



LAWS OF KENYA

PREVENTION OF TERRORISM ACT, 2012

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PREVENTION OF TERRORISM ACT

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NO. 30 OF 2012

PREVENTION OF TERRORISM ACT

[Date of assent: 12th October, 2012.]

[Date of commencement: 24th October, 2012.]

An Act of Parliament to provide measures for the detection and prevention of terrorist activities; to amend the Extradition (Commonwealth Countries) Act and the Extradition (Contiguous and Foreign Countries) Act; and for connected purposes

[Act No. 38 of 2013.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Prevention of Terrorism Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**aircraft**” has the meaning assigned to it under the Civil Aviation Act (Cap. 394)

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to internal security;

“**communication**” means a information received or transmitted through the postal service or through a telecommunication system within the meaning of the Kenya Information and Communications Act (Cap. 411A);

“**communications service provider**” means a person who is licensed under the Kenya Information and Communications Act to provide postal or telecommunication services;

“**competent authority**” in relation to a foreign State, means the Attorney-General or the equivalent officer of that State;

“**entity**” means a person, group of persons, trust, partnership, fund or an unincorporated association or organization;

“**financial institution**” means any person or entity, which conducts as a business, one or more of the following activities or operations—

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring, with or without recourse, and financing of commercial transactions;
- (c) financial leasing;
- (d) transferring of funds or value, by any means, including both formal and informal channels;
- (e) issuing and managing means of payment (such as credit and debit cards, cheques, travellers’ cheques, money orders and bankers’ drafts and electronic money);

- (f) financial guarantees and commitments;
- (g) trading in—
 - (i) money market instruments including cheques, bills, certificates of deposit and derivatives;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index funds;
 - (iv) transferable securities; or
 - (v) commodity futures trading;
- (h) participation in securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (k) otherwise investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment related insurance;
- (m) money and currency changing;

“Financial Reporting Centre” means the Financial Reporting Centre established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act (Cap. 59B);

“funds” mean assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to, or interest in such assets;

“Inspector-General” means the Inspector-General of the National Police Service appointed under Article 245 of the Constitution;

“master” in relation to a vessel, means the owner or person other than a harbour master or pilot having for the time being command or charge of the vessel;

“operator”, in relation to an aircraft, has the meaning assigned to it under the Civil Aviation Act (Cap. 394);

“property” means assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets and includes funds;

“specified entity” means an entity in respect of which an order under section 3 has been made;

“terrorist act” means an act or threat of action—

- (a) which—
 - (i) involves the use of violence against a person;
 - (ii) endangers the life of a person, other than the person committing the action;

- (iii) creates a serious risk to the health or safety of the public or a section of the public;
- (iv) results in serious damage to property;
- (v) involves the use of firearms or explosives;
- (vi) involves the release of any dangerous, hazardous, toxic or radioactive substance or microbial or other biological agent or toxin into the environment;
- (vii) interferes with an electronic system resulting in the disruption of the provision of communication, financial, transport or other essential services;
- (viii) interferes or disrupts the provision of essential or emergency services;
- (ix) prejudices national security or public safety; and
- (b) which is carried out with the aim of—
 - (i) intimidating or causing fear amongst members of the public or a section of the public; or
 - (ii) intimidating or compelling the Government or international organization to do, or refrain from any act; or
 - (iii) destabilizing the religious, political, Constitutional, economic or social institutions of a country, or an international organization:

Provided that an act which disrupts any services and is committed in pursuance of a protest, demonstration or stoppage of work shall be deemed not to be a terrorist act within the meaning of this definition so long as the act is not intended to result in any harm referred to in paragraph (a)(i) to (iv);

“terrorist group” means—

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

“terrorist property” means—

- (a) proceeds from the commission of a terrorist act, money or other property which has been, is being, or is intended to be used to commit a terrorist act;
- (b) money or other property which has been, is being, or is intended to be used by a terrorist group; or
- (c) any property belonging to a specified entity;

“vessel” means any thing made or adapted for the conveyance by water of people or property;

“weapon” includes a firearm within the meaning assigned to it under the Firearms Act (Cap. 114), explosive, chemical, biological, nuclear or other lethal device.

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression **“Cabinet Secretary”** and **“Principal**

Secretary” shall be construed to mean “Minister” and “Permanent Secretary” respectively.

PART II – SPECIFIED ENTITIES

3. Specified entity order

(1) Where the Inspector-General has reasonable grounds to believe that—

- (a) an entity has—
 - (i) committed or prepared to commit;
 - (ii) attempted to commit; or
 - (iii) participated in or facilitated the commission of,
a terrorist act; or
- (b) an entity is acting –
 - (i) on behalf of;
 - (ii) at the direction of; or
 - (iii) in association with,

an entity referred to in paragraph (a),

he may recommend to the Cabinet Secretary that an order be made under subsection (3) in respect of that entity.

(2) Before making a recommendation under subsection (1), the Inspector-General shall afford the affected entity an opportunity to demonstrate why it should not be declared as a specified entity.

(3) Upon receipt of the recommendation under subsection (1), the Cabinet Secretary may, where he is satisfied that there are reasonable grounds to support a recommendation made under subsection (1), declare, by order published in the *Gazette*, the entity in respect of which the recommendation has been made to be a specified entity.

