicate any information which is false, misleading or deceptive in material, and the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight.

(4) It shall be a defence for a person charged with an offence under subsection (3) to prove that -

- (a) he believed and had reasonable grounds for believing that the information was true; or
- (b) when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and he communicated the information in good faith in the performance of those duties.

#### **Acts of violence at airport**

23. A person who unlawfully and intentionally, using any device, substance or weapon -

- (a) performs an act of violence against a person at an airport serving civil aviation which causes or is likely to cause serious injury or death; or
- (b) destroys or seriously damages the facilities of an airport serving civil aviation or an aircraft not in service located at the airport or disrupts the services of the airport, where such an act endangers or is likely to endanger safety at that airport, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

#### **Endangering the safety of ships and fixed platform**

24. (1) A person who intentionally -

- (a) seizes, or exercises control over, a ship or a fixed platform by force or threat of force or other form of

intimidation;

- (b) commits an act of violence against a person on board a ship or a fixed platform, which act is likely to endanger the safe navigation of that ship or a fixed platform;
- (c) destroys a ship or a fixed platform;
- (d) causes damage to a ship, its cargo or fixed platform so as to endanger, or to be likely to endanger, the safe navigation of that ship, or as the case may be, the safety of the fixed platform;
- (e) places, or causes to be placed, on a ship or fixed platform, by any means whatsoever, a device or substance, which -
  - (i) in the case of a ship, is likely to destroy the ship or cause damage to that ship or its cargo as to endanger the safe navigation of that ship;
  - (ii) in the case of a fixed platform, is likely to destroy the fixed platform or to endanger its safety;
- (f) destroys or seriously damages maritime navigation facilities or seriously interferes with their operation which act is likely to endanger the safe navigation of a ship;
- (g) communicates information which he knows to be false as a result of which endangers the safe navigation of a ship;
- (h) injures or kills any other person in connection with the commission, or attempted commission, of any of offences described in paragraph (a), (b), (c), (d), (f), or (g),

commits an offence and is, on conviction, liable to imprisonment for a period

not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) A person who, with the intention of compelling any other person to do, or refrain from doing any act, threatens to commit any of the offences described in paragraphs (b), (c), (d) or (f) of subsection (1), in relation to a ship or fixed platform, which threat is likely to endanger the navigation of the ship or the safety of the fixed platform, commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Use and discharge of BCN weapons and other substances from a ship or fixed platform**

25. (1) A person who commits any of the following acts, when the purpose of the 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 -

- (a) using against or on a ship or a fixed platform, or discharging from a ship or a fixed platform any explosive, radioactive material or BCN weapon in a manner that causes or is likely to cause death or serious injury or damage;
- (b) discharging from a ship or fixed platform, oil, liquefied natural gas or other hazardous or noxious substance, which is not covered by paragraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage;
- (c) using a ship in a manner that causes death or serious injury or damage,

commits an offence and is liable on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) A person who threatens to commit an act referred to in subsection(1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Transportation of BCN weapons and other substances on board a ship**

26. (1) A person who transports on board a ship -
- (a) an explosive or radioactive material, knowing that it is intended to be used to cause, or in a threat to cause death or serious injury or damage for the purpose of intimidating a population, or compelling a government or an international organisation to do or to abstain from doing any act;
  - (b) a BCN weapon, knowing it to be a BCN weapon;
  - (c) a source of material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguards pursuant to an IAEA comprehensive safeguards agreement;
  - (d) any equipment, materials or software or related technology that significantly contributes to the design, manufacture or delivery of a BCN weapon, with the intention that it will be used for such purposes,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) A person who causes injuries or kills another person in connection with the perpetration of any of the offences set out in subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Transportation of certain offenders on board ships**

27. A person who transports another person on board a ship, knowing that the person has committed an act that constitutes an offence set out in this Act, and intending to assist that person to evade criminal prosecution, commits an offence and is, on conviction, liable to imprisonment for a period not exceeding

60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Offences against internationally protected persons**

28. (1) A person who intentionally -
- (a) commits murder, kidnapping or other attack on the person or liberty of an internationally protected person;
  - (b) commits a violent attack on the official premises, private accommodation or means of transport, of an internationally protected person in a manner likely to endanger his person or liberty;
  - (c) threatens a violent attack,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) In any proceedings brought under subsection (1), it shall not be necessary for the prosecution to prove that the accused knew, at the time of the alleged crime, the identity of the internationally protected person, the capacity in which he was internationally protected or that he was entitled under international law to special protection from attack.

