

# MEASURES TO COMBAT TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT 2005

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**SCHEDULE 1**

REPUBLIC OF KIRIBATI  
(№ 3 of 2005)

I assent,

Beretitenti  
2005

**AN ACT TO COMBAT TERRORISM AND  
TRANSNATIONAL ORGANISED CRIME  
AND FOR ANCILLARY PURPOSES**

Commencement:  
2005

**MADE** by the Maneaba ni Maungatabu and assented to by the Beretitenti

**PART I—PRELIMINARY**

**1. Short title**

This Act may be cited as the *Measures to Combat Terrorism and Transnational Organised Crime Act 2005*.

**2. Interpretation**

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

‘act of violence’ means an act or omission—

- (a) in Kiribati that constitutes an offence under section 192, 193, 208, 216, 217, 218, 220, 220A, 221, 222, 237, 238 or 319A of the *Penal Code* (which relate to murder, attempted murder, manslaughter, endangering life, assault and causing explosions); or
- (b) outside Kiribati that, if done or omitted in Kiribati would constitute an offence mentioned in paragraph (a);

‘Administrator’ means the Administrator appointed under the *Proceeds of Crime Act 2003*;

‘aircraft’ means any aircraft, whether or not an aircraft that is for the time being registered in Kiribati, other than an aircraft in the customs or police services;

‘authorised officer’ means—

- (a) the Commissioner of Police; or
- (b) a Police officer authorised by the Commissioner of Police for the purposes of this Act; or
- (c) any person authorised by the Attorney-General for the purposes of this Act;

‘child’ means a person under 18 years;

‘citizen’, for Kiribati, includes a person of Kiribati descent;

- ‘commercial carrier’ includes a company or the operator of any means of transport that engages in the transport of goods or people for commercial gain;
- ‘consular officer’ means a consular officer of Kiribati, including a consul-general, consul, pro-consul or consular agent of Kiribati;
- ‘counter terrorism convention’ means an instrument mentioned in Schedule 1;
- ‘Court’ means the High Court of Kiribati;
- ‘craft’ includes any aircraft, ship, boat or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water;
- ‘detection agent’ means a substance mentioned in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention;
- ‘entity’ means a person, group, trust, partnership, fund or an unincorporated association or organisation;
- ‘exploitation’ includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;
- ‘explosive or other lethal device’ means—
- (a) an explosive or other incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or
  - (b) a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials;
- ‘family land’ means land held under customary tenure that the landowner is not free to sell without first obtaining the consent of his or her next-of-kin;
- ‘financial institution’ has the meaning given by the *Proceeds of Crime Act 2003*;
- ‘Financial Intelligence Unit’ has the meaning given by the *Proceeds of Crime Act 2003*;
- ‘fixed platform’ means an artificial island, installation or structure permanently attached to the sea bed for the purposes of exploration or exploitation of resources or for other economic purposes;
- ‘forfeiture order’ means an order made by the Court under section 24;
- ‘fraudulent travel or identity document’ means a travel or identity document that—
- (a) has been made, or altered in any way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country; or
  - (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
  - (c) is being used by a person other than the lawful holder;
- ‘illegal entry’ means entering Kiribati or any other country without complying with the requirements for lawful entry of that country;

‘international nuclear transport’ means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the country where the shipment originates—

- (a) beginning with the departure from a facility of the shipper in the country; and
- (b) ending with the arrival at a facility of the receiver within the country of ultimate destination;

‘international organisation’ means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind;

‘internationally protected person’ means—

- (a) any of the following persons while in a foreign country, including a member of the person’s family accompanying him or her—
  - (i) a Head of State (including any member of a collegial body performing the functions of a Head of State);
  - (ii) a Head of Government;
  - (iii) a Minister responsible for foreign affairs; or
- (b) a representative or official of a country or an official or other agent of an international organisation of an inter-governmental character who, when and where a crime against the person or the person’s official premises, private accommodation or means of transport is committed, is entitled under international law to special protection from attack on the person’s freedom or dignity, as well as on the person’s family forming part of that person’s household;

‘material benefit’ includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

‘military device’ includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade or perforator, lawfully manufactured exclusively for military or police purposes;

‘military service’ includes naval and air force service;

