

# X DEMOCRACY REPORT

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A Civil Society Perspective On Parliament

## IN CONTEXT

# ANTI-TERRORISM ACT OF 2012 WHEN 'URGENCY' TRUMPS PROPER PARLIAMENTARY DEBATE

**T**errorism has evolved into a global phenomenon and the absence of bombs going off, buildings tumbling down and multiple lives lost does not mean a country is immune from terrorist activities. There is still no academic or international consensus on the meaning of the word 'terrorism'. There is some agreement amidst the plethora of definitions that terrorism includes three key features (Valis et al, 2004): "(1) acts or threats of violence; (2) the communication of fear to an audience beyond the immediate victim, and; (3) political, economic, or religious aims by the perpetrator(s)."

In December 2012, Namibia followed international trends by passing an anti-terrorism law: the Prevention and Combating of Terrorist Activities Act – Act No. 12 of 2012 – henceforth referred to as "the Anti-Terrorism Act". In his motivation speech to the National Assembly (NA), the then Minister of Safety and Security Nangolo Mbumba admitted that the repeal of the Apartheid era's anti-terrorism law (i.e. Terrorist Act of 1967 – Act No. 83 of 1967) left a gap in the country's legal framework – rendering Namibia susceptible to terrorist activities and to becoming a possible conduit for financing terrorism.

Even though the discussion on criminalising terrorist activities arguably dates back to 1999, the Prevention and Combating of Terrorist Activities Bill, which culminated into the Anti-Terrorism Act, did not receive the legislative scrutiny it deserves. Two sessions of parliamentary proceedings dealt with the Bill in two days (20 November 2012 in the National Assembly and 28 November 2012 in the National Council), all in the name of 'urgency' and meeting deadlines.

Swanu MP Usutuaije Maamberua raised his concerns during the limited National Assembly debate, arguing that more time should have been given to consider the Anti-Terrorism Bill in conjunction with the revised Financial Intelligence Bill as both bills share the aim of targeting the financing of terrorism. He also suggested that the Namibian public should have been consulted on the Bill. The Deputy Speaker of the National Assembly, Loide Kasingo, suggested that public education about the Bill should still take place after it is passed so that grassroots communities can understand it.

In his contribution APP MP Ignatius Shixwameni made clear that the Bill had not been made available to the House prior to its tabling – meaning that MPs had to process 39 pages of a complex piece of legislation and be able to make constructive and meaningful



input while only having the time it took for the Minister to motivate the bill to assess it.

In his response to these concerns, the then Minister of Safety and Security, Nangolo Mbumba, made it clear that there could be serious consequences if Namibia did not comply with international strictures that such a law be in place as soon as possible.

Namibia was in danger of falling foul of the stipulations of the Financial Action Task Force (FATF), an inter-governmental organisation seeking to develop policies to combat money laundering and terrorism financing. As a result of FATF recommendations the Financial Intelligence Act (Act 3 of 2007) was repealed and replaced with a new Act with the same name just a few weeks before the Anti-Terrorism Bill appeared in parliament. FATF came to the conclusion that Namibia lacked legislation that criminalised terrorism and terrorism financing. It was in order to address these omissions that parliament passed both the financial intelligence and anti-terrorism bills towards the end of 2012. Both became law in December 2012.

However, the case of the Anti-Terrorism Bill illustrates what happens when the Executive starts to take the Legislature for granted. Indeed, in this case it was simply presumed that the Legislature would act as a rubber stamp. The fact that only a single MP spoke in the National Council debate is also worrying.

There were surely other options to having a 'debate' which was so compressed it did not even allow MPs to read the Bill in question. Parliament could surely have sat for a few more days to give the Bill proper consideration even given the fact that the Executive's delays in tabling the Bill were unacceptable. It would be unfortunate if MPs' desire to go on their Christmas break was also a factor in curtailing this debate.

The subject of terrorism and how to prevent it is a very serious matter and one that deserves to be the subject of a national discourse and, especially, a serious debate in parliament.

