

# THE PREVENTION OF TERRORISM ACT 2002\*

Act No. 2 of 2002

*I assent*

19th February 2002

**ARIRANGA G. PILLAY**  
Ag President of the Republic

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\* This Act was published in Government Gazette No. 9 of 29 January 2002 and came into operation on 16 March 2002 as per Proclamation No. 14 of 2002.

**An Act**

To provide for measures to combat terrorism and for related matters

ENACTED by the Parliament of Mauritius, as follows –

**1. Short title**

This Act may be cited as the Prevention of Terrorism Act 2002.

**PART I - INTRODUCTORY**

**2. Interpretation**

In this Act –

"act of terrorism" means an act specified in section 3;

"bank" -

(a) has the same meaning as in the Banking Act; and

(b) includes –

- (i) any person engaged in deposit-taking business and authorised to do so under the Banking Act; and
- (ii) any person who carries on any business or activity regulated by the Bank of Mauritius;

"cash dealer" means a person authorised under the Foreign Exchange Dealers Act to carry on the business of foreign exchange dealer or money changer;

"Commissioner" means the Commissioner of Police;

"financial institution" means any institution or person regulated by any of the enactments specified in the First Schedule;

"government" means the government of the Republic of Mauritius or of any other State;

"Minister" means the Minister to whom responsibility for the subject of national security is assigned;

"proscribed organisation" -

- (a) means an organisation which has been declared to be a proscribed organisation under section 4; and
- (b) includes a group which has been declared to be an international terrorist group under section 10;

"terrorist investigation" means an investigation of –

- (a) the commission, preparation or instigation of an act of terrorism or any other offence under this Act;
- (b) any act or omission reasonably suspected to have been done for an act of terrorism or any other offence under this Act;
- (c) the resources of a proscribed organisation;

"terrorist property" means property which -

- (a) has been, is being, or is likely to be used for any act of terrorism;
- (b) has been, is being, or is likely to be used by a proscribed organisation;
- (c) is the proceeds of an act of terrorism; or
- (d) is gathered for the pursuit of, or in connection with, an act of terrorism;

"trustee" has the same meaning as in the Trusts Act 2001.

## **PART II - ACTS OF TERRORISM AND RELATED OFFENCES**

### **3. Prohibition of acts of terrorism**

- (1) Any person who –
  - (a) does, or threatens to do, or does an act preparatory to or in furtherance of, an act of terrorism; or
  - (b) omits to do anything that is reasonably necessary to prevent an act of terrorism,

shall commit an offence.

- (2) In this section, “act of terrorism” means an act which-
  - (a) may seriously damage a country or an international organisation;  
and
  - (b) is intended or can reasonably be regarded as having been intended to-
    - (i) seriously intimidate a population;
    - (ii) unduly compel a Government or an international organisation to perform or abstain from performing any act;
    - (iii) seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation; or

- (iv) otherwise influence such government, or international organisation; and
- (a) involves or causes, as the case may be-
- (i) attacks upon a person's life which may cause death;
  - (ii) attacks upon the physical integrity of a person;
  - (iii) kidnapping of a person;
  - (iv) extensive destruction to a Government or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss;
  - (v) the seizure of an aircraft, a ship or other means of public or goods transport;
  - (vi) the manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons;
  - (vii) the release of dangerous substance, or causing of fires, explosions or floods, the effect of which is to endanger human life;
  - (viii) interference with or disruption of the supply of water, power or any other fundamental natural resource, the effect of which is to endanger life.

#### **4. Proscribed organisations**

(1) Where any 2 or more persons associate for the purpose of, or where an organisation engages in -

- (a) participating, or collaborating, in an act of terrorism;
- (b) promoting, encouraging or exhorting others to commit an act of terrorism; or
- (c) setting up or pursuing acts of terrorism,

the Judge in Chambers may, on an application made by the Commissioner, declare the entity to be a proscribed organisation.

(1) Any order made under subsection (1) shall be published in the *Gazette*, in 2 daily newspapers and at such other places, as the Judge in Chambers shall determine.

(2) Any publication made under subsection (2) shall contain such relevant particulars as the Judge in Chambers may specify.

(3) Any person who belongs, or professes to belong, to a proscribed organisation shall commit an offence.

(4) It shall be a defence for a person charged under subsection (4) to prove that the organisation had not been declared a proscribed organisation at the time the person charged became, or began to profess to be, a member of the organisation and that he has not taken part in the activities of the organisation at any time after it has been declared to be a proscribed organisation.

