

# SUPPLEMENT TO THE SWAZILAND GOVERNMENT GAZETTE

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# PART A

THE SUPPRESSION OF TERRORISM BILL, 2008 (Bill No.5 of 2008)

(To be presented by the Prime Minister)

## MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to provide a legal regime that would prevent, fight and suppress terrorists activities in compliance with the United Nations Security Council Resolution 1373 and the United Nations Conventions against terrorism.

**J. M. DLAMINI** ATTORNEY GENERAL

A BILL Entitled

An Act to provide for the detection, suppression and deterrence of terrorism and for punishment of all forms of terrorist acts and persons engaged in terrorist acts in compliance with the Conventions and Resolutions of the United Nations.

ENACTED by the King and the Parliament of Swaziland.

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**PART I PRELIMINARY PROVISIONS***Short title and commencement.*

1. This Act may be cited as the Suppression of Terrorism Act, 2008 and shall come into force thirty days after date of publication in the Gazette.

*Interpretation.*

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

"aircraft" includes an aeroplane, glider and helicopter;

"Commissioner" means the Commissioner of Police and includes any other police officer authorised by the Commissioner of Police to act or carry out any duties entrusted on the Commissioner of Police under this Act;

"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;

"communications service provider" means a person who provides services for the transmission or reception of communications;

"counter terrorism convention" means any of the following United Nations Conventions -

(a) Convention on Offences and certain Other Acts committed on Board Aircraft signed at Tokyo on 14<sup>th</sup> September 1963;

(b) Convention for the Suppression of Un lawful Seizure of Air craft done at the Hague on 16<sup>th</sup> December 1970;

(c) Convention for the Suppression of Un lawful Acts Against the Safety of Civil Aviation, done at Montreal on 23<sup>rd</sup> September 1971;

(d) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14<sup>th</sup> December 1973;

(e) International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17<sup>th</sup> December 1979;

(f) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3<sup>d</sup> March 1980;

(g) 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<sup>th</sup> February 1988;

(h) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, done at Rome on 10<sup>th</sup> March 1988;

(i) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10th March 1988;

G) Convention on the Marking of Plastic Explosives for the Purposes of Detention, signed at Montreal, on 1<sup>st</sup> March 1991;

(k) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15<sup>th</sup> December 1997;

(l) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9<sup>th</sup> December 1999. (Not yet in force), and

includes the United Nations Security Council Resolution 1373 and any other subsequent protocols that bind the Government;

"entity" means a person, group, trust, partnership, fund or an unincorporated association or . organisation;

"financial institution" means a commercial bank, or any other institution which makes loans, advances or investments or accepts deposits of money from the public;

"Financial Intelligence Unit" means a body or agency responsible for receiving, requesting, analysing and disseminating to competent authorities disclosures of financial information as required under this Act, the Prevention of Money Laundering Act or in any United Nations Convention, multilateral, regional or bilateral convention or treaty relating to the prevention or countering money laundering and financing of terrorism;

"interception of communications order" means an order issued by a Judge under section 25;

"Minister" means the Minister for responsible for national security;

"Master" in relation to a vessel, means the owner or person (except a harbour master or pilot) having for the time being command or charge of the vessel;

"member of a terrorist group or organisation" includes -

(a) a person who is an informal member of the organisation; and

(b) a person who has taken steps to become a member of the organisation;

"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 any movable or immovable property of any description and deeds and instruments relating to or evidencing the title or right to property, or giving a right to recover or receive money or goods, and includes any funds, financial assets or economic resources;

"Security Council" means the Security Council of the United Nations;

"specified entity" means an entity in respect of which a Notice under section 28 has been made, or is deemed by reason of the operation of section 29(4) to have been made, and is for the time being in force;

"terrorist act" means -

(1) an act or omission which constitutes an offence under this Act or within the scope of a counter-terrorism convention; or

(2) an act or threat of action which -

(a) causes-

(i) the death of a person;

(ii) the overthrow, by force or violence, of the lawful Government; or

(iii) by force or violence, the public or a member of the public to be in fear of death or bodily injury;

(b) involves serious bodily harm to a person;

(c) involves serious damage to property;

(d) endangers the life of a person;

(e) creates a serious risk to the health or safety of the public or a section of the public;

(f) involves the use of firearms or explosives;

(g) involves releasing into the environment or any part of the environment or distributing or exposing the public or any part of the public to-

(i) any dangerous, hazardous, radioactive or harmful substance;

(ii) any toxic chemical;

(iii) any microbial or other biological agent or toxin;

(h) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;

(i) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services;

(j) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to -

(k) intimidate the public or a section of the public; or

(l) compel the Government, a government or an international organisation to do, or refrain from doing, any act.

