

FACT SHEET

Prime Minister of Eswatini and 3 Others v Thulani Maseko and 6 Others, Supreme Court, Case No. 73/2016

BACKGROUND TO ESWATINI'S SEDITION AND TERRORISM LAWS

This case challenges provisions in Eswatini's Sedition and Subversive Activities Act of 1938 and the Suppression of Terrorism Act of 2008.

The **Sedition and Subversive Activities Act of 1938** is part of the received law from Britain. During the period of political upheaval and shortly after the launch of PUDEMO in July 1983, the Sedition and Subversive Activities (Amendment) Act No. 8 of 1983 introduced substantive changes to the law:

- a) A new **section 4(e)** made it an offence for any person to have "any seditious publication" in his or her possession "without lawful excuse";
- b) The maximum penalty for being convicted of sedition in terms of section 4 was increased from two years' imprisonment or a fine of E200, to 20 years' imprisonment or a fine of E20,000;
- c) The maximum penalty for being convicted of subversive activities in terms of section 5 was increased from three years' imprisonment to 20 years' imprisonment without the option of a fine.

Over the years, the Act has been used against activists to suppress dissent. Often, activists would be arrested under sedition charges after participating in demonstrations and would be detained for extended periods, just to be acquitted, convicted of lesser offences such as jaywalking or attending a political meeting (an offence under the 1973 Proclamation), or they would be released on bail without ever being brought to trial. In one such instance, in 2000, Mario Masuku was charged with sedition and acquitted after spending 323 days in maximum security prison.

On 23 June 2008, political parties filed a notice of set down requesting an order declaring that "political organisations, are entitled and have a right, to be recognised, registered and organise, operate and engage in free political activity in Swaziland" [See **Sithole and Others v Government of the Kingdom of Swaziland and Others** Case No. 50/2008]. Shortly thereafter, in August 2008, the King signed the Suppression of Terrorism Act (STA) into law. The police, using their powers under the STA, took members of political parties and civil society organisations in for lengthy interrogations. On 14 November 2008, the Prime Minister declared PUDEMO, the Swaziland Youth Congress (SWAYOCO), the Swaziland Solidarity Network (SSN) and the Swaziland People's Liberation Army (Umbane) terrorist entities. Subsequently, the law was often used to arrest and detain activists and search their houses. For example, in October 2008 Mario Masuku was charged under the Act after he made a speech at the funeral of an activist. On 23 September 2009, on the first day of the trial, he was acquitted after the prosecution had failed to produce an offence, which meant that he had spent 343 days in custody on what were proved to be spurious charges. That same year, Mphandlana Shongwe was charged under the Act for shouting "viva PUDEMO, viva SWAYOCO" at a meeting, he was released on bail and never brought to trial. In May 2010 Sipho Jele was arrested at a May Day rally for wearing a PUDEMO t-shirt. He died in custody. The Suppression of Terrorism Act was amended in 2017.

WHO BROUGHT THE CASE?

The case is a consolidation of 4 different cases which all challenged provisions of the Sedition and Subversive Activities Act of 1938 and the Suppression of Terrorism Act of 2008.

1st Respondent – Thulani Maseko

Charged with making a statement during a May Day rally in 2009 commemorating deceased activists. He was charged with sedition and filed a constitutional challenge to sections 3, 4 and 5 of the Sedition Act (*Thulani Maseko v Minister of Justice and Others*, filed under case number 2180/09).

2nd – 4th Respondents – Maxwell Dlamini, Mfanawenkhosi Mntshali and Derrick Nkambule

Arrested and charged after allegedly participating in a demonstration calling for the boycott of the 2013 National Elections in Swaziland. They were charged with two offences under the Sedition and Subversive Activities Act for taking part in the demonstration (which constituted attempting to “bring hatred and dissatisfaction against the Swaziland government in terms of section 4(a) of the Act) and of being in possession of a banner (which constituted the possession of a seditious publication in terms of section 4(e) of the Act). In *Maxwell Dlamini and Others v Prime Minister of Swaziland and Others*, filed under case number 782/14, challenging sections 3(1), 4(a) and 4(e) of the Sedition Act.

