

Anti-Terrorism Bill

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BILL

ENTITLED

ANTI-TERRORISM ACT, 2005

AN ACT to combat terrorism, suppress and detect acts of terrorism, to prevent the territory, resources and financial services of this country from being used to commit terrorist acts, to protect the right of people in this country to live in peace, freedom and security and to provide for connected purposes.

ENACTED by the President and Parliament:

Terrorist act

1. Prohibition of terrorist act

- (1) A person shall not engage in a terrorist act.
- (2) A person who engages in a terrorist act commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years and not exceeding twenty-five years.

2. Meaning of terrorist act

(1) A terrorist act is an act or threat of action in or outside the Republic which constitutes an offence within the scope of an international counter terrorism convention to which the Republic is a party.

(2) Any of the following acts effected or performed in furtherance of a political, ideological, religious, racial, ethnic reason or for any other reason constitutes a terrorist act, these include, an action which

- (a) involves serious bodily harm to a person;
- (b) involves serious damage to property;
- (c) endangers a person's life;
- (d) creates a serious risk to the health or safety of the public;
- (e) involves the use of firearms or explosives;
- (f) involves the exposure of the public and the release into the environment of
 - i. dangerous, hazardous, radioactive or harmful substances;
 - ii. toxic chemicals; or
 - iii. microbial or other biological agents or toxins;
- (g) is prejudicial to national security or public safety;
- (h) is designed or intended to disrupt a computer system or the provision of services directly related to communications, infrastructure, banking or financial services, utilities, transportation or other essential infrastructure; or
- (i) is designed or intended to disrupt the provision of essential services.

(3) A terrorist act is also an act which is intended or by its nature and context may reasonably be regarded as being intended to

- (a) intimidate the public, or
- (b) compel a person, a government or an international organization to do or refrain from doing an act, and

is made to advance a political, ideological or religious cause.

3. Acts not considered to be terrorist acts

A protest, demonstration or stoppage of work which disrupts an essential service shall not be considered to be a terrorist act within the meaning of this Act if the act does not result in the harm referred to in paragraphs, (a),(b),(c) or (d) of subsection (2) of section 2.

4. Terrorist acts in armed conflict

(1) Terrorist act in armed conflict means an act

(a) the purpose of which by its nature or context is the intimidation of the population or which is intended to compel a government or an international organization to do or refrain from doing an act;

(b) that is intended to cause death or serious bodily injury to a civilian not taking an active part in the hostilities in that situation.

(2) An act shall not be considered to be a terrorist act in armed conflict if the armed conflict is in accordance with rules of international law applicable to the conflict.

5. Jurisdiction to try offences under this Act

The High Court has jurisdiction for an act which constitutes an offence committed outside the country if the act constitutes an offence in this country where

(a) the person committing the act is

i. a citizen of Ghana;

ii. not a citizen of Ghana but is ordinarily resident in this country;

(b) the act is committed to compel the Government to do or refrain from doing an act;

(c) the act is committed against a citizen of Ghana;

(d) the act is committed against property outside the country that belongs to the Republic; or

(e) the person who commits the act is after its commission, found present in Ghana.

Terrorist offences

6. Provision or collection of property to commit an act of terrorism

A person who

(a) provides,

(b) collects, or

(c) makes available

by any means, directly or indirectly, property, intending, knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

7. Provision of financial services for commission of a terrorist act

A person who directly or indirectly provides or makes available financial or other related services

- (a) intending that the financial services be used, in whole or in part to commit or facilitate the commission of a terrorist act,
- (b) to benefit a person who is committing or facilitating the commission of a terrorist act, or
- (c) knowing that in whole or part, the financial services will be used by or will benefit a terrorist group,

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

8. Use of property for commission of a terrorist act

A person who

- (a) uses property, directly or indirectly, in whole or in part, to commit a terrorist act, or
- (b) possesses property with the intention that it is to be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act,