(3) Notwithstanding the provisions of subsection (2), an act which -

(a) disrupts any services; and

(b) is committed in pursuance of a protest, demonstration or stoppage of work, shall be deemed not to be a terrorist act within the meaning of this definition, so long as the act is not intended to result in any harm referred to in paragraphs, (a), (b), (c), (d) or (e) of subsection (2);

"terrorist group" means -

- (a) an entity that has one of its activities and purposes, the committing of, or the facilitation of the commission of, a terrorist act; or
- (b) a specified entity;

"terrorist property" means

- (a) proceeds from the commission of a terrorist act,
- (b) money or other property which has been, or is likely to be used to commit a terrorist act, or
- (c) money or other property which has been, is being, or is likely to be used by a terrorist group;

"vessel" means any thing made or adapted for the conveyance by water, of people or property;

"weapon" includes a firearm, ammunition, bomb, explosive or any device capable of causing an explosion, grenade or any incendiary material, chemical, biological or nuclear weapon.

## PART II JURISDICTION AND TRIAL OF OFFENCES

### *Jurisdiction to try offences under this Act*

3. (1) The High Court shall have jurisdiction to try an offence under this Act if the act or omission constituting the offence is committed in Swaziland.

(2) For the purposes of subsection (1) an act or omission committed outside Swaziland and which would be an offence if committed in Swaziland and where-

- (a) the person committing the act or omission is a citizen of Swaziland or is not a citizen but is ordinarily resident in Swaziland;
- (b) the act or omission is committed to compel the Government of Swaziland to do or refrain from doing an act or certain act;
- (c) the act or omission is committed against a citizen of Swaziland or a person under the protection of the Government of Swaziland;
- (d) the act or omission is committed against property belonging to the Government of Swaziland outside Swaziland; or
- (e) the person who commits the act or omission is, after its commission, present in Swaziland,

shall be deemed to be an act or omission committed in Swaziland.

*Evidence by certificate*

4. Where in any proceedings for an offence under this Act, a question arises as to whether anything or a substance is a-

- (a) weapon;
- (b) hazardous, radioactive or a harmful substance;
- (c) toxic chemical or microbial or other biological agent or toxin,

a certificate purporting to be signed by an appropriate authority, or a person with expert knowledge, as to the nature of the thing or substance described in the certificate shall be admissible in evidence without proof of the signature or authority of the person appearing to have signed it and shall, in the absence of evidence to the contrary, be proof of the facts stated in that certificate.

## PART III OFFENCES

*Terrorist Offences and punishments*

5. (1) A person who commits a terrorist act, subject to any other specific penalty provided in this Act for that offence, shall be guilty of an offence and, on conviction, shall be sentenced to any period of imprisonment not exceeding twenty five (25) years or to such number of life sentences as the court may impose.

(2) A person who, without a lawful and justifiable reason, is in possession or is found in possession of literature on weapons-making, that is, including but not limited to, books, manuals, documents, pamphlets, drawings, diagrams, electronic storage devices and tapes, commits an offence and, on conviction, shall be liable to imprisonment for a period not exceeding three (3) years or such other penalty as the Court may impose.

(3) Any person who -

(a) unlawfully sends or delivers, by any means, to another person or institution an explosive device, contraption or substance for purposes of causing harm, disturbance, fear, or panic;

(b) intentionally and without lawful excuse, sends or communicates to another person or institution a false alarm or by any deed causes a false alarm or unwarranted panic;

(c) places a parcel, substance or thing in any place with the intention to cause damage or injury to a person or property;

(d) places a parcel, substance or thing in any place with the intention to induce -

(i) fear of injury to life or body to any person or damage to property; or

(ii) submission to a demand whether that demand is possible or impossible of being realized or being met;

(e) intentionally publishes or communicates, in whatever manner, false information about the existence of any danger, dangerous thing, explosive or harmful or hazardous substance when that person does not believe in the existence of that thing or truthfulness of that publication or communication,

commits an offence and, on conviction, shall be liable to imprisonment for a period not exceeding three (3) years or such fine as the Court may impose

(4) Where a body corporate commits an offence under this Act, every director, officer or agent of the corporation who directed, authorized, assented to, acquiesced or participated in the commission of the offence is a party to and

guilty of the offence and shall be liable, on conviction, to the punishment provided for the offence whether or not the body corporate has been prosecuted.

(5) A court convicting a person under subsection (1) shall not impose a punishment of payment of a fine unless there are compelling reasons for so doing such as where, because of ill health or humanitarian reasons, there would be no useful purpose in keeping the convict in effective imprisonment.

(6) Any person who commits a terrorist act or contravenes any other provision of this Act, by commission or omission, commits an offence and shall be liable, on conviction, to such penalty as provided under this section or under this Act.

(7) A person charged with an offence under this Act, may be tried summarily by the High Court and only the High Court shall be the court of first instance including any incidental matter such as questions of bail or liberty of the accused before or during the trial.