### **Terrorist bombings**

29. (1) A person who, intentionally, delivers or places, discharges or detonates an explosive or other lethal device in, into or against -
- (a) a place of public use;
  - (b) a State or government facility;
  - (c) a public transportation system;
  - (d) an infrastructure facility;
  - (e) any other place where such an event is likely to cause death or bodily disability, with intent to -

- (i) cause death or serious bodily injury;
- (ii) cause extensive damage to such place, facility or system, and where such destruction results in or is likely to result in major economic loss,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) If the person by his act under subsection (1) causes death, that person is liable, on conviction, to a sentence of death.

### **Handling of radioactive or nuclear material and devices**

30. (1) A person who, without lawful authority, receives, possesses, transfers, alters or disposes radioactive or nuclear material or possesses a device -

- (a) with the intent to cause -
  - (i) death or serious bodily injury; or
  - (ii) substantial damage to property or to the environment,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) If the person by his act under subsection (1) causes death, that person is liable, on conviction, to a sentence of death.

(3) A person who commits -

- (a) theft or robbery of radioactive or nuclear material; or
- (b) an embezzlement or fraudulently obtaining radioactive or nuclear material; or
- (c) an act which constitute the carrying, sending or moving of radioactive material into or out of a State without lawful authority,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

- (4) A person who -
  - (a) threatens to commit an offence set out in subsection(2) (a) in order to compel another person, international organisation or State to do or to refrain from doing any act;
  - (b) demands radioactive or nuclear material or a device by threat, or by use of force, or by any other form of intimidation,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

#### **Use of radioactive or nuclear material**

31. (1) A person who, without lawful authority, uses or disperses in any way radioactive or nuclear material or uses or makes a device -

- (a) with the intent to cause -
  - (i) death or serious bodily injury; or
  - (ii) substantial damage to property or to the environment; or
- (b) compel a natural or legal person, an international organisation or a State to do or refrain from doing an act; or
- (c) which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

- (2) If the person by his act under subsection (1) causes death, that

person is liable, on conviction, to a sentence of death.

(3) A person who threatens to commit an offence set out in subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Offences relating to nuclear material and nuclear facilities**

32. A person who, without lawful authority -

- (a) intentionally receives, possesses, uses, transfers, alters, disposes or disperses nuclear material, in such a manner so as to cause or be likely to cause death or serious injury to any person or substantial damage to property or the environment;
- (b) steals nuclear material;
- (c) embezzles or fraudulently obtains nuclear material;
- (d) intentionally carries, sends or moves nuclear material into or out of Lesotho;
- (e) does any act which is directed against a nuclear facility or which interferes with the operation of a nuclear facility with the intention or knowledge that the act is likely to cause death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substance;
- (f) does any act constituting a demand for nuclear material, by the threat of the use of force, by the use of force or by any other form of intimidation;
- (g) threatens -
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property or the environment or to commit an

offence under paragraph (e);

- (ii) to commit an offence under subsection (a) or subsection (e) in order to compel a natural or legal person, an international organisation or State to do or refrain from doing any act,

commits an offence and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

### **Offences relating to unmarked plastic explosives**

33. (1) Subject to subsection (3), any person who manufactures, imports, transports, keeps, stores, possesses, transfers, purchases, sells, supplies or exports any unmarked plastic explosives commits an offence, and is liable, on conviction, to imprisonment for a period not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti or both.

(2) A manufacturer of plastic explosives shall not import, transport, keep, store, possess, transfer, sell, supply or export plastic explosives unless the plastic explosives are marked in such a manner as to achieve homogeneous distribution in the finished product.

(3) The minimum concentration of a detection agent in the finished product at the time of manufacture shall be in accordance with the Technical Annex to the Convention on the Marking of Plastic Explosive for the Purpose of Detection.

(4) Subsection (1) shall not apply in respect of the manufacture, importation, transportation, keeping, storage, possession, transfer, sale, supply, or transmission of any unmarked plastic explosives in limited quantities as may be determined, in writing, by the Commissioner of Police solely for -

- (a) use in -
  - (i) research into or development or testing of new or modified explosives;
  - (ii) training in the detection of explosives; or

- (iii) the development or testing of equipment for the detection of explosives; or
- (b) forensic purposes, and under such conditions as may be prescribed by law.

