

Internal Security Act 1993

No. 20 of 1993.

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Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Internal Security Act 1993,

Being an Act to make provision for maintaining the internal security of Papua New Guinea by providing measures to combat terrorism and terrorist activities, and for related purposes, MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the Constitution, namely–

- (a) freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
- (b) freedom of conscience, thought and religion conferred by Section 45 of the Constitution; and
- (c) freedom of expression conferred by Section 46 of the Constitution; and
- (d) freedom of assembly and association conferred by Section 47 of the Constitution; and
- (e) freedom of employment conferred by Section 48 of the Constitution; and
- (f) right to privacy conferred by Section 49 of the Constitution; and
- (g) right to freedom of information conferred by Section 51 of the Constitution; and
- (h) right to freedom of movement conferred by Section 52 of the Constitution,

is a law that is made for the purpose of giving effect to the public interest in public safety and public order and public welfare.

2. INTERPRETATION.

In this Act, unless the contrary intention appears–

“arms” includes–

- (a) a firearm within the meaning of the Firearms Act 1978 and ammunition for such firearm; and
- (b) a bomb within the meaning of the Firearms Act 1978; and
- (c) a machine gun within the meaning of the Firearms Act 1978 and ammunition for such machine gun; and

(d) an offensive weapon within the meaning of Summary Offences Act 1977; and
(e) an explosive within the meaning of the Explosives Act (Adopted);
“conveyance” means a vehicle, vessel, aircraft or any other conveyance capable of being used to convey persons;
“examination officer” means an examination officer appointed under Section 22;
“exclusion order” means an exclusion order made under Section 8;
“exemption permit” means an exemption permit issued under Section 18;
“organization” means any two or more persons or any association, party, group, club or grouping of persons, by whatever name known, whether or not incorporated or registered under any law;
“premises” includes any place and in particular includes—
(a) any vehicle, vessel or aircraft; and
(b) any tent or movable structure;
“prohibited area” means an area declared to be a prohibited area under Section 15;
“property” includes property wherever situated and whether real or personal, heritable or movable and things in action and other intangible or incorporeal property;
“proscribed organization” mean an organization declared to be a proscribed organization under Section 4;
“public place” includes—
(a) a place to which free access is permitted to members of the public with the express or implied consent of the owner or occupier of the place; and
(b) a place to which members of the public are admitted on payment of money while members of the public are present or are permitted to have access to the place; and
(c) a road, street, bridge, footway, footpath, court, alley, passage or thoroughfare to which members of the public are allowed, notwithstanding that the same may be, or be formed on, private property; and
(d) an aerodrome, whether enclosed or otherwise; and
(e) a conveyance carrying fare paying passengers; and
(f) any school building or land or premises used in connection with any school;
“restricted area” means an area declared to be a restricted area under Section 20;
“terrorism” means the use of violence for political ends or any use of violence for the purpose of putting the public or any section of the public in fear.

PART II. – PREVENTION OF TERRORISM.

3. PREVENTION OF TERRORISM.

A person who—

- (a) manufactures, imports, stockpiles, buys, sells, leases, gives or uses arms or equipment for the purposes of; or
- (b) practises, encourages, supports or advocates; or
- (c) is knowingly concerned in the arrangements for securing the entry into the country, or into any part of the country, of a person whom he knows or has reasonable grounds for believing is likely to engage in; or
- (d) knowingly harbours a person whom he knows or has reasonable grounds for believing is or has been engaged in,

terrorism, is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 or imprisonment for a term not exceeding 14 years, or both.

PART III. – PROSCRIBED ORGANIZATIONS.

4. DECLARATION OF PROSCRIBED ORGANIZATION.

(1) Where the Head of State, acting on advice, is of the opinion that an organization–

- (a) is engaged in, or is likely or about to be engaged in; or
- (b) is promoting or encouraging, or is likely or about to promote or encourage,

terrorism, the Head of State, acting on advice, may declare the organization to be a proscribed organization.