THE ANTI-TERRORISM ACT IN THE MAKING: A TIMELINE OF DISCOURSE OR EVENTS RELATED TO ANTI-TERRORISM	
1999	Namibia expresses the need to criminalise terrorist activities.
2002	Cabinet starts debating the need to have national consensus, policies and proactive strategies to combat terrorist activities and the financing thereof.
2003	Appointment of task force to develop the Terrorist Activities Bill under the auspices of the then Ministry of Home Affairs.
2005	Ministry of Home Affairs' functions split, culminating into two Ministries – Safety and Security; Home Affairs and Immigration.
2005	The 2003 Bill 'falls through the cracks' owing to the split of the Ministry of Home Affairs. Namibia undergoes a financial sector assessment by the World Bank and is found to be non-compliant with international standards, especially with regards to criminalising financing of terrorism.
2007	World Bank report presented to and endorsed by the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG). Outcome of evaluation noted by Cabinet.
2010	Prima facie audit on Namibia's combating of financing terrorism regime. No sufficient progress made on recommendations of 2005 mutual evaluation report.
2010	Work on anti-terrorist bill recommences under the auspices of the Ministry of Safety and Security.
2011	Targeted audit on national combating of financing terrorism regime. Namibia still not compliant. Government develops action plan to address deficiencies
2012	Namibia ratifies the UN International Convention for Suppression of the Financing of Terrorism on April 26. Prevention and Combating of Terrorist Activities Bill tabled in the National Assembly on November 20, undergoes the third reading (final stage during which a bill is passed) on the same day. Signed into law by the President on December 5 as Act No. 12 of 2012

Source(s): NA proceedings of November 20, 2013; World Bank / ESAAMLG (2007).

national discourse and, especially, a serious debate in parliament.

### AIMS OF THE 2012 ANTI-TERRORISM ACT

The Prevention and Combating of Terrorist Activities Act (Act No. 12 of 2012) defines a number of important objectives. These objectives are: "To provide for the offence of terrorism and other offences connected or associated with terrorist activities; to provide for

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## A NAMIBIAN DEFINITION OF TERRORISM

According to the Prevention and Combating of Terrorist Activities Act, (Act No. 12 of 2012), 'terrorist activity' is defined as follows:

(a) Any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, or group of persons or causes or may cause damage to public or private property, natural resources, the environment or cultural heritage and is calculated or intended to –

- i. Intimidate, instill fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles;
- ii. Disrupt any public service, the delivery of any essential service to the public or to create a public emergency;
- iii. Create general insurrection in a State; or
- iv. (b) Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a).

'Combating a terrorist activity' includes all efforts and measures related to the prevention, uncovering and halting of terrorist activities as well as those related to the minimizing of losses caused by any terrorist activity.

Source: Prevention and Combating of Terrorist Activities Act, (Act No. 12 of 2012)

## NAMIBIA'S OBLIGATION TO CRIMINALISE TERRORIST ACTIVITIES

In terms of Article 4 of the UN International Convention for Suppression of the Financing of Terrorism:

"Each State Party shall adopt such measures as may be necessary:

- (a) To establish as criminal offences under its domestic law the offences set forth in article 2;
- (b) To make those offences punishable by appropriate penalties which take into account the grave nature of the offences".

\* Namibia's instrument of Ratification to the International Convention for Suppression of Financing of Terrorism with reservation (i.e. "That a struggle waged by people in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces, shall not be considered as terrorist acts") was accepted and deposited by the Secretary-General on the 18th of October 2012. It came into force on the 17th of November 2012 in accordance with Art. 26(2).

Sources: UN International Convention for the Suppression of the Financing of Terrorism

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measures to prevent and combat terrorist activities; to provide for measures to give effect to international conventions, instruments and best practices concerning measures to combat terrorist activities; to provide for measures to prevent and combat the funding of terrorist activities; to provide for investigative measures concerning terrorist activities; to provide for measures to proscribe organisations that conduct terrorist activities; and to provide for matters incidental thereto".