*Provision and collection of funds to commit terrorist acts*

6. A person who provides or collects by any means, directly or indirectly, any funds, intending or knowing or having reasonable grounds to believe that the funds may be used in full or in part to carry out a terrorist act commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

*Collection, provision of property or service for terrorist acts*

7. A person who, directly or indirectly, collects property or provides or invites a person to provide, or makes available, property or financial or other related service-

(a) intending that the property or service be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or

(b) knowing or having reason to know that in whole or in part, the property or service may be used by, or may benefit, a terrorist group,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

*Use of property for terrorist acts*

8. A person who -

(a) uses property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or

(b) possesses property intending that the property be used or knowing that the property may be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

*Retention or control of terrorist property*

9. A person who knowingly or having reason to know enters into, or becomes concerned in, an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -

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

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

*Dealing with property owned or controlled by terrorist groups*

10. (1) A person who knowingly or having reason to know -

- (a) deals, directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group;
- (b) enters into, or facilitates, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or
- (c) directly or indirectly provides financial or other service in respect of property referred to in paragraph (a) at the direction of a terrorist group,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

(2) A person who takes or fails to take measures to comply with subsection (1) shall not be liable in any civil action arising from having taken, or not having taken those measures if that person proves that all reasonable steps were taken to ensure that the relevant property was not owned or controlled by or on behalf of a terrorist group.

*Soliciting and giving support to terrorist groups*

11. (1) A person who knowingly, and in any manner -

- (a) solicits support for, or gives support to, any terrorist group, or
- (b) solicits support for, or gives support to, the commission of a terrorist act,

commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

(2) For the purposes of this section an offer to provide, or the provision of, forged or falsified travel documents to a member of a terrorist group constitutes giving of support to a terrorist group.

***Harbouring terrorist suspects***

12. A person who-

- (a) harbours or conceals any other person; or
- (b) prevents, hinders or interferes with the apprehension of any other person,

knowing or having reason to believe that that other person -

- (c) is a terrorist suspect;
- (d) has committed a terrorist act; or,
- (e) is a member of a terrorist group,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding twenty (20) years.

***Provision of weapons to terrorist groups***

13. Every person who knowingly or having reason to know provides or offers to provide, an) weapon to-

- (a) a terrorist group;
- (b) member of a terrorist group ; or,
- (c) any other person for use by, or for the benefit of, a terrorist group or a member of f terrorist group,

commits an offence and shall on conviction, be liable to imprisonment for twenty (20) years or to such other higher or lower sentence as the court may impose.

***Recruitment to terrorist groups or acts***

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

- (a) be a member of a terrorist group; or
- (b) participate in the commission of a terrorist act,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding twenty (20) years.

***Training terrorist groups and for terrorist acts***

15. A person who, knowingly, agrees to provide training or instruction, or provides training or instruction in -

- (a) the making or use of any weapon,
- (b) the carrying out of a terrorist act,
- (c) the practice of military exercises or manoeuvres,

to member of a terrorist group or person engaging in, or preparing to engage in, the commission of a terrorist act commits an offence and shall, on conviction, be liable to imprisonment for twenty (20) years or to such other sentence as the court may impose.

*Promotion and facilitation of terrorist acts in foreign states*

16. A person in Swaziland, who-

(a) knowingly promotes or facilitates the doing of any act in a foreign State for the purpose of achieving any of the following objectives, whether or not the objective is achieved -

(i) the overthrow, by force or violence, of the lawful Government of that foreign State;

(ii) causing, by force or violence, the public in that foreign State to be in fear of death or bodily injury;

(Hi) causing death of, or bodily injury to, a person who is the lawful Head of State of that foreign State or holds, or performs the duties of, a public office in that foreign State;

(iv) unlawfully, destroying or damaging any property belonging to the lawful Government of that foreign State;

(b) recruits another person to become a member of, or to serve in any capacity with, a body or association of persons the objectives of which are, or include, the objectives referred to in paragraph (a);

(c) accumulates, stockpiles or otherwise keeps, any weapons for the purposes of doing any act referred to in paragraph (a);

(d) trains or drills, or participates in the training or drilling, of any other person in the use of weapons or in the practice of military exercises or manoeuvres to prepare that person to do any act referred to in paragraph (a);

(e) agrees or submits to be trained or drilled, in the use of weapons or in the practice of military exercises or manoeuvres for the purpose of doing any act referred to in paragraph (a);

(t) gives any money or goods to, or performs services for, any other person or body or association of persons for the purposes of promoting or supporting the doing of an act referred to in paragraph (a); or

(g) receives or solicits money or goods or the performance of services for the purposes of promoting or supporting the doing of an act referred to in paragraph (a),

commits an offence and shall, on conviction, be liable to imprisonment for a period of twenty five (25) years or such number of life sentences as the court may impose.

*Promotion of offences under section 16*

17. A person who being-

- (a) the owner, occupier, lessee or the person in charge of any building, premises, room, or place knowingly permits a meeting of persons to be held in that building, premises, room or place;
- (b) the owner, charterer, lessee, operator, agent, or master of a vessel. or the owner, charterer, lessee, operator, agent or pilot in charge, of an air craft, knowingly permits that vessel or aircraft to be used,

for the purposes of committing an offence under section 16, or promoting or supporting the commission of an offence under section 16, commits an offence and shall, on conviction, be liable to imprisonment for twenty five (25) years or to such number of life sentences as the court may impose.