### PART III - SPECIFIED ENTITIES

#### Declaration of specified entity or person

34. (1) Where the Commissioner of Police has reasonable grounds to suspect that -

- (a) an entity or a person knowingly -
  - (i) recruits or has recruited a person to commit;
  - (ii) is or has been involved in the commission, preparation or instigation of;
  - (iii) is attempting or has attempted to commit;
  - (iv) is participating or has participated in commission of; or
  - (v) is facilitating in or has facilitated the commission of, a terrorist act, or
- (b) an entity or a person -
  - (i) is a member of or belongs to a terrorist group;
  - (ii) has links with a terrorist group;
  - (iii) has been listed in the United Security Council Sanctions List as may be prescribed in the regulations;
  - (iv) has been considered as a person or an entity involved in a terrorist act by another State or an

organisation as the Minister may approve;

(v) is subject to the control or influence of persons outside Lesotho and is involved in the financing, commission, preparation, or instigation of a terrorist acts; or

(c) a person or an entity is acting -

(i) on behalf of;

(ii) at the direction of;

(iii) in association with,

a person or an entity referred to in subsection (1)(a),(b) and (c) he may recommend to the Minister that an order be made under subsection (2) in respect of the person or entity.

(2) If the Minister is satisfied that there are reasonable grounds to support a recommendation made under subsection (1) he may apply to the Court in Chambers for an order to -

(a) declare a person or an entity in respect of whom or which the recommendation is made to be a specified entity or person; and

(b) direct that the person or an accountable institution freeze, without delays, funds or other assets of a person or an entity so declared if it is in possession of the funds or other assets.

(3) A person who or an entity which makes available, directly or indirectly, funds under this section commits an offence and on conviction is liable to imprisonment for a period not exceeding 25 years or a fine not exceeding 50,000,000.00 Maloti or both.

(4) Where a person declared under subsection (2) is a naturalized citizen of Lesotho or is in the process of obtaining citizenship of Lesotho, the Minister may deprive the person his citizenship or stop the process.

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**Orders for the implementation of measures to give effect to resolutions of the Security Council**

35. Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and call upon Government of Lesotho to apply those measures, the Minister may, by regulations published in the Gazette, make such provision as may appear to him to be necessary or expedient to enable those measures to be effectively applied.

**PART IV - INFORMATION SHARING, EXTRADITION AND MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS****Exchange of information relating to terrorist groups and terrorist acts**

36. (1) The Commissioner of Police may, on a request made by the appropriate authority of a foreign state, disclose to that authority, any information in his or her possession or in the possession of any government department or agency, relating to any of the following -

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel documents by persons suspected of involvement in the commission or terrorist acts;
- (c) trafficking in explosives or other devices or sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (d) the use of communication technologies by terrorist groups; or
- (e) any information as may be necessary,

if the disclosure is not prohibited by any provision of law and will not, in the view of the Commissioner of Police, be prejudicial to national security or public safety.

(2) The Commissioner of Police may request any information set out in subsection (1) from a foreign jurisdiction.

### **Extradition**

37. (1) The offences provided for in this Act shall be deemed to be extraditable offences under the Fugitives Offenders Act, 1967<sup>2</sup> and accordingly, the provisions of the Fugitives Offenders Act shall apply to, and in relation to, extradition in respect of those offences.

(2) Where the Government of Lesotho accedes to a request by a party to a counter terrorism convention for the extradition of a person accused of an offence provided for in this Act, the act constituting such an offence shall, for the purposes of the Fugitives Offenders Act, be deemed to have been committed not only in the place where it was committed but also within the jurisdiction of the requesting party to the counter terrorism convention.

### **Existing extradition treaties deemed to include treaty offences as extraditable offences**

38. Where Lesotho is a party, or becomes a party to, an international treaty listed in the Schedule, the international treaty shall be deemed, for the purposes of the Fugitives Offenders Act, to include a provision for extradition in respect of offences falling within the scope of the international treaty set out in the Schedule.

### **International treaty to be used as basis for extradition**

39. Where Lesotho is a party or becomes a party to an international treaty listed in the Schedule, and there is no extradition arrangement between the Government of Lesotho and another state which is a party to the treaty, the Minister may, by order published in the Gazette, treat the international treaty, for the purposes of the Fugitives Offenders Act, as an extradition arrangement between Government of Lesotho and that state, in respect of offences falling within the scope of that international treaty.

### **Applicability of general provisions and laws and treaties in force on legal mutual assistance**

40. The conditions and procedures relating to mutual legal assistance with

regard to the offences in this Act are regulated by the relevant applicable laws and treaties in force in Lesotho.

**Transfer of detained persons for purposes of identification, testimony, etc. to a foreign State**

41. (1) A person who is being detained or is serving a sentence in Lesotho, and whose presence is required by a foreign state for purposes of identification, testimony or otherwise providing evidence for the investigation or prosecution of offences set out in this Act may be transferred subject to such conditions to be agreed upon with the requesting State and that the person to be transferred agrees.