(5) The Judge in Chambers may -

- (a) upon application by the proscribed organisation or by any person affected by a declaration made under subsection (1); and
- (b) on being satisfied that a proscribed organisation has ceased to engage in the acts specified in subsection (1) and that there is no likelihood of the organisation engaging in such acts specified in subsection (1) in the future,

cancel the declaration ordered under that subsection.

## **5. Terrorist meetings**

Any person who –

- (a) arranges, manages, or assists in arranging or managing, or participates in a meeting, or an activity, which he knows is concerned with an act of terrorism;
- (b) provides logistics, equipment or facilities for a meeting, or an activity, which he knows is concerned with an act of terrorism; or
- (c) attends a meeting, which he knows is to support a proscribed organisation, or to further the objectives of a proscribed organisation,

shall commit an offence.

## **6. Support**

(1) Any person who, in any manner or form –

- (a) solicits support for, or tenders support in relation to, an act of terrorism, or
- (b) solicits support for, or tenders support to, a proscribed organisation,

shall commit an offence.

(2) For the purposes of subsection (1), “support” includes –

- (a) instigation to the cause of terrorism;
- (b) (i) offer of material assistance, weapons including biological, chemical or nuclear weapons, explosives, training, transportation, false documentation or identification;
- (ii) offer or provision of moral assistance, including invitation to adhere to a proscribed organisation;
- (c) the provision of, or making available, such financial or other related services as may be prescribed.

## **7. Harboursing terrorists**

Any person who harbours, conceals, or causes to be harboured or concealed, any person whom he knew to have committed, or to have been convicted of, an act of terrorism, or against whom he knew that a warrant of arrest or imprisonment for such an act had been issued, shall commit an offence.

## **8. Information about acts of terrorism**

(1) Subject to subsections (2) and (3), where a person has information which he knows or believes might be of material assistance –

- (a) in preventing the commission by another person of an act of terrorism; or
- (b) in securing the apprehension, prosecution or conviction of another person for an offence under this Act,

and that person fails to disclose to a police officer at any police station the information as soon as reasonably practicable, he shall commit an offence.

(2) It shall be a defence for a person charged under subsection (1) to prove that he has reasonable excuse for not making the disclosure.

(3) Subsection (1) does not require disclosure by a law practitioner of any information, or a belief or suspicion based on any information, which he obtained in privileged circumstances.

(4) For the purpose of subsection (3), information is obtained by a law practitioner in privileged circumstances where it is disclosed to him -

- (a) by his client in connection with the provision of legal advice, not being a disclosure with a view to furthering a criminal purpose;
- (b) by any person for the purpose of actual or contemplated legal proceedings, and not with a view to furthering a criminal purpose.

## **9. Obstruction of terrorist investigations**

(1) Any person who -

- (a) discloses to another anything which is likely to prejudice a terrorist investigation;
- (b) interferes with material which is likely to be relevant to a terrorist investigation,

shall commit an offence.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove –

- (a) that he did not know and had no reasonable cause to suspect that the disclosure was likely to affect a terrorist investigation; or
  - (b) that he had a reasonable excuse for the disclosure or interference.
- (3) Subsection (1) does not apply to a disclosure which is made by a law practitioner –
- (a) to his client in connection with the provision of legal advice, not being a disclosure with a view to furthering a criminal purpose;
  - (b) to any person for the purpose of actual or contemplated legal proceedings, and not with a view to furthering a criminal purpose.

## **10. International terrorism**

(1) The Minister may declare any person to be a suspected international terrorist where

- (a) he reasonably suspects that the person -
  - (i) is or has been concerned in the commission, preparation or instigation of acts of international terrorism;
  - (ii) is a member of, or belongs to, an international terrorist group; or
  - (iii) has links with an international terrorist group,

and he reasonably believes that the person is a risk to national security;

- (b) the person is listed as a person involved in terrorist acts in any Resolution of the United Nations Security Council or in any instrument of the Council of the European Union; or
- (c) the person is considered as a person involved in terrorist acts by such State or other organisation as the Minister may approve.

(2) Where the Minister makes a declaration under subsection (1) (a), he shall, in such manner as he considers appropriate, cause the person declared to be a suspected international terrorist to be notified as soon as is reasonably practicable.

(3) Where a person declared a suspected international terrorist under sub-section (1) possesses the Mauritian citizenship as well as the citizenship of any other country or State, the

Minister may deprive that person of his Mauritian citizenship in the manner specified in section 11 of the Mauritian Citizenship Act.