*Conspiracy to commit offences under this Act*

18. (1) A person who conspires with another person in Swaziland to do any act in any place outside Swaziland, being an act, which if done in Swaziland would constitute an offence under this Act shall be deemed to have conspired to do that act in Swaziland.

(2) A person who conspires with another person in a place outside Swaziland which if done in Swaziland would constitute an offence under this Act shall be deemed to have conspired to do that act in Swaziland.

(3) A person who conspires with another person in terms of this section commits an offence and shall, on conviction, be liable to imprisonment for a period not exceeding twenty (20) years.

*Membership of terrorist groups*

19. (1) A person who-

- (a) is a member; or
- (b) professes to be a member,

Of a terrorist group commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding ten (10) years.

(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 charge is brought was not a terrorist group at or on the date that person became a member or professed to be a member of that entity, or that person has not taken part in the activities of that entity after that entity became a terrorist group.

*Arrangements of meetings in support of terrorist groups*

20. (1) A person who arranges, manages or assists in arranging or managing a meeting which that person 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 shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.

(2) In this section "meeting" means a meeting of three (3) or more persons, whether or not the public is admitted.

*Participation in the commission of offences under this Act*

21. A person who -

- (a) aids and abets the commission of;
- (b) attempts to commit;
- (c) conspires to commit;
- (d) counsels or procures the commission of,

an offence under this Act commits an offence and shall, on conviction, be liable to the same punishment as is prescribed for the perpetrator or, or to such other punishment as may be specifically provided.

PART IV INVESTIGATION OF OFFENCES

*Powers of arrest*

22. Any police officer may arrest without warrant any person who has committed or is committing or whom the police officer has reasonable grounds for suspecting to have committed or to be committing an offence under this Act.

*Detention orders*

23. (1) Subject to subsection (2) a police officer may for the purpose of preventing the commission of an offence under this Act or preventing interference in investigation of an offence under this Act, apply ex parte, to a Judge of the High Court for a detention order.

(2) A police officer may make an application under subsection (1) only with the prior written consent of the Attorney-General.

(3) A judge to whom an application is made under subsection (1) shall make an order for the detention of the person named in the application where the judge is satisfied that there are reasonable grounds to believe that -

- (a) the person is about to commit an offence under this Act; or
- (b) is interfering or likely to interfere with an investigation into an offence under this Act.

(4) An order under subsection (3) shall be for a period not exceeding forty-eight (48) hours in the first instance and may, on application made by a police officer, be extended for a further period, provided that the maximum period of detention under that order shall not exceed seven (7) days.

(5) An order under subsection (3) shall specify the place at which the person named in the order is to be detained and the conditions subject to which that person shall be detained (including conditions relating to access to a Government medical officer and the video recording of the person in detention so as to constitute an accurate, continuous and uninterrupted record of the detention of that person for the whole period of the detention).

***Power to gather information***

24. (1) Subject to subsection (2) a police officer may, for the purpose of an investigation of an offence under this Act, apply ex parte to a Judge of the High Court for an order for the gathering of information.

(2) A police officer may make an application under subsection (1) only with the prior written consent of the Attorney-General.

(3) A Judge to whom an application is made under subsection (1) shall make an order for the gathering of information where the Judge is satisfied that the consent of the Attorney-General has been obtained as required by subsection (2) and that there are reasonable grounds to believe that-

- (a) an offence under this Act has been committed and information concerning the offence or information that may reveal the whereabouts of a person suspected by the police officer of having committed the offence is likely to be obtained as a result of the order;
- (b) that there are reasonable grounds to believe that an offence under this Act may soon be committed; or
- (c) that there are reasonable grounds to believe that a person has direct and material information that relates to an offence referred to in paragraph (b) or that may reveal the whereabouts of a person whom the police officer suspects may commit an offence under this section or Act, and
- (d) reasonable attempts have been made to obtain the information required under this section from the person who is named in the application.

(4) An order made under subsection (3) may-

- (a) require the examination, on oath or not, of a person named in the order;
- (b) require the person to attend at the place fixed by the Judge, or by the Judge designated under paragraph (d), as the case may be, for the examination and to remain in attendance until excused by the presiding Judge;
- (c) require or order the person to bring to the examination any document or thing in the possession or control of that person, and produce that document or thing to the presiding Judge;
- (d) designate another Judge as the Judge before whom the examination shall take place; and
- (e) include any other terms or conditions that the Judge considers appropriate including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any on-going investigation.

(5) An order made under subsection (3) may be executed anywhere in Swaziland.

(6) The Judge who made the order under subsection (3), or another Judge of the same court, may vary the terms and conditions of that order.

(7) A person named in an order made under subsection (3) shall answer questions put to that person by the Attorney-General or the Attorney-General's representative and shall produce to the presiding Judge documents or things which that person was ordered to bring and may refuse

to do so if answering a question or producing a document or thing would disclose information that is protected by the law relating to non-disclosure of information or privilege.

(8) The presiding Judge shall rule on an objection or other issue relating to a refusal to answer a question or to produce a document or thing.