(4) The Cabinet Secretary shall, subject to subsection (5), inform the entity in respect of which the order is made, in writing, of his decision under subsection (3) together with reasons for arriving at that decision, within a period seven days from the date of declaring the entity a specified entity.

(5) A specified entity may apply to the Inspector-General requesting for the revocation of an Order made under subsection (3) in respect of that entity.

(6) If on an application made under subsection (5), the Inspector-General is satisfied that—

- (a) there are reasonable grounds for making the application, recommend to the Cabinet Secretary the revocation of the Order; or
- (b) there are no reasonable grounds for making the application, the Inspector-General shall reject the application and shall, within sixty days of receiving the application, inform the applicant of the decision.

(7) A specified entity which is aggrieved by the decision of the Inspector-General under subsection (6) may apply to the High Court for a review of that decision within a period of sixty days from the date of receipt of the decision.

- (8) In determining an application under subsection (5), the Court—
- (a) may receive and examine in chambers, all information considered by the Cabinet Secretary in arriving at his decision under subsection (3) and any other information or evidence submitted by the Inspector-General, any body, institution or agency of a foreign State or international organization which it considers relevant to the determination of the application;
 - (b) may receive in evidence, any information obtained by the Government, any institution or agency of a foreign State that it may consider necessary or relevant for the determination of the application;
 - (c) shall provide the applicant with a statement of the information available to the Court, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the opinion of the Court, be prejudicial to national security or endanger the safety of any person; and
 - (d) shall give the applicant a reasonable opportunity to be heard.

(9) The Court may, on the application of the Cabinet Secretary, consider any evidence or information adduced by him before the Court in the absence of the applicant or the counsel representing the applicant where the disclosure of that information would be prejudicial to national security or endanger the safety of any person.

(10) The Court may, where it is satisfied that there are no reasonable grounds for declaring an entity as a specified entity, make an order for the revocation of the order made by the Cabinet Secretary in respect of the applicant.

(11) The Cabinet Secretary shall, in consultation with the Inspector-General and within a period of twelve months from the commencement of this Act and every subsequent year, review all the orders made under subsection (3) to determine whether the grounds for declaring an entity as a specified entity apply with respect to that entity and may revoke the order or issue such orders as he considers appropriate.

(12) The Cabinet Secretary may, where he has reasonable grounds to believe that a specified entity is operating wholly or partly under a name that is not specified in the order or different name from that specified in the order direct that the entity be treated as a specified entity under the Act and that the name of that entity which is not specified in that Schedule be treated as another name for the specified entity.

PART III – OFFENCES

4. Commission of a terrorist act

(1) A person who carries out a terrorist act commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

(2) Where a person carries out a terrorist act which results in the death of another person, such person is liable, on conviction, to imprisonment for life.

5. Collection or provision of property and services for commission of terrorist acts

(1) A person who, directly or indirectly, collects, attempts to collect, provides, attempts to provide or invites a person to provide or make available any property, funds or a service intending, knowing or having reasonable grounds to believe that such property, funds or service shall be used—

- (a) for the commission of, or facilitating the commission of a terrorist act or any other act which constitutes an offence within the scope of, and as defined in any of the treaties listed in the annex to the 1999 International Convention for the Suppression of the Financing of Terrorism;
- (b) by a terrorist group for any purpose;
- (c) by any natural person, for any purpose, who—
 - (i) commits, or attempts to commit, by any means, directly or indirectly, unlawfully and willfully, acts within the scope of paragraph (a);
 - (ii) participates as an accomplice in acts within the scope of paragraph (a);
 - (iii) organizes or directs others to commit acts within the scope of paragraph (a); or
 - (iv) contributes to the commission of acts within the scope of paragraph (a) by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the commission of acts within the scope of paragraph (a), or with the knowledge of the intention of the group to commit acts within the scope of paragraph (a),

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

(2) The offences under this section shall be deemed to be committed irrespective of any occurrence of a terrorist act or other act referred to in subsection (1)(a) or whether the funds have actually been used to commit such act.

[Act No. 38 of 2013, s. 33.]

6. Possession of property for commission of terrorist acts

A person who possesses any property intending or knowing that it shall be used, whether directly or indirectly or in whole or in part, for the commission of, or facilitating the commission of a terrorist act, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

7. Arrangements for the retention or control of terrorist property

A person who knowingly enters into, or is involved in an arrangement to facilitate the retention or control by or on behalf of another person of terrorist property, including—

- (a) by concealment;
- (b) by a removal outside the jurisdiction of Kenya; or
- (c) by transfer to a nominee,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

8. Dealing in property owned or controlled by terrorist groups

(1) A person who knowingly—

- (a) deals directly or indirectly, in any property that is owned or controlled by or on behalf of a terrorist group;
- (b) enters into, or facilitates, directly or indirectly any transaction in respect of property referred to in paragraph (a); or
- (c) provides financial or other services in respect of property referred to in paragraph (a) at the direction of a terrorist group,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

(2) A person under subsection (1) who proves that he took all reasonable action to satisfy himself that the property was not owned or controlled by or on behalf of a terrorist group shall not be liable in any civil action for any action taken under subsection (1) in relation to that property.