Part 2 of the Act deals with offences falling under the definition of terrorist activities (see the text box on the left) and their corresponding penalties. Inter alia, offences include financing of terrorist activities; damaging facilities of an airport; endangering the safety of marine navigation; taking hostages and recruitment of persons to participate in terrorist activity. Apart from a life sentence in the case of terrorist activities resulting in death of any person, the second maximum penalty that can be meted out is a fine not exceeding N\$10 million or imprisonment for a period not exceeding 30 years, or both such fine and incarceration.

Part 3 of the Act relates to international obligations that



Namibia has to honour, and provides for measures to implement resolutions of the UN Security Council. Investigating powers and other anti-terrorism measures are dealt with under Part 4, while jurisdiction and procedural matters fall under Part 5 of the Act.

By and large, the enacting of the Anti-Terrorism Act became an urgent necessity after Namibia ratified the United Nations International Convention for the Suppression of the Financing of Terrorism on 26 April 2012. Namibia has been a

signatory to the Convention since November 10, 2001. The Convention essentially addresses the "urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators". Namibia has also ratified the SADC Protocol on Finance and Investment which, amongst others, obligates member states to adopt national laws for combating money laundering and financing of terrorism; and is signatory to the SADC Declaration on Terrorism (see page 4).

## A RUSHED DEBATE DELIBERATIONS IN THE NA AND NC

A total of eight MPs – seven in the National Assembly and one in the National Council – added their views to the short discussion on the Prevention and Combating of Terrorist Activities Bill. Below are verbatim excerpts of some of these contributions.

<b>Loide Kasingo</b> Swapo Party MP and Deputy Speaker of the NA	"I would like to humbly request the Honourable Minister after we have passed this Bill to devise a mechanism so that this Bill could go to the grassroots in a simplified way for them to understand, because we make laws for the people who elected us to understand. We do not make laws for ourselves. Some time, particularly when we are faced with some pressure, I am not only referring to this Bill, but other national instruments, we usually say; 'it is urgent'".
<b>Usutuaije Maamberua</b> MP, Swanu	"One would exactly want to know why the Bill was delayed to the extent that we now have to rush such an important Bill through the House (...).I would have thought that enough time would be allowed so that we can look at this Bill in conjunction with the Bill that we just conceded about a few weeks ago, the one on Financial Intelligence to see if they talk to each other or because that Bill also had some elements on terrorism. (...) a normal approach would have been to have allowed Namibians to have had access broadly on this particular Bill given its complexity, given its implications on the lives of Namibians. Not being able to apply my mind to this particular Bill, I am for those reasons unfortunately not able to support this Bill (...)."
<b>Peya Mushelenga</b> Swapo Party MP and Deputy Minister of Foreign Affairs	"When we see that there is need for improvement, there can always be amendments as time goes on, but for now we need a legal framework on which we can work on. (...) for now I think it is important that we allow the Bill to go through up to the Committee Stage so that we do not waste time. This is a very serious Bill; we should therefore not try to start politicking out issues of security".
<b>Ignatius Shixwameni</b> MP, All People's Party	"This Bill was brought here. It was tabled today, motivated today and I do not know how people would have been expected to read the 39 pages during the time spent by the Minister of Safety and Security, standing and reading the statement motivating this particular Bill. There is nothing that we were going to do if we saw this piece of Bill earlier on. We would have read and understood it. We are not like kindergarten kids who would take a week to read this Bill. If we were requested to read fast we would have done that".
<b>Nangolo Mbumba,</b> Former Swapo Party MP and the then Minister of Safety and Security	Response to issues raised "(...) the delay that was caused when the Ministry changed (...). We have been audited and found not to be in compliance and if we are not compliant, our banking system can be blocked to an extent that we would not be able to transfer money outside our country and money would not come into the country. Our Ambassadors and other Diplomats would be starving, the time frame has been given and it is not out of malice or out of naughtiness that we are now rushing this matter, but it is our responsibility and the Bills always have to go through certain procedures. (...) if there is something we find not to be in line, we can make amendments (...). When your jurisdiction is not having tight laws, people can commit crimes in other countries and run to your country, then you do not have the laws to arrest them, punish them or even to send them back to where they have committed the crimes. We need to be up to standard".

Source: Hansard

In the National Council, only one contribution was made. This was by MP Ndapewoshali Nangula Nambili, who briefly spoke about what the Bill intends to achieve before concluding by supporting it.

