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UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) UNODC MODEL TERRORIST FINANCING BILL 2003

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Bill No of 20--

To be presented by the [Minister of Justice]

MEMORANDUM OF OBJECTS AND REASONS -----

The object of this bill is to bring into force the provisions of the International Convention for the Suppression of the Financing of Terrorism, 1999 and those provisions of Security Council Resolution 1373 (2001) that are applicable to the financing of terrorism.

ATTORNEY-GENERAL

An Act to provide for the suppression of the financing of terrorism

ENACTED by the President and Parliament of [name of State]

PRELIMINARY

1. Short title, Extent and Commencement

- (1) This Act may be called the "Terrorist Financing Act".
- (2) It shall extend throughout **[name of State]**.
- (3) It shall come into force at once.

2. Definitions

In this Act, unless the context otherwise requires,

(a) "entity" means a person, group, trust, partnership or fund or an unincorporated association or organization, wherever it may be formed or located;

(b) "judge" means **[superior court judge]**;

(c) "property" means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, whether situated in **[name of State]** or elsewhere, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

(d) "terrorist act" means an act **or omission**, actual or threatened, inside or outside **[name of State]** that is an offence as set out in any of the United Nations Conventions listed in the Annex and includes an act, actual or threatened, that is intended, or can reasonably be regarded as being intended, to intimidate the public **[or any section of the public]** or compel a government or international organization to do or refrain from doing any act **[and to advance a political, religious or ideological cause]**, if the act

(i) involves serious violence against persons,

(ii) involves serious damage to property,

(iii) endangers a person's life,

(iv) creates a serious risk to the health or safety of the public **[or any section of the public]**,

(v) involves the use of firearms or explosives,

(vi) involves exposing the public to any dangerous, hazardous, radioactive or harmful substance, any toxic chemical or any microbial or other biological agent or toxin,

(vii) is designed to disrupt, damage or destroy any computer system or the provision of services directly related

to communication infrastructure, banking and financial services, utilities, transportation or key infrastructure,

(viii) is designed to disrupt the provision of essential emergency services such as the police, civil defence and medical services, or

(ix) involves prejudice to public security or national defence,

but does not include

(x) an act described in **subsections (vii) to (ix)** if the act is the result of advocacy, protest, dissent or stoppage of work, and is not intended to result in the harm or conduct described in any of **subsections (i) to (vi)**, or

(xi) an act intended to cause death or serious bodily injury to any person taking an active part in hostilities in a situation of armed conflict;

(e) "terrorist group" means

(i) an entity having as one of its purposes or activities the facilitation or carrying out of any terrorist act, or

(ii) an entity prescribed in an order made under **section 9**,

and includes an association of such entities; and

(f) "terrorist property" means

(i) proceeds from the commission of a terrorist act,

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

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

(iv) property owned or controlled by or on behalf of a terrorist group, or

(v) property which has been collected for the purpose of providing support to a terrorist group or funding a terrorist act.

FINANCING OF TERRORISM

3. Provision or collection of property

Every person who, directly or indirectly, provides or collects property intending, knowing or having reasonable grounds to believe that it will be used in whole or part to carry out a terrorist act is guilty of an offence.

Penalty: Imprisonment not exceeding [...years] or a fine not exceeding [...], or both.

4. Collection of property or provision of property or services

Every person who, directly or indirectly, makes available property or financial or other related services

(a) intending, knowing, or having reasonable grounds to believe that they will be used, in whole or in part, for the purpose of facilitating or carrying out any terrorist act, or for the purpose of benefiting any person who is facilitating or carrying out such an activity, or

(b) knowing that, in whole or part, they will be used by or will benefit a terrorist group,

is guilty of an offence.

Penalty: Imprisonment not exceeding [...years] or a fine not exceeding [...], or both.

5. Use or possession of property

Every person who

(a) uses property, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist act,

(b) possesses property intending that it be used or knowing that it will be used, directly or indirectly, in whole or in part, for the purpose of facilitating or carrying out a terrorist act, or

(c) knowingly enters into, or becomes concerned in, an arrangement which facilitates the acquisition, retention or control by or on behalf of another person of terrorist property by concealment, by a removal out of jurisdiction, by transfer to a nominee or in any other way,

is guilty of an offence.

Penalty: Imprisonment not exceeding [...years] or a fine not exceeding [...], or both.

