

EXPLANATORY STATEMENT

Issued by the authority of the Attorney-General

Criminal Code Act 1995

Criminal Code (Terrorist Organisation – Jama’at Nusrat al-Islam wal-Muslimin)

Regulations 2023

The purpose of the Criminal Code (Terrorist Organisation – Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2023 (the Regulations) is to specify the organisation known as Jama’at Nusrat al-Islam wal-Muslimin for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code).

Section 5 of the Criminal Code provides that the Governor-General may make regulations prescribing matters required or permitted by the Criminal Code to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Criminal Code.

Paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1) of the Criminal Code provides that regulations can specify organisations for the purposes of the definition of ***terrorist organisation***.

Subsection 102.1(2) of the Criminal Code provides that before the Governor-General makes regulations specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1(1), the ***AFP Minister*** must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, or advocates the doing of a terrorist act. Subsection 100.1(1) provides that, for Part 5.3 of the Criminal Code, the ***AFP Minister*** is the Minister administering the *Australian Federal Police Act 1979*. Under the Administrative Arrangements Order made by the Governor-General on 23 June 2022, and which commenced on 1 July 2022, this is the Attorney-General.

The AFP Minister is satisfied on reasonable grounds that the organisation Jama’at Nusrat al-Islam wal-Muslimin is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act. In coming to this position, the AFP Minister has taken into consideration unclassified information provided by the relevant agencies (the Statement of Reasons at [Attachment C](#)).

Effect of the instrument

Division 102 of Part 5.3 of the Criminal Code sets out the following offences relating to terrorist organisations:

- Directing the activities of a terrorist organisation
- Being a member of a terrorist organisation
- Recruiting persons to a terrorist organisation
- Receiving training from, providing training to or participating in training with a terrorist organisation
- Getting funds to, from or for a terrorist organisation

- Providing support to a terrorist organisation, and
- Associating with a terrorist organisation.

The Regulations enable Jama'at Nusrat al-Islam wal-Muslimin to continue to be recognised as a terrorist organisation for the purposes of the offence provisions in Division 102 of 5.3 of the Criminal Code.

The Regulations repeal the Criminal Code (Terrorist Organisation – Jama'at Nusrat al-Islam wal-Muslimin) Regulations 2020, which would otherwise cease to have effect on 3 November 2023 by operation of subsection 102.1(3) of the Criminal Code. Making new regulations ensures that the organisation Jama'at Nusrat al-Islam wal-Muslimin continues to be specified for the purposes of paragraph (b) of the definition of **terrorist organisation**.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on 3 November 2023. Subsection 102.1(3) of the Criminal Code provides that regulations for the purposes of paragraph (b) of the definition of **terrorist organisation** cease to have effect on the third anniversary of the day on which they take effect.

A Statement of Compatibility with Human Rights has been completed in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The overall assessment is that the Regulations are compatible with human rights. A copy of this Statement is at [Attachment A](#).

Further details of the Regulations are set out in [Attachment B](#).

Consultation

The *Intergovernmental Agreement on Counter-Terrorism Laws* (IGA) requires that the Commonwealth Government consult with the governments of the States and Territories prior to making regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the Criminal Code. The IGA provides that if a majority of States and Territories object to the making of such a regulation within a timeframe nominated by the Commonwealth, and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

The Attorney-General wrote, on behalf of the Prime Minister, to the Premiers and Chief Ministers of the States and Territories. A majority of States and Territories did not object to the making of the Regulations within the timeframe nominated by the AFP Minister.

Subsection 102.1(2A) of the Criminal Code provides that before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1) of the Criminal Code, the AFP Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed regulation. The Attorney-General wrote to the Leader of the Opposition, enclosing the information upon which he was satisfied that Jama'at Nusrat al-Islam wal-Muslimin meets the legislative requirements for listing.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Criminal Code (Terrorist Organisation – Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2023

This Disallowable Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The Criminal Code (Terrorist Organisation— Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2023 (the Regulations) specify Jama’at Nusrat al-Islam wal-Muslimin for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the Criminal Code.

The object of the Regulations is to identify that Jama’at Nusrat al-Islam wal-Muslimin is a terrorist organisation under Australian law, and put the organisation and members of the public on notice of that fact. Notification is important to help people avoid engaging in activities which might constitute an offence under Division 102 of the Criminal Code in relation to Jama’at Nusrat al-Islam wal-Muslimin.