# WAKE-UP CALL

## 'THE AIRPORT'S BOMB SCARE' OF 2010

On November 16, 2010, Namibia experienced a 'bomb scare' at the Hosea Kutako International Airport. Whether or not this scare was a prank remains unclear. Nevertheless, it was an unpleasant test of Namibia's readiness and legislative robustness in an event of a terrorist attack. Reports noted that a suspicious looking device was found in a laptop case while airport security personnel were scanning luggage (Mongudhi, 2010). The luggage was ready to be loaded on Flight AB7377 belonging to Air Berlin, en route to Munich, Germany. The flight that was carrying 295 passengers and 10 crew members

was delayed for about five hours. It was later discovered that the device was a dummy bomb used in security exercises. It had allegedly been planted by a certain Chief Inspector Nehemia Shafuda who worked in the airport's security unit (Jensen, 2010). Shafuda was charged

with four counts – contravening the Civil Aviation Offences Act of 1972 by attempting to enter or being in a restricted area at an airport with a harmful article, contravening the same Act by communicating false information, mak-



ing a false statement under oath, and attempting to defeat or obstruct the course of justice (Menges, 2010).

In his motivation speech for the Prevention and Combating of Terrorist Activities Bill, Nangolo Mbumba made reference to the late 2010 airport bomb

scare as one of the reasons the Bill was an urgent matter. Since the acts preceded the promulgation of the Anti-Terrorism Act, Shafuda's alleged offences did not constitute terrorist activities. If the Anti-Terrorism Act had been a law at the time, Shafuda would likely have been charged in terms of Section 15 of this Act which relates to 'placing or sending of noxious or hazardous substances, lethal devices, explosives or other similar thing and offence concerning making of hoaxes relating to these offences'.

These offences carry a fine of N\$1 million or a period of imprisonment not exceeding 20 years, or to both such fine and incarceration. By early 2011 Shafuda was still awaiting the Prosecutor General's decision on the case. At the time he was free on bail of N\$10,000. The case is due to go to trial on June 24 2013.

## THE ELUSIVE PUBLIC PROCUREMENT BILL

Reforming the current Tender Board Act, Act No. 16 of 1996 has been under discussion for several years now. The intricacies involved in law-making notwithstanding, the new public procurement legislation has to date been elusive to say the least, and there is no doubt that the necessary changes to overhaul public contracting systems and operations in Namibia are long overdue. In fact, President Pohamba mentioned public procurement reform directly in his State of the Nation Address in 2011 and again in 2012.

In this light, in 2011, the President noted that "A new Public Procurement Bill is (...) receiving attention and will be tabled in Parliament this year". A year later – with no Public Procurement Bill yet to speak of - in his 2012 address, he noted that, "Deliberate steps are being taken to increase the participation of more Namibians in the local economy. One of the initiatives towards this end involves the review of the Public Procurement System through the amendment of the current legislation. The proposed amendments that will be tabled soon will address issues such as reservation of certain public tenders for targeted beneficiaries including youth, women and SMEs; and the provision for the Tender Board to delegate some of its powers to the Regional Councils".

Hopefully there will still be a new Public Procurement Bill before the end of this year. However, there is little evidence to suggest that there is any urgency in actually tabling – let alone passing – the Public Procurement Bill.

## DEALING WITH TERRORIST ACTIVITIES AT AIRPORT

**The Prevention and Combating of Terrorist Activities Act, (Act No. 12 of 2012) includes the following points with regards to terrorist activity at an airport or in association with an aircraft:**

"A person who with the intention of inducing economic damage or social terror, or to intimidate or to coerce any government, body or institution to adopt or abandon a political, religious or ideological standpoint –

- (a) performs an act of violence against any person on board an aircraft, while such aircraft is in flight, and such act of violence is intended to endanger the safety of that aircraft;
- (b) destroys an aircraft in service or causes damage to such an aircraft, which damage is intended to render such aircraft incapable of flight or to endanger its safety in flight;
- (c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or a substance which is likely to destroy or cause damage to such aircraft or which is intended to render it incapable of flight or to endanger its safety in flight;
- (d) destroys or damages air navigation facilities or interferes with their operation, and which destruction, damage or interference is likely to endanger the safety of any aircraft in flight; or
- (e) communicates information which he or she knows to be false, with the intention of endangering the safety of any aircraft in flight, commits an offence, and is liable to -
  - (i) imprisonment for a period not exceeding 30 years; or
  - (ii) life imprisonment, where the commission of such offence resulted in the death of any person".