(9) A person shall not be excused from answering a question or producing a document or thing under subsection (7) on the ground that the answer or document or thing may tend to incriminate the person or subject the person to any proceedings or penalty, and -

(a) no answer given or document or thing produced under subsection (7) shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence; and

(b) no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against that person, other than in a prosecution for perjury or giving false evidence.

(10) A person, who is the subject matter of this section, shall have the right to retain and instruct counsel at any stage of the proceedings under this section.

(11) The presiding Judge, if satisfied that any document or thing produced during the course of the examination may likely be relevant to the investigation of any offence under this Act, shall order that document or thing be delivered into the custody of the police officer or someone acting on behalf of that police officer.

*Power to intercept and admissibility of intercepted communications*

25. (1) Subject to subsection (2) a police officer may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply ex parte to a Judge of the High Court for an order intercepting a communication.

(2) A police officer may make an application under subsection (1) only with the prior written consent of the Attorney-General.

(3) Subject to subsection (3) a Judge to whom an application is made under subsection (1) may make an order -

(a) requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received, transmitted or about to be received or transmitted by that communications service provider;

(b) authorising the police to enter any premises and to install on those premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain that device.

(4) A Judge shall not make the order under subsection (2) unless the judge is satisfied that the consent of the Attorney-General has been obtained as required by subsection (2) and that there are reasonable grounds to believe that material information relating to-

(a) the commission of an offence under this Act, or

(b) the whereabouts of the person suspected by the police officer to have committed the offence

may be contained in that communication or communications of that description.

(5) Any information contained in a communication-

(a) intercepted and retained pursuant to an order under subsection (3); or

(b) intercepted and retained in a foreign State in accordance with the law of that foreign state and certified by a Judge of that foreign state to have been so intercepted and retained.

shall be admissible in proceedings for an offence under this Act, as evidence of the truth of its contents notwithstanding the fact that it contains hearsay.

#### PART V DISCLOSURE AND SHARING OF INFORMATION

##### *Duty to disclose information relating to offences and terrorism acts*

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

(a) preventing the commission by another person of a terrorist act; or

(b) securing the arrest or prosecution of another person for an offence under this Act,

shall forthwith disclose the information to the Commissioner or at a police station to an officer not below the rank of a Superintendent of Police.

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

(3) Civil or criminal proceedings shall not lie against any person for disclosing any information, in good faith, under subsection (1).

(4) Any person who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years.

##### *Duty to disclose information relating to terrorist property*

27. (1) A person shall forthwith disclose to the Financial Intelligence Unit-

(a) the existence of any property in the possession or control of that person which is, to the knowledge of that person, owned or controlled by or on behalf of a terrorist group or specified entity;

(b) any information regarding a transaction or proposed transaction in respect of any property referred to in paragraph (a).

(2) The Financial Intelligence Unit shall disclose to the Financial Intelligence Unit of a foreign State or the appropriate authority of that 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 that information is requested or if the Financial Intelligence Unit in Swaziland is of the view that the information would be relevant to that foreign State.

(3) A financial institution shall report, every three months, to the Financial Intelligence Unit and any body authorized by law to supervise and regulate the activities of that institution, that the institution -

- (a) is not in possession or control of any property owned or controlled by or on behalf of a terrorist group;
  - (b) is in possession or control of such property as is described in paragraph (a) , and the particulars relating to the persons, accounts, and transactions involved and the total value of the property.
- (4) In addition to the requirements of subsection (2), every financial institution shall report to the Commissioner, every transaction which occurs within the course of the activities of that institution, and in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.
- (5) It shall be the duty of the Financial Intelligence Unit or the body authorised by law to supervise the activities of a financial institution or the Commissioner, as case may be, on a request made in that behalf, to 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 the possession of that Unit or body or the Commissioner, as the case may be, relating to any property owned or controlled by or on behalf of a terrorist group.
- (6) Neither civil nor criminal proceedings shall lie against any person for making a disclosure or report, in good faith, under this section.
- (7) A person who fails to comply with the provisions of this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years.

## PART VI SPECIFIED ENTITIES

### *Orders declaring certain entities to be specified*

28. (1) Where the Attorney-General, the Commissioner or person responsible for the prevention of corruption or other investigative or financial body has reasonable grounds to believe that -

- (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of, a terrorist act, or,
- (b) any entity is knowingly acting on behalf of, at the direction of or in association with, an entity referred to in paragraph (a),

the Attorney-General, or any of the other persons mentioned in this subsection after consultation with the Attorney-General, may recommend to the Minister that a notice be made under subsection (2) in respect of that entity.

(2) Where the Minister is satisfied that there is material to support a recommendation made under subsection (1), the Minister may by notice published in the Gazette declare the entity in respect of which the recommendation has been made to be a specified entity.

(3) A specified entity may apply to the Attorney-General requesting the Attorney-General to recommend to the Minister the revocation of the notice made under subsection (2), or deemed under section 29(4) to have been made, in respect of that entity.

