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Letter dated 15 May 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached fifth report from Namibia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

06-35486 (E) 160606

Annex

Letter dated 9 May 2006 from the Chargé d'affaires a.i. of the Permanent Mission of Namibia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour, in response to your letter of 31 January 2006, to convey the enclosed fifth report on the implementation by the Republic of Namibia of resolution 1373 (2001). The report also includes a section on Namibia's implementation of resolution 1624 (2005).

(*Signed*) Julius Zaya **Shiweva**
Chargé d'affaires a.i.

Enclosure*

Implementation Measures

Criminalization of terrorist acts and their financing

1.1

- The Anti-Terrorism Activities Bill is not yet enacted and is currently with the Legal Drafters for final scrutiny
- The Financial Intelligence Bill is currently before Parliament and will be enacted soon
- The Prevention of Organized Crime Act, 2004 (29 of 2004) is already promulgated
- Not yet ratified. The document is referred to the Ministry of Finance for consideration

1.2 Section 9 and 10 under Chapter 2 of the Anti-Terrorism Activities Bill provides for the recruitment and membership of a terrorist organization:

Section 9 reads as follows:

9. Any person who knowingly agrees to recruit, or recruits another person-

(a) to be a member of a terrorist organization; or
(b) to participate on the commission of terrorist act

commits an offence and is liable on conviction to imprisonment for a period not exceeding twenty years without the option of a fine

Section 10 reads as follows;

10. (1) Any person who becomes or is a member of a terrorist organization proscribed in terms of section 3 of this Act shall be guilty of an offence, and liable on conviction to imprisonment for a period not exceeding ten years, without the option of a fine

(2) For the purpose of this section member of an organization includes

(a) a person who is an informal member of the organization; and
(b) a person who has taken steps to become a member of the organization

1.3 Section 51 of the Prevention of Organized Crime Act, 2004 (29 of 2004) provides for a preservation of property order if there is sufficient evidence that the property concerned is: “an instrumentality of an offence referred to in Schedule 1. Even though terrorism is not a predicate offence to money laundering as provided for in the Act, Schedule 1 to the Act makes provision for: “any offence which is punishable by imprisonment for a period of 12 months or more”. This provision can then be used to freeze any terrorist asset. Another alternative is to insert a new section in the Anti-Terrorism Activities Bill that specifically deals with such assets.

* Annexes are on file with the Secretariat and are available for consultation.

1.4 Comments attached

1.5 Schedule 1 of the Financial Intelligence Bill contains a list of accountable institutions, which list also includes non-financial institutions such as private pension funds, stock exchanges, investment managers, moneylenders, accountants, lawyers and insurance companies. A copy of the Bill is provided herewith

1.6 Kindly refer to par 1.5 above for information.

1.7 The Financial Intelligence Center, once established, will have powers to impose sanctions for non-compliance with the law, but only for minor violations, which do not warrant criminal prosecution. More serious violations are referred to the Office of the Prosecutor General. Kindly refer to Parts V and VI of the enclosed Bill.

1.8 Yes in terms of s34 of the Bill.

1.9 These core functions will be performed by the Bank of Namibia, through an autonomous Financial Intelligence Center to be housed in the Bank of Namibia. This body will only be established once the Bill becomes law, but preliminary work has already commenced. Since the body does not exist, we cannot at this stage comment on its structure, funding and resources.

1.10 There are six. These include the four Authorized Dealers (Commercial Banks), the Namibia Bureau de Change (which is an authorized dealer with limited authority – only deals with travel-related services) and Bank of Namibia. The penalty is N$250 000 or 5 years in prison or both.

1.11 There is currently no law dealing with third parties or intermediaries, but sections 13 and 14 of the Financial Intelligence Bill are designed to somewhat close this gap. For now, accountable institutions are not required to obtain information on trustees, settlers/grantors and beneficiaries of trusts.

1.12 Yes it refers to the Kimberley Process Certificate.

1.13

- Other mechanisms used to ensure the communication of early warning of possible terrorist activities to other states, among other includes
- Coordination of information in accordance with bilateral relations enjoyed with neighboring States and
- Sharing of timeouslly intelligence with sister agencies in neighboring countries

1.14 Part 3 of the Financial Intelligence Bill sets out in Sections 7 to 10 the establishment, functions, composition, meeting and procedures of the council.

1.15

- Regular exchange and assessing of information among, law enforcement agencies and other stakeholders currently form the basis of investigation techniques on the subject matter.

  Regrettably, legislation criminalizing the financing of terrorism activities in Namibia remains to enacted.

- Further, capacity building in terms of training in the investigation of such crimes lacks efficiency because of scares resources. However, the central Bank of Namibia and other Commercial Banks in the country are certainly becoming involved in the investigations of cases of financial fraud (criminal) with the provision of investigative training programs to investigators

1.16

- The witness protection Programme as prescribed in the Criminal Procedure Act – Act 52 of 1977 is currently applied in the context.