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

9. Arrangements for retention or control of terrorist property

A person who knowingly enters into, or becomes involved in an arrangement which facilitates the acquisition, retention or control by or on behalf of another person of terrorist property

- (a) by concealing, or removing the property out of the jurisdiction,
- (b) by transfer of the property to a nominee, or
- (c) in any other way

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

10. Dealing with terrorist property

A person who knowingly

- (a) deals directly or indirectly with terrorist property,
- (b) acquires or possesses terrorist property,
- (c) enters into, or facilitates, directly or indirectly, a transaction in respect of terrorist property,
- (d) converts, conceals or disguises terrorist property, or

(e) provides financial or other services in respect of terrorist property at the direction of a terrorist group

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

11. Support of terrorist act

(1) A person who knowingly

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

(b) solicits support for or gives support to the commission of a terrorist act commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

(2) For the purpose of subsection (1), support includes

(a) the provision or an offer to provide, forged or falsified travel documents to a person connected with a terrorist act or to a member of a terrorist group;

(b) the provision or an offer to provide a skill or expertise for the benefit of, at the direction of, or in association with a person or terrorist group; or

(c) entering or remaining in a country for the benefit of or at the direction of or in association with any person or a terrorist group.

12. Harboring of persons committing terrorist acts

(1) A person who harbors or conceals a person knowing or having reason to believe that the person

(a) has committed, is planning or likely to commit a terrorist act, or

(b) is a member of a terrorist group

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

(2) A person who prevents, hinders or interferes with the apprehension of a person knowing or having reason to believe that the person

(a) has committed, is planning or likely to commit a terrorist act, or

(b) is a member of a terrorist group

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

13. Provision of a lethal device to a terrorist group

A person who knowingly provides or offers to provide an explosive or other lethal device to

(a) a terrorist group,

(b) a member of a terrorist group, or

(c) another person for use by or for the benefit of a terrorist group or a member of a terrorist group commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than ten years.

14. Recruitment of member of terrorist group

A person who knowingly recruits or agrees to recruit another person

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

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

15. Provision of training and instruction to terrorist group

A person who knowingly provides or agrees to provide training or instruction

- (a) in the making or use of an explosive or other lethal device.
- (b) in carrying out a terrorist act,
- (c) in the practice of military exercises or movements

to a member of a terrorist group or to a person engaged in, or preparing to engage in the commission of a terrorist act, commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than ten years.

16. Incitement, promotion or solicitation of property for a terrorist act

A person who knowingly

- (a) incites or promotes the commission of a terrorist act,
- (b) incites or promotes membership of a terrorist group, or
- (c) solicits property for the benefit of a terrorist group or for the commission of a terrorist act

commits an offence and is liable on conviction on indictment to a term of imprisonment of not less than seven years.

17. Provision of facilities to support a terrorist act

(1) A person who owns, occupies, leases or who is in charge of premises and knowingly permits a meeting of persons to be held on the premises for the commission of a terrorist act commits an offence.

(2) A person who owns a vessel or is a charterer, lessee, operator, agent or master of a vessel who knowingly permits the vessel to be used to commit a terrorist act commits an offence.

(3) A person who owns an aircraft or is a charterer, lessee, operator, agent or pilot in charge of an aircraft who knowingly permits the aircraft to be used to commit a terrorist act commits an offence.

(4) A person who owns, is a lessee or person in charge of communications equipment or a facility that permits recording, conferencing or meetings through a communications system and who knowingly permits the communications equipment or facility to be used for a terrorist act commits an offence.

(5) A person convicted of an offence under this section is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment of not less than two years.

(6) In this section "communications equipment and communications system" has the same meaning as in the National Communications Authority Act, 1996 (Act 524).

18. Arrangements of meetings in support of a terrorist group

(1) A person who arranges, manages or assists in arranging or managing a meeting which is

(a) to support a terrorist group,

(b) to further the activities of a terrorist group, or

(c) to be addressed by a person who belongs or professes to belong to a terrorist group

commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment of not less than two years or to both.