The Regulations, which are part of Australia’s terrorist organisation listing regime, support the application of the offences in Division 102 of the Criminal Code, the object of which is to protect national security, public safety and the rights and freedoms of persons within and outside of Australia. In particular, the offence of associating with a terrorist organisation in section 102.8 of the Criminal Code applies in relation to associating with Jama’at Nusrat al-Islam wal-Muslimin as a listed terrorist organisation.

Terrorist organisations, including Jama’at Nusrat al-Islam wal-Muslimin, present a threat to the security of Australia and often seek to harm Australians and our democratic institutions. The statutory definition of a ‘terrorist organisation’ requires that an organisation directly or indirectly engages in, prepares, plans, assists in or fosters the doing of a terrorist act or, in relation to a listed terrorist organisation, that the organisation advocates the doing of a terrorist act.

Human rights implications

The Regulations promote the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the inherent right to life in Article 6.

The Regulations limit the following human rights contained in the ICCPR:

- the right to freedom of expression in Article 19, and

- the right to freedom of association in Article 22.

The inherent right to life in Article 6

Article 6 of the ICCPR provides that countries have a duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders. The Regulations, and the terrorist organisation listing regime more broadly, ensure that the offence provisions in Division 102 of the Criminal Code apply to certain conduct in relation to listed terrorist organisations. These offence provisions operate to penalise conduct that presents a significant risk to life, both in Australia and overseas, and, in conjunction with the terrorist organisation listing regime, also act as a deterrent to that conduct. Deterring the conduct, and thereby preventing the risk to life, promotes the inherent right to life expressed in Article 6 of the ICCPR.

The right to freedom of expression in Article 19

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression. However, Article 19(3) provides that freedom of expression may be limited if it is necessary to achieve a legitimate purpose, including for the protection of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right to freedom of expression to the extent that persons are prohibited from directing the activities of, recruiting for, providing support to or associating with terrorist organisations, including Jama'at Nusrat al-Islam wal-Muslimin. The restrictions on freedom of expression are justified on the basis that such conduct could jeopardise the security of Australia, the personal safety of its population and its national interests and the restrictions are reasonable, necessary and proportionate to the objective of protecting Australia's national security.

The right to freedom of association in Article 22

Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right may be limited for the purpose of national security. The Regulations, and the terrorist organisation listing regime more broadly, limit the right of freedom of association to prevent people engaging with and participating in terrorist organisations, in this instance Jama'at Nusrat al-Islam wal-Muslimin.

The offence of associating with a terrorist organisation in section 102.8 of the Criminal Code is limited in its application to an organisation that is a listed terrorist organisation under the definition of 'terrorist organisation' in paragraph 102.1(1)(b) of the Criminal Code. The offence does not apply if the association is with a close family member and relates to a matter of family or domestic concern, or takes place in the course of practicing a religion in a place used for public religious worship, or the association is only for the purpose of providing humanitarian aid or only for the purpose of providing legal advice or legal representation.

Due to the severity of the danger posed by terrorist organisations, it is reasonable, necessary and proportionate to limit the right of individuals who, by their association with a terrorist organisation, pose a threat to Australians.

General safeguards and accountability mechanisms

Whilst the Regulations may limit the right to freedom of expression and the right to freedom of association with Jama'at Nusrat al-Islam wal-Muslimin, the Regulations are subject to the safeguards outlined below. The limits on these rights are reasonable, necessary and proportionate, and are in the interests of public safety and national security, after taking into consideration the direct and indirect terrorist activities of the organisation, which threaten human life.

The Criminal Code provides safeguards and accountability mechanisms requiring prior consultation and enabling review of the Regulations, including the following:

- the Commonwealth must consult with the states and territories in accordance with the *Intergovernmental Agreement on Counter-Terrorism Laws* of 25 June 2004, and the Regulations may only be made if a majority of the states and territories do not object to the Regulations within a reasonable time specified by the Commonwealth
- under subsection 102.1(2A) of the Criminal Code, the Minister must arrange for the Leader of the Opposition to be briefed in relation to the proposed Regulations
- under subsection 102.1(3) of the Criminal Code, the Regulations will cease to have effect on the third anniversary of the day on which they take effect
- subsection 102.1(4) of the Criminal Code provides that if the Minister ceases to be satisfied of the criteria necessary for listing an organisation under subsection 102.1(2) of the Criminal Code, the Minister must make a declaration to that effect by written notice published in the Gazette, with the effect of the Minister's declaration that the Regulations listing the organisation cease to have effect and the organisation is de-listed as a terrorist organisation under Division 102 of the Criminal Code
- subsection 102.1(17) of the Criminal Code provides that an individual or an organisation may make a de-listing application to the Minister
- the Regulations may be reviewed by the Parliamentary Joint Committee on Intelligence and Security under section 102.1A of the Criminal Code, and
- both Houses of Parliament may disallow the Regulations within 15 sitting days after the Regulations are laid before that House, as provided for in section 42 of the *Legislation Act 2003* and noting that this period may be extended by operation of subsection 102.1A(4) of the Criminal Code if the Parliamentary Joint Committee on Intelligence and Security reviews the Regulations.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights. To the extent that the terrorist organisation listing regime, of which the Regulations are part, may also limit human rights, those limitations are for a legitimate purpose and are reasonable, necessary and proportionate.

The Honourable Mark Dreyfus KC MP

Attorney-General

ATTACHMENT B

Details of the *Criminal Code (Terrorist Organisation – Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2023*

Section 1 – Name

This section would provide that the title of the proposed Regulations is the *Criminal Code (Terrorist Organisation – Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2023*.

Section 2 – Commencement

This section would provide for the Regulations to commence on 3 November 2023.

Section 3 – Authority

This section would provide that the *Criminal Code (Terrorist Organisation – Jama’at Nusrat al-Islam wal-Muslimin) Regulations 2023* are made under the *Criminal Code Act 1995*.

Section 4 – Schedules

This section would provide that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – Terrorist organisation— Jama’at Nusrat al-Islam wal-Muslimin

Subsection 5(1) would provide that, for the purposes of paragraph (b) of the definition of ‘terrorist organisation’ in subsection 102.1(1) of the *Criminal Code Act 1995* (the Criminal Code) the organisation known as Jama’at Nusrat al-Islam wal-Muslimin is specified.

Division 102 of the Criminal Code provides a range of offences relating to interactions with terrorist organisations.

Subsection 5(2) provides a list of 27 names that Jama’at Nusrat al-Islam wal-Muslimin is also known as:

- a) al-Mulathamun Battalion;
- b) al-Murabitoun;
- c) al-Murabitun;
- d) Ansar al-Din;
- e) Ansar Dine;
- f) Force de Libération du Macina;
- g) GNIM;
- h) Group for Support of Islam and Muslims;
- i) Group for Supporting Islam and Muslims;
- j) Group of Support for Islam and All Muslims;
- k) Group to Support Islam and Muslims;
- l) GSIM;

- m) Islam and Muslims' Support Group;
- n) JNIM;
- o) Jamaat Nosrat al-Islam wal-Mouslimin;
- p) Jama'a Nusrat al-Islam wa al-Muslimin;
- q) Jama'ah Nusrat al-Islam wal-Muslimin;
- r) Jama'at Nusrat al-Islam wal Muslimeen;
- s) Jama'at Nusrat al-Islam wal Muslimin;
- t) Katibat Macina;
- u) Macina Liberation Front;
- v) NIM
- w) Nusrat al-Islam wal Muslimeen;
- x) Nusrat al-Islam wal Muslimin;
- y) the Sentinels;
- z) Sahara Emirate;
- aa) Union for Supporting Islam and Muslims.

Schedule 1— Repeals

Criminal Code (Terrorist Organisation— Jama'at Nusrat al-Islam wal-Muslimin) Regulations 2020

Schedule 1 would repeal the *Criminal Code (Terrorist Organisation— Jama'at Nusrat al-Islam wal-Muslimin) Regulations 2020*.