(4) If, on an application made under subsection (3), the Attorney-General after consultation with the Commissioner and any other person -

(a) decides that there are reasonable grounds for making the recommendation requested in the application, the Attorney- General shall make the requested recommendation to the Minister;

(b) decides that there are no reasonable grounds for making the recommendation requested in the application, the Attorney General shall refuse the application and shall, within sixty (60) days of receiving the application, inform the applicant of the decision.

(5) Within sixty (60) days of receiving information of the decision referred to in subsection (4), the specified entity may apply to the High Court for a review of that decision.

(6) Upon an application being made under subsection (5), a judge of the High Court-

(a) shall examine in chambers, any security or intelligence reports considered in recommending or making a notice under subsection (2) in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the Attorney General;

(b) may, at the request of the Attorney-General, hear all or part of that evidence or information referred to in paragraph (a) in the absence of the applicant or any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;

(c) shall provide the applicant with a statement summarizing the information available to the judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information which would, in the opinion of the judge, be prejudicial to national security or endanger the safety of any person;

(d) shall provide the applicant with a reasonable opportunity to be heard; and

(e) shall determine whether the decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, make an order compelling the Attorney-General to recommend to the Minister the revocation of the notice made under this section or deemed to have been made under section 29 (4) in respect of the applicant.

(7) The judge may receive in evidence anything (including information obtained from the Government, institution or agency of a foreign state or an international organisation) that in the opinion of the judge is reliable and relevant notwithstanding that the thing would not otherwise be admissible in law and may base the decision on that evidence.

(8) The Attorney-General may, from time to time and in consultation with the Commissioner and any other person, review all the Notices made under subsection (2) to determine whether there are still reasonable grounds as set out in subsection (1) for any Notice to continue to apply to a specified entity and if the Attorney-General determines that there are no such reasonable grounds the Attorney-General shall recommend to the Minister the revocation of the Notice made under subsection (2) in respect of that specified entity.

*Orders for the implementation of the Security Council resolutions*

29. (1) Where, in pursuance of Article 41 of the Charter of the United Nations, the Security Council-

- (a) decides on the measures to be employed to give effect to any of the decisions of the Security Council; and,
- (b) calls upon the Government to apply those measures,

the Minister of Foreign Affairs shall forward those measures to the Minister.

(2) On receipt of the measures as provided under subsection (1), the Minister may, after consultation as may be required by law, implement the measures through such provisions as may appear to the Minister to be necessary or expedient to enable those measures to be effectively applied.

(3) The measures shall not be implemented in terms of subsection (2) unless those measures have been published in the Gazette by the Minister.

(4) Where a notice under section 28 (2) makes provision to the effect that there are reasonable grounds to believe that an entity specified in the notice is engaged in terrorist activity that entity shall be deemed with effect from the date of the notice to have been declared a specified entity.

## PART VII

### SEIZURE AND FORFEITURE OF TERRORIST PROPERTY

#### *Power to seize property used in commission of terrorist acts*

30. (1) Where the Commissioner has reasonable grounds for believing that any property has been, or is being, used to commit an offence under this Act, the Commissioner may seize the property.

(2) The Commissioner may exercise the 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 shall as soon as practicable after seizing any property under subsection (1), make an application, *ex parte*, to a Judge of the High Court for a detention order in respect of that property.

(4) A judge to whom an application is made under subsection (3), may subject to this subsection grant the detention order and shall not grant the detention order in respect of that property unless the Judge -

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

(5) Subject to subsection (6), a detention order made under subsection (4), shall be valid for a period of sixty (60) days and may, on application, be renewed by a Judge of the High Court, for a further period of sixty (60) days until such time as the property referred to in the order is produced in court in proceedings for an offence under this Act in respect of that property.

(6) A judge of the High Court, on application by the property owner, lessee, custodian, the person named in the order or the Commissioner may release any property referred to in a detention order under subsection (4) where the Judge-

(a) is satisfied that there are no longer reasonable grounds to suspect that the property has been or is being used to commit an offence under this Act; or

(b) becomes aware that no proceedings are instituted in the High Court for an offence under this Act in respect of that property after the lapse of six (6) months from the date of the detention order.

(7) A seizure of any property by the Commissioner under subsection (1) shall be deemed not to be a contravention of sub-section (8).

(8) Civil or criminal proceedings shall not lie against the Commissioner and the Government for a seizure of property made in good faith under subsection (1).

*Orders for forfeiture of property after conviction*

31. (1) Where any person is convicted of an offence under this Act, the court may order that any property, used for or in connection with or received as payment or reward for the commission of that offence, be forfeited to the Government.

(2) Before making an order under such section (1) the court shall give any person who submits to the jurisdiction of the court and declares interest in the property in respect of which the order is proposed to be made an opportunity of being heard.

(3) Property forfeited to the Government under subsection (1) shall vest in the Government-

(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) if an appeal has been made against the order, on the final determination of the appeal if unsuccessful.