(2) The person transferred shall receive credit in Lesotho for the service of the sentence for time spent in custody of the requesting State.

**Transfer of detained persons for purposes of identification, testimony, etc. to Lesotho**

42. (1) The Director of Public Prosecutions may address a request to a foreign State for the transfer of a person who is being detained or is serving a sentence in such State whose presence is required by Lesotho for purposes of identification, testimony or otherwise providing evidence for the investigation or prosecution of offences set out in this Act.

(2) Unless the competent authority of the foreign State so agrees, the person being transferred, whatever his nationality -

- (a) shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in respect of acts or convictions anterior to his departure from the territory of the foreign State;
- (b) shall be kept in custody, unless otherwise requested or authorised by the requested State;
- (c) shall be returned without delay to the custody of the requested State as agreed.

(3) The competent authority of another State shall not require the

initiation of extradition proceedings for the return of the person to the requested State.

#### **Prohibition to refuse a request for assistance on the ground of bank secrecy**

43. For the purpose of providing assistance to the Government of Lesotho or a foreign State, bank secrecy shall not be invoked as grounds to refuse a request with respect to the offence of financing of terrorist acts and terrorism related offences.

#### **Non-discrimination clause**

44. Nothing imposes an obligation to extradite or provide assistance in relation to a person for any of the offences set out in this Act, if there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing that person on account of his gender, race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to the position of that person for any of these reasons.

#### **Notification to other competent or interested States**

45. (1) When the person who is the subject of an investigation for an offence provided for in this Act has been placed into custody, the Director of Public Prosecutions shall immediately notify the State of the detained person -

- (a) of the fact that such person is in custody;
- (b) of the circumstances that warrant the detention of that person.

(2) The Director of Public Prosecutions shall promptly inform the State mentioned in subsection (1) of the conclusions of the investigation, and indicate to them whether he intends to exercise jurisdiction.

(3) If the Director of Public Prosecutions considers it appropriate, he may notify any other interested States.

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**Offences under this Act deemed not to be offences of a political character for the purposes of extradition**

46. Notwithstanding anything in the Fugitives Offenders Act, an offence under this Act or an offence under any Act where the act or omission constituting the offence also constitutes a terrorist act, shall for the purposes of extradition or mutual legal assistance, be deemed not to be -

- (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or
- (b) a fiscal offence.

**PART V - SEIZURE AND FORFEITURE OF TERRORIST PROPERTY****Seizure and detention of terrorist cash etc**

47. (1) Where the Commissioner of Police has reasonable grounds to suspect that any cash, funds or property -

- (a) is intended to be used for the purposes of terrorism;
- (b) belongs to, or is held on trust for, a specified entity;
- (c) is or represents property obtained through acts of terrorism, he may seize the cash, funds or property.

(2) The Commissioner of Police may seize the cash, funds or property even if he reasonably suspects part only of the cash, funds or property to be terrorist cash, funds or property and it is not reasonably practicable to seize that part only of the cash, funds or property.

(3) The Commissioner of Police may exercise his powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with terrorist cash, funds or property.

(4) The Commissioner of Police shall, as soon as is reasonably practicable, apply to the Court in Chambers for a detention order with respect to the cash, funds or property seized under subsection (1).

(5) The Court in Chambers shall not make an order for detention of the cash, funds or property unless the Court is satisfied that there are reasonable grounds for suspecting that the cash, fund or property -

- (a) is intended to be used for the purposes of terrorism;
- (b) consists of resources of a prescribed organisation, or
- (c) is or represents property obtained through terrorist activities.

(6) Subject to subsection (8), any order made under subsection (5) shall remain valid for a period of 90 days, and may be renewed for further period of 90 days by the Court in Chambers, until production of the cash, funds or property before the court in proceedings against any person for an offence with which that cash, funds or property is connected.

(7) Any cash, or funds detained under this section shall be deposited by the Commissioner of Police into the Asset and Forfeiture Fund established under section 56.

(8) The cash, or funds, with the interest, may be released by an order of the Court in Chambers -

- (a) where the conditions under subsection (5) are no longer met; or
- (b) where no proceedings are brought in connection with the cash, funds or property detained.

(9) For the purposes of this section, "cash" means -

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) traveler's cheques;
- (d) banker's draft;

- (e) bearer bonds and bearer shares; or
- (f) such other monetary instruments as the Minister responsible for finance may, by notice published in the Gazette, specify.