5th & 6th Respondents – Mario Masuku and Maxwell Dlamini

At May Day celebrations in 2014, Mario Masuku spoke and Maxwell Dlamini participated in the singing of songs and chanting of slogans. They were both charged with two contraventions of the Suppression of Terrorism Act, and two contraventions of the Sedition Act. They were eventually released on bail after spending 454 days in jail. In *Mario Masuku and Another v Prime Minister of Swaziland and Others*, filed under case number 1703/2014, they challenged the constitutionality of sections 2, 11(1)(a) and (b), 28 and 29(4) of the Suppression of Terrorism Act and sections 3(1), 4(a), (b), (c) and (e), and 5(1) and (2) of the Sedition Act.

7th Respondent – Mlungisi Makhanya

Mlungisi Makhanya and 6 others were charged in April 2014 with contravening sections 11(1)(a) and 11(1)(b) of the Suppression of Terrorism Act, for wearing t-shirts which contained the logo of the Peoples’ United Democratic Movement, an organisation designated a terrorist organisation under the Suppression of Terrorism Act. They were arrested when they attended the court hearings of Bheki Makhubu and Thulani Maseko in 2014. In *Mlungisi Makhanya v Prime Minister of Swaziland and Others*, filed under case number 181/2014, the applicant challenged sections 2(1), 2(2)(f), 2(2)(g)(i)-(iii), 2(2)(h), 2(2)(j), 2(b), 11(1)(a), 11(2), 28(2) and 29(4) of the Suppression of Terrorism Act.

THE HIGH COURT JUDGMENT

In *Thulani Maseko and Others v Prime Minister of Swaziland and Others* [2016] SZHC 180, the High Court declared sections 3(1), 4(a)(e) and 5 of the Sedition and Subversive Activities Act and paragraph (1) of section 2, paragraph 2(f)(g)(i)(ii)(iii)(i), paragraph (b), section 11(1)(a) and (b), and 11(2), as well as sections 28 and 29(4) of the Suppression of Terrorism Act inconsistent with sections 23, 24 and 25 of the Constitution.

At the hearing in the High Court, there was no contention by the State that the relevant provisions in the Sedition and Subversive Activities Act of 1938 did not infringe the applicants' constitutional rights. Instead, the respondents argued that the rights to freedom of expression and association were not absolute and the restrictions put on the applicants' rights by the Act were legitimate and thus lawful and permissible. The test as laid out by the High Court was whether "the limitations were proportional to the mischief sought to be regulated" and if "there is a rational connection between such limitations and objectives to which such restrictions or limitations relate". The Court explained that the legitimate objectives of such limitations could only be for the purposes of "defence, public safety, public order, public morality or public health, or the other interests enumerated under section 24(3) or 25(3) of the Constitution". Notably, the Court stated that it had "not been told of any mischief" done by the applicants. In its reasoning, the Court found that "the respondents failed to satisfy that the restrictions and limitations imposed on the applicants' freedom of speech or expression are either reasonable or justifiable".

Regarding provisions of the Suppression of Terrorism Act, the High Court found that despite PUDEMO being a specified entity under the Suppression of Terrorism Act, the applicants were arrested purely for belonging to this group and for wearing its t-shirts and chanting its slogans, which interfered with their rights to freedom of association and freedom of expression. It also held that, the government had not provided a legitimate justification for interfering with these rights. The Court also said that sections 28 and 29(4) of the Suppression of Terrorism Act could be used to target individuals without allowing them to defend themselves and found that "it is against the rules of natural justice or procedural fairness or administrative justice that a person can be condemned before he has been given the opportunity to be heard on the issue under consideration".