‘nuclear material’ means any of the following—

- (a) plutonium with an isotopic concentration of not more than 80% in plutonium-238;
- (b) uranium-233;
- (c) uranium containing uranium-233 or uranium-235 or both;
- (d) uranium with a naturally occurring isotopic concentration, other than uranium in the form of ore or ore residue;
- (e) a substance containing nuclear material;

‘operator’ for a craft, means the owner, operator or person having for the time being command or charge of the craft, other than a pilot of a ship, a harbour master or a law enforcement officer acting in the course of his or her duties;

‘organised criminal group’ means a group of at least three persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least four years’ imprisonment;

‘people smuggling’ means the arranging or assisting of an unauthorised person’s illegal entry into any country;

‘plastic explosive’ means an explosive that—

- (a) is formulated with one or more high explosives that in their pure form have a vapour pressure less than  $10^{-4}$  Pa at a temperature of 25°C; and
- (b) is formulated with a binder material; and
- (c) is, when mixed, malleable or flexible at normal room temperature;

‘Plastic Explosives Convention’ means the *Convention on the Marking of Plastic Explosives for the Purpose of Identification*, done at Montreal on 1 March 1991;

‘privileged communication’ means a confidential communication, whether made directly or indirectly through an agent—

- (a) between—
  - (i) a lawyer in his or her professional capacity and another lawyer in the same capacity; or
  - (ii) a lawyer in his or her professional capacity and his or her client; and
- (b) to obtain or give legal advice or assistance; and
- (c) not for the purpose of committing or assisting the commission of an illegal or wrongful act;

‘property’ includes—

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and
- (b) 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;

‘public official’ includes a person who is a member of the public service;

‘receiving country’ means—

- (a) for people smuggling — the country into which the unauthorised person’s entry is arranged; or
- (b) for people trafficking — the country into which a trafficked person is brought as part of an act of trafficking in persons;

‘registrable property’ means property the title to which is passed by registration on a register kept under a law of Kiribati;

‘ship’ means a vessel that is not permanently attached to the sea bed—

- (a) including a hovercraft, hydrofoil, submarine or other floating craft; but
- (b) not including a warship, a ship owned or operated by a state and being used as a naval auxiliary or for customs or police purposes or a ship that has been withdrawn from navigation;

‘specified entity’ means a person or group—

- (a) to which section 4 applies; or
- (b) for which a declaration under section 5 has been made;

‘specified means’ means any of the following—

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power or of a position of vulnerability;
- (g) giving or receiving payments or benefits to achieve the consent of a person having control over another person;

‘terrorist act’ has the meaning given by section 3;

‘terrorist group’ means—

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

‘terrorist property’ means property, other than family land—

- (a) that has been, is being, or is likely to be used to commit a terrorist act; or
- (b) that has been, is being, or is likely to be used by a terrorist group; or
- (c) owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

‘trafficked person’ means a person who is the victim of trafficking in persons;

‘trafficking in persons’ means the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation;

‘unauthorised person’ for a country, means a person who is not a citizen of the country or is not in possession of all the documents required by the law of the country for the person’s lawful entry into the country;

‘unmarked plastic explosive’ means a plastic explosive that—

- (a) does not contain a detection agent; or
- (b) at the time of manufacture, does not contain the minimum concentration level of a detection agent mentioned in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention ;

‘weapon’ includes a firearm, chemical, biological or nuclear weapon.

- (2) For this Act, an aircraft is taken to be in service—
  - (a) during the whole of the period that begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight; and
  - (b) at any time (outside that period) while, in accordance with paragraph (a), the aircraft is in flight.
- (3) For this Act, unless the context otherwise requires, a reference to a country or the territorial limits of a country is taken to include a reference to the territorial waters, if any, of the country.