Source: Prevention and Combating of Terrorist Activities Act, (Act No. 12 of 2012) – Section 4

## WHAT'S NEW IN PARLIAMENT

Since the official opening of Parliament on 12 February 2013 under the theme Connecting Parliament with Public: Ensuring Accountability and Public Disclosure, a total of 25 bills have been put forward for tabling. These are listed in the table below.

### BILLS THAT MAY BE TABLED IN 2013

1. Agricultural Enhancement Agents Bill
2. Marriage Bill
3. Appropriation Bill (passed in the National Assembly on April 19<sup>th</sup>, 2013)
4. Namibia Board of Trade Bill
5. Audit Bill
6. Namibian Citizenship Amendment Bill
7. Aviation Bill
8. Namibian Constitution Third Amendment Bill
9. Child Care and Protection Bill
10. Namibia Financial Institutions Supervisory Authority Bill
11. Communal Land Reform Amendment Bill
12. Plant Breeders' and Farmers' Rights Bill
13. Diplomatic Privileges and Immunities Bill
14. Public Procurement Bill
15. Electronic Transactions Bill
16. Seed and Seed Varieties Bill
17. Financial Institutions and Markets Bill
18. Export Levy Bill
19. Gaming and Entertainment Control Bill
20. State Finance Bill
21. Immigration Control Amendment Bill
22. Urban and Regional Planning Bill
23. Magistrates Amendment Bill
24. Transfer Duty Amendment Bill (passed in the National Assembly on April 25<sup>th</sup>, 2013)
25. Water Resources Amendment Bill

## ABOUT DEMOCRACY REPORT

**D**emocracy Report will observe, analyse and disseminate information about the debates and activities of both the National Council and National Assembly. The project will produce at least five specialist research papers per year aimed at enhancing wider understanding of issues that on the legislative agenda.

### THE OBJECTIVES OF DEMOCRACY REPORT ARE:

- To promote a better understanding of the tenets of democracy throughout Namibia.
- To encourage participation in national debates on policy issues through the creation of a variety of forums.
- To create a greater awareness and discourse among the general public about the role of parliament.
- To enable stakeholders to have a better understanding of the legislation and other issues before parliament and, in so doing, contributed to informed public and parliamentary discourse.
- To review the performance of parliament in terms of its capacity to deliver legislation as well as its functioning in terms of its committee systems; accountability; and administration.

### ABOUT THE IPPR

The Institute for Public Policy Research (IPPR) was launched in 2001 as a not for profit organisation with a mission to deliver independent, analytical, critical yet constructive research on social, political and economic issues that affect development in Namibia. The IPPR was established in the belief that development is best promoted through free and critical debate informed by quality research.

The IPPR is independent from government, political parties, business, trade unions and other interest groups. The Institute is governed by a board of directors from different areas of Namibian society. The IPPR is mainly grant-funded, but also undertakes paid research on public policy issues provided independent conclusions can be reached and made available to the public. The IPPR's directors are: Monica Koep (chairperson), Bill Lindeke, Daniel Motinga, Ndiitah Nghipondoka-Robinata, Graham Hopwood and André du Pisani.