9. Soliciting and giving of support to terrorist groups or for the commission of terrorist acts

(1) A person who knowingly supports or solicits support for the commission of a terrorist act by any person or terrorist group commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

(2) For the purposes of subsection (1), support includes the provision of forged or falsified travel or other documents.

10. Harboursing of persons committing terrorist acts.

A person who harbours or conceals, or prevents, hinders or interferes with the arrest of a person knowing, or having reason to believe that such person—

- (a) has committed or intends to commit a terrorist act; or
- (b) is a member of a terrorist group,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

11. Provision of weapons to terrorist groups

A person who knowingly offers to provide or provides a weapon to—

- (a) a terrorist group;
- (b) a member of a terrorist group; or
- (c) any other person, not being a member of a terrorist group, for use by that person to commit an offence under this Act,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

12. Direction in the commission of a terrorist act

A person who, being a member of a terrorist group, directs or instructs any person to commit a terrorist act commits an offence and is liable, on conviction, to imprisonment for life.

13. Recruitment of members of a terrorist group

A person who knowingly recruits or facilitates the recruitment of another person

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

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

14. Training and directing of terrorist groups and persons

(1) A person who provides or facilitates the provision of training, or instruction to any person or member of a terrorist group—

- (a) in the making or use of a weapon;
- (b) in the carrying out of a terrorist act;
- (c) in the practice of military exercises or movements,

knowing that such training or instruction is intended for the use in the commission of a terrorist act commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

(2) A person who receives training or instruction referred to in subsection (1) for the purpose of engaging or preparing to engage in the commission of a terrorist act commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

15. Obstruction of justice

(1) A person who carries out any act for the purpose of obstructing or hindering the cause of justice under this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

(2) A person who—

- (a) uses or threatens to use physical force;
- (b) intimidates;
- (c) dissuades or attempts to dissuade a person from giving evidence;
- (d) induces false evidence;
- (e) interferes with the production or giving of evidence; or
- (f) promises or offers a benefit,

in relation to a witness or any officer for the purpose of interfering with the judicial process commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

16. Obstruction of officers

A person who willfully obstructs a public officer in the execution of his duties under this Act or a person lawfully acting under the direction of the officer commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

17. Retaliation against witnesses

A person who does or omits to do any act against a person or a member of the family of a person in retaliation for the person having given information or evidence under this Act commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

18. Intimidation

A person who, for the purpose of compelling another person—

- (a) to abstain from doing anything that the person has a lawful right to do under this Act; or
- (b) to do anything that the person has a lawful right to abstain from doing under this Act,

causes the person to reasonably fear for his safety or the safety of anyone known to him, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

19. Disclosure of information

A person who, knowing or having reasonable cause to suspect that an officer is conducting an investigation under this Act—

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

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

20. False statements

A person who, with intent to mislead an officer under this Act, makes a statement knowing the same to be false commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

21. Acts carried out for the commission of a terrorist act in foreign states

A person who, being in Kenya—

- (a) knowingly promotes or facilitates the commission of an act;
- (b) recruits another person to become a member of or serve in a body or association of persons whose objective is the commission of a terrorist act;
- (c) accumulates, stockpiles or otherwise keeps any weapons;
- (d) trains or participates in the training of a person in the use of weapons or in the practice of military exercises or movements;
- (e) receives training in the use of weapons or in the practice of military exercises or movements;
- (f) provides any money or goods to, or performs services for or on behalf of a person, body or association; or
- (g) receives or solicits money or goods or the performance of services,

for the purpose of carrying out or facilitating the commission of a terrorist act in a foreign State, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

22. Promotion of offences under this Act

A person who—

- (a) being the owner, occupier, lessee or in charge of any building premises or place, authorizes a meeting of persons to be held in that building, premises or place; or
- (b) being the owner, charterer, lessee, operator, agent or master or pilot of a vessel or aircraft authorizes the use of that vessel or aircraft,

for the purpose of committing an offence or organizing or facilitating the commission of an offence under this Act commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

23. Conspiracy to commit offences under this Act

(1) A person who, being outside Kenya, conspires with a person who is in Kenya to carry out a terrorist act in any place outside Kenya being an act which if committed in Kenya, would constitute an offence under this Act shall be deemed to have conspired to commit that act in Kenya.

(2) A person who, being in Kenya, conspires with a person who is outside Kenya carry out a terrorist act in Kenya shall be deemed to have conspired in Kenya to carry out that act.

(3) A person who, being outside Kenya, conspires with a person who is outside Kenya to carry out a terrorist act in Kenya shall be deemed to have conspired in Kenya to do that act.