THE IMPACT OF THE SUPPRESSION OF TERRORISM (AMENDMENT) ACT NO. 11 OF 2017

The Amendment Act made changes to sections 2, 11, and 28 but not in a way that fully complies with the High Court's decision to strike out these provisions or its reasons to do so.

The High Court judgment declared as unconstitutional paragraph 1 of section 2, which included in the definition of a terrorist act "an act or omission which constitutes an offence under this Act or within the scope of a counter-terrorism convention". This section was retained in the Amendment Act. This part of the definition is problematic because it includes conduct which might be criminal under the Act but does not necessarily comply with the internationally accepted definition of a terrorist act. The Suppression of Terrorism Act further included under the definition of a terrorist act an act that "involved prejudice to national security or public safety". This section was held to vague and overly broad by the High Court. This part of the definition has been removed from the Amendment Act.

Section 11 of the Suppression of Terrorism Act specifies that it is an offence to knowingly solicit support for a terrorist group. Section 11 has accordingly been used to arrest individuals who have supported an organisation without having actual knowledge that the organisation they support is involved in terrorism. This results in 'guilt by association' which violates the presumption of innocence. The High Court declared sections 11(1)(a) and (b) unconstitutional. They were, however, retained in the Amendment Act.

Section 28 of the Suppression of Terrorism Act addresses the powers of the Attorney General and the Minister to declare an organisation a 'specified entity' – i.e. an entity that is believed to have participated in the commission of a terrorist act. Of concern is the low threshold on which the Attorney General and Minister can base their initial decision on when to designate an organisation as terrorist, i.e. "reasonable grounds to believe". Given the serious consequences of such a declaration and the fact that once designated the members of the organisation can be liable to criminal charges, this threshold is too low. No allowance is given for the organisation in question to have an opportunity to make representations before a decision is made. Section 28 was declared unconstitutional by the High Court and the section was amended to allow a judge to order the Minister to revoke an order designating an organisation a 'specified entity'. Section 28 however still retains other clauses that are problematic. For example, section 28(6)(b) allows the court to hear evidence in the absence of the applicant organisation and its legal representative if the evidence would disclose information that is "prejudicial to national security or endanger the safety of any person". What the section fails to do is provide an alternative, for example permitting the organisation to make a statement prior to the proceedings; to publish the reasons for the exclusion of the applicant organisation from hearing certain evidence; or for someone to be appointed to represent the applicant organisation in court in its absence. Section 28 further allows the High Court hearing the review to accept any evidence that would otherwise be inadmissible.

Section 29(4) states that where there are "reasonable grounds" under section 28 to believe that an entity 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. Since the High Court declared section 28 unconstitutional, it also declared section 29(4) unconstitutional. Section 29(4) has been retained in the Amendment Act.

WHAT ARE THE ARGUMENTS BEFORE THE SUPREME COURT?

The State appealed the High Court's decision. However, there are a number of irregularities with the appeal:

The High Court judgment was delivered on 16 September 2016, and the State noted an appeal. However the State missed the deadline for filing the appeal record by 3 months. In January 2017, the former AG, Majahenkhaba Dlamini, filed the first set of heads of argument in the appeal. Majahenkhaba Dlamini now sits as judge of the Supreme Court and would have to recuse himself from hearing this matter. In March 2017, the respondents indicated that the appeal would be considered abandoned if the State does not file the appeal record. The State subsequently applied for condonation for the late filing of the appeal record. The Respondents opposed this application and filed a counter-application arguing that the appeal has since been abandoned. On 23 October 2017 the appellants' condonation application was struck off the roll due to non-appearance by the State. The Supreme Court ordered that the appeal could not be reinstated without the leave of that Court. On 5 December 2017 the State filed an application to reinstate the appeal and, in a judgment, dated 5 March 2018, the Supreme Court reluctantly agreed to reinstate the appeal. Subsequently, all parties filed heads of arguments on the substantive issues before the court. Only the procedural issues

relating to the appeal were to be addressed at the hearing on 19 March 2019. In April 2018, the AG filed a further set of heads of argument on the substantive case, and in August 2018, the AG filed its 3rd set of heads of argument, dealing with issues outside of those mentioned in the notice of appeal. The case was previously scheduled to be heard in September and October 2018, but in both instances postponed due to lack of quorum for bench. The procedural issues were finally heard on 10 June 2022.