- (4) The Minister may declare a group to be an international terrorist group if the group -
- (a) is subject to the control or influence of persons outside Mauritius, and the Minister reasonably suspects that it is concerned in the commission, preparation or instigation of acts of international terrorism; or
  - (b) is listed as a group or entity involved in terrorist acts in any Resolution of the United Nations Security Council or in any instrument of the Council of the European Union; or
  - (c) is considered as a group or entity involved in terrorist acts by such competent authority of such State as the Minister may approve.
- (5) Reference in this Act to a proscribed organisation shall be deemed to include reference to an international terrorist group, and, whenever applicable, to a suspected international terrorist.
- (6) The Minister may, with respect to any suspected international terrorist or an international terrorist group, make regulations to provide -
- (a) for the freezing of his or its funds, financial assets or other economic resources, including funds derived from property, owned or controlled directly or indirectly, by him or it, by persons acting on his or its behalf or at his or its direction;
  - (b) for the prevention of his or its entry into, or transit in, Mauritius;
  - (c) for the prohibition of the direct or indirect supply, sale and transfer to him or it of arms, weapons, ammunitions, military vehicles and equipment, paramilitary equipment, spare parts and related material, and technical advice, assistance, or training related to military activities;
  - (d) that any person who contravenes any regulations made under this subsection shall commit an offence and shall, on conviction, be liable to penal servitude for a period not exceeding 5 years.
- (7) The Minister shall give notice of any declaration made under subsections (1) and (4) in the *Gazette* and in such other manner as he deems fit.
- (8) For the purposes of this section, "act of international terrorism" means an act of terrorism involving -
- (a) a non-citizen; or
  - (b) any person possessing dual citizenship as specified in subsection (3).

## **11. Suppression of financing of international terrorism**

(1) Any person who, wilfully and unlawfully, directly or indirectly, provides or collects funds with the intention, or knowledge, that they will be used, in full or in part, in order to

- (a) commit an offence in breach of an enactment specified in the Second Schedule;
- (b) do any other act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act,

shall commit an offence.

(2) For an act to constitute an offence under subsection (1), it shall not be necessary that the funds were actually used to commit the said offence.

## **12. Hostages**

- (1) Any person who –
  - (a) seizes or detains;
  - (b) threatens to kill, injure or continue to detain,

another person in order to compel a third party to do or abstain from doing any act, as an explicit or implicit condition for the release of the hostage, shall commit an offence.

(2) In this section, “third party” means a State, an international governmental organisation, a natural or juridical person or a group of persons.

## **PART III - TERRORIST CASH AND TERRORIST PROPERTY**

### **13. Seizure and detention of terrorist cash**

- (1) Where the Commissioner has reasonable grounds to suspect that any cash -
  - (a) is intended to be used for the purposes of terrorism;
  - (b) belongs to, or is held on trust for, a proscribed organisation;
  - (c) is or represents property obtained through acts of terrorism,

he may seize the cash.

(2) The Commissioner may seize cash, even if he reasonably suspects part only of the cash to be terrorist cash, where it is not reasonably practicable to seize that part only of the cash.

(3) The Commissioner may exercise his powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with the terrorist cash.

(4) The Commissioner shall, as soon as is reasonably practicable, apply to the Judge in Chambers for a detention order with respect to the cash seized under subsection (1).

(5) The Judge in Chambers shall not make an order for detention of the cash unless he is satisfied that there are reasonable grounds for suspecting that the cash –

- (a) is intended to be used for the purposes of terrorism;
- (b) consists of resources of a proscribed organisation; or
- (c) is or represents property obtained through terrorist activities.

(6) Subject to subsection (8), any order made under subsection (5) shall remain valid for a period of 90 days, and may be renewed for further periods of 90 days by the Judge in Chambers, until production of the cash before the court in proceedings against any person for an offence with which the cash is connected.

(7) Any cash detained under this section shall be deposited by the Commissioner in an interest-bearing account.

(8) The cash, with the interest, may be released by order of the Judge in Chambers -

- (a) where the conditions under subsection (5) are no longer met; or
- (b) where no proceedings are brought in connection with the cash detained.

(9) For the purposes of this section, “cash” means –

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) traveller’s cheques;
- (d) banker’s drafts;
- (e) bearer bonds and bearer shares;
- (f) such other monetary instruments as the Minister responsible for the subject of finance may, by regulations, specify.

#### **14. Terrorist funding**

Any person who –

- (a) solicits, receives, provides or possesses money or other property;
- (b) enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available,

for the purposes of terrorism, or for a proscribed organisation, shall commit an offence.