### 3. **Meaning of ‘terrorist act’**

- (1) A terrorist act is an act or omission in or outside Kiribati that—
  - (a) constitutes an offence within the scope of a counter terrorism convention; or
  - (b) is mentioned in subsection (2).
- (2) For paragraph (1)(b), the act or omission—
  - (a) must—
    - (i) involve death or serious bodily injury to a person; or
    - (ii) involve serious damage to property; or
    - (iii) endanger a person’s life; or
    - (iv) create a serious risk to the health or safety of the public or a section of the public; or
    - (v) involve the use of weapons; or
    - (vi) involve introducing into the environment, distributing or exposing the public to any—
      - (A) dangerous, hazardous, radioactive or harmful substance; or
      - (B) toxic chemical; or
      - (C) microbial or other biological agent or toxin; or
    - (vii) involve serious disruption to any system or the provision of services directly related to essential infrastructure; and
  - (b) must be intended or, by its nature and context, reasonably be regarded as being intended—
    - (i) to intimidate the public or a section of the public; or
    - (ii) to compel a government or an international organisation to do, or refrain from doing, any act; and
  - (c) must be made for the purpose of advancing a political, ideological or religious cause
- (3) However, an act or omission mentioned in subsection (2) does not include an act or omission that—
  - (a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsection (2)(i), (ii), (iii) or (iv); or
  - (b) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

## **PART II—SPECIFIED ENTITIES**

### 4. **Listed entities**

- (1) This section applies to an entity that is a person or group—
  - (a) for which the Security Council of the United Nations has made a decision under Chapter 7 of the Charter of the United Nations relating wholly or partly to terrorism; and

- (b) identified in the decision, or using a mechanism established under the decision, as an entity to which the decision relates.
- (2) Regulations made under section 59 may prescribe that an entity mentioned in subsection (1) is not to be a specified entity for the purposes of this Act.

## **5. Declarations that certain entities are specified entities**

- (1) The Attorney-General may apply to the Court for a declaration under subsection (3) if the Attorney-General has reasonable grounds to believe that—
  - (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act, or
  - (b) an entity is knowingly acting on behalf of, at the direction of or in association with an entity mentioned in paragraph (a); or
  - (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).
- (2) The Court—
  - (a) may make orders for service of the application; and
  - (b) may deal with the application *ex parte*.
- (3) If the Court is satisfied that there is evidence to support the application, the Court may—
  - (a) declare the entity to be a specified entity; and
  - (b) require the Attorney-General to give notice of the declaration to any person who may be affected by the declaration.
- (4) The declaration must be published in the *Gazette*.

## **6. Revocation of declarations**

- (1) If the Court has made a declaration under section 5 in relation to an entity, the Court may, on application by the Attorney-General or the specified entity, revoke the declaration.
- (2) If the application is made by the specified entity—
  - (a) the specified entity must give reasonable written notice of the application to the Attorney-General; and
  - (b) before deciding on the application, the Court must hear from the Attorney-General.
- (3) The Court must—
  - (a) if the Court decides that there are reasonable grounds to do so, revoke the declaration; or
  - (b) if the Court decides that there are no reasonable grounds to revoke the declaration, refuse the application.
- (4) If the Court revokes the declaration, the Attorney-General must—
  - (a) if practicable, tell the entity in writing; and
  - (b) publish a notice of revocation in the *Gazette*.

## **7. Procedure**

- (1) For a hearing under this Part, the Court—
  - (a) may hear any evidence or information presented by the Attorney-General in the absence of the entity or counsel representing the entity, or the public, if the Court thinks that disclosure of the information would prejudice national security or endanger the safety of any person; and
  - (b) may receive in evidence anything that would not otherwise be admissible as evidence (including information from the government or institution or agency of a foreign country or an international organisation), that the Court thinks is reliable and relevant.
- (2) For a hearing under section 5 or 6, the Court must give the entity a statement summarising the information available to the Court, without disclosing any information that the Court thinks could prejudice national security or endanger the safety of any person.

## **8. Review of declarations**

- (1) The Attorney-General must review all declarations made under section 5(3) every six months to determine whether there are still reasonable grounds, as set out in section 5(1), for the declarations to continue to apply to specified entities.
- (2) If the Attorney-General determines that there are no reasonable grounds for a declaration to continue to apply to a specified entity, the Attorney-General must apply to the Court that the declaration be revoked in relation to the specified entity.

## **9. Appeal**

The Attorney-General or an entity in relation to which a declaration is made may appeal to the Court of Appeal against a decision made by the Court under this Part.

## **PART III—OFFENCES RELATED TO TERRORISM**

### **10. Terrorism financing**

Any person who provides or collects, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used in full or in part to carry out a terrorist act commits an offence and is liable upon conviction to imprisonment for life.

### **11. Provision of property or services to specified entity**

- (1) Any person who, directly or indirectly, knowingly makes available property or financial or other related services to, or for the benefit of, a specified entity, other than for the purposes of humanitarian aid or legal services commits an offence and is liable upon conviction to imprisonment for 15 years.
- (2) Subsection (1) does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council.