*Orders for seizure and restraint of property*

32. (1) Where a judge of the High Court is satisfied, on an ex parte application made to the judge in chambers, that there are reasonable grounds to believe that there is in any building, motor vehicle, place or vessel, any property in respect of which an order of forfeiture may be made under section 33, the judge may issue-

(a) a warrant authorising a police officer to search the building, motor vehicle, 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 an order of forfeiture may be made under section 33;

(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 judge may, at the request of the AttorneyGeneral and if the judge is of the opinion that the circumstances so require -

(a) appoint a person to take control of, and manage or otherwise deal with, the whole or a part of that property, in accordance with the directions of that judge;

(b) call upon any person having possession of that property to give possession of that property to the person appointed under paragraph (a).

(3) The power to manage or otherwise deal with property under subsection (2) includes without further application to a judge -

(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) 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 Government or destroyed.

(5) The Attorney-General 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*

33. (1) The Attorney-General may make an application to a Judge of the High Court for an order of forfeiture in respect of terrorist property.

(2) The Attorney-General shall name as respondents to an application under subsection (1) only those persons who are known to own or control the property which is the subject of the application.

(3) The Attorney-General shall give notice of an application under subsection (1) to the respondents named in that application in such manner as the Attorney-General may deem reasonable.

(4) If a judge is satisfied, on a balance of probabilities, that the property which is the subject of the application is terrorist property, the judge shall order that the property be forfeited to the Government.

(5) Where a judge refuses an application under subsection (1), the judge shall make an order that describes the property and declare that it is not property referred to in that subsection.

(6) On an application under subsection (1), a judge may require notice to be given to any other person who in the opinion of the judge, appears to have an interest in the property, and that person shall be entitled to be added as a respondent to the application.

(7) If a judge is satisfied that a person referred to in subsection (6)-

(a) has an interest in the property which is the subject of the application;

(b) has exercised reasonable care to ensure that the property-

(i) is not the proceeds of a terrorist act;

(ii) would not be used to commit or facilitate the commission of a terrorist act; and,

(iii) would not be used by a terrorist group; and

(c) is not a member of a terrorist group,

the judge shall order that the interest shall not be affected by the order and also declare the nature and extent of the interest in question.

(8) A person who claims an interest in property that has been forfeited and who has not been given notice under subsection (6) may make an application to the High Court to vary or set aside an order made under subsection (4) not later than 60 days after the day on which the forfeiture order was made.

(9) A person who intends to appeal against an order under subsection (4) or a decision under subsection (8) shall do so within 45 days of the date of that order or decision.

(10) Pending the determination of an appeal against an order of forfeiture made under this section -

(a) property restrained under section 32 shall continue to be so restrained;

(b) property seized under a warrant issued under section 32 shall continue to be so detained; and,

(c) any person appointed to manage, control or otherwise deal with the property under section 32 shall continue in that capacity.

(11) The provisions of this section, unless otherwise expressly stated, shall not affect the operation of any other provision of this Act respecting forfeiture.

## **PART VI**

### **EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

#### *Exchange of information relating to terrorist groups and terrorist acts*

34. The Commissioner may, on a request made by the appropriate authority of a foreign State, disclose to that authority any information in the possession of the Commissioner or in the possession of any other 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 papers by persons suspected of involvement in the commission of terrorist acts;

(c) trafficking in weapons and sensitive materials by terrorist groups or persons suspected of involvement in the commission of terrorist acts;

(d) the use of communications technologies by terrorist groups;

#### *Counter-terrorism conventions to be used as basis for extradition*

35. (1) Where Swaziland becomes a party to a counter terrorism convention and there is in force an extradition arrangement between the Government of Swaziland and another State which is a party to that counter- terrorism convention, the extradition arrangement shall be deemed, for the purposes of the Extradition Act, to include provision for extradition in respect of offences falling within the scope of that counter terrorism convention.

(2) Where Swaziland becomes a party to a counter terrorism convention and there is no extradition arrangement between the Government of Swaziland and another State which is a party to that counter-terrorism convention, the Minister may, by notice published in the Gazette, treat the counter - terrorism convention, for the purposes of the Extradition Act, as an extradition arrangement between the Government of Swaziland and that State, providing for extradition in respect of offences falling within the scope of that counter-terrorism convention.

*Counter terrorism convention for mutual assistance in criminal matters*

36. (1) Where Swaziland becomes a party to a counter-terrorism convention and there is in force an arrangement for mutual assistance in criminal matters between the Government of Swaziland and another State which is a party to that counter-terrorism convention, that arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that counter terrorism convention.

(2) Where Swaziland becomes a party to a counter-terrorism convention and there is no arrangement for mutual assistance in criminal matters between the Government of Swaziland and another State which is a party to that counter-terrorism convention, the Minister may, by notice published in the Gazette, treat that counter-terrorism convention as an arrangement between the Government of Swaziland and that other State provided for mutual assistance in criminal matters in respect of offences falling within the scope of that counter- terrorism convention.