Statement of Reasons – Jama’at Nusrat al-Islam wal-Muslimin

<p>Listing Jama’at Nusrat al-Islam wal-Muslimin as a terrorist organisation under Division 102 of the <i>Criminal Code Act 1995</i></p>
<p>This Statement of Reasons is based on publicly available information about the Jama’at Nusrat al-Islam wal-Muslimin. To the Australian Government’s knowledge, this information is accurate, reliable and has been corroborated by classified information where available.</p>
<p>Known aliases</p> <p>al-Mulathamun Battalion; al-Murabitoun; al-Murabitun; Ansar al-Din; Ansar Dine; Force de Libération du Macina; GNIM; Group for Support of Islam and Muslims; Group for Supporting Islam and Muslims; Group of Support for Islam and All Muslims; Group to Support Islam and Muslims; GSIM; Islam and Muslims’ Support Group; JNIM; Jamaat Nosrat al-Islam wal-Mouslimin; Jama’a Nusrah al-Islam wa al-Muslimin; Jama’ah Nusrah al-Islam wal-Muslimin; Jama’at Nusrat al-Islam wal Muslimeen; Jama’at Nusrat al-Islam wal Muslimin; Katibat Macina; Macina Liberation Front; NIM; Nusrat al-Islam wal Muslimeen; Nusrat al-Islam wal Muslimin; the Sentinels; Sahara Emirate; Union for Supporting Islam and Muslims.</p>
<p>Legislative basis for listing a terrorist organisation</p> <p>Division 102 of the <i>Criminal Code Act 1995</i> (Criminal Code) provides that for an organisation to be listed as a terrorist organisation, the AFP Minister must be satisfied on reasonable grounds that the organisation:</p> <ul style="list-style-type: none">a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; orb) advocates the doing of a terrorist act. <p>For the purposes of listing a terrorist organisation under the Criminal Code, subsection 102.1(2) of the Criminal Code describes the doing of a terrorist act as including the doing of a specific terrorist act, the doing of more than one terrorist act and the doing of a terrorist act, even if a terrorist act does not occur.</p>
<p>Background to this listing</p> <p>The Australian Government first proscribed JNIM as a terrorist organisation on 3 November 2020. Al-Murabitun (since merged into JNIM) was listed on 5 November 2014, and re-listed on 3 November 2017.</p>
<p>Details of the organisation</p> <p>JNIM is an al-Qa’ida aligned Salafi-Jihadist organisation that strives to build a Salafi-Islamist state in West Africa. The organisation is primarily based in Mali but active across much of West Africa, including Burkina Faso, Niger, and Togo.</p> <p>JNIM was formed on 2 March 2017, when a coalition of jihadist groups operating in the Sahel region of West Africa – Ansar al-Din, the Macina Liberation Front (FLM), al-Murabitun and the Sahara Emirate subgroup of al-Qa’ida in the Lands of the Islamic Maghreb (AQIM) – announced they had merged into one entity under one Emir, formalising the longstanding alliance between the member groups.</p>

JNIM's goal to eliminate Western influences in the region has brought the organisation into conflict with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), and partner states – predominantly France through its regional counter-terrorism effort, Operation Barkhane, which concluded in August 2022. Over the past decade, more than 300 peacekeepers associated with MINUSMA have been killed as a result of targeted insurgent attacks. The danger posed to UN personnel by JNIM, combined with tensions between MINUSMA and host country authorities, has resulted in a security situation described as 'dire' by a UN Security Council report.

JNIM's activities in West Africa have also brought the organisation into competition with Islamic State (IS) affiliates operating in the region. Between 2017 and 2019, engagements between JNIM and IS were largely cooperative, and reported as a "Sahelian exception" to the wider conflict between al-Qa'ida affiliates and IS. Since 2019 this relationship has degraded, as JNIM and IS have repeatedly come into violent conflict over territory. Since fighting first broke out in mid-2019, there have been reports of nearly 200 clashes between the groups resulting in the deaths of more than 1100 combatants.

Leadership

Current emir: Iyad ag Ghaly

The founder of Ansar al-Din, Iyad Ag Ghaly was named as JNIM's overall emir shortly following the organisation's formation in March 2017. Following his appointment, Ag Ghaly affirmed JNIM's allegiance to AQIM, al-Qa'ida, and the Afghan Taliban.

Ag Ghaly, a Tuareg, originates from the Kidal Region of northern Mali. A participant in the Tuareg rebellions during the 1990s, Ag Ghaly also led a short-lived Tuareg revolt in 2006 before joining the Malian High Council of Territorial Collectivities – a constitutionally enshrined institution of Mali that advises the government – in 2007.

Ag Ghaly operated as a hostage negotiator for the Malian Government until 2010. During this time, Ag Ghaly formulated several close contacts within AQIM, with Ag Ghaly eventually encouraged by AQIM officials to form Ansar al-Din as a way to assist AQIM's efforts to expand its activities into northern Mali.

Ag Ghaly was included in the United Nations' ISIL (Da'eash) and al-Qaida Sanctions List on 25 February 2013 and listed by the United States as a 'Specially Designated Global Terrorist' a day later.