**Powers of Commissioner of Police to seize property used in commission of terrorist acts**

48. (1) Where the Commissioner of Police has reasonable grounds to believe that any property has been, is being, or may be used to commit an offence under this Act, he may seize the property.

(2) The Commissioner of Police may exercise his powers under subsection (1) whether or not any proceedings have been instituted for an offence under this Act in respect of that property.

(3) The Commissioner of Police, shall as soon as practicable after seizing any property under subsection (1), and in any event within 10 days, make an application to the Court for a detention order in respect of that property.

(4) A judge to whom an application is made under subsection (3), shall not make a detention order in respect of the property referred to in the application unless he -

- (a) has given every person appearing to have an interest in the property, a reasonable opportunity of being heard;
- (b) has reasonable grounds to believe that the property has been, is being, or may be used to commit an offence under this Act.

(5) Subject to subsection (6), every detention order made under subsection (4), shall be valid for a period of 90 days, and may, on application, be renewed by the Court, for further period of 90 days until such time as the property referred to in the order is produced in court in proceeding for an offence under this Act in respect of that property.

(6) The Court may, upon application, release any property referred to in a detention order made under subsection (4) if -

- (a) the Commissioner of Police no longer has reasonable grounds to suspect that the property has been, is being or will be used to commit an offence under this Act; or
- (b) no proceedings are instituted in the Court for an offence under this Act in respect of that property within 6 months of the date of the detention order.

#### **Orders for forfeiture of property on conviction for offences under this Act**

49. (1) Where any person is convicted of an offence under this Act, or an offence under any other Act where the act or omission also constitutes a terrorist act, the court may order that property -

- (a) used for, or in connection with; or
- (b) obtained as proceeds from,

the commission of that offence, be forfeited to the State.

(2) Property forfeited to the State under subsection (1) shall vest in the Government of Lesotho -

- (a) if no appeal has been made against the order, at the end of the period within which an appeal may be made against the order; and
- (b) where an appeal has been made against the order, in the final determination of the appeal.

#### **Orders for seizure and restraint of property**

50. (1) Where the Court is satisfied, on an application made to the Court in Chambers, that there are reasonable grounds to believe that there is in any building, place or vessel, any property in respect of which a forfeiture order may be made, the Court may issue -

- (a) a warrant authorising a police officer to search the building, place or vessel for that property and to seize that property if found, and any other property in respect

of which that police officer believes, on reasonable grounds, that a forfeiture order may be made;

- (b) a restraint order prohibiting any person from disposing of, or otherwise dealing with any interest in that property, other than as may be specified in the order.

(2) On an application made under subsection (1), the Court may, at the request of the Commissioner of Police and if the Court considers that the circumstances so require, appoint a person to manage the property so seized.

(3) The power to manage or otherwise deal with property under subsection (2) includes -

- (a) in the case of perishable or rapidly depreciating property, the power to sell that property; and
- (b) in the case of property that has little or no value, the power to destroy that property.

(4) Before a person appointed under subsection (2) destroys any property referred to subsection (3)(b), he shall apply to the Court for a destruction order.

(5) Before making a destruction order in relation to any property, the Court shall require notice to be given, in such manner as the Court may direct, to any person who, in the opinion of the Court, appears to have an interest in the property and may provide that person with a reasonable opportunity to be heard.

(6) The Court may order that any property in respect of which an application is made under subsection (4), be destroyed if it is satisfied that the property has little or no financial or other value.

(7) A management order under subsection (2) shall cease to have effect when the property which is the subject of the management order is returned to an applicant in accordance with the law or forfeited to the state.

(8) The Commissioner of Police may, at any time, apply to a Judge of the High Court to cancel or vary a warrant or order issued under this section.

### Orders for forfeiture of property

51. (1) The Commissioner of Police may make an application to the Court for a forfeiture order in respect of terrorist property.

(2) Pending the determination of an appeal against an order of forfeiture made under this section, property restrained under section 50 shall continue to be detained, and any person appointed to manage, control or otherwise deal with the property under that section shall continue in the capacity.

(3) The provisions of this section shall not affect the operation of any other provision of this Act in respect of forfeiture.

### Humanitarian exemptions

52. A person whose funds have been affected by a freezing order under this Act may make an application to the Court for an order permitting him access to the following -

- (a) basic expenses including payments for foodstuffs, rent or mortgage, medicines and medical treatment, insurances premiums, and public utility charges;
- (b) reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; or
- (c) fees or services charges for routine holding or maintenance of frozen funds or frozen economic resources.