(2) A declaration under Subsection (1) shall be–

- (a) published in the National Gazette; and
- (b) published in a newspaper circulating throughout the country; and
- (c) broadcast on the National Broadcasting Corporation broadcast service; and
- (d) further publicized by notices posted in prominent places in the country in general and in any part of the country in which the proscribed organization is known to exist.

(3) A declaration under Subsection (1) shall not take effect until the expiry of a period of seven days after the first occasion of publication in each manner under Subsection (2).

(4) As soon as practicable after the making of a declaration under Subsection (1), the Prime Minister shall send to the Speaker for tabling in the Parliament at its next sitting, a copy of the declaration and a statement of the reasons for it and the declaration is subject to revocation by decision of the Parliament.

5. APPEAL AGAINST DECLARATION OF PROSCRIBED ORGANIZATION.

(1) A person aggrieved by a declaration of a proscribed organization under Section 4 may, within 28 days of the declaration, forward a written notice of appeal against the decision, stating the reasons for the appeal, to the Minister.

(2) The Minister shall forthwith submit the appeal to the National Executive Council, and the Head of State, acting on advice, shall–

- (a) consider and determine the appeal; and
- (b) in accordance with the determination, confirm or revoke the declaration.

(3) The Minister shall advise the appellant of the result of the determination of the appeal.

(4) Where a declaration of a proscribed organization is revoked under Subsection (2)(b), all charges and convictions arising out of offences relating to that declaration (other than offences relating to contempt of court) shall be null and void.

6. MEMBERSHIP, SUPPORT AND MEETINGS OF PROSCRIBED ORGANIZATION.

(1) Subject to Subsection (2), a person who—

- (a) belongs or professes to belong to a proscribed organization; or
- (b) aids, assists or supports (whether financially or otherwise) a proscribed organization; or
- (c) solicits or invites aid, assistance or support (whether financial or otherwise) for a proscribed organization; or
- (d) arranges or assists in the arrangement or management of, or addresses, any meeting of three or more persons (whether or not it is a meeting to which the public are admitted) knowing that the meeting is—
 - (i) to support; or
 - (ii) to further the activities of; or
 - (iii) to be addressed by a person belonging to or professing to belong to,

a proscribed organization,

is guilty of an offence.

Penalty: On summary conviction, a fine not exceeding K10,000.00 or imprisonment for a term not exceeding seven years, or both.

(2) It is a defence to a charge of an offence under Subsection (1)(a) if the person charged shows—

- (a) that he became a member of the proscribed organization by force or undue influence applied on him; or
- (b) that, at the time when he became a member of the proscribed organisation, he was not aware that it was concerned with terrorism.

(3) For the purposes of Subsection (1)(b), an appeal under Section 5 against a declaration of a proscribed organization, does not constitute aiding, assisting or supporting the proscribed organization.

(4) A certificate signed by the Commissioner of Police certifying that a person is, in the opinion of the Commissioner of Police, a member of a proscribed organization, shall be prima facie evidence of that fact.

7. DISPLAY OF SUPPORT IN PUBLIC.

A person who, in a public place—

- (a) wears any item of dress; or
- (b) wears, carries or displays any article,

of such a kind or in such a way or in such circumstances as to arouse reasonable apprehension that he is a member or supporter of a proscribed organization, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years, or both.

PART IV. – EXCLUSION ORDERS.

8. EXCLUSION ORDER.

(1) Where–

- (a) a person has been convicted of an offence against this Act; or
- (b) the National Executive Council is of the opinion that a person is likely to commit an offence against this Act,

the National Executive Council may make an exclusion order against that person–

- (c) excluding him from any specified part of the country; or
- (d) where he is a non-citizen–excluding him from the country or from any specified part of the country.

(2) An exclusion order shall–

(a) specify–

- (i) the name of the person against whom it is made; and
- (ii) that he is excluded from the country or part of the country, as the case may be; and
- (iii) where he is excluded from part of the country, the part of the country from which he is excluded; and
- (iv) the reasons for the making of the exclusion order; and
- (v) the rights afforded to him under Section 9; and
- (vi) the manner in which these rights may be exercised; and
- (b) where the person against whom it is made is in the country, be served on him personally, or where it is not possible to serve it on him personally, be delivered to his last known address or place of residence as soon as possible; and
- (c) where it is not served personally on the person against whom it is made, be published in a newspaper circulating throughout the country.