WHAT IS THE CURRENT LEGAL POSITION?

Section	Provision	High Court judgment	What does the law say at the moment
Sedition and Subversive Activities Act of 1938			
3(1)	<p>Seditious intention A “seditious intention” is an intention to —</p> <p>a) bring into hatred or contempt or to excite disaffection against the person of His Majesty the King, His Heirs or successors, or the Government of Swaziland as by law established; or</p> <p>b) excite His Majesty’s subjects or inhabitants of Swaziland to attempt to procure the alteration, otherwise than by lawful means, of any matter in Swaziland as by law established; or</p> <p>c) bring into hatred or contempt or to excite disaffection against the administration of justice in Swaziland; or</p> <p>d) raise discontent or disaffection amongst His Majesty’s subjects or the inhabitants of Swaziland; or</p> <p>e) promote feelings of ill-will and hostility between different classes of the population of Swaziland.</p>	The High Court declared this section unconstitutional in its entirety.	Until the appeal is determined, the High Court judgment is not in effect and all the provisions of the Act remain operational. However, a judgement by the High Court in the case of Goodwill Sibiyi held that the State ought not to prosecute people for sedition whilst the appeal is pending since a full bench of the High Court had declared the offence unconstitutional.
3(2)	<p>Seditious intention An act, speech or publication shall not be seditious by reason only that it intends to —</p> <p>a) show that His Majesty has been misled or mistaken in any of His measures; or</p>	Not addressed by High Court.	This exclusion to the offence still applies, so even if the Sedition Act remains operational, it is not an offence to criticise the State or the Constitution.

	<p>b) point out errors or defects in the government or constitution of Swaziland as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or</p> <p>c) persuade His Majesty's subjects or the inhabitants of Swaziland to attempt to procure by lawful means the alteration of any matter in Swaziland as by law established; or</p> <p>d) point out, with a view to their removal, any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Swaziland.</p>		
4	<p>Offences</p> <p>Any person who —</p> <p>a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;</p> <p>b) utters any seditious words;</p> <p>c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or,</p> <p>d) imports any seditious publication, unless he has no reason to believe that it is seditious;</p> <p>e) without lawful excuse has in his possession any seditious publication;</p> <p>shall be guilty of an offence and liable on conviction to imprisonment up to twenty years or to a fine not exceeding E20,000 and any seditious publication shall be forfeited to the Government.</p>	<p>The High Court declared sections 4(a) and 4(e) unconstitutional.</p> <p>If the High Court judgment is upheld, sections 4(b), (c) and (d) remain an offence.</p>	<p>Until the appeal is determined, the High Court judgment is not in effect.</p>
5	<p>Subversive activities</p> <p>1) A person who does or attempts to do or makes any preparation to do an act with a subversive intention or who utters any words with a subversive intention shall be guilty of an offence and liable, on conviction, to imprisonment for a term not exceeding twenty years without the option of a fine.</p> <p>2) For the purposes of this section, "subversive" means —</p> <p>a) supporting, propagating or advocating any act or thing prejudicial to —</p> <p>i) public order;</p> <p>ii) the security of Swaziland; or</p> <p>iii) the administration of justice:</p> <p>Provided that this paragraph shall not extend to any act or thing done in good faith with intent only to point out errors or defects in the government</p>	<p>The High Court declared section 5 unconstitutional in its entirety.</p>	<p>Until the appeal is determined, the High Court judgment is not in effect. Although section 5 remains operational, the proviso to section 5 should be taken into account: The offence does "not extend to comments or criticisms made in good faith and with a view to the removal of any causes of hatred or enmity between races or communities" or</p>