(2) In this section "meeting" means a coming together of two or more persons whether or not the public is admitted.

Specified terrorist entities

19. Order declaring entity to be a specified entity

(1) The Minister may by executive instrument declare an entity to be a specified entity if there is evidence to support the declaration submitted by a person who has knowledge that the entity has

(a) committed,

(b) attempted to commit,

(c) participated in the commission of, or

(d) facilitated the commission of a terrorist act.

(2) The declaration may also be made by the Minister upon reasonable grounds that an entity is knowingly acting

(a) on behalf of,

(b) at the direction of, or

(c) in association with

another specified entity.

(3) The declared entity shall from the date of the Gazette publication of the executive instrument be declared a specified entity.

(4) A specified entity is proscribed.

20. Revocation of specified entity order

(1) A specified entity may through a representative, make an application in writing to the Minister for the revocation of an order made in respect of that entity within sixty days after the publication of the executive instrument in the Gazette.

(2) The Minister may revoke the specified entity order if satisfied that there are reasonable grounds for the revocation.

(3) If the Minister decides that reasonable grounds do not exist for the revocation, the application shall be refused and the applicant shall be informed of this decision within sixty days after the refusal of the application.

21. Application for review by High Court

(1) An applicant aggrieved by the decision of the Minister may apply for review to the High Court.

(2) The application for review shall be made to the Court within sixty days after the applicant has received notice that the revocation order has been refused.

(3) The Court may receive in evidence information obtained from the Government, an institution or agency of a foreign state or an international organization if the information is reliable and relevant even if the evidence would not otherwise be admissible under the Evidence Decree 1975 (NRCD 323), but the information shall not include self incriminating evidence and shall not endanger the safety of any person.

(4) The evidence from the Government, foreign Government, state or international organization shall be in the form of a deposition and shall be corroborated.

22. Periodic review of specified entity orders

The Minister shall review specified entity orders at six month intervals and may revoke an order if satisfied that there is no longer justification for the order.

23. Meaning of specified entity

A specified entity means a person, group, trust, partnership, fund, body corporate or unincorporated body or an organization associated with acts of terrorism and declared to be a specified entity.

Search, seizure and forfeiture of property

24. Search

(1) Where the police have reasonable grounds to suspect that there is

(a) property to be used for the commission of a terrorist act; or

(b) terrorist property

concealed or deposited on a premises, the police may enter the premises at any time to search for the property and may search any person who is in or on the premises.

(2) The police may, if necessary, break open a premises and forcibly enter for the purpose of conducting the search and may stop, search and detain a conveyance suspected to be connected with an offence under the Act.

(3) (a) A police officer may conduct a physical search of a person who the officer has reason to believe is in possession of property liable to seizure or forfeiture under this Act.

(b) A police officer may also search the property of a person where the officer has reason to believe there may be property liable to seizure or forfeiture under this Act.

25. Obstruction of inspection and search

A person who

(a) refuses a police officer access to a premises or fails to submit to a search;

(b) assaults, obstructs, hinders or delays a police officer in the execution of a duty imposed by this Act;

(c) fails to comply with a lawful demand of a police officer in the execution of a duty under this Act;

(d) refuses or neglects to give information required under this Act;

(e) fails to produce, conceals or attempts to conceal property liable to seizure under this Act;

(f) furnishes information to a police officer which the person knows to be false

commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to imprisonment for a term not exceeding two years or to both.

26. Seizure of terrorist property

(1) Where the police have reasonable grounds to suspect that property has been, is being, or may be used to commit an offence under this Act, the property may be seized.

(2) The police shall make an ex-parte application to a District Court or Circuit Court for a detention order of the seized property within ten days after the seizure of the property.