(3) As soon as practicable after the making of an exclusion order under Subsection (1), the Prime Minister shall send to the Speaker for tabling in the Parliament at its next sitting, a copy of the exclusion order and a statement of the reasons for it and the exclusion order is subject to revocation by decision of the Parliament by an absolute majority.

9. APPEAL AGAINST EXCLUSION ORDER.

(1) A person against whom an exclusion order is made may, within 48 hours of the service of the order in accordance with Section 8(2), forward a written notice of appeal against the exclusion order, stating the reasons for the appeal, to the Minister.

(2) The Minister shall forthwith submit the appeal to the National Executive Council who shall consider and determine the appeal.

(3) In considering and determining an appeal under this section the National Executive Council shall not be bound by the technical rules of evidence but shall at all times have regard for the principles of natural justice.

(4) The Minister shall advise the appellant of the result of the determination of the appeal.

10. DURATION OF EXCLUSION ORDER.

(1) An exclusion order may be revoked at any time by a further order by the National Executive Council or be revoked at any time by the Parliament.

(2) An exclusion order shall, unless sooner revoked, expire at the end of the period of three years commencing on and from the day on which it was made.

(3) The fact that an exclusion order against a person has been revoked or has expired shall not prevent the making of a further exclusion order against that person.

11. EFFECT OF EXCLUSION ORDER.

The effect of an exclusion order is that the presence of the person against whom it is made—

(a) in the country; or

(b) where it is made in respect only of part of the country—in that part of the country,

during the duration of the exclusion order, is illegal.

12. POWERS OF REMOVAL.

Where—

(a) an exclusion order has been made against a person and has been served in accordance with Section 8(2); and

(b) either—

(i) no appeal under Section 9 has been made against the exclusion order; or

(ii) an appeal against the exclusion order has been refused,

the Minister may—

(c) where it is an exclusion order in respect of the country—have the person removed from the country; or

(d) where it is an exclusion order in respect of part only of the country—have the person removed from that part of the country.

13. REMOVAL DIRECTIONS.

(1) The Minister may order that a person, against whom an exclusion order has been made under Section 8(1)(d), be detained in custody until arrangements have been made for his removal from the country.

(2) A person, against whom an exclusion order under Section 8(1)(d) has been made, may—

(a) if he has not removed himself from the country within the period (if any) specified in the order; or

(b) if he is being detained pending removal,

be placed on board a suitable conveyance by an officer, and may be detained in that conveyance until it leaves the country.

(3) A person, against whom an exclusion order under Section 8(1)(d) has been made, may be removed to any country which is under obligation to receive him or to any country to which he consents to be removed if the Government of that country receives him.

(4) A person in charge of a conveyance going to a country to which a person is to be removed under this section shall receive that person on board and on proper payment being made convey him to that country and give him accommodation and maintenance during the passage.

(5) The cost of the passage, accommodation and maintenance provided in accordance with Subsection (4) shall be paid by the person removed and the Minister may apply money or property of the person removed in payment of the whole or part of that cost or, if the Minister thinks fit, the whole or part of the cost shall be borne by the State.

14. OFFENCES IN RESPECT OF EXCLUSION ORDERS.

A person who—

(a) being a person against whom an exclusion order has been made, fails to comply with the exclusion order; or

(b) is knowingly concerned in the arrangements for securing the entry into—

(i) the country, of a person whom he knows or has reasonable grounds for believing is excluded by an exclusion order from the country; or

(ii) part of the country, of a person whom he knows or has reasonable grounds for believing is excluded by an exclusion order from that part of the country; or

(c) knowingly harbours—

(i) in the country, a person whom he knows or has grounds for believing is excluded by an exclusion order from the country; or

(ii) in part of the country, a person whom he knows or has reasonable grounds for believing is excluded by an exclusion order from that part of the country,

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding seven years, or both.