(4) A person who conspires to carry out a terrorist act under this section commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

24. Membership of terrorist groups

A person who is a member of, or professes to be a member of a terrorist group commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

25. Arrangement of meetings in support of terrorist groups

A person who organises, facilitates or assists in organising or facilitating a meeting knowing or having reason to believe—

- (a) the agenda of the meeting to be—
 - (i) the support of a terrorist group; or
 - (ii) the furtherance of the activities of a terrorist group; or
- (b) that the meeting shall be addressed by a person who belongs to or professes to belong to a terrorist group,

commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

26. Hoaxes

A person who issues any information that a terrorist act has been or is likely to be committed, knowing that the information is false, commits an offence and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

27. Incitement

A person who publishes, distributes or otherwise avails information intending to directly or indirectly incite another person or a group of persons to carry out a terrorist act commits an offence and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

28. Kidnapping and hostage taking

A person who, in committing a terrorist act—

- (a) seizes, detains or kidnaps a person; and

- (b) threatens to kill, injure or continue to detain that 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,

commits an offence, and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

29. Collection of information

A person who is a member of a terrorist group or who, in committing or in instigating, preparing or facilitating the commission of a terrorist act, holds, collects, generates or transmits information for the use in the commission of a terrorist act commits an offence, and is liable, on conviction, to imprisonment for a term not exceeding thirty years.

30. Possession of an article connected with an offence under this Act

A person who knowingly possesses an article or any information held on behalf of a person for the use in instigating the commission of, preparing to commit or committing a terrorist act commits an offence, and is liable, on conviction, to imprisonment for a term not exceeding twenty years.

PART IV – INVESTIGATION OF OFFENCES

31. Powers of arrest

A police officer may arrest a person where he has reasonable grounds to believe that such person has committed or is committing an offence under this Act.

32. Right to be released

(1) A person arrested under section 24 (referred to as the suspect) shall not be held for more than twenty-four hours after his arrest unless—

- (a) the suspect is produced before a Court and the Court has ordered that the suspect be remanded in custody; or
- (b) the twenty-four hours ends outside ordinary court hours or on a day that is not an ordinary court day.

(2) A police officer holding a suspect under subsection (1) may release that suspect at any time before the expiry of twenty-four hours on condition that the suspect appears before the Court or such other place as may be specified, in writing, by the police officer and may, for this purpose, require the suspect to execute a bond of a reasonable sum on the suspect's own recognizance.

(3) A police officer shall not re-arrest a suspect who is released under subsection (2) for the same offence unless—

- (a) he has applied for, and obtained a warrant of arrest; and
- (b) further evidence has come to light justifying the re-arrest of the suspect.

33. Remand by court

(1) A police officer who detains a suspect may, where he has reasonable grounds to believe that the detention of the suspect beyond the period specified in section 32 is necessary—

- (a) produce the suspect before a Court; and
- (b) apply in writing to the Court for an extension of time for holding the suspect in custody.

(2) In making an application under subsection (1), the police officer shall specify

- (a) the nature of the offence for which the suspect has been arrested;
- (b) the general nature of the evidence on which the suspect has been arrested;
- (c) the inquiries that have been made by the police in relation to the offence and any further inquiries proposed to be made by the police; and
- (d) the reasons necessitating the continued holding of the suspect in custody,

and shall be supported by an affidavit.

(3) A Court shall not hear an application for extension of time under subsection (1)(b) unless the suspect has been served with a copy of the application.

(4) In determining an application under subsection (1), the Court shall consider any objection that the suspect may have in relation to the application and may—

- (a) release the suspect unconditionally;
- (b) release the suspect subject to such conditions as the Court may impose to ensure that the suspect—
 - (i) does not, while on release, commit an offence, interfere with witnesses or the investigations in relation to the offence for which the suspect has been arrested;
 - (ii) avails himself for the purpose of facilitating the conduct of investigations and the preparation of any report to be submitted to the Court dealing with the matter in respect of which the suspect stands accused; and
 - (iii) appears at such a time and place as the Court may specify for the purpose of conducting preliminary proceedings or the trial or for the purpose of assisting the police with their inquiries; or
- (c) having regard to the circumstances specified under subsection (5), make an order for the remand of the suspect in custody.

(5) A Court shall not make an order for the remand in custody of suspect under subsection (4)(c) unless—

- (a) there are compelling reasons for believing that the suspect shall not appear for trial, interfere with witnesses or the conduct of investigations, or commit an offence while on release;

- (b) it is necessary to keep the suspect in custody for the protection of the suspect or where the suspect is a minor, for the welfare of the suspect;
- (c) the suspect is serving a custodial sentence; or
- (d) the suspect, having been arrested in relation to the commission of an offence under this Act, has breached a condition for his release.

(6) The Court may, for the purpose of ensuring the attendance of a suspect under subsection (4)(b)(ii) or (iii), require the suspect—

- (a) to execute a bond for such reasonable amount as the Court considers appropriate in the circumstances; and
- (b) to provide one or more suitable securities for the bond.

(7) Where a Court makes an order for the remand of a suspect under subsection (4)(c), the period of remand shall not exceed thirty days.

(8) A police officer who detains a suspect in respect of whom an order has been issued under subsection (4)(c) may, at any time before the expiry of the period of remand specified by the Court, apply to the Court for an extension of that period.

(9) The Court shall not make an order for the extension of the time for remand under subsection (8) unless it is satisfied that having regard to the circumstances for which an order was issued under subsection (4)(c), it is necessary to grant the order.

(10) Where the Court grants an extension under subsection (9), such period shall not, together with the period for which the suspect was first remanded in custody, exceed ninety days.