The IPPR produces a range of publications including briefing papers, commentaries, research reports, books, and bulletins. Recent research projects have included: poverty and inequality, electricity supply, budget accountability, election monitoring, business climate assessments as well as papers based on the Afrobarometer survey. Research can be accessed at the IPPR's website:  
<http://www.ippr.org.na>

# SADC DECLARATION ON TERRORISM

**W**e, the Heads of State or Government of: the Republic of Angola, the Republic of Botswana, the Democratic Republic of Congo, the Kingdom of Lesotho, the Republic of Malawi, the Republic of Mauritius, the republic of Mozambique, the Republic of Namibia, the Republic of Seychelles, the Republic of South Africa, the Kingdom of Swaziland, the United Republic of Tanzania, the Republic of Zambia, the Republic of Zimbabwe

**Concerned** with national independence, sovereignty and territorial integrity as well as the social and economic development and with the stability and security of all SADC member states;

**Conscious** that harmonious cooperation in the African continent and in the region in particular, based on the principles that guide the African Union can only be achieved in conditions of peace and in a climate of political, social and economic stability;

**Considering** that threats and acts of terrorism in the region, the African continent and the world have prompted the international community to strengthen the mechanisms for preventing and combating all forms of terrorism;

**Considering** further that terrorism constitutes an impediment to the full enjoyment of fundamental rights and freedoms of humankind;

**Conscious** of the imperative need to protect human rights and individual liberties in conformity with the principles enshrined in international legal instruments, in particular the right to life;

**Taking into account** resolutions 55/158 of the UN General Assembly and 1269 (1999) and 1373 (2001) of the UN Security Council that qualify acts of terrorism as a threat to international peace and security and which urge member states to strengthen cooperation between the UN and regional organizations for the

prevention of terrorism in all its forms and manifestations;

**Considering** the OAU convention on the prevention and combating of terrorism, adopted at the Algiers summit on 14th July, 1999;

Condemn all acts of terrorism wherever they occur and, therefore, undertake to:

1. Accede or ratify international instruments on combating terrorism, adopted by the OAU and the United Nations and incorporate them into domestic laws;
2. Fight with all means at our disposal all forms of terrorism that endanger the lives of innocent civilians, disrupt regional security, stability and the constitutional order of states;
3. Cooperate at all levels in the exchange of information and identification of persons, institutions and networks associated with terrorism;
4. Urge member states to create, strengthen and harmonize legal instruments for the prosecution of groups or individuals involved in terrorism;
5. Prevent SADC member states from being used as bases or support centres for groups or individuals involved in terrorist activities;
6. Appeal to cooperating partners for financial, technical, and human resource development assistance to SADC member states to enable them to effectively combat terrorism.

In witness whereof, we the Heads of the State or Government, or our duly authorized representatives, have signed this declaration.

Done at Blantyre on this 14th day of January, 2002, in three (3) originals, in the English, French, and Portuguese languages, all texts being equally authentic.

Source: The SADC Declaration on Terrorism

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## BILLS PASSED THUS FAR

**T**he first bill passed in 2013 was the National Planning Commission Bill (on February 20 1013) which was reconsidered after the National Council proposed some amendments. The main bill before parliament was the Appropriation Bill.

Article 126 of the Namibian Constitution states that "(1) The Minister in charge of the Department of Finance shall, at least once every year and thereafter at such interim stages as may be necessary, present for the consideration of the National Assembly estimates of revenue, expenditure and income for the prospective financial year. (2) The National Assembly shall consider such estimates and pass pursuant thereto such Appropriation Acts as are in its opinion necessary to meet the financial requirements of the State from time to time". This obligation was covered in the Appropriation Bill passed on April 19, 2013, "to appropriate amounts of money to meet the financial requirements of the State during the financial year ending 31 March 2014".

Although it wasn't listed at the opening of Parliament, the Income Tax Amendment Bill was passed by the National Assembly on April 25, 2013. This Bill seeks to "amend the Income Tax Act of 1981, so as to increase the threshold on income tax payable by individuals and to reduce the tax rate payable by individuals and non-mining companies (...)". The Transfer Duty Amendment Bill was also passed on April 25, 2013. It seeks to "amend the Transfer Duty Act of 1993, so as to change the rates at which transfer duty is levied; and to provide for incidental matters".

The Stamp Duties and Amendment Bill was also passed on April 25 2013 – it amends the Stamp Duties Act, No. 15 of 1993, so as to exempt natural persons from the payment of stamp duty on transfer deeds in respect of the acquisition of immovable property with a value or consideration not exceeding N\$600,0000 and to provide for incidental matters.