*Offences under this Act not political offences for extradition*

37. Notwithstanding anything in the Extradition Act, an offence under this Act shall, for the purposes of extradition under the Extradition Act, be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

*Death, serious bodily harm and damage to property not political offences for extradition*

38. Notwithstanding anything in the Extradition Act, an offence under this Act which causes death or serious bodily harm to a person, or serious damage to property shall, for the purposes of extradition under the Extradition Act, be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives.

## PART VII MISCELLANEOUS

*Refusal and revocation of registration of charities linked to terrorists.*

39. (1) The Minister or the Minister responsible for finance may sign or direct the Minister responsible for charitable or similar organisations to sign a certificate stating that, based on information received including any security or criminal intelligence reports, there are reasonable grounds to believe that a registered charity or an applicant for registration as a registered charity (in this section referred to as "the applicant") has made, is making or is likely to make, available any resources, directly or indirectly, to a terrorist group.

(2) A copy of the signed certificate shall be served on the applicant or the registered charity physically or by registered post sent to the last known address of the charity or the applicant.

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

(4) Seven (7) days after service under subsection (2) or as soon as practicable thereafter the Minister or a person authorised by the Minister shall-

(a) file a copy of the certificate in the High Court for the Court to make a determination under subsection (5); and

(b) cause the applicant or registered charity to be served, physically or by registered letter sent to the last known address, with a notice informing the charity or applicant of the filing of the certificate.

(5) Upon the filing of a certificate in the High Court under subsection (4), the judge of that court -

(a) shall examine in chambers, the information, including any security or criminal intelligence reports, considered by the Minister and or the Minister responsible for finance before signing the certificate and,

(b) shall hear any evidence or information that may be presented by or on behalf of those Ministers (whether or not that information is admissible in a court of law); and,

(c) may, on the request of the Minister, hear all or part of that evidence or information in the absence of the applicant or registered charity, or any counsel representing the applicant or the registered charity,

if the judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;

(d) shall provide the applicant or the registered charity with a statement summarising the information available to the judge so as to enable the applicant or the registered charity to be reasonably informed of the circumstance giving rise to the certificate, without disclosing any information which would, in the opinion of the judge, be prejudicial to national security or endanger the safety of any person;

(e) shall provide the applicant or registered charity with a reasonable opportunity to be heard; and

(f) shall determine whether the certificate is reasonable on the basis of all the information available to the judge or if found not reasonable, quash the certificate.

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

(7) Where the judge determines, under subsection (5), that a certificate is reasonable, 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 ground for the refusal of the application for registration or de-registration of the charity referred to in the certificate.

*Information relating to passengers in motor vehicles, vessels and aircrafts*

40. (1) An operator of an aircraft departing from Swaziland, owner or driver of a motor vehicle within Swazi territory or master of a vessel registered in Swaziland departing from any place outside Swaziland may, subject to regulations made under subsection (5), provide to-

(a) the Commissioner any information in the possession of the provider, relating to persons on board, or expected to be on board, the aircraft, motor vehicle or vessel, as the case may be;

(b) the competent authority in a foreign State, any information in the possession of the provider, relating to persons on board, or expected to be on board, the aircraft, motor vehicle or vessel, as the case may be, and required by the laws of that foreign State.

(2) The Chief Immigration Officer or other authorised officer under the laws relating to immigration may, subject to regulations made under subsection (5), provide to the competent authority in a foreign State any information in the possession of the officer relating to persons entering or leaving Swaziland by land which may be required by the laws of that 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 law prohibiting the disclosure of the information.

(4) The information provided to the Commissioner under subsection (1) shall not be used or disclosed by the Commissioner except for the purpose of protecting national security or public safety.

(5) The Minister may make regulations generally to give effect to the purposes of this section, including regulations:

- (a) respecting the types of classes of information that may be provided;
- (b) specifying the foreign States to which the information may be provided; and
- (c) for any matter the Minister may deem fit.

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

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

(2) Where the Minister responsible for immigration has reasonable grounds to believe that a person in Swaziland has been, is or will be, involved in the commission of a terrorist act, that Minister may make an order requiring that person to leave Swaziland, and so long as the order is in force, remain out of Swaziland .

(3) A person with respect to whom an order under subsection (2) is made may be detained in such manner as may be directed by the Minister responsible for immigration and may be placed on a vessel or aircraft leaving Swaziland.

(4) A person who does any act in contravention of an order made under this section, commits an offence and on conviction, shall be liable, in addition to any punishment provided under the immigration laws, to imprisonment for a term not exceeding five (5) years or to such fine as may be determined by the court.

*Power to refuse application*

42. The Minister responsible for immigration 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 that Minister 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.

*Power to make Regulations*

43. (1) The Minister may make regulations in respect of all matters for which regulations are required or authorised to be made under this Act.

(2) Every regulation made under subsection (1) shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under this section shall, as soon as convenient after approval by the Cabinet, be laid before Parliament in the manner applicable to regulations.

*Commissioner to authorise certain officers.*

44. The Commissioner may, by notice published in the Gazette, authorise senior officers not below the rank of assistant superintendent to perform the duties entrusted the Commissioner in terms of this Act.