34. Power to gather information

(1) In addition to any power conferred by any other written law, a police officer may, for the purpose of conducting an investigation in relation to the commission of an offence under this Act, apply *ex parte* to a Magistrate's Court for an order for the gathering of information.

(2) The Court may make an order under subsection (1) if—

- (a) there are reasonable grounds to believe that—
 - (i) an offence under this Act has been committed; and
 - (ii) the order is necessary for the purpose of obtaining information concerning the offence or the whereabouts of a person suspected by the police officer to have committed the offence; or
- (b) there are reasonable grounds to believe that—
 - (i) an offence is likely to be committed under this Act;
 - (ii) a person has direct and material information that relates to the offence under paragraph (i) or that may reveal the whereabouts of a person whom the police officer suspects is likely to commit that offence; and
 - (iii) reasonable attempts have been made to obtain the information referred to in paragraph (ii) from the suspect.

- (3) In making an order under subsection (3), the Court may—
- (a) require the examination of the person specified in the order;
 - (b) require the attendance of the person specified in the order at such a place and time as the Court may specify for purpose of examination;
 - (c) require the production before the Court, any information or material in the possession of the person specified in the order which is relevant to the investigation; or
 - (d) impose such conditions as it may consider necessary including conditions for the protection of the interests of the person or third party specified in the order or for the safeguard of any investigation.

(4) The Court may vary the conditions of an order made under this section.

(5) Subject to Article 49(1)(d) of the Constitution, a person specified in an order issued under subsection (2) shall answer questions put to him by the police officer, and shall produce to the presiding magistrate any information or thing required to be produced by him under subsection (3)(c) but may refuse to do so if answering a question or producing the information or thing would disclose information that is protected by the law relating to non-disclosure of information or privilege.

(6) The Court shall determine an objection or any issue relating to a refusal to answer a question or to produce information or thing under subsection (5).

(7) A person shall not be excused from answering a question or producing a document or thing under subsection (6) on the ground that the answer or document or thing may incriminate the person or subject the person to any proceedings or penalty, but—

- (a) an answer given or document or thing produced under subsection (5) shall not be used or received against the person in any proceedings against that person, other than in a prosecution for perjury or giving false evidence; and
- (b) no evidence derived from the evidence obtained from the person shall be used or received against the person in any proceedings against that person, other than in a prosecution for perjury or giving false evidence.

(8) A person shall have the right to retain and instruct counsel at any stage of the proceedings under this section.

(9) The Court may, if satisfied that any document or article produced during an examination under this section is relevant to the investigation of any offence under this Act, make an order for the submission of that document or thing into the custody of the police officer or someone acting on behalf of the police officer.

35. Limitation of certain rights

(1) Subject to Article 24 of the Constitution, the rights and fundamental freedoms of a person or entity to whom this Act applies may be limited for the purposes, in the manner and to the extent set out in this section.

(2) A limitation of a right or fundamental freedom under subsection (1) shall apply only for the purposes of ensuring—

- (a) the investigations of a terrorist act;
- (b) the detection and prevention of a terrorist act; or
- (c) that the enjoyment of the rights and fundamental freedoms by an individual does not prejudice the rights and fundamental freedom of others.

(3) The limitation of a fundamental right and freedom under this section shall relate to—

- (a) the right to privacy to the extent of allowing—
 - (i) a person, home or property to be searched;
 - (ii) possessions to be seized;
 - (iii) the privacy of a person's communication to be investigated, intercepted or otherwise interfered with.
- (b) the rights of an arrested person specified under Article 49(1)(f) of the Constitution may be limited only for purposes of ensuring—
 - (i) the protection of the suspect or any witness;
 - (ii) the suspect avails himself for examination or trial or does not interfere with the investigations; or
 - (iii) the prevention of the commission of an offence under this Act and the preservation of national security,

in accordance with section 26.

- (c) the freedom of expression, the media and of conscience, religion, belief and opinion to the extent of preventing the commission of an offence under this Act;
- (d) the freedom of security of a person to the extent of allowing investigations under this Act;
- (e) the right to property to the extent of detaining or confiscating any property used in the commission of an offence under this Act.

36. Power to intercept communication and the admissibility of intercepted communication.

(1) Subject to subsection (2), a police officer of or above the rank of Chief Inspector of Police may, for the purpose of obtaining evidence of the commission of an offence under this Act, apply *ex parte*, to the High Court for an interception of communications order.

(2) A police officer shall not make an application under subsection (1) unless he has applied for and obtained the written consent of the Inspector-General or the Director of Public Prosecutions.

(3) The Court may, in determining an application under subsection (1), make an order—

- (a) requiring a communications service provider to intercept and retain specified communication of a specified description received or transmitted, or about to be received or transmitted by that communications service provider; or

- (b) authorizing the police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication and to remove and retain such device.

(4) The Court shall not make an order under subsection (3) unless it is satisfied that the information to be obtained relates to—

- (a) the commission of an offence under this Act; or
- (b) the whereabouts of the person suspected by the police officer to have committed the offence.