(3) The District Court or Circuit Court shall make a detention order in respect of the property referred to in the application where the person who appears to have an interest in the property has had a reasonable opportunity to be heard and there are reasonable grounds to believe that the property has been, is being, or may be used to commit an offence under this Act.

(4) A detention order shall be valid for sixty days and may be renewed by the District Court or Circuit Court for a further period of not more than sixty days at a time until the proceedings have been concluded.

(5) The District Court or Circuit Court may release the property referred to in a detention order if

(a) there are no longer reasonable grounds to suspect that the property has been or will be used to commit an offence under this Act: or

(b) proceedings are not commenced in a Court for an offence under this Act in respect of that property within six months of the date of the detention order.

27. Management of seized property

(1) The District Court or Circuit Court may at the request of the Minister, grant a management order of seized property and

(a) appoint a person to take control of and manage or otherwise deal with the whole or a part of the property in accordance with the directions of the District Court or Circuit Court;

(b) require a person in possession of the property to give possession of the property to the person appointed under paragraph (a).

(2) The power to manage or otherwise deal with property under this section includes the power to sell the property if the property is of rapidly depreciating value.

(3) A management order shall cease to have effect when the property of the management order is returned to an applicant in accordance with this Act or forfeited to the Republic.

28. Destruction of seized property

(1) The District Court or Circuit Court may order the destruction of seized property if satisfied that the property has little or no financial or other value.

(2) Property shall not be destroyed by a person unless an application has been made to the District Court or Circuit Court for a destruction order by an authorized person.

(3) Before making a destruction order, the Court shall require notice to be given to a person with an interest in the property and the person shall be given a reasonable opportunity to be heard.

(4) The Minister may apply to the Court to cancel or vary an order issued under this section.

29. Orders for seizure and restraint of property

(1) The Minister may make an ex-parte application to the Court for a seizure or restraint order where there are reasonable grounds to suspect that there is property in premises or in a vessel in respect of which a forfeiture order may be made.

(2) The Justice of the High Court may issue

(a) a warrant authorizing a police officer to search the premises or vessel for the property and seize the property and a other property which the police officer reasonably believes may be forfeited; or

(b) a restraint order prohibiting a person from disposing of or otherwise dealing with an interest in that property other than as may be specified in the order.

(3) The application shall be heard by a Justice of the High Court in chambers.

30. Orders for forfeiture of property

(1) The Minister may make an ex-parte application to the Court for an order of forfeiture in respect of terrorist property.

(2) The Minister shall name as respondent to the application only those persons who are known to own or control the property that is the subject of the application.

(3) The Minister shall give notice of the application to the respondent in the manner directed by the Court.

(4) If the Court is satisfied on the balance of probabilities that the property which is the subject of the application is terrorist property, the Court shall order that the property be forfeited to the Republic or be disposed of as directed by the Court.

(5) Where the Court refuses to grant a forfeiture order, the Court shall make an order and declare that the property is not subject to a forfeiture order.

31. Interested parties and forfeiture orders

(1) The Court may in an action relating to forfeiture pursuant to sections 24 to 30, require notice to be given to a person who appears to have an interest in terrorist property and that person shall be added as a respondent to the application.

(2) If the Court is satisfied that the person added as a respondent to the application

(a) has an interest in the property the subject of the application.

(b) has exercised reasonable care to ensure that the property is not from the proceeds of a terrorist act, would not be used to commit or facilitate the commission of a terrorist act and would not be used by a terrorist group, and

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

the Court shall order that the interest of that person shall not be affected by the order and the order shall also declare the nature and extent of the interest of the person.

32. Orders for forfeiture of property on conviction for offences under this Act

(1) Where a person is convicted of an offence under this Act or under any other enactment and the act also constitutes a terrorist act, the Court may order that property

(a) used for, or in connection with, or

(b) obtained as proceeds from

the commission of that offence be forfeited to the Republic.