PART V. – PROHIBITED AREAS.

15. DECLARATION OF PROHIBITED AREA.

(1) Where the Head of State, acting on advice, is of the opinion that there is likely to be terrorism in any area of the country, the Head of State, acting on advice, may declare that area to be a prohibited area for such period, not exceeding three months, as is specified in the declaration.

(2) A declaration under Subsection (1) shall be–

(a) published in the National Gazette; and

(b) published in a newspaper circulating throughout the country; and

(c) broadcast on the National Broadcasting Corporation broadcast service; and

(d) further publicized by notices posted in prominent places in the country in general and in particular in and in the vicinity of the prohibited area.

(3) A declaration under Subsection (1) may exempt from the provisions of the declaration any person normally resident within the prohibited area.

(4) A declaration under Subsection (1) shall not take effect until the expiry of a period of 24 hours after the first occasion of publication in each manner required under Subsection (2).

(5) As soon as practicable after a declaration under Subsection (1) has been made, the Prime Minister shall send to the Speaker for tabling in the Parliament at its next sitting a copy of the declaration, and a statement of the reasons for it and the declaration is subject to revocation by decision of the Parliament.

(6) On the expiry of a declaration under Subsection (1), the Head of State, acting on advice, may make a further declaration or series of declarations relating to the same area and the provisions of Subsections (2), (3) and (5) shall apply to such further declaration or declarations.

16. EFFECT OF DECLARATION OF PROHIBITED AREA.

Where an area has been declared under Section 15 to be a prohibited area, no person, unless exempted under Section 17, shall be present within the prohibited area during the period the declaration remains in force.

17. PERSONS EXEMPTED FROM DECLARATION.

A declaration under Section 15 shall not apply to–

(a) the Head of State; or

(b) a member of the Police Force while on duty or going to or returning from duty; or

- (c) a uniformed officer or uniformed member of the Defence Force while on duty or going to or returning from duty; or
- (d) an examination officer while on duty or going to or returning from duty; or
- (e) a uniformed officer or uniformed member of the Fire Service while on duty or going to or returning from duty; or
- (f) a medical practitioner, nurse or ambulance driver dealing with or attending to an urgent medical case; or
- (g) a person to whom an exemption permit has been issued under Section 18 and who is in compliance with any conditions of the exemption permit; or
- (h) a person exempted under Section 15(3).

18. EXEMPTION PERMITS.

(1) A person who considers that he has a valid reason for being granted an exemption from the provisions of a declaration of a prohibited area, may apply in the prescribed manner to the Commissioner of Police for an exemption permit.

(2) On receipt of an application under Subsection (1), the Commissioner of Police shall consider the application and may issue an exemption permit in the prescribed form to the applicant.

(3) An exemption permit may contain restrictions as to times, parts of the prohibited area and periods within which it is valid.

19. OFFENCES IN RELATION TO A PROHIBITED AREA.

A person who, not being a person exempted under Section 17, enters or is present in a prohibited area contrary to the terms of a declaration under Section 15 in relation to that prohibited area, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding three years, or both.

PART VI. – RESTRICTED AREAS.

20. DECLARATION OF RESTRICTED AREA.

(1) Where the Head of State, acting on advice, is of the opinion that there is likely to be terrorism in any area of the country, but that the circumstances do not warrant the declaration of that area as a prohibited area, the Head of State, acting on advice, may declare that area to be a restricted area for such period, not exceeding three months, as is specified in the declaration.

(2) A declaration under Subsection (1) shall–

(a) specify the restrictions imposed on presence in, entry to and egress from the restricted area of any person; and

(b) be published in the National Gazette; and

(c) be published in a newspaper circulating throughout the country; and

(d) be broadcast on the National Broadcasting Corporation broadcast service; and
(e) be further publicized by notices posted in prominent places in the country in general and in particular in and in the vicinity of the restricted area.

(3) A declaration under Subsection (1) shall not take effect until the expiry of a period of 24 hours after the first occasion of publication in each manner required under Subsection (2).