**15. Dealing in terrorist property**

(1) Any person who enters into, or becomes concerned in, an arrangement which facilitates the retention or control by, or on behalf of, another person of terrorist property, in any manner, including -

- (a) by concealment;
- (b) by removal from the jurisdiction; or
- (c) by transfer to any other person,

shall commit an offence.

(2) It shall be a defence for a person charged under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

**16. Attachment of property**

(1) Where a person is charged or about to be charged with an offence under this Act, the Commissioner may apply to a Judge in Chambers for a provisional order attaching in the hands of the suspect or in the hands of any other specified person, all moneys and other property due, or owing, or belonging to, or held on behalf of, the suspect.

(2) An order made under subsection (1) may –

- (a) prohibit any person from making money or other property available to or for the benefit of the suspect;
- (b) provide for the granting of authority to make money or other property available to such persons and on such conditions as may be specified in the order;
- (c) require the suspect to provide such information or produce such document as may be required or reasonably needed for an investigation under this Act;
- (d) include such other condition as the Judge may impose.

(3) The Judge in Chambers may appoint the Official Receiver or any other suitable person to manage the assets of the suspect during the period of operation of an Order made under this section.

(4) The Commissioner shall –

- (a) cause notice of the order to be published in the next issue of the *Gazette* and in 2 daily newspapers;
- (b) give notice of the order to –
  - (i) all notaries;

- (ii) banks, financial institutions and cash dealers;
- (iii) any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

(5) An order under this section shall remain in force until the determination of any charge or intended charge under subsection (1) and, in the event of a conviction, until an order for forfeiture is made by the court or proceedings relating thereto are concluded.

(6) Where an order under this section ceases to have effect, the Commissioner shall cause notice thereof to be published in the *Gazette* and 2 daily newspapers.

(7) Any payment, transfer, pledge or other disposition of property made in contravention of an order under this section shall be void.

## **17. Property tracking**

(1) Where the Commissioner has reasonable grounds to suspect that a person has committed, is committing or is about to commit an act of terrorism or is in possession of terrorist property, he may, for the purposes of an investigation under this Act, apply to a Judge in Chambers for an order -

- (a) compelling the suspect to deliver to him any document relevant to identifying, locating or quantifying any property belonging to, or in the possession or control of that person;
- (b) requiring a bank or any other financial institution, trustee, cash dealer or custodian, to produce to him all information and deliver to him all documents regarding any business transaction conducted by or on behalf of the suspect.

(2) Where a person fails to comply with, is delaying or is otherwise obstructing an order made under subsection (1)(a), the Judge in Chambers may, upon information sworn to that effect by the Commissioner, authorise the Commissioner or any officer deputed by him to enter any premises, including a bank or other financial institution, and search the premises and remove any document for the purposes of executing such order.

## **PART IV - MUTUAL ASSISTANCE AND EXTRADITION**

### **18. Requests from foreign States**

(1) Where a foreign State makes a request for assistance in the investigation or prosecution of an offence related to terrorism, the Minister responsible for foreign affairs, after consultation with the Prime Minister and the Attorney-General, shall –

- (a) execute the request; or
- (b) inform the foreign State making the request of any reason for -
  - (i) not executing the request forthwith;
  - (ii) delaying the execution of the request.

(2) Where the Minister responsible for foreign affairs decides to execute a request for assistance under subsection (1), he may apply to a Judge in Chambers for –

- (a) an order in writing for –
  - (i) search and entry of specified premises;
  - (ii) search of any specified person;
  - (iii) removal of any relevant document or material;
- (b) an attachment order;
- (c) a property tracking order;
- (d) an order for freezing or forfeiture of property,

in such manner as may be prescribed.

(3) The Judge in Chambers may make an order under this section on such conditions as he may deem fit to impose, including any condition as to payment of debts, sale, transfer or disposal of any property.

## **19. Requests to foreign States**

(1) The Minister responsible for foreign affairs may, after consultation with the Attorney-General, make a request to any foreign State –

- (a) to provide evidence or information relevant to an offence under this Act;
- (b) for the restraint and forfeiture of property located in that State and which is liable to be forfeited by reason of it being terrorist property.

(2) Where the foreign State to which a request for assistance is made under subsection (1) requires the request to be signed by an appropriate competent authority, the Minister responsible for foreign affairs shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

(3) The Minister responsible for foreign affairs may, in respect of any proceedings for an offence under this Act, apply to a Judge in Chambers for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Supreme Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the foreign State for the purpose of giving evidence in relation to those proceedings.