### **12. Dealing with terrorist property**

- (1) Any person who knowingly—
  - (a) deals, directly or indirectly, in any terrorist property; or

- (b) collects or acquires or possesses terrorist property; or
  - (c) enters into, or facilitates, directly or indirectly, any transaction in respect of terrorist property; or
  - (d) converts, conceals or disguises terrorist property,
- commits an offence and is liable upon conviction to imprisonment for life.

- (2) A person does not commit an offence under subsection (1)(a), (b) or (c) if the person—
- (a) tells the Attorney-General, in writing, as soon as the person becomes aware that the property is terrorist property; and
  - (b) acts in accordance with any directions of the Attorney-General concerning the property.

### **13. Harboursing of persons committing terrorist acts**

Any person who harbours or conceals, or prevents, hinders or interferes with the apprehension of, any other person, knowing or having reason to believe that the other person—

- (a) has committed or is planning or likely to commit a terrorist act; or
- (b) is a member of a specified entity,

commits an offence and is liable upon conviction to imprisonment for life.

### **14. Provision of weapons to terrorist groups**

Any person who knowingly offers to provide, or provides, a weapon to—

- (a) a specified entity; or
- (b) a member of a specified entity; or
- (c) any other person for use by, or for the benefit of, a specified entity or a member of a specified entity,

commits an offence and is liable upon conviction to imprisonment for life.

### **15. Recruitment of persons to be members of terrorist groups or for terrorist acts**

Any person who knowingly agrees to recruit, or recruits, another person —

- (a) to be a member of a terrorist group that is a specified entity; or
- (b) to participate in the commission of a terrorist act,

commits an offence and is liable upon conviction to imprisonment for life.

## **PART IV—MANAGEMENT AND FORFEITURE OF TERRORIST PROPERTY**

### **DIVISION 1—MANAGEMENT**

#### **16. Direction to take control of property**

- (1) The Attorney-General may apply to the Court for a direction under subsection (3) concerning property in Kiribati if the Attorney-General has reasonable grounds to believe that the property is terrorist property.

- (2) The Court—
  - (a) may make orders for service of the application; and
  - (b) may deal with the application *ex parte*.
- (3) If the Court is satisfied that there is evidence to support the application, the Court may direct the Administrator to take custody and control of the property.
- (4) The direction—
  - (a) must specify the property concerned; and
  - (b) may be subject to conditions.
- (5) A person who has custody or control of property mentioned in the direction must allow the Administrator to take custody and control of the property in accordance with the direction.

#### **17. Notice of direction**

- (1) Notice of the making of a direction under section 16 must be given—
  - (a) as soon as possible to the person who owns or controls the property, if practicable, if the person or a representative of the person is in Kiribati; and
  - (b) to any other person that the Attorney-General thinks may have an interest in the property.
- (2) Failure to comply with subsection (1) does not affect the validity of the direction.

#### **18. Variation, revocation or expiry of direction**

- (1) If the Court has made a direction under section 16, the Court may, on application by the Attorney-General or the person who owns or controls the property—
  - (a) make another direction under section 16 varying the conditions of the direction or the property that is subject to the direction; or
  - (b) revoke the direction.
- (2) If the application is made by the person who owns or controls the property—
  - (a) the person must give reasonable written notice of the application to the Attorney-General; and
  - (b) before deciding on the application, the Court must hear from the Attorney-General.
- (3) The Court must—
  - (a) if the Court decides that there are reasonable grounds to do so, revoke the direction; or
  - (b) if the Court decides that there are no reasonable grounds to revoke the direction, refuse the application.
- (4) If the Court revokes the direction, the Attorney-General must—
  - (a) tell the person who owns or controls the property in writing; and
  - (b) tell any other person to whom the Attorney-General gave notice under section 17(1)(b).

- (5) If not earlier revoked, a direction under section 16 about property of a specified entity expires if—
- (a) for property of a specified entity — the entity ceases to be a specified entity; or
  - (b) a forfeiture order is made under section 24 in relation to the property.

## **19. Appeal**

The Attorney-General or a person whose property is subject to a direction may appeal to the Court of Appeal against a decision made by the Court under this Part.