6. Dealing with terrorist property

(1) No person in **[name of State]** and no **[national]** outside **[name of State]** shall knowingly

(a) deal, directly or indirectly, in any terrorist property;

(b) enter into or facilitate, directly or indirectly, any transaction involving terrorist property; or

(c) provide any financial or other related services involving terrorist property to, for the benefit of or at the direction of, a terrorist group.

(2) Every person who contravenes **subsection (1)** is guilty of an offence.

Penalty: Imprisonment not exceeding [...years] or a fine not exceeding [...], or both.

(3) The **[Minister]** or a person designated by the **[Minister]** may, in writing, authorize any person in **[name of State]** or any **[national]** outside **[name of State]** to carry out a specified activity or transaction that is prohibited by subsection (1), or a class of such activities or transactions. The **[Minister]** or person designated by the **[Minister]** may make the authorization subject to any terms and conditions that are required in their opinion, and may amend, suspend, revoke or reinstate it.

(4) Every person who fails **[without reasonable excuse]** to disclose to the **[Financial Intelligence Unit (FIU), police, Attorney-General]**

(a) the existence of property in his or her possession or control that he or she knows is terrorist property, or

(b) information about a transaction or proposed transaction in respect of property referred to in **subsection (a)**

is guilty of an offence.

Penalty: Imprisonment not exceeding [...years] or a fine not exceeding [...], or both.

(5) No criminal or civil proceedings lie against a person for disclosure made in good faith under **subsection (4)**.

7. Participation in the commission of offences under this Act

Every person who aids and abets the commission of, attempts to commit, conspires to commit or counsels or procures the commission of an offence under this Act is guilty of an offence.

Penalty: Imprisonment not exceeding [...years] or a fine not exceeding [...], or both.

PROSECUTION AND JURISDICTION

8. Consent to prosecution

(1) Proceedings in respect of an offence under this Act shall not be commenced without the consent of the **[Attorney General]**.

(2) The **[name of court]** shall have jurisdiction to try offences under this Act.

(3) The **[name of court]** shall have jurisdiction to try an offence under this Act if the act or omission constituting the offence is committed in **[name of State]**.

(4) For the purposes of **subsection (3)**, an act or omission committed outside **[name of State]** and which would if committed in **[name of State]** constitute an offence under this Act shall be deemed to have been committed in **[name of State]** if

(a) the person committing the act or omission is a national of **[name of State]** or, not being a national of any country, is ordinarily resident in **[name of State]**;

(b) the act or omission is committed to compel the government of **[name of State]** to do or refrain from doing any act;

(c) the act or omission is committed against a national of **[name of State]**;

(d) the act or omission is committed against property owned, used or occupied by the Government of **[name of State]** outside **[name of State]**, including diplomatic or consular premises of **[name of State]**;
or

(e) the person who commits the act or omission is, after its commission, present in **[name of State]**.

PRESCRIBED ENTITIES

9. Prescribed entities

(1) If the **[Commissioner of Police]** has reasonable grounds to believe that an entity

(a) has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist act; or

(b) is knowingly acting on behalf of, at the direction of or in association with an entity referred to in **subsection (a)**,

he or she may recommend to the **[Attorney General]** that an order be made under **subsection (2)** declaring the entity to be a prescribed entity.

(2) If the **[Attorney General]** has reasonable grounds to believe that the entity to which the recommendation relates is a entity referred to in **subsection (1)(a) or (b)**, the **[Attorney General]** shall make an order, to be published in the **[official government publication]**, declaring the entity to be a prescribed entity.

(3) Where the United Nations Security Council decides, pursuant to Chapter VII of the United Nations Charter, that measures, including the freezing of property, shall be taken by States against an entity in the context of international terrorism, the entity shall be deemed declared a prescribed entity under subsection (2) and the name of the prescribed entity shall be published in the **[official government publication]**. The declaration as a prescribed entity shall take effect on publication.

(4) A prescribed entity may apply to the **[Attorney General]** for revocation of the order.

(5) The **[Attorney General]** shall, on receipt of an application, consider whether there are reasonable grounds for revoking the order. The **[Attorney General]** shall notify the applicant without delay of any decision taken respecting the application.

(6) Within 60 days after receiving notice of the decision, the applicant may apply to a judge for judicial review of the decision.

(7) In any application under **subsection (6)**, the judge may receive in evidence anything — including information obtained from the government or institution or agency of a foreign state or an international

organisation — that, in the judge's opinion is reliable and relevant, even if the thing would not otherwise be admissible in law, and may base his or her decision on that evidence.