(2) Before making the order, the Court shall give a person who appears to have an interest in the property in respect of which the order is proposed to be made an opportunity to be heard.

(3) Property forfeited to the Republic shall vest in the Republic either

(a) at the end of the period within which an appeal may be made against the order where an appeal has not been made against the order; or

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

(4) Property vested in the Republic may be subject to public auction and the proceeds shall be public funds.

33. Appeal and forfeiture orders

(1) A person who claims an interest in property that has been forfeited and who has not been given notice under section 30(3) or 31(1) may make an application to the Court of Appeal to vary or set aside the forfeiture order not later than sixty days after the day on which the forfeiture order was made.

(2) Pending the determination of an appeal against an order of forfeiture,

(a) property restrained under section 29 shall continue to be restrained,

(b) property seized under a warrant issued under that section shall continue to be detained

and a person appointed to manage, control or otherwise deal with the property under that section shall continue in that capacity.

Miscellaneous matters

34. Intercepted communications

(1) A senior police officer may apply ex-parte to the Circuit Court for an intercepted communications order to obtain evidence of the commission of an offence under this Act.

(2) A senior police officer may make an application only with the prior written consent of the Minister.

(3) A Justice of the Circuit Court to whom an application is made under subsection (1) may make an order for the prevention of crime upon reasonable grounds

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

(b) to authorize a senior police officer to intercept or listen to a conversation provided by a communications service provider,

(c) to authorize the senior police officer to enter premises and install on the premises a device for the interception and retention of specified communications or communications of a specified description and to remove and retain the device,

where there is reasonable suspicion of the commission of an offence under this Act, or the whereabouts of a person suspected by the police officer to have committed an offence is contained in that communication or communication of that description.

(4) Despite the Evidence Decree, 1975 (NRCD 323) information contained in a communication which is intercepted and retained in a foreign state in accordance with the law of the foreign state and certified by a judge of that foreign state to have been intercepted, is admissible in proceedings for an offence under this Act as evidence of the truth of its contents even if it contains hearsay but shall be corroborated.

35. Power to prevent entry and order the removal of persons

- (1) The Director of Immigration or an officer authorized by the Director shall not grant an endorsement or authority to permit a person to enter this country if there are reasonable grounds to suspect that the person is, will or has been involved in the commission of a terrorist act.
- (2) Where the Minister responsible for Interior has reasonable grounds to believe that a person in the Republic is, will or has been involved in the commission of a terrorist act, the Minister may order that person to be deported in accordance with the Immigration Act 2000 (Act 573).
- (3) A person with respect to whom an order under subsection (2) is made is a prohibited immigrant.
- (4) A person with respect to whom an order under subsection (2) is made, may be detained in the manner directed by the Minister responsible for Interior and may be placed on a vessel or aircraft leaving the Republic.

36. Information relating to passengers on vessels or aircraft and persons entering or leaving the country

- (1) The operator of an aircraft or the master of a vessel, arriving or departing from the Republic or the operator of an aircraft registered in the Republic or master of a vessel registered in the Republic departing from a place outside the Republic, shall provide information
 - (a) relating to persons on board, or expected to be on board the aircraft or vessel to the Inspector General of Police,
 - (b) relating to persons on board or expected to be on board the aircraft or vessel to the competent authority in a foreign state, as required by the laws of that foreign state.
- (2) The Director of Immigration may provide to the competent authority in a foreign state information relating to persons entering or leaving the Republic by land.
- (3) The provision of the information shall be deemed not to contravene a provision of law prohibiting the disclosure of the information.
- (4) Information provided to the Inspector General of Police shall not be used or disclosed by the Inspector General except to protect national security or public safety.

37. Power to refuse refugee application

The Refugee Board established under the Refugee Law, 1992 (P.N.D.C.L. 305D) shall take into consideration national security and public safety and may refuse the application of a person applying for status as a refugee if the Board has reasonable grounds to believe that the applicant has committed a terrorist act or is or is likely to be involved in the commission of a terrorist act.