EFFECTIVENESS OF INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

1.17 Section 5 (1)(a) of the Namibian Extradition Act, Act No.11 of 1996 deals with mandatory refusal of extradition on the basis that the offence in question is an offence of a political nature. It is common cause that the political offence exception in extradition law is a principle that exists in most jurisdictions, however the problem is that no acceptable definition of what constitutes a political offence has been determined in these jurisdictions. So far our courts have never dealt with this principle and there is no criteria that has been set to determine what constitutes a political offence. Therefore, Namibia is unable to say whether the offences mentioned in paragraph 2(c) of resolution 1373(2001) can be considered as political offences because it is the courts that should determine whether the circumstances in a given case constitute a political offence or not.

1.18 Namibia has indeed legislation on mutual legal assistance and a copy is herewith attached.

1.19 Namibia customs has joined with other law enforcement agencies in the detection of illicit activities, including cross border movement of undeclared or under declared goods, exchange of intelligence and contraband such as controlled substances and drugs. In addition the Namibian Police are stationed at all entry points to defend against potential terrorist infiltration Namibia also participate in joint patrols with neighboring states and allowed several joint commission meeting on Defense and Security issues.

1.20 The RILO (Regional Intelligence Liaison Office Project is being used as the basis to share information amongst the member states. The information being shared relates to commercial fraud, firearms, drugs, prohibited substances and illicit goods. Plans are under way to link Namibia to the Central Enforcement Network in Belgium, Brussels.

1.21 The inspection of cargo is the sole responsibility of the Customs Department. The customs automated system has Rish Management Module which enable the system to select Rish Cargo for physical inspection. In addition the software is accompanied by a basic a audit trail which monitors the activities related to fraction tables.

1.22 Namibian had implemented and advanced customs clearance system known as the Asyanda ++ System. The system has the capability to interface in the other of this system i.e banks, airlines, importers and clearing agents, and other customs administration. Currently the system functionalities has not been fully explored and this an area for further improvement. So far the system has been installed at all the entry points across Namibia.

1.23 The customs networks is integrated and all border posts are linked to the main server located at the headquarters.

1.24 Namibia Customs provide Basic Courses, Intermediate and Advanced Courses. Other specialized Courses presented are amongst others the following. Training in classification Origin, Investigation, Enforcement, Counterfeit goods, to mention but a few.

The district lack of capacity in the following areas remains problematic. The administration would appreciate capacity in the following areas: enforcement, investigation, terrorism identification activities and money laundering.

B. Immigration control

1.25 Yes.

1.26 Namibia has a refugee facility called the Osire Refugee Camp. This facility is monitored and maintained jointly by the UNHCR and the Namibian government agencies.

1.27 The Ministry of Home Affairs is in the process of computerizing the visa and permits section.

1.28 No name change can be done in Namibia prior to residency. Such a person without residency should apply for a name change in his/her country of origin.

1.29 Applicants are required to produce the following:

- Original birth certificate – Namibian citizens
- Original Citizen Certificate – People born outside Namibia
- Original Permanent Residence Permit – Residence permit holders
- Marriage Certificate – Married Women
- Old Identity Document – Applicants in possession of an old ID

C. Border controls

1.30

- Yes. There is a 24 hrs hotline the Immigration Department and Border Control. Information from Interpol and other countries is immediately transmitted to the borders

- Yes. There is equipment and trained personnel, but more training and equipment is needed
- Yes, but more Ultra Violet Scanners are needed. The ones available do not cover all the borders and entry points. There is a need for more computers to speed up information sharing. This includes the rapid distribution of photos of suspected people and other information

2. Implementation of Resolution 1624 (2005)

2.1 Section 16 of the Anti-Terrorism activities Bill provides as follows:

Any person who knowingly

- Incites or promotes the commission of a terrorist act;
- Incites or promotes the membership in a terrorist organization; or
- Solicits property for the benefit of a terrorist organization or the commission of the terrorist act

Commits an offence and is on conviction liable to imprisonment for a period not exceeding 20 years.

2.2 Sections 1 to 13 of the Immigration Control Act, 1993 (Act No: 7 of 1993) provides for the entry of people into Namibia and the requirements thereof. Section 39 of the Act deals with prohibited immigrants. These are some of the measures that can be take to deny a save haven for such persons. Other measures can be taken under the extradition Act if and when a request to that effect was received.

2.3

- Even though lacking advance technical equipments at some of the border posts, strict patrol measures are enforced to prevent terrorist elements from entering the country
- Joint border operations with law enforcement Agencies of the neighboring States are also enforced as a deterrent measure and
- The sharing of intelligence with sister agencies on National level

Paragraph 3

2.4

- Namibia does participate in dialogues on the matter with International Organizations such as UN, AU, INTERPOL, SARPCCO, SADC and Joint Commission of Defense and Security of neighbouring States in Southern Africa. Various international protocols and elements on the Prevention and combating of terrorism have also been endorsed by Namibia

2.5

- As a secular state, Namibia is not affected by religious extremism elements, as 90% of the population are Christians. Further, the Combating of Terrorist Activity Bill criminalizes, amongst other acts, incitement to execute or conspiracy to commit terrorist activities by any individual or group in Namibia.

Paragraph 4

2.6 Kindly refer to paragraphs 2.1; 2.2; and 2.5.