### Exemptions for extraordinary expenses

53. (1) For the purposes of this Act, "extra-ordinary expenses" means expenses pertaining to religious duties, covering the costs of travel and other expenses in relation to it.

(2) Any person, group, undertaking, or entity whose funds have been frozen under the Consolidated List may make an application before a competent court for an order excluding funds and other financial assets or economic resource necessary for extra-ordinary expenses from the Consolidated List.

### **Provisional measures**

54. (1) The Commissioner of Police shall detain funds that have been specifically used or allocated for the commission of any offence under this Act for possible forfeiture upon conviction of a person suspected to have committed or attempted to commit an offence under the Act.

(2) A person whose funds are detained under subsection (1) shall not transfer, convert or dispose funds so detained until duly authorised by the Commissioner of Police or a competent court of law.

### **Preventive measures**

55. (1) The Commissioner of Police shall apply for an order before a competent court of law for the freezing, without delay, of the funds of persons in relation to whom there are reasonable grounds to believe that they are committing or attempting to commit, or participating in or facilitating the commission of any of the offences under this Act.

(2) An order for freezing of funds under subsection (1) shall be valid for a period of 90 days.

(3) Where there are reasonable grounds to believe that such funds are intended to be used for offences under this Act, or consists of funds or assets of listed organizations, or represents funds obtained through activities connected with offences under this Act, the period for freezing may be renewed for further period not exceeding 90 days.

(4) The Commissioner of Police shall deposit funds detained under this section into the Asset and Forfeiture Fund established under section 56.

(5) The funds shall be released where no proceedings are brought in connection with funds connected to offences under the Act or where circumstances provided for in this section no longer exist.

### **Establishment of Fund and its management**

56. (1) There is established a fund to be called the Asset and Forfeiture Fund into which shall be deposited funds detained under this Act.

(2) The Minister shall, in consultation with the Minister responsible for finance, establish procedures and systems for proper administration and management of the seized funds.

#### **Adoption and dissemination of domestic decision**

57. (1) The Minister shall -

- (a) designate persons and groups to be listed pursuant to the United Nations Resolutions; and
- (b) order freezing of funds and other assets or economic resources of persons or groups listed under paragraph (a).

(2) The listing shall be published by notice in the Gazette and disseminated to law enforcement agencies and accountable institutions.

#### **Lifting of restrictive measures**

58. Where an individual or entity has been subjected to listing measures on account of mistaken identity, such an individual or entity shall be able to request review of such status before the Sanctions Committee of the United Nations Security Council.

#### **Management of perishable or rapidly depreciating objects**

59. (1) The Commissioner of Police shall, upon being granted an order by a competent court, sell perishable or rapidly depreciating objects that are the subject of freezing actions.

(2) Any interests accrued from such sale shall be deposited into an account maintained for funds and other financial assets or economic resources under this Act.

#### **Refusal of application for registration, and the revocation of the registration of the non-profit making organisations linked to terrorist groups**

60. (1) The Minister and the Minister responsible for the registration of a non-profit making organisation may sign a certificate refusing or revoking reg-

istration of a non-profit making organisation, based on information received including any security or criminal intelligence reports, where there are reasonable grounds to believe or suspect that an applicant for registration as a non-profit making organisation (in this section referred to as "applicant") has made, is making, or likely to make available, any resources, directly or indirectly to an individual terrorist, a terrorist organisation or for a terrorist act.

(2) A copy of the signed certificate shall be served on the applicant or the registered non-profit making organisation, personally or by registered letter sent to its last known address, with a copy of the certificate.

(3) The certificate or any matter arising out of it shall not be subject to review or be restrained, prohibited, removed, set aside or otherwise dealt with, except in accordance with this section.

(4) Within 30 days in respect of the copy of the notice under subsection (2), the applicant or the registered non-profit making organisation may make an application to the High Court to review the decision of the Minister.

(5) Upon the filing of an application under subsection (4), the Court may examine, in Chambers, the information, including any security or criminal or intelligence reports, considered by the Ministers in subsection (1) and deal with the matter in a manner that may not prejudice the interest of national security or fairness to any person.

(6) A determination under subsection (5) shall not be subject to appeal or review by any court.

(7) Where the Court determines, under subsection (5), that a certificate is reasonable, or if no application is brought upon the expiry of 30 days from the date of service of the notice, the Minister shall cause the certificate to be published in the Gazette.

(8) A certificate determined to be reasonable under subsection (5), shall be deemed for all purposes to be sufficient grounds for the refusal of the application for registration of the non-profit making organisation referred to in the certificate or the revocation of the registration of the non-profit making organisation referred to in the certificate.