## **20. Further provisions on management of property of specified entities**

The following sections of the *Proceeds of Crime Act* 2003 apply, with the following (and all other necessary) modifications, to property that is the subject of a direction under section 16, as if the direction were a restraining order under section 58 of that Act—

- (a) section 58 (which provides for the contents of an order and directions to the Administrator about preserving property);
- (b) section 59 (which provides for undertakings by the Attorney-General);
- (c) section 63 (which provides for registration of orders);
- (d) section 64 (which makes it an offence to dispose of or deal with the property in contravention of an order, knowing that the order has been made in relation to the property);
- (e) section 123 (which provides for an indemnity for the Administrator, except that the indemnity must relate only to the exercise or performance, or purported exercise or performance, or omission to exercise or perform, functions, duties, and powers of the Administrator under this Act).

## **21. Third parties may apply for relief**

- (1) A person, other than the person who owns or controls the property, who claims an interest in property that is subject to a direction under section 16 may apply to the Court for an order under section 22.
- (2) The person must give written notice of the application to the Attorney-General, who is a party to any proceedings on the application.

## **22. Court may grant relief to third party**

- (1) Subsection (2) applies if—
  - (a) a person makes an application under section 21; and
  - (b) the Court is satisfied that the person's claim to the interest is valid.
- (2) The Court must make an order—
  - (a) declaring the nature, extent, and value of the person's interest in the property; and
  - (b) declaring that the interest is no longer subject to the order under section 16; and
  - (c) if the interest is held by the Administrator—
    - (i) directing the Administrator to transfer the interest to the person; or

- (ii) declaring that there is payable by the Administrator to the person an amount equal to the value of the interest declared by the Court.
- (3) However, the Court may, if it thinks fit, refuse to make an order if it is satisfied that—
- (a) the person was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or
  - (b) if the person acquired the interest at the time of or after the designation of the entity as a specified entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to a direction under section 16.

## DIVISION 2—FORFEITURE

### **23. Application for forfeiture order**

- (1) The Attorney-General may apply to the Court for a forfeiture order against terrorist property.
- (2) The Attorney-General must—
  - (a) name as respondents to the application only those persons who are known to own or control the property the subject of the application; and
  - (b) give notice of the application to each respondent in the manner directed by the Court.
- (3) The Court may, at any time before the final determination of the application, make orders for—
  - (a) service of the application on any person whom the Court thinks has an interest in the property; and
  - (b) publication of notice of the application.
- (4) Any person who claims an interest in the property may appear and present evidence at the hearing of the application.

### **24. Making forfeiture order**

- (1) If the Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court must order that the property be forfeited to the Republic.
- (2) If the Court is satisfied that a person mentioned in section 23(2)(a) or section 23(3)(a)—
  - (a) has an interest in the property the subject of the application; and
  - (b) has exercised reasonable care to ensure that the property is not terrorist property; and
  - (c) is not a member of a specified entity,
 the Court must order that the interest is not affected by the order and declare the nature and extent of the interest.
- (3) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.

- (4) If the Court refuses to make a forfeiture order, the Court must make an order that describes the property and declares that it is not terrorist property.

**25. Effect of forfeiture order**

- (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the Republic.
- (2) If the Court makes a forfeiture order against registrable property—
- (a) the order vests the property in the Republic in equity, but does not vest it in the Republic at law until the applicable registration requirements have been complied with; and
  - (b) the Republic is entitled to be registered as owner of the property; and
  - (c) the Attorney-General may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Republic as owner, including the execution of any necessary instrument; and
  - (d) the Attorney-General may do anything necessary or convenient to give notice of, or otherwise protect, the Republic's equitable interest in the property; and
  - (e) anything done by the Attorney-General under paragraph (d) is not a dealing for the purposes of subsection (3)(a).
- (3) If the Court makes a forfeiture order against property (including registrable property)—
- (a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the Republic, before six months after the forfeiture order was made; and
  - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Attorney-General directs, after six months after the forfeiture order was made.

**26. Protection of third parties**

- (1) A person who claims an interest in property that has been forfeited and who has not been given notice under section 23(2)(a) or section 23(3)(a) may apply to the Court, within six months after the forfeiture order was made, for an order under subsection (4).
- (2) The person must give reasonable written notice of the application to the Attorney-General.
- (3) The Attorney-General—
- (a) is a party to the proceedings in an application under subsection (1); and
  - (b) may make an application under subsection (1) for a person..
- (4) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with section 24(2).
- (5) An appeal lies to the Court of Appeal from an order under subsection (4).