(8) When an application is made under **subsection (6)**, the judge shall, without delay

(a) examine, in private, any security or intelligence reports considered in recommending or making an order in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the **[Attorney General]** and may, at the request of the **[Attorney General]**, hear all or part of that evidence or information in the absence of the applicant and any counsel representing the applicant, if the judge is of the opinion that the disclosure of the information would prejudice national security, damage the relations of **[name of State]** with any other state, endanger the safety of any person or significantly prejudice an investigation relating to a terrorist act;

(b) provide the applicant with a statement summarizing the information available to the judge 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 judge's opinion, prejudice national security, damage the relations of **[name of State]** with any other state, endanger the safety of any person or significantly prejudice an investigation relating to a terrorist act;

(c) provide the applicant with a reasonable opportunity to be heard; and

(d) determine whether the decision is reasonable on the basis of information available to the judge and, if found not to be reasonable, order that the applicant no longer be a prescribed entity.

(9) The **[Attorney General]** shall publish in the **[official government publication]** notice of a final order of a court that the applicant no longer be a prescribed entity.

(10) The **[Attorney General]** may, from time to time, [shall, at least once every [two] years] review all orders made under **subsection (2)** to determine whether there are still reasonable grounds, as set out in **subsection (1)**, for the order to continue to apply to a prescribed entity, and if he or she determines that there are no such reasonable grounds, he or she shall revoke the order in respect of that entity.

GENERAL

10. Regulations

The **[Minister]** may, by regulation, subject to **[the negative resolution]** of **[Parliament]**, add to or delete from the Annex a reference to a United Nations Convention.

NOTE: The following provisions may be added to this Act:

INFORMATION SHARING, EXTRADITION AND MUTUAL ASSISTANCE AND
TERRORIST ACTS

X. Exchange of information relating to terrorist groups and terrorist acts

The **[Commissioner of Police]** may, on a request made by the appropriate authority of a foreign state, disclose to that authority any information in his or her possession or in the possession of any other government department or agency relating to terrorist property, if the disclosure is not prohibited by any provision of law and will not, in the **[Commissioner's]** view, be prejudicial to national security or public safety.

X. Instruments to be used as basis for extradition

(1) Where **[name of State]** becomes a party to an instrument listed in the Annex and there is in force an extradition agreement between the government of **[name of State]** and another state which is a party to that instrument, the extradition agreement shall be deemed, for the purposes of the **[Extradition Act]**, to include provision for extradition in respect of offences falling within the scope of that instrument.

(2) Where **[name of State]** becomes a party to an instrument listed in the Annex and there is no extradition agreement between the government of **[name of State]** and another state which is a party to that instrument, the instrument shall be deemed for the purposes of the **[Extradition Act]**, to be an extradition agreement between the government of **[name of State]** and that state, providing for extradition in respect of offences falling within the scope of that instrument.

X. Instrument to be used as basis for mutual assistance in criminal matters

(1) Where **[name of State]** becomes a party to an instrument listed in the Annex and there is in force an agreement between the government of **[name of State]** and another state which is a party to that instrument for mutual assistance in criminal matters, the agreement shall be deemed, for the purposes of the **[Mutual Assistance in Criminal Matters Act]**, to include provision for mutual assistance in criminal matters in respect of offences falling within the scope of that instrument.

(2) Where **[name of State]** becomes a party to an instrument listed in the Annex and there is no agreement between the government of **[name of State]** and another state which is a party to that instrument for mutual assistance in criminal matters, the instrument shall be deemed to be an agreement between the government of **[name of State]** and that state providing for mutual assistance in criminal matters in respect of offences falling within the scope of that instrument.

X. Offences under this Act deemed not to be offences of a political character for the purposes of extradition and mutual assistance

(1) Notwithstanding anything in the **[Extradition Act]** or the **[Mutual Assistance Act]**, an offence under this Act or an offence under any other Act where the act or omission constituting the offence also constitutes a terrorist act shall, for the purposes of extradition or mutual assistance, be deemed not to be

(a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or

(b) a fiscal offence.

(2) Notwithstanding anything in this Act or any other Act, no request for mutual assistance relating to terrorist property or a terrorist act may be declined solely on the basis of bank secrecy.

ANNEX

(1) Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970

(2) Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971

(3) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973

(4) International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979

(5) Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980

(6) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988

(7) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988

(8) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988

(9) International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1977

(10) International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999