## **20. Evidence pursuant to a request**

(1) Evidence taken, pursuant to a request under section 19, in any proceedings in a Court of a foreign State may, if it is authenticated, be *prima facie* admissible in any proceedings to which such evidence relates.

- (2) For the purpose of subsection (1), a document is authenticated if -

- (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of a foreign State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal -
  - (i) of a Minister, Department of State or Department, or officer in or of the Government of the foreign State; or
  - (ii) in the case of a territory, protectorate or colony, of the person administering the Government of the foreign territory, protectorate or colony, or of a person administering a department of that territory, protectorate or colony.

## **21. Form of requests**

(1) A request under section 18 or 19 shall be in writing and shall be dated and signed by or on behalf of the person making the request.

(2) The request may be transmitted by facsimile or by any other electronic device or means.

(3) The request shall –

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected offence related to terrorism or that a person has been convicted of an offence related to terrorism;
- (b) state the grounds on which any person is being investigated or prosecuted for an offence related to terrorism or details of the conviction of the person;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any bank, financial institution, cash dealer or other person believed to have information, documents or materials which may be of assistance to the investigation or prosecution;
- (e) request assistance to obtain from a bank, financial institution, cash dealer or other person all and any information, document or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
- (g) state whether a freezing order or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may assist the execution of the request.

(4) A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with subsection (3) where the Minister responsible

for foreign affairs is satisfied that there is sufficient compliance to enable him to execute the request.

(5) Where the Minister to whom responsibility for the subject of finance is assigned considers it appropriate, either because an international arrangement so requires or permits or in the public interest, he may order that the whole or any part of any property forfeited under section 18 or 19, or the value thereof, be returned or remitted to the requesting State.

## **22. Extradition**

Any offence under sections 3, 4, 5, 6, 7, 11, 12, 14 and 15 of this Act shall be considered to be an extradition crime for which extradition may be granted or obtained under the Extradition Act.

## **PART V - INVESTIGATION**

### **23. Power of investigation**

(1) A police officer not below the rank of Superintendent may apply to a District Magistrate for the issue of a warrant for the purpose of a terrorist investigation.

(2) The Magistrate may issue a warrant authorising any police officer –

- (a) to enter the premises specified in the warrant;
- (b) to search the premises and any person found therein;
- (c) to seize and retain any relevant material found therein.

(3) The Magistrate shall not issue a warrant under subsection (2) unless he is satisfied that –

- (a) the warrant is sought for the purpose of a terrorist investigation; and
- (b) there are reasonable grounds for believing that there is material on the premises which may be relevant to the terrorist investigation.

### **24. Power of investigation in cases of urgency**

(1) Where, in a case of urgency, communication with a Magistrate to obtain a warrant would cause delay that may be prejudicial to the maintenance of public safety or public order, a police officer, not below the rank of Superintendent, may, notwithstanding any other Act, with the assistance of such other police officers as may be necessary –

- (a) enter and search any premises or place, if he has reason to suspect that, within those premises or at that place –
  - (i) an offence under this Act is being committed or likely to be committed; and
  - (ii) there is evidence of the commission of an offence under this Act;

- (b) search any person or vehicle found on any premises or place which he is empowered to enter and search under paragraph (a);
- (c) stop, board and search any vessel, aircraft or vehicle if he has reason to suspect that there is in it evidence of the commission or likelihood of commission of an offence under this Act;
- (d) seize, remove and detain anything which is, or contains or appears to him to be or to contain or to be likely to be or to contain, evidence of the commission of an offence under this Act;
- (e) arrest and detain any person whom he reasonably suspects of having committed or of being about to commit an offence under this Act.

(2) A police officer may use such force as may be necessary for the exercise of the powers conferred by subsection (1).

(3) Any person found on any premises or place or in any vessel, aircraft or vehicle may be detained by a police officer until the completion of the search under subsection (1).

(4) Where a seizure is effected under this section, a list of all the articles, documents and other matters seized shall forthwith be delivered –

- (a) to the person on whom the search is made;
- (b) to the owner of the premises, place, vessel, aircraft or vehicle searched.

(5) Notwithstanding subsection (1), no woman shall be searched under this section except by a woman.

(6) For the purposes of this section, the degree of force which may be used shall not be greater than is reasonably necessary.

(7) Nothing in this section shall be construed as a derogation from the lawful right of any person in the defence of person or property.

(8) A police officer who uses such force as may be necessary for any purpose, in accordance with this Act, shall not be liable, in any criminal or civil proceedings, for having, by the use of force, caused injury or death to any person or damage to or loss of any property.