	<p>or constitution of Swaziland as by law established or in legislation or in the administration of justice with a view to remedying such errors or defects;</p> <p>b) inciting to violence or other disorder or crime, or counselling defiance of or disobedience to any law or lawful authority;</p> <p>c) intended or likely to support or assist or benefit, in or in relation to such acts or intended acts as are hereinafter described, persons who act, intend to act or have acted in a manner prejudicial to public order, the security of Swaziland or the administration of justice, or who incite, intend to incite, or have incited to violence or other disorder or crime, or who counsel, intend to counsel or have counselled defiance of or disobedience to any law or lawful authority;</p> <p>d) indicating, expressly or by implication, any connection, association or affiliation with or support for an unlawful society;</p> <p>e) intended or likely to promote feelings of hatred or enmity between different races or communities in Swaziland: Provided that this paragraph shall not extend to comments or criticisms made in good faith and with a view to the removal of any causes of hatred or enmity between races or communities;</p> <p>f) intended or likely to bring into hatred or contempt or to excite disaffection against any public officer or any class of public officers in the execution of his or their duties, or any of His Majesty's armed forces, or any officer or other member of such a force in the execution of his duties: Provided that this paragraph shall not extend to comments or criticisms made in good faith and with a view to remedying or correcting errors, defects or misconduct on the part of such public officer, force or officer or other member thereof and without attempting to bring into hatred or contempt or to excite disaffection against such a person or force;</p> <p>g) intended or likely to seduce from his allegiance or duty any public officer or any officer or other member of any of His Majesty's armed forces.</p>		<p>“with a view to remedying or correcting errors, defects or misconduct on the part of such public officer, force or officer or other member thereof and without attempting to bring into hatred or contempt or to excite disaffection against such a person or force.”</p>
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Section	Suppression of Terrorism Act of 2008	High Court judgment	Suppression of Terrorism (Amendment) Act of 2017
2(1)	“terrorist act” means-	The High Court declared definition in section 2(1)	“terrorist act” means-

	(1) an act or omission which constitutes an offence under this Act or within the scope of a counter-terrorism Convention.	unconstitutional. It was retained in Amendment Act.	(1) an act or omission which constitutes an offence under this Act or within the scope of a counter-terrorism Convention.
2(2)	<p>“terrorist act” means-</p> <p>(2) an act, attempted action or threat of action which—</p> <p>(a) causes</p> <ul style="list-style-type: none"> (i) the death of a person; (ii) the overthrow, by force or violence, of the lawful Government; (iii) by force or violence, the public or a member of the public to be in fear of death or bodily injury. <p>(b) involves serious bodily harms to a person.</p> <p>(c) involves serious damage to property,</p> <p>(d) endangers the life of any person;</p> <p>(e) creates a serious risk to the health or safety of the public or a section of the public;</p> <p>(f) involves the use of firearms or explosives;</p> <p>(g) involves releasing into the environment or distributing or exposing the public, or any part of the public, to—</p> <ul style="list-style-type: none"> (i) any dangerous, hazardous, radioactive or harmful substance, (ii) any toxic chemical, or ((iii) any harmful microbial or other biological agent or toxin; <p>(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;</p>	<p>The High Court declared sections 2(f), (g), (h), (i) and (j) unconstitutional.</p> <p>Section 2(j) was subsequently deleted from the Amendment Act, but other provisions have been broadened, by adding the words “is intended to cause” and the phrase “committed for a political, religious or ideological purpose”. The numbering of the definition section has also changed.</p> <p>The minority judgment of the High Court interpreted the definition to mean that the prohibited types of conduct in sections 2(2)(a)-(j) can never amount to an offence if it was not intended to result in the conduct mentioned in sections 2(2)(k) and 2(2)(l).</p>	<p>“terrorist act” means</p> <p>(2) an act, attempted action or threat of action which—</p> <p>(a) causes or is intended to cause death or bodily injury;</p> <p>(b) causes or is intended to cause serious damage to property;</p> <p>(c) endangers the life of any person;</p> <p>(d) creates a serious risk to the health of the public or a section of the public;</p> <p>(e) involves the use of firearms or explosives;</p> <p>(f) involves releasing into the environment or distributing or exposing the public, or any part of the public, to—</p> <ul style="list-style-type: none"> (i) any dangerous, hazardous, radioactive or harmful substance, (ii) any toxic chemical, or (iii) any harmful microbial or other biological agent or toxin; <p>(g) 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;</p> <p>(h) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or</p> <p>(i) constitutes the intentional taking of a hostage, and is committed for a political, religious or ideological purpose and—</p> <ul style="list-style-type: none"> (i) is intended to intimidate the public or a section of the public,