(5) Any information contained in a communication—

- (a) intercepted and retained pursuant to an order under subsection (3); or
- (b) intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a Court of that foreign state to have been so intercepted and retained,

shall, subject to the provisions of any other written law, be admissible in proceedings for an offence under this Act.

(6) A police officer who intercepts communication other than is provided for under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding five million shillings or to both.

37. Power to seize property used in commission of terrorist acts

(1) Where the Inspector-General has reasonable grounds to suspect that any property has been, or is being used for the purpose of committing an offence under this Act, he may make an *ex parte* application to the High Court supported by an affidavit, for an order to seize that property.

(2) Where it is not reasonably practicable, having regard to the urgency of the situation, the Inspector-General may, notwithstanding the provisions of subsection (1) seize the property, provided that the Inspector-General shall, as soon as is practically possible, but not later than seventy two hours after seizing the property, make an application to the High Court for an order specified under subsection (1).

(3) The High Court shall not determine an application under subsection (1) unless—

- (a) every person having an interest in the property has been given a reasonable opportunity to be heard; and
- (b) there are reasonable grounds to believe that the property has been, or is being used for the purpose of committing an offence under this Act.

(4) Subject to subsection (5), an order for the detention of property made under subsection (3) shall be valid for a period of sixty days and may on application, be extended by the High Court for such further period as may be necessary to enable, where applicable, the production of the property in Court in proceedings for an offence under this Act in respect of that property.

- (5) The High Court may release any property seized under this section if—
- (a) the Court no longer has reasonable grounds to suspect that the property has been or is being used for the commission of an offence under this Act; or
 - (b) no proceedings are instituted in the High Court for an offence under this Act in respect of that property within six months of the date of the detention order.

(6) No civil or criminal proceedings shall lie personally against the Inspector-General for a seizure of property made in good faith under subsection (2).

PART V – TRIAL OF OFFENCES

38. Jurisdiction to try offences under this Act

(1) The subordinate courts shall have jurisdiction to try an offence under this Act where the act or omission constituting the offence is committed in Kenya.

(2) For the purposes of subsection (1), an act or omission committed outside Kenya which would if committed in Kenya constitute an offence under this Act shall be deemed to have been committed in Kenya if—

- (a) the person committing the act or omission is—
 - (i) a citizen of Kenya; or
 - (ii) ordinarily resident in Kenya; and
- (b) the act or omission is committed—
 - (i) against a citizen of Kenya;
 - (ii) against property belonging to the Government of Kenya outside Kenya; or
 - (iii) to compel the Government of Kenya to do or refrain from doing any act; or
- (c) the person who commits the act or omission is, after its commission or omission, present in Kenya.

39. Evidence by certificate

Where in any proceedings for an offence under this Act a question arises as to whether any thing or substance is a weapon, a certificate signed by an appropriate authority to the effect that the thing or substance described in the certificate is a weapon, shall, subject to the provisions of any other written law, be admissible in evidence without proof of the signature of the person appearing to have signed it and shall, in the absence of evidence to the contrary, be proof of the facts stated therein.

40. Order for forfeiture of property on conviction of offences under this Act

(1) Where a person is convicted of an offence under this Act, the Court may make an order that any property—

- (a) used for or in connection with; or
- (b) received as payment or reward for,

the commission of that offence, be forfeited to the State.

(2) In making an order under subsection (1), the Court shall give every party who has an interest in the property an opportunity to be heard.

- (3) Property forfeited to the State under subsection (1) shall vest in the State—
- (a) if no appeal is filed within a period of fourteen days; or
 - (b) if an appeal has been lodged against the order, on the confirmation of the order on appeal.

PART VI – MISCELLANEOUS

41. Duty to disclose information relating to terrorist acts, etc.

- (1) A person who has any information that is relevant in—
- (i) preventing the commission of a terrorist act; or
 - (ii) securing the arrest or prosecution of another person for an offence committed under this Act,

shall disclose the information to a police officer.

(2) Nothing in subsection (1) shall require the disclosure of any information which is protected under any written law relating to privilege and non-disclosure.

(3) No civil or criminal proceedings shall lie against any person for disclosing any information, in good faith, under subsection (1).

42. Duty to disclose information relating to property of terrorist groups

- (1) A person who has information on—
- (a) the existence of any property in his or property used for commission of offences under this Act possession or control which is to his knowledge owned or controlled by or on behalf of a terrorist group; or
 - (b) any information regarding a transaction or proposed transaction in respect of any property referred to in paragraph (a),

shall disclose that information to the Financial Reporting Centre.

(2) Where a financial institution has reasonable grounds to believe that it holds any property or an account that is owned or controlled by or on behalf of a terrorist group or specified entity, it shall, disclose to the Financial Reporting Centre the particulars of—

- (a) the name, physical and postal address and occupation of the property owner;
- (b) a description of the property held;
- (c) the value of the property; and
- (d) such other information as the financial institution or the police officer shall consider necessary.

(3) In addition to the requirements specified under subsection (2), every financial institution shall submit to the Financial Reporting Centre, information in relation to a transaction carried out which it has reasonable grounds to believe is intended to facilitate the commission of a terrorist act.

(4) No civil or criminal proceedings shall lie against any person in respect of a disclosure or report made in good faith, under subsections (1), (2) or (3).