## **25. Intelligence gathering**

(1) Notwithstanding any other enactment, the Minister may for the purposes of the prevention or detection of offences, or the prosecution of offenders, under this Act, give such directions as appear to him to be necessary to –

- (a) communication service providers generally;
- (b) communication service providers of a specified description;
- (c) any particular communication service provider.

(2) Before giving a direction under this section, the Minister may consult any communication service provider he deems fit to consult.

(3) A direction under this section shall specify the maximum period for which a communication service provider may be required to retain communications data.

(4) In this section –

“communication service provider” means a person who provides postal, or information and communication, including telecommunications, service;

“data” means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose.

## **26. Detention of aircraft or vessel**

(1) An authorised person may issue a detention order in respect of an aircraft or vessel if he is of opinion that –

- (a) a threat has been made to commit an act of violence against the aircraft or vessel, or against any person or property on board the aircraft or vessel; or
- (b) an act of violence is likely to be committed against the aircraft or vessel, or against any person or property on board the aircraft or vessel.

(2) Where the operator of an aircraft or vessel fails to comply with a detention order under subsection (1), the authorised person may –

- (a) enter, or authorise any other person to enter, the aircraft or vessel;
- (b) arrange for a person or thing to be removed from the aircraft or vessel,

and may use reasonable force, or authorise the use of reasonable force by another person for any such purpose.

(3) The authorised person shall give written notice to the operator of the aircraft or vessel of any detention order issued under this section.

(4) Where the operator of an aircraft or vessel objects to a detention order, the Minister may, after hearing the interested parties, confirm, vary or cancel the order.

(5) Any person who –

- (a) without reasonable excuse, fails to comply with the requirement of a detention order;
- (b) intentionally obstructs or hinders any person acting in accordance with subsection (2),

shall commit an offence.

(6) For the purposes of this section, the Minister may, in writing, designate as an authorised person such person as he deems appropriate.

## **27. Detention for offences related to terrorism**

(1) Where any person is arrested under reasonable suspicion of having committed any offence under section 3, 4, 5, 6, 7, 11, 12, 14 or 15, a police officer not below the rank of Superintendent of Police may, subject to this section, direct that the person arrested be detained in police custody for a period not exceeding 36 hours from his arrest, without having access to any person other than a police officer not below the rank of Inspector, or a Government Medical Officer and, in any such case, that person shall be detained accordingly.

(2) No direction under subsection (1) shall be made unless the police officer has reasonable grounds to believe that giving access to any person other than the Police Officer not below the rank of Inspector or the Government Medical Officer specified in that subsection -

- (a) will lead to interference with or harm to evidence connected with an offence under section 3, 4, 5, 6, 7, 11, 12, 14 or 15, or to interference with, or physical injury to, other persons; or
- (b) will lead to the alerting of other persons suspected of having committed such an offence but not yet arrested for it; or
- (c) will hinder the tracking, search and seizure of terrorist property.

(3) As soon as a direction is issued under subsection (1), the person detained shall be informed that he may, if he so wishes, be examined by a Government Medical Officer.

## **28. Custody record and video recording**

(1) A custody record containing the information specified in the Third Schedule shall be kept in respect of any person detained pursuant to the powers conferred by section 27.

(2) A video recording shall be made and kept in the manner specified in the Fourth Schedule in respect of any person detained pursuant to the powers conferred by section 27.

(3) A video recording under this section shall, notwithstanding the common law rule against hearsay, be admissible in evidence in the course of any judicial proceedings to the same extent and in the same manner as documentary evidence would be admissible.

(4) In this section, "video recording" includes the recording of visual images or sound by electronic or other technological means.

## **PART VI - PROSECUTION**

### **29. Prosecution for offence**

(1) No prosecution for an offence under this Act shall be instituted except by or with the consent of the Director of Public Prosecutions.

(2) A Court may, on motion by or on behalf of the Director of Public Prosecutions, order that no person shall publish –

- (a) the name, address or photograph of any witness in any case tried or about to be tried before it for any offence under this Act; or
- (b) any evidence or any other matter likely to lead to the identification of the witness.

(3) A Court may, on motion by or on behalf of the Director of Public Prosecutions, in the interest of public safety or public order, exclude from proceedings instituted for any offence under this Act, any person other than the parties and their legal representatives.

(4) Any person who contravenes an order made under subsection (3) shall commit an offence.