**27. Return of property**

- (1) The Attorney-General must, on application by a person who has obtained an order under section 26(4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed—
- (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or
  - (b) if the interest in the property is no longer vested in the Republic, pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.
- (2) Subsection (1) does not apply to any property returned, or amount paid, to the person under section 22.

**28. Appeal**

The Attorney-General or a person affected by a decision made by the Court under this Part may appeal to the Court of Appeal against the decision.

### DIVISION 3—INFORMATION

**29. Disclosure of information**

- (1) A financial institution must immediately tell the Financial Intelligence Unit about the existence of any property in its possession or control—
- (a) that is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or
  - (b) for which there are reasonable grounds to suspect is property of a kind mentioned in paragraph (a).
- (2) The Financial Intelligence Unit may tell the financial intelligence authority or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned in subsection (1), if the Unit thinks the information would be relevant to the foreign country.
- (3) Information may be given under subsection (2) subject to any conditions that the Financial Intelligence Unit determines.
- (4) A financial institution must tell the Financial Intelligence Unit about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.
- (5) No civil or criminal proceedings lie against a person for making a disclosure or report, in good faith, under this section.
- (6) Nothing in subsection (1) or (4) requires a lawyer to disclose a privileged communication.
- (7) A person who receives information under this section must not disclose the information or its source except—
- (a) for the purposes of—
    - (i) the enforcement of this Act; or
    - (ii) the detection, investigation or prosecution of an offence under this Act; or

- (iii) providing assistance under the *Mutual Assistance in Criminal Matters Act 2003*;  
or
  - (b) in accordance with an order of a court.
- (8) Any financial institution which contravenes subsection (1) or (4) commits an offence and is liable upon conviction to a fine not exceeding \$100,000.

### **30. Exchange of information relating to terrorist groups and terrorist acts**

The Attorney-General may disclose to the appropriate authority of a foreign country any information in its possession relating to any of the following—

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (d) the use of communication technologies by terrorist groups,

if the disclosure is not prohibited by any law of Kiribati and will not, in the Attorney-General's view, prejudice national security or public safety.

## **PART V—POWER TO REMOVE AND PREVENT ENTRY OF PERSONS**

### **31. Power to prevent entry and order the removal of persons**

- (1) An authorised officer must not grant an endorsement or other authority permitting a person to enter Kiribati if he or she has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.
- (2) If the Minister responsible for immigration has reasonable grounds to suspect that a person, other than a citizen, in Kiribati has been, is or will be, involved in the commission of a terrorist act, he or she may make an order requiring the person to leave Kiribati and to remain out of Kiribati.
- (3) A person against whom an order under subsection (2) is made must leave Kiribati and must, so long as the order is in force, remain out of Kiribati.
- (4) A person against whom an order under subsection (2) is made may be—
  - (a) detained in such manner as may be directed by the Minister responsible for immigration for no more than seven days, or any longer period that is reasonably necessary to arrange for the person's removal from Kiribati; and
  - (b) placed on a craft leaving Kiribati.

## PART VI—COUNTER TERRORISM CONVENTIONS

### DIVISION 1—INTERNATIONALLY PROTECTED PERSONS

#### **32. Offences against internationally protected persons**

Any person who intentionally—

- (a) commits murder, kidnapping or other attack on the person or liberty of an internationally protected person; or
- (b) commits a violent attack on the official premises, private accommodation or means of transport of an internationally protected person, likely to endanger that person or that person's liberty; or
- (c) threatens to commit such an attack; or
- (d) attempts to commit such an attack,

commits an offence and is liable upon conviction to imprisonment for life.

### DIVISION 2—HOSTAGES

#### **33. Offence of hostage taking**

Any person who—

- (a) seizes or detains another person; and
- (b) threatens to kill, injure or continue to detain the other person,

with intent to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person commits an offence and is liable upon conviction to imprisonment for 15 years.