38. Evidence by certificate

A certificate purporting to be signed by an appropriate authority to the effect that a thing or substance described in a certificate is a weapon, is hazardous, radioactive or a harmful substance, a toxic chemical or microbial or other biological agent or toxin, shall be admissible in evidence without proof of the signature or authority of the person appearing to have signed it in a proceedings under this Act and shall, in the absence of evidence to the contrary, be proof of the facts stated in the certificate.

39. Regulations

The Minister may by legislative instrument make regulations

- (a) on the types of financial and other related services which may not be provided to proscribed specified entities;
- (b) specifying the reporting by accountable institutions;
- (c) on the provision of information relating to passengers on vessels or aircraft and persons entering or leaving the country, and specifying the foreign states to which the information may be provided, and
- (d) generally to provide for the effective implementation of the provisions of this Act.

40. Interpretation

In this Act unless the context otherwise requires,

"accountable institution" includes the Police Service and the Immigration Service;

"communications" means a communication received or transmitted by post or a telegraphic telephone or other communication received or transmitted by electric, magnetic, electro-magnetic, electro-chemical or electro mechanical energy;

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

"conveyance" means any kind of vehicle for the transport of persons and property by land;

"counter-terrorism convention" means a convention adopted by the United Nations Security Council;

"Court" means High Court;

"entity" means specified entity;

"essential service" includes the police, fire, health and other vital services;

"explosive" includes gunpowder, nitro-glycerin, dynamite or other nitroglycerine admixture, gun cotton, blasting powder, detonators and every other substance used to produce a practical effect by explosion;

"firearm" includes any gun, rifle, machine gun, cap-gun, flint lock gun or pistol, revolver, cannon or other firearms, any gun, air rifle or air pistol whether whole or in attached pieces;

"ideological cause" includes racial or ethnic cause;

"lethal device" includes weapon;

"Minister" means the Attorney-General and Minister responsible for Justice;

"premises" includes a building, room, place, structure, tent, caravan, land, ship, boat, aircraft;

"property" means an asset of any kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible and legal documents or instruments in any form including electronic or digital,

evidencing title to, or interest in such assets including but not limited to bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letter of credit;

"Republic" means the Republic of Ghana;

"terrorist group" means

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

(b) or a specified entity;

"terrorist property" means

(a) proceeds from the commission of a terrorist act;

(b) property which has been, is being, or is likely to be used to commit a terrorist act;

(c) property which has been, is being, or is likely to be used by a terrorist group;

(d) property owned or controlled by or on behalf of a terrorist group; or

(e) property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act; "utilities" includes electricity and water;

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

"weapon" includes a firearm, explosive, chemical, biological or nuclear weapon.

41. Consequential amendment

(1) (a) The Criminal Procedure Code, 1960 (Act 30) is amended in section 96(7) by the insertion after the word "of" of the words "the importation and exportation of narcotic drugs, acts of terrorism,"

(b) The Criminal Procedure Code, 1960 (Act 30) is amended in section 147B by the insertion after subsection (1) of the following new subsection "(1A) Where sentence is imposed for an offence involving an act of terrorism, the court on sentencing the offender, on its own motion or on the application of the prosecutor or the victim of the offence may make an order for the offender to pay for the value of any property damaged as a result of the terrorist act without limiting any civil action the victim may take."

(c) The Criminal Procedure Code, 1960 (Act 30) is amended in Section 227 (1) by the deletion of the word "male" after the word "Every"

(2) The Immigration Act 2000 (Act 573) is amended in section 8 by the insertion of a new paragraph after paragraph (i) of sub-section (1) of the following "(j) is a person declared a specified entity under the Anti-Terrorism Act 2004 (Act...)".

42. Modification

The Criminal Code, 1960 (Act 29) shall be read as one with this Act and where there is a conflict this Act shall prevail.