	<p>(i) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or (j) involves prejudice to national security or public safety, constitutes the intentional taking of a hostage,</p> <p>and is intended, or by its nature and context, may reasonably be regarded as being intended to-</p> <p>(k) intimidate the public or a section of the public, or (l) to compel a Government or an Intergovernmental Organisation to do or refrain from doing, any act.</p> <p>(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).</p>		<p>(ii) to compel a Government or an Intergovernmental Organisation to do or refrain from doing any act, or (iii) to bring about the overthrow by force or violence, of a lawful Government.</p> <p>(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 not be deemed to be a terrorist act within the meaning of this definition, so long as the act is not intended to result in any of the harm referred to in subsection (2) (a), (b), (c) or (d).</p>
2(b)	<p>“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.</p>	The High Court declared part (b) of definition unconstitutional, but latter was unaffected by Amendment Act.	Section 2(b) remains.
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	Not an issue before the High Court.	Not affected by Amendment Act.

	offence and, on conviction, shall be sentenced to any period of imprisonment not exceeding 25 years or to such number of life sentences as the court may impose.		
11(1)	<p>Soliciting and giving support to terrorist groups for terrorist acts</p> <p>(1) A person who knowingly, and in any manner—</p> <p style="padding-left: 40px;">(a) solicits support for, or gives support to, any terrorist group; or</p> <p style="padding-left: 40px;">(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.</p>	The High Court declared section 11(1)(a) and (b) unconstitutional, but latter was unaffected by Amendment Act.	Section 11(1) remains.
11(2)	<p>Soliciting and giving support to terrorist groups for terrorist acts</p> <p>(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.</p>	The High Court declared section 11(2) unconstitutional in its entirety. The Amendment Act replaced section 11(2) with a more elaborate provision.	<p>11. Soliciting and giving support to terrorist groups for terrorist acts.</p> <p>(2) For the purposes of this section—</p> <p>(a) an offer to provide, or the provision of forged or falsified travel documents to a member of a terrorist group;</p> <p>(b) the travelling or attempting to travel to a State other than the State of citizenship or residence of the person travelling or attempting to travel for the purpose of perpetrating, planning or participating in a terrorist act or the provision or receiving of terrorist training;</p> <p>(c) the wilful provision or collection of funds with the intention or knowledge that the funds are intended to be used to finance the travel of an individual to a State, other than the State of citizenship or residence of that individual, for the purpose of perpetrating, planning, preparing or participating in an act of</p>

			<p>terrorism or providing or receiving terrorist training;</p> <p>(d) the wilful arrangement, or other facilitation, including acts of recruitment in Swaziland or by a Swazi citizen of the travel of individuals who travel to a State other than the State of citizenship or residence for the purpose of perpetrating, planning, preparing for or participating in a terrorist act or the providing or receiving of terrorist training;</p> <p>(e) the wilful arrangement, or other facilitation, including acts of recruitment in Swaziland or by any person for the purpose of perpetrating, planning, preparing for or participating in a terrorist act or the providing or receiving of terrorist training within Swaziland, or</p> <p>(f) the wilful provision or collection of funds with the intention or knowledge that the funds are intended to be used to finance the travelling within Swaziland of an individual or group of individuals, for the purpose of perpetrating, planning, preparing or participating in an act of terrorism or providing or receiving terrorist training, constitutes giving support to a terrorist group.</p> <p>(3) For the purposes of this section, registered organisations engaged in essential humanitarian aid projects, are exempt from the provisions of this section.</p>
19	<p>Membership of terrorist groups</p> <p>(1) A person who—</p> <p>(a) is a member; or</p> <p>(b) professes to be a member, of a terrorist group commits an offence and</p>	Not an issue before the High Court.	Not affected by Amendment Act.