(9) Where the Court determines that the certificate is not reasonable,

the Court shall order the registration or continuity of the non-profit making organisation.

## PART VI - MISCELLANEOUS RIGHTS AND POWERS

### **Right of communication and visit**

61. (1) A person arrested in relation to the commission of an offence under this Act has a right to communicate with and be visited by the representative of the state where he is a citizen or with someone entitled to protect his rights.

(2) The right to communication and visit under subsection (1) shall be afforded the International Committee of the Red Cross whenever a request is made by a country claiming jurisdiction over that person where both Lesotho and the other country are parties to the Counter Terrorism Convention.

### **Provision of information relating to passengers of vessels and aircraft, and persons entering and leaving the country**

62. (1) An operator of -

- (a) an aircraft or master of a vessel, departing from Lesotho; or
- (b) an aircraft registered in Lesotho or master of vessel registered in Lesotho, departing from any place outside Lesotho,

may, subject to regulations made under subsection (5), provide -

- (i) to the Director of Immigration, any information in his possession, relating to persons on board, or expected to be on board, the aircraft or vessel, as the case may be;
- (ii) to the competent authority in a foreign state, any information in his possession, relating to persons on board, or expected to be on board, the aircraft or vessel, as the case may be, and as required by

the laws of that foreign state.

(2) The Director of Immigration may, subject to regulations made under subsection (5), request from or provide to the competent authority in a foreign state, any information in his possession relating to persons entering or leaving Lesotho, by land, and as may be required by the laws of Lesotho or the foreign state.

(3) The provision of any information under subsection (1) or (2), subject to regulations made under subsection (5), shall be deemed not to be a contravention of any provision of the law prohibiting the disclosure of information.

(4) No information provided to the Director of Immigration under subsections (1) and (2) shall be used or disclosed by the Director of Immigration except for the purpose of protecting national security or public safety.

(5) The Minister may make regulations generally to give effect to the purpose of this section, including regulations in respect of types or classes of information that may be provided under this section.

#### **Power to prevent entry and order the removal of persons**

63. (1) The Director of Immigration or any other authorised officer under the laws relating to immigration shall not grant an endorsement or other authority permitting a person to enter Lesotho if he has reasonable grounds to suspect or believe that the person has been, is, or will be, involved in the commission of a terrorist act.

(2) Where the Minister has reasonable grounds to believe that a person in Lesotho has been, is or will be, involved in the commission of a terrorist act, he may make an order requiring that person to leave Lesotho and remain out of Lesotho thereafter.

(3) A person with respect to whom an order under subsection (2) is made shall leave Lesotho and shall, so long as the order is in force remain out of Lesotho.

**Power to refuse refugee application**

64. (1) The Minister may, having regard to the interests of national security and public safety, refuse the application of any person applying for status as a refugee, if he has reasonable grounds to believe that the applicant has committed a terrorist act or is or is likely to be, involved in the commission of a terrorist act.

(2) Where the Minister has reasonable grounds to believe that a person who is granted a refugee status or is in Lesotho as an asylum seeker has committed a terrorist act or is or is likely to be, involved in the commission of a terrorist act he may revoke his refugee status or be denied asylum.

**Adoption and dissemination of Consolidated List**

65. The Minister shall, in consultation with the Minister responsible for foreign affairs and international relations and by notice published in the Gazette -

- (a) adopt a resolution or any other decision regarding;
- (b) modify, in a timely manner, any change to,

the Consolidated List.

**Travel ban**

66. Individuals placed on the Consolidated List shall not be allowed entry into, or transit through Lesotho unless such individuals are citizens of Lesotho.

**Exemptions on travel ban**

67. Notwithstanding the provisions of travel ban above, such individuals should be permitted entry into or transit through Lesotho for purposes of standing trial or for purposes of extradition, or for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of any offence under this Act.

**General penalty**

68. A person who contravenes a provision of this Act where no penalty is

provided commits an offence and is liable, on conviction, to imprisonment for a term not exceeding 60 years or a fine not exceeding 100,000,000.00 Maloti.

### **Regulations**

69. (1) The Minister may make regulations generally to give effect to the provisions of this Act.

(2) Without derogating from the general provisions of subsection (1), the Minister may amend the Schedule.