(5) A person who fails to comply with the provisions of subsections (1), (2) or (3) commits an offence and is liable, on conviction, to a fine not exceeding one million shillings or to imprisonment for a term not exceeding seven years.

43. Orders for seizure and restraint of property

(1) The High Court may, on an *ex parte* application supported by an affidavit and where there are reasonable grounds to believe that there is in any building, place or vessel, any property used for or in connection with or received as payment for the commission of an offence under this Act, issue—

- (a) a warrant authorizing a police officer to search the building, place or vessel and seize the property in respect of which the warrant is issued; or
- (b) a restraining order prohibiting any person from disposing of, or dealing with any interest in that property, other than as may be specified in the order.

(2) The Court may, on an application made under subsection (1) and at the request of the Director of Public Prosecutions, if the circumstances so require—

- (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 Court; and
- (b) require any person having possession of the property to give possession thereof to the person appointed under paragraph (a).

(3) The power to manage or otherwise deal with property under subsection (2) includes—

- (a) in the case of perishable or rapidly depreciating property, the power to sell or otherwise dispose of that property; and
- (b) in the case of property that has little or no value, the power to destroy that property.

(4) A person shall not destroy property under subsection (3)(b) unless he has applied for, and obtained an order from the High Court for the destruction of the property.

(5) A Court shall not make an order for destruction under subsection (4) unless

- (a) a notice has been issued in such manner as the Court may direct, to any person who, in the opinion of the Court, appears to have an interest in the property; and
- (b) that person has been given a reasonable opportunity to be heard.

(6) An order for the management of property under subsection (2)(a) shall cease to have effect if the property which is the subject of the order is returned to the owner in accordance with the relevant written law or forfeited to the State.

(7) The Director of Public Prosecutions may, at any time, apply to the High Court for the cancellation or variation of a warrant or order issued under this section.

44. Orders for forfeiture of property

(1) The Director of Public Prosecutions may apply to the High Court for an order of forfeiture in respect of property that is—

- (a) owned or controlled by or on behalf of a terrorist group; or
- (b) used or intended to be used, in whole or in part in the commission of, or to facilitate the commission of a terrorist act.

(2) The Director of Public Prosecutions shall issue a notice of an application under subsection (1)—

- (a) to the respondent in relation to the application; and
- (b) to any person who, in the opinion of the Court, appears to have an interest in the property,

in such manner as the Court may direct.

(3) A person who has an interest in property under subsection (2)(b) may, on an application to the Court, be enjoined as a party to the application.

(4) The Court may, where it is satisfied that the property in respect of which an application is made falls within the scope of subsection (1), make an order for the forfeiture of the property to the State and may issue such further orders for the disposition of the property as it considers appropriate.

(5) The Court may, where it is satisfied that a person referred to under subsection (2)(b)—

- (a) has an interest in the property which is the subject of the application;
- (b) has exercised reasonable care to ensure that the property is not used to commit or facilitate the commission of a terrorist act; and
- (c) is not a member of a terrorist group,

make an order restraining any person from interfering with the property or interest in the property.

(6) A person who—

- (a) has an interest in property against which an order for forfeiture has been issued under subsection (4); and
- (b) was not served with a notice under subsection (2)(b),

may apply to the High Court to vary or set aside the order made under subsection (4) within a period of sixty days from the date on which the order was made.

(7) An order for the restraint, seizure or management of property under this Part shall continue in force pending the determination of an application under subsection (6) or an appeal against the decision of the Court.

45. Power to prohibit making funds available to persons in foreign states to commit terrorist acts

(1) Where the Cabinet Secretary has reasonable grounds to believe that a person outside Kenya has committed or is likely to commit a terrorist act in Kenya, he may, by order published in the *Gazette*, prohibit—

- (a) all persons in Kenya; and

(b) all citizens of Kenya residing outside Kenya,

from making funds available to, or for the use or benefit of, the first mentioned person who shall be named in the order or be identified by reference to a description of persons set out in the order.

(2) A person who contravenes an order issued under subsection (1) commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding five years.

46. Refusal of applications for registration, and the revocation of registration, of associations linked to terrorist groups

(1) The Cabinet Secretary may, where he has reasonable grounds to believe that a registered company or association or an applicant for registration as a company or association has made or is likely to make available, directly or indirectly, any resources in support of a terrorist group, issue an order to that effect in the prescribed form.

(2) The Cabinet Secretary shall cause the order issued under subsection (1) to be served upon—

- (a) the relevant Registrar responsible for registration of the association; and
- (b) the applicant or the registered association, personally or by registered post sent to the last known address of the applicant or the registered association as the case may be.

(3) The Cabinet Secretary shall, within a period of seven days from the date of service of the order under subsection (2)—

- (a) file a copy of the order in the High Court;
- (b) file an application for the confirmation of the order issued under subsection (1); and
- (b) cause to be served on the applicant or registered association, personally or by registered post sent to the last known address, a notice of the filing of the order and application.

(4) The Cabinet Secretary shall cause to be served on the relevant Registrar, a notice of the filing of an application under subsection (3).

(5) The Registrar shall not, where the notice served on him is in relation to a group of persons intending to be registered as an association, register that group as an association pending the determination of the application under subsection (3).