### DIVISION 3—NUCLEAR MATERIAL

#### **34. Movement of nuclear material**

- (1) Any person who knowingly imports or exports nuclear material to or from Kiribati without written permission from the Minister responsible for transport commits an offence and is liable upon conviction to imprisonment for 15 years.
- (2) Any person who knowingly, without written permission from the Minister responsible for transport, transports nuclear material—
  - (a) over the territory of Kiribati; or
  - (b) through any of its seaports or airports,
 commits an offence and is liable upon conviction to imprisonment for 15 years.
- (3) Any person who knowingly transports nuclear material between two places in Kiribati, through international waters or airspace, without written permission from the Minister responsible for transport commits an offence and is liable upon conviction to imprisonment for 15 years.

- (4) The Minister responsible for transport may only give the written permission referred to in this section if he or she has received a written assurance from the person that the material will, during international nuclear transport, be protected at the levels referred to in the *Convention for the Physical Protection of Nuclear Material*, done at Vienna and New York on 3 March 1980.
- (5) Any person who knowingly makes a false statement or provides a false assurance to the Minister responsible for transport under this section commits an offence and is liable upon conviction to imprisonment for 15 years.

### **35. Offences relating to nuclear material**

Any person who intentionally—

- (a) without lawful authority receives, possesses, uses, transfers, alters, disposes of or disperses nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property; or
- (b) steals nuclear material; or
- (c) embezzles or fraudulently obtains nuclear material; or
- (d) demands nuclear material by threat or use of force or any other form of intimidation; or
- (e) threatens—
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property; or
  - (ii) to steal nuclear material to compel a person, state or an international organisation to do or refrain from doing any act,

commits an offence and is liable upon conviction to imprisonment for life.

## DIVISION 4—MARITIME SAFETY

### **36. Offences relating to maritime safety**

- (1) Any person who unlawfully and intentionally—
- (a) seizes, or exercises control over, a ship or fixed platform by force or threat of force or other form of intimidation; or
  - (b) commits an act of violence against a person on board a ship or fixed platform that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (c) destroys a ship or fixed platform; or
  - (d) causes damage to a ship or its cargo or a fixed platform that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (e) places, or causes to be placed on a ship or fixed platform a device or substance likely to—
    - (i) for a ship — destroy the ship, or cause damage to the ship or its cargo likely to endanger the safe navigation of the ship; or
    - (ii) for a fixed platform — destroy the fixed platform or endanger its safety; or

- (f) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation in a way that is likely to endanger the safe navigation of a ship; or
- (g) communicates information that he or she knows to be false, endangering the safe navigation of a ship; or
- (h) injures or kills a person in connection with the commission, or attempted commission, of an offence under this subsection,

commits an offence and is liable upon conviction to imprisonment for life.

- (2) Any person who, with the intention of compelling another person to do or to refrain from doing any act, threatens to commit an offence mentioned in subsection (1)(b), (c), (d) or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform, commits an offence and is liable upon conviction to imprisonment for life.

### **37. Arrest and delivery**

- (1) The master of a ship registered in Kiribati who has reasonable grounds to believe that a person has committed an offence under section 36 against, or on board, any ship may—
  - (a) arrest and detain the person; and
  - (b) deliver the person to the appropriate authorities in any State (called in this section a ‘Convention State’) party to the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, done at Rome on 10 March 1988.
- (2) Before delivering a person arrested and detained under subsection (1) to the appropriate authorities in a Convention State, the master shall notify those authorities of his or her intention to do so.
- (3) Where the master delivers a person arrested and detained under subsection (1) to the appropriate authorities in a Convention State, he or she shall furnish to those authorities the evidence in his or her possession supporting the commission of an offence under section 36 by that person.
- (4) The master of a ship registered in Kiribati who fails, without reasonable cause, to comply with subsection (2) or (3) commits an offence and is liable upon conviction to imprisonment for five years.
- (5) Where the master of the ship registered in a Convention State delivers to a Police officer in Kiribati a person arrested and detained on that ship on suspicion of having committed an offence corresponding to an offence under section 36, it shall be the duty of such Police officer to take such person into custody, unless the Police officer has reasonable grounds to believe that such a person has not committed the offence as alleged. Where a Police officer refuses to take such person into custody, he or she shall give written reasons for such refusal.

## DIVISION 5—PLASTIC EXPLOSIVES

### **38. Offences relating to plastic explosives**

- (1) Any person who knowingly manufactures unmarked plastic explosives commits an offence and is liable upon conviction to imprisonment for 15 years.
- (2) Any person who knowingly possesses or transports unmarked plastic explosives commits an offence and is liable upon conviction to imprisonment for 15 years.