### **NOTE**

1. Act No. 4 of 2008
2. Act No. 38 of 1967

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**SCHEDULE**

(section 39)

**ANTI- TERRORISM TREATY LIST**

- (a) Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September, 1963;
- (b) Hague Convention for the Suppression of Unlawful Seizure of Aircraft ("Aircraft Convention"), done at the Hague on 16 December, 1970;
- (c) Convention for the Suppression on unlawful Acts against the Safety of Civil Aviation ("Civil Aviation Convention") 1971;
- (d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents ("Diplomatic Agents Convention"), adopted by UN General Assembly on 14 December 1973;
- (e) International Convention against the Taking of Hostages ("Hostage Convention"), adopted by UN General Assembly on 17 December, 1979;
- (f) Convention on the Physical Protection of Nuclear Material ("Physical Protection Convention"), adopted at Vienna on 26 October 1979 (including amendments of 2005);
- (g) Protocol for the Suppression on Unlawful Acts against the Safety of Maritime Navigation ("maritime Convention"), done at Rome on 10 March, 1988;
- (h) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf ("Fixed Platforms Protocol"), done at Rome on 10 March, 1988;
- (i) Convention on the Marking of Plastic Explosive for the Purposes of Detection, signed at Montreal, on March, 1991;
- (j) International Convention for the Suppression of Terrorist Bombings ("Bombings Convention"), adopted by the UN General Assembly on

- 15 December, 1997;
- (k) International Convention for the Suppression of the Financing of Terrorism (“Financing Convention”), adopted by the UN General Assembly on 9 December, 1999;
  - (l) International Convention for the Suppression of Acts of Nuclear Terrorism (“Nuclear Terrorism Convention”) adopted by the UN General Assembly on 13 April, 2005;
  - (m) Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of maritime Navigation (“2005 Maritime Protocol”), signed at London on 14 October, 2005;
  - (n) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (“2005 Fixed Platforms Protocol”), signed at London on 14 October, 2005;
  - (o) Convention on the physical protection of Nuclear Material, adopted at Vienna on 26 October, 1979 (including the amendments of 2005);
  - (p) 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, done at Montreal on 24 February, 1988;
  - (q) International Convention for the Suppression of the Acts of Nuclear Terrorism, adopted by the UN General Assembly on 13 April, 2005;
  - (r) OAU Convention on the Prevention and Combating of Terrorism, adopted at Algiers on 14 July, 1999;
  - (s) Protocol to the OAU Convention on the Prevention and Combating of Terrorism, adopted at Addis Ababa on 8 July, 2004;
  - (t) Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft (Beijing Protocol of 2010).

## GOVERNMENT NOTICE NO. 8 OF 2018

**The Parliament of Lesotho****Statement of Objects and Reasons of the Prevention and  
Suppression of Terrorism Act, 2018**

**(Circulated by the Authority of the Minister of Home Affairs  
Honourable Tsukutlane Au)**

The main purpose of the Prevention and Suppression of Terrorism Bill, 2018 is to provide for the effective implementation of the international conventions and protocols against terrorism and strengthening international cooperation mechanisms related to terrorism and in related criminal matters.

Lesotho is a signatory to Universal and Regional legal instruments relating to terrorism and terrorist financing, but since ratification there has never been a comprehensive legal framework on anti-terrorism. Although the Penal Code Act, 2011 and the Money-Laundering and Proceeds of Crime Act, 2008 touch on offences relating to terrorist acts and terrorist financing respectively, they are not sufficient enough to bring perpetrators of terrorist acts to book. It is therefore of paramount importance that Lesotho domesticates the conventions and protocols by putting in place a comprehensive piece of legislation and measures that would assist the country to join the international community in the fight against terrorism which is rampant globally.

The Bill proposes to create an effective and rule of law-based criminal justice system that ensures that any person who participates in the planning and preparation, and financing and supporting of terrorist acts is brought to justice with due respect for human rights and fundamental freedoms. Thus it is an offence to threaten, attempt, aid, abet, fund and solicit support in the commission of terrorist acts and the actual commission of the act itself including hostage taking and hoaxes.

The Bill does not define the word "terrorism" but proposes to list terrorist acts and activities which include any act or omission which endangers the life of any person, involves death or serious bodily injury to a person, damage to national key points and use of dangerous weapons, toxic chemical and microbial or other biological agents or toxin or disruption of a system or infrastructure. The Bill also covers offences associated or connected with terrorist act, and all offences

that are created by other conventions relating to anti-terrorism.

The Bill reinforces Lesotho's participation with the international community by promoting information sharing on terrorists, terrorism and terrorist activities, extradition matters and mutual legal assistance in the investigation and prosecutions of perpetrators and other related criminal matters.

Annexed to the Bill by way of Schedule is a list of anti-terrorism treaties to which Lesotho is a party.