### **30. Extra-territorial jurisdiction**

A Mauritian Court shall have jurisdiction to try an offence and inflict the penalties specified in this Act where the act constituting the offence under sections 3, 4, 5, 6, 7, 11, 12, 14 and 15, has been done or completed outside Mauritius and -

- (a) the victim is a citizen of the Republic of Mauritius or has an effective link with Mauritius or is dealing with or on behalf of the Government of Mauritius;
- (b) the alleged offender is in Mauritius; or
- (c) the alleged offender is in Mauritius, and Mauritius does not extradite him.

### **31. Competent Court**

(1) Subject to subsection (2), prosecution for an offence under this Act shall take place, at the sole discretion of the Director of Public Prosecutions, before a Judge without a jury, the Intermediate Court or the District Court.

(2) A prosecution for an offence under section 3 shall take place before a Judge without a jury.

(3) Notwithstanding any other enactment, the Intermediate Court shall have –

- (a) jurisdiction to impose any penalty provided for an offence under this Act provided that the penalty for an offence does not exceed 20 years; and
- (b) power to order sentences imposed under this Act to be served consecutively provided that the terms of such sentences shall not in the aggregate exceed 30 years.

(4) Sections 150, 151, 152 and 153 of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction for an offence under this Act.

### **32. Penalties**

(1) Subject to subsection (3), any person who commits an offence against this Act shall, on conviction, be liable –

- (a) in the case of an offence under section 3, to penal servitude for a term of not less than 5 years nor more than 35 years;
- (b) in the case of an offence under sections 4, 5, 6, 7, 11, 12, 14 and 15, to penal servitude for a term of not less than 3 years nor more than 20 years;
- (c) in the case of an offence under sections 8 and 9, to penal servitude for a term of not less than 2 years nor more than 15 years;
- (d) in the case of an offence under sections 26 and 29, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 5 years.

(2) The Court before which a person is convicted of an offence under this Act may, in addition to any penalty imposed by the Court, order the forfeiture of -

- (a) any terrorist cash, with any accrued interest, or terrorist property;
- (b) any article, substance, device or material by means of which the offence was committed;
- (c) any vehicle or vessel used in the commission of the offence.

(3) (a) Any person who has been convicted of a conspiracy to commit any of the offences under sections 3, 4, 5, 6, 7, 11, 12, 14, or 15 shall be exempted from penalty as specified in subsection (1) and absolutely discharged if, having revealed the conspiracy to the police or to the Court, he has made it possible to prevent the commission of the offence and to identify the other persons involved in the conspiracy.

(b) Notwithstanding subsection (1), the penalty incurred by any person convicted of any offence referred to in that subsection shall be reduced in such manner as the Court thinks just where that person has, before any proceedings, made possible or facilitated the identification of the other guilty persons, or who, after the commencement of proceedings, has made possible or facilitated the arrest of such persons.

## **PART VII - MISCELLANEOUS**

### **33. Regulations**

- (1) The Minister may, for the purposes of this Act, make such regulations as he thinks fit.
- (2) Regulations made under sub-section (1) may provide for -
  - (a) the types of financial or other related services which may not be provided to proscribed organisations;
  - (b) the amendment of the Schedules.

### 34. Consequential amendments

(1) The Criminal Code (Supplementary) Act is amended in section 109, in subsection (2), by deleting the words "or manslaughter" and replacing them by the words "manslaughter or an offence related to terrorism under the Prevention of Terrorism Act 2002."

(2) The Criminal Procedure Act is amended in the Fifth Schedule by adding the following new paragraph, the full stop at the end of paragraph (g) being replaced by a semi-colon -

(h) Prevention of Terrorism Act 2002, section 3.

(3) The Immigration Act is amended in section 8, in subsection (1), by adding at the end the following new paragraph -

(l) persons declared suspected international terrorists under the Prevention of Terrorism Act 2002.

(4) The Mauritius Citizenship Act is amended in section 11, in subsection (3) -

(a) in paragraph (a), by deleting the words "Subject to paragraph (b)" and replacing them by the words "Subject to paragraphs (b) and (c)";

(b) in sub-paragraph (a) (i), by adding immediately after the word "State" the words "or is, or has been declared, a suspected international terrorist under the Prevention of Terrorism Act 2002";

(c) by adding after paragraph (b), the following new paragraph -

(c) In the case of a person who is declared a suspected international terrorist as specified in sub-paragraph (a) (i) -

(i) the Minister may, subject to paragraph (b), deprive him of his citizenship irrespective of the manner in which he acquired both the citizenship of Mauritius and that of another State;

(ii) subsections 5, 6 and 7 shall not be applicable.

### 36. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the operation of different sections of the Act.

Passed by the National Assembly on the fourth day of February two thousand and two and on the fourteenth day of February two thousand and two upon reconsideration under section 46(2)(d) of the Constitution of Mauritius.