	<p>shall on conviction, be liable to imprisonment for a term not exceeding ten (10) years.</p> <p>(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.</p>		
20	<p>Arrangements of meetings in support of terrorist groups</p> <p>(1) A person who arranges, manages or assists in arranging or managing a meeting which that person knows is to—</p> <ul style="list-style-type: none"> (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, <p>commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding fifteen (15) years.</p> <p>(2) In this section, “meeting” means a meeting of three (3) or more persons, whether or not the public is admitted.</p>	Not an issue before the High Court.	Not affected by Amendment Act.
28	<p>Orders declaring certain entities to be specified</p> <p>(1) Where the Attorney-General, the Commissioner or person responsible for the prevention of corruption or other investigative</p>	The High Court declared sections 28 and 29(4) unconstitutional to the extent that they deny persons to be heard before or after an organisation or	<p>28. Orders declaring certain entities to be specified</p> <p>(6) Upon an application being made under subsection (5), a judge of the High Court—</p> <p>(e) shall determine whether the decision is reasonable on the basis of the information</p>

	<p>or financial body has reasonable grounds to believe that—</p> <p>(a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of, a terrorist act; or</p> <p>(b) any entity is knowingly acting on behalf of, at the direction of or in association with, an entity referred to in paragraph (a),</p> <p>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.</p> <p>(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 <i>Gazette</i> declare the entity in respect of which the recommendation has been made to be a specified entity.</p> <p>(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.</p> <p>(4) If, on an application made under subsection (3), the Attorney-General after consultation with the Commissioner and any other person—</p> <p>(a) decides that there are reasonable grounds for making the recommendation requested in</p>	<p>entity to which they are members, supporters or affiliates, is proscribed as a specified entity. The Amendment Act slightly changed the wording of section 28(6)(e).</p>	<p>available to the judge and, if found not to be reasonable, make an order that the Minister revokes the order made, or deemed to have been made, under subsection (2) in respect of the applicant.</p>
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	<p>the application, the Attorney-General shall make the requested recommendation to the Minister;</p> <p>(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.</p> <p>(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.</p> <p>(6) Upon an application being made under subsection (5), a judge of the High Court—</p> <p>(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;</p> <p>(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;</p> <p>(c) shall provide the applicant with a statement summarising the information available to the</p>		
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	<p>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;</p> <p>(d) shall provide the applicant with a reasonable opportunity to be heard; and</p> <p>(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, or deemed to have been made under section 29(4) in respect of the applicant.</p> <p>(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.</p> <p>(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</p>		
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	of the notice made under subsection (2) in respect of that specified entity.		
29	<p>Orders for the implementation of the Security Council resolutions</p> <p>(1) Where, in pursuance of Article 41 of the Charter of the United Nations, the Security Council—</p> <p>(a) decides on the measures to be employed to give effect to any of the decisions of the Security Council; and</p> <p>(b) calls upon the Government to apply those measures,</p> <p>the Minister responsible for Foreign Affairs shall forward those measures to the Minister.</p> <p>(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.</p> <p>(3) The measures shall not be implemented in terms of subsection (2) unless those measures have been published in the <i>Gazette</i> by the Minister.</p> <p>(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.</p>	The High Court declared section 29(4) unconstitutional but it was not amended by the Amendment Act.	Not affected by Amendment Act.