(4) As soon as practicable after a declaration under Subsection (1) has been made, the Prime Minister shall forward to the Speaker for presentation to the Parliament at its next sitting a copy of the declaration and a statement of the reasons for it and the declaration is subject to revocation by decision of the Parliament.

(5) On the expiry of a declaration under Subsection (1), the Head of State, acting on advice, may make a further declaration or series of declarations relating to the same area and the provisions of Subsection (2) and (4) shall apply to such further declaration or declarations.

21. OFFENCES IN RELATION TO A RESTRICTED AREA.

A person who—

- (a) is present in; or
- (b) enters; or
- (c) leaves,

a restricted area in contravention of the terms of a declaration under Section 20, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a period not exceeding five years, or both.

PART VII. – MISCELLANEOUS.

22. EXAMINATION OFFICERS.

(1) The Head of State, acting on advice, may, by notice in the National Gazette, appoint a person or a class of persons to be an examination officer or examination officers for the purposes of the Act.

(2) An examination officer may—

- (a) within a prohibited area or a restricted area or in relation to a person who is about to travel to or who has travelled from a prohibited area or restricted area, outside a prohibited area or a restricted area—
 - (i) examine a person in order to ascertain whether that person—

(A) is or was authorized to be present in, enter or leave that prohibited area or restricted area; or

(B) is subject to an exclusion order in relation to the country or to that part of the country in which the prohibited area or restricted area is situated; or

(C) is concerned with or involved with a proscribed organization, or involved with the commission, preparation or instigation of terrorism; and

(ii) arrest and detain a person pending examination under Subparagraph (i); and

(iii) arrest and detain a person pending a decision on an exclusion order; and

(b) within a prohibited area or a restricted area, or in relation to a conveyance which is about to travel to or has travelled from a prohibited area or restricted area, outside a prohibited area or a restricted area—

(i) board and search a conveyance or premises; and

(ii) detain a conveyance or any article suspected of being—

(A) used or likely to be used for terrorism; or

(B) used or likely to be used by or in connection with a proscribed organization; or

(C) necessary in connection with a decision to make an exclusion order against a person; or

(D) likely to be required as evidence in any court proceeding.

(3) Where an examination officer detains a conveyance or article under Subsection (2)(b)(ii), he shall—

(a) at the time of detaining the conveyance or article issue a receipt to the person, if any, in charge of it; and

(b) as soon as practicable thereafter, issue a receipt to the owner, if known, of it.

(4) A person, who hinders or obstructs an examination officer in the exercise of his powers under this Act, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding 1 year or both.

23. FORFEITURE.

Where a court convicts a person of an offence against Section 3 or 6, the court may, in addition to imposing the penalty set out in that section, order the forfeiture to the State of any money, conveyance, vehicle, ship, aircraft or property, real or personal, which the court considers had been used or was intended to be used—

(a) in the case of a conviction under Section 3—for the purpose of terrorism; or

(b) in the case of a conviction under Section 6—by or on behalf of or for the benefit or assistance of the proscribed organization.

24. FORFEITED GOODS.

Any money, conveyance, vehicle, ship, aircraft or property, real or personal, ordered by a court to be forfeit under this Act become the property of the State and shall be dealt with or disposed of in accordance with the directions of the Minister.

25. POWERS OF ARREST AND DETENTION.

(1) A—

(a) police officer; or

(b) in the case of an offence against Part VII, an examination officer,

may arrest, without warrant, a person whom he reasonably suspects of having committed an offence against this Act.

(2) A person arrested under this Act shall be brought before a court within 120 hours of the time of his arrest, save that in exceptional circumstances, the period of 120 hours may be extended by a further period of 120 hours.

(3) The powers of arrest under this Act are in addition to the powers of arrest and detention under any other law.

26. REGULATIONS.

The Head of State, acting on advice, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular, but without prejudice to the foregoing generality—

(a) for countering and dealing with terrorism; and

(b) for prescribing penalties of fines not exceeding K1,000.00 and terms of imprisonment not exceeding three years or both, for offences against the Regulations.

Office of Legislative Counsel, PNG