ANDRE POMPON  
*Clerk of the National Assembly*

**FIRST SCHEDULE***(sections 2 and 17)*

Financial Services Development Act 2001

Immigration Act in so far it applies to section 5A

Insurance Act

Securities (Central Depository, Clearing and Settlement) Act

Stock Exchange Act

Trusts Act 2001

Unit Trusts Act

**SECOND SCHEDULE**  
*(section 11)*

Civil Aviation (Hijacking and other Offences) Act, sections 4, 5, 6 and 6A

Section 12 of this Act

### **THIRD SCHEDULE**

*(section 28 (1))*

#### **Custody Record**

1. Entries shall be made in the Custody Record in respect of all matters relevant to the detention of the arrested person. In particular, the entries shall be made in respect of the following

-

- (a) an accurate record of the time and place of
    - (i) the arrest;
    - (ii) the issue of the direction under section 27; and
    - (iii) each interview, including any interview immediately following his arrest, of the person detained;
  - (b) the place or places where the interview takes place;
  - (c) the time at which the interview begins and the time at which it ends;
  - (d) any break during the interview;
  - (e) the names of persons present at the interviews;
  - (f) the time and reason for any transfer of the detained person from one place of custody to another as well as the time at which the detention ends;
  - (g) any property secured from the person on his arrest or during his detention;
  - (h) the name and rank of the police officer upon whose authority any action in relation to the detained person is taken; and
  - (i) the ground or grounds, set out in section 27(2), on which the detention is based.
2. The Custody Record shall be opened as soon as practicable after the start of a person's detention under section 27.
3. The person making an entry in the Custody Record shall insert the time at which the entry is made and his signature against the entry made.
4. The Custody Record or copy of the Record shall accompany a detained person to any other place where he is transferred.
5. A copy of the Custody Record shall be supplied to the person detained or his legal representative as soon as is practicable after he or the representative makes a request upon his release from detention or his being taken to court.
6. The person detained shall be allowed to check and shall be made to insert his signature in respect of any entry in the Custody Record.

7. An entry shall be made in respect of any refusal of the person detained to insert his signature where such signature is required.
8. Entries in the Custody Record shall be made as soon as practicable after the occurrence of the events to which they relate.
9. A police officer not below the rank of Inspector shall be responsible for ensuring the accuracy and completeness of the Custody Record and that the Custody Record or a copy of the Record accompanies the detained person on his transfer.
10. Entries in a computerised Custody Record shall be timed and shall contain evidence of the computer operator's identity.

## FOURTH SCHEDULE

*(section 28 (2))*

### Video Recording

1. The video recording of the detained person during his period of detention under section 27 shall be carried out in such manner as to constitute an accurate, continuous and uninterrupted record of the whole period of his detention, including his movements, interviews and statements.
2. When issuing the direction for detention under section 27, the Police Officer shall make arrangements for the video recording of the person detained during the whole of the period of his detention.
3. The Police Officer shall, for the purposes of the video recording, designate a recording officer under whose responsibility and control the video recording shall be conducted.
4. The recording officer shall be responsible for starting, without delay and immediately after a direction is issued under section 27, and for continuing the video recording without any interruption during the whole of the period of detention.
5. The recording officer shall, in respect of the video recording, keep a written record of the following -
  - (a) the name of the person detained;
  - (b) the name and rank of the recording officer;
  - (c) the name of the Police Officer who issued the direction under section 27;
  - (d) the names of all the persons involved in the video recording;
  - (e) the identification numbers of the video records used for video recording;
  - (f) the date, time of commencement, duration and place of -
    - (i) the detention; and
    - (ii) the recording;
  - (g) the place at which the video records are kept;
  - (h) particulars of the movement of the video records.
6. Where the person detained raises any objection during his period of detention or makes any statement, the whole of his objection or statement shall be recorded.
7. (a) The video record, referred to herein as the master video record, shall be sealed, with a label specifying that the record is a master video record, in the presence of the detained person at the end of his period of detention.

(b) The recording officer shall sign the label and ask the detained person and any third party present to sign the label.

(c) Where the detained person or the third party refuses to sign the label, another person may be asked to sign it.

8 (a) Where more than one video record is used, the recording officer shall ensure that all the video records are properly identified and labelled.

(b) This shall be done by marking the video records with an identification number immediately after they are removed from the recorder.

9. The recording officer shall make arrangements for the video records to be kept securely under lock and key under the responsibility of an officer designated for that purpose.