Senior Leader: Amadou Kouffa

Born in Niafunke, Mali, Amadou Kouffa founded FLM in January 2015. Alongside Ag Ghaly, Kouffa was one of the co-founders of JNIM. Since JNIM's formation, Kouffa's FLM faction been responsible for more violent activities and associated fatalities than any other JNIM-affiliated faction. Kouffa's FLM faction has also targeted civilians at a higher rate than any other JNIM faction.

Kouffa was included in the United Nations' ISIL (Da'eash) and al-Qa'ida Sanctions List on 4 February 2020.

Membership

JNIM is estimated to boast approximately 2000 fighters in central and northern Mali.

Recruitment and funding

JNIM follows the wider al-Qa'ida blueprint of appealing to local communities, seeking to exploit the frustrations of vulnerable and underrepresented peoples, such as the Tuareg and Fulani, and presenting itself as an alternative to existing West African governments. Amadou Kouffa's FLM faction in particular has found success by weaponising local and ethnic grievances for broader Salafi-Islamist ends.

JNIM finances itself through kidnappings-for-ransom, extortion and the levying of taxes, such as zakat, to fund the recruitment of its fighters. It has also been reported that JNIM taxes smugglers and traffickers seeking transit through JNIM-controlled areas. JNIM has also equipped itself with arms captured from military barracks and local militia forces.

Links to other groups

JNIM holds close links to al-Qa'ida. Immediately following the formation of JNIM in 2017, Iyad ag Ghaly affirmed the organisation's allegiance to Abdelmalek Droukdel, the emir of AQIM, Ayman al-Zawahiri, the emir of al-Qa'ida, and Haibatullah Akhundzada, the then leader of the Afghan Taliban.

Terrorist activity

JNIM regularly conducts attacks against both foreign and state security forces, typically through the use of hit and run attacks, kidnappings, improvised explosive devices, roadside bombings and mortar attacks. JNIM has also frequently conducted attacks against civilian targets and villages. JNIM has also celebrated violent attacks against Western targets and frequently published material in support of terrorist acts.

Directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act

The following acts can be reliably attributed to JNIM:

- 8 May 2023, JNIM fighters killed six soldiers in an ambush near Kita town, Mali.
- 22 April 2023, JNIM launched several suicide attacks in Sevare town, Mali, leaving 10 civilians dead and 60 injured.
- 24 November 2022, JNIM fighters killed 12 soldiers after ambushing security forces in Kpendjal, north Togo.
- 26 September 2022, JNIM fighters killed 11 soldiers and injured 28 others during an ambush on a military convoy taking supplies to a town in Gaskinde, northern Burkina Faso.
- 11 August 2022, JNIM detonated an explosive device in Niamey, Niger's capital. Two people were killed.
- 1 August 2022, JNIM fighters conducted an attack in Barbougna village, northwest Niger. Three civilians were killed.
- 25 June 2022, JNIM militants killed 132 people across several villages in the Bankass area of Central Mali.
- 23 December 2021, JNIM gunmen killed 41 civilians during an attack on a convoy of market traders in the nord region, Burkina Faso.
- 18 August 2021, JNIM gunmen killed 59 civilians and 15 security forces in an attack on a military convoy on the road between Arbinda and Gorgadji in Burkina Faso.
- 8 April 2021, JNIM kidnapped French journalist Olivier Dubois in Mali's Gao area. Dubois was released 711 days later on 20 March 2023.

On the basis of these examples, JNIM is assessed to have directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Other considerations

Links to Australia and threats to Australian interests

JNIM has previously targeted Australian citizens. On January 2016, Dr Kenneth Elliot was abducted by the Saharan Emirate subgroup of AQIM, one of the founding organisations that merged to form JNIM in March 2017. Dr Elliot was held for seven years before being released in May 2023. A successful terrorist attack directed or inspired by JNIM could result in harm to Australians, and the group's activities and propaganda have the potential to inspire Australian violent extremists.

Listings by likeminded countries or the United Nations

The UN Security Council included JNIM in its ISIL (Da'esh) and al-Qa'ida Sanctions List. JNIM was designated as a foreign terrorist organisation by the United States in 2018, was listed as a proscribed terrorist organisation by the United Kingdom in 2019, and was listed as a terrorist entity by Canada in 2021.

Engagement in peace or mediation processes

JNIM is not involved in any peace or mediation process.

Conclusion

On the basis of the above information, the Australian Government assesses that Jama'at Nusrat al-Islam wal-Muslimin is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of terrorist acts.