(6) Upon receipt of an application under subsection (3) the High Court shall—

- (a) examine in chambers, the information including any security or criminal intelligence reports considered by the Cabinet Secretary before issuing an order, hear any evidence or information that may be presented by or on behalf of the Cabinet Secretary, and may on the request of the Cabinet Secretary, hear all or part of that evidence or information in the absence of the applicant or registered association, or any counsel representing the applicant or the registered association, if the Court is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;

- (b) provide the applicant for registration or the registered association with a statement summarizing the information available to the Court so as to enable the applicant for registration or the registered association to be reasonably informed of the circumstances giving rise to the order, without disclosing any information the disclosure of which would, in the opinion of the Court, prejudice national security or endanger the safety of any person;
- (c) provide the applicant for registration or registered association with a reasonable opportunity to be heard; and
- (d) determine whether the order is reasonable on the basis of all the information available to the Court.

(7) Where the Court determines that the order made by the Cabinet Secretary, under subsection (5) is reasonable, the Court shall confirm the order.

(8) The Cabinet Secretary shall, by notice in the *Gazette*, publish a notice of the confirmation of the order by the High Court.

(9) Upon the publication of the confirmation under subsection (8), the Registrar

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- (a) shall not register an applicant for registration; or
 - (b) revoke or cancel the registration of an association.

(10) An order issued by the Cabinet Secretary shall have no effect unless it is confirmed and published in accordance with this section.

47. Provision of information relating to persons entering and leaving the country

(1) Notwithstanding the provisions of any other written law, an—

- (a) operator of an aircraft or master of a vessel, departing from, or entering, Kenya; or
- (b) operator of an aircraft registered in Kenya or master of a vessel registered in Kenya and departing from any place outside Kenya,

shall, subject to rules made under subsection (4), provide—

- (i) to the Director any information in his or her possession relating to persons on board or expected to be on board the aircraft or vessel, as the case may be; and
- (ii) to the competent authority in a foreign state, any information in his or her possession relating to persons on board or expected to be on board the aircraft or vessel, as the case may be, and required by the laws of that foreign state.

(2) The Director shall not use or disclose any information provided to him under subsection (1) for any other purpose except for national security or public safety.

(3) The Cabinet Secretary may make regulations generally to give effect to the provisions of this section including regulations—

- (a) on the types or classes of information that may be provided under this section; or
- (b) the foreign states to which the information may be provided.

(4) In this section, “**Director**” means the director appointed under section (4) of the Kenya Citizenship and Immigration Act (Cap. 172).

48. Powers to refuse refugee application

(1) The Commissioner for Refugee Affairs may, having regard to the interests of national security, public safety and the International Convention on Refugees, refuse the application of any person applying for status as a refugee, if the Commissioner has reasonable grounds to believe that the applicant has committed or is involved in the commission of a terrorist act.

(2) In this section, “**refugee**” has the meaning assigned to it under the Refugees Act (Cap. 173).

49. Compensation of Victims of Terrorism Fund

(1) There is established a fund to be known as the Compensation of Victims of Terrorism Fund.

(2) There shall be paid into the Fund—

- (a) such moneys as may be realized from any property forfeited to the State under this Act;
- (b) grants, gifts, donations or bequests received by the Fund with the approval of the Cabinet Secretary; and
- (c) such other moneys as may be payable to, or vested in, the Fund by virtue of any other written law.

(3) Where any immovable property is assigned to the Fund under subsection (2)(a), the State shall deal with the property in such manner as it considers fit and may sell the property and use the proceeds of sale for the purposes for which the Fund is established.

(4) Subject to this section, the Cabinet Secretary may, by regulations, provide for the management and administration of the Fund and for anything incidental to or connected therewith.

50. Power to make rules

(1) The Cabinet Secretary may make Regulations in respect of which regulations are required or authorised by this Act.

(2) Where the Security Council of the United Nations decides, in pursuance of Article 41 of the Charter of the United Nations, on the measures to be employed to give effect to any of its decisions and calls upon member States to apply those measures, the Cabinet Secretary may by regulations make such provisions as may be necessary or expedient to enable those measures to be applied.

(3) Where a regulation under subsection (2) declares that there are reasonable grounds to believe that an entity specified in that regulation is engaged in terrorist activity, that entity shall be deemed with effect from the date of publication of the regulation to have been declared a specified entity under section 3 of the Act.

(4) Regulations made under this section shall be laid before the National Assembly.

51. Amendment to Cap. 76

The Schedule to the Extradition (Contiguous and Foreign Countries) Act is amended by inserting before the item relating to “*Piracy and Similar Offences*” the following item—

Terrorist Offences

Any offence that constitutes a terrorist act under the Prevention of Terrorism Act, 2012.

52. Amendment to Cap. 77

The Schedule to the Extradition (Commonwealth Countries) Act is amended by inserting the following new item immediately after item 32—

33. Any offence that constitutes a terrorist act under the Prevention of Terrorism Act, 2012.

53. Amendment to Cap. 173

The Refugees Act is amended by deleting the word “notwithstanding” appearing in section 12(1) and substituting therefore the words “subject to”.