- (3) Subject to subsection (4), it is not an offence under subsection (1) or (2) if—
- (a) the person manufactures, possesses or transports unmarked plastic explosives in a quantity approved in writing by the Commissioner of Police solely for use—
    - (i) in research, development or testing of new or modified explosives; or
    - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
    - (iii) for forensic science purposes; or
  - (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in Kiribati within three years after the coming into force of the Plastic Explosives Convention in Kiribati.
- (4) Any person who imports or exports unmarked plastic explosives commits an offence and is liable upon conviction to imprisonment for 15 years.

#### DIVISION 6—TERRORIST BOMBING

### 39. Offences relating to terrorist bombings

- (1) Subsection (2) applies to an action that is intended by a person—
- (a) to cause death or serious bodily injury; or
  - (b) to cause extensive damage to a place mentioned in subsection (2)(a) or (b), a facility mentioned in subsection (2)(c) or a system mentioned in subsection (2)(d), if the damage results in or is likely to result in major economic loss.
- (2) Any person who unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against—
- (a) a part of a building, land, street or waterway or other location that is accessible or open to members of the public, whether continuously, periodically or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place; or
  - (b) a facility or conveyance that is used or occupied, in connection with his or her official duties, by—
    - (i) a representative of any Government; or
    - (ii) the Head of State of any country; or
    - (iii) the Prime Minister or a Minister of any country; or
    - (iv) a member of the legislature of any country; or
    - (v) a judge of any country; or
    - (vi) an official or employee of a Government or public authority or an inter-governmental organisation; or
  - (c) a facility, conveyance or instrumentality, whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or
  - (d) a publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications,
- commits an offence and is liable upon conviction to imprisonment for life.

## PART VII—TRANSNATIONAL ORGANISED CRIME

### 40. Participation in organised criminal group

- (1) Any person who participates (whether as a member, associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group, commits an offence and is liable upon conviction to imprisonment for 15 years.
- (2) A group of people is capable of being an organised criminal group for the purposes of this section whether or not—
  - (a) some of them are subordinates or employees of others; or
  - (b) only some of the people involved in it at a particular time are involved in the planning, arrangement or execution at that time of any particular action, activity or transaction; or
  - (c) its membership changes from time to time.

### 41. Corruption

- (1) Any person who intentionally promises, offers or gives to a public official, directly or indirectly, an undue advantage, for the official or for another person, for the official to act or refrain from acting in the exercise of his or her official duties commits an offence and is liable upon conviction to imprisonment for 15 years.
- (2) Any public official who intentionally solicits or accepts, directly or indirectly, an undue advantage, for the official or for another person, for the official to act or refrain from acting in the exercise of official duties commits an offence and is liable upon conviction to imprisonment for 15 years.

## PART VIII—TRAFFICKING IN PERSONS AND PEOPLE SMUGGLING

### 42. Offence of trafficking in persons

Any person who engages in trafficking in a person or is involved in the arranging of trafficking in a person, knowing that the person's entry into Kiribati or any other State is or was arranged by specified means, commits an offence and is liable upon conviction to imprisonment for 15 years.

### 43. Offence of trafficking in children

Any person who intentionally engages in trafficking in a person who is a child or is involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into Kiribati or any other State is or was arranged by specified means, commits an offence and is liable upon conviction to imprisonment for 20 years.

### 44. Consent of trafficked person

In a criminal prosecution for an offence under section 42 or 43, it is not a defence that—

- (a) the trafficked person consented to the intended exploitation; or
- (b) the intended exploitation did not occur.

**45. Protection for trafficked persons**

- (1) A trafficked person is not liable to criminal prosecution for—
- (a) the act of trafficking in persons or being a party to an offence of trafficking in persons; or
  - (b) the person's illegal entry into Kiribati, in connection with the act of trafficking in persons, if Kiribati is the receiving country; or
  - (c) the person's period of unlawful residence in Kiribati after being trafficked, if Kiribati is the receiving country; or
  - (d) the person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.
- (2) Subsection (1) does not prevent the removal of a trafficked person under the *Immigration Ordinance*.

**46. Offence of people smuggling**

- (1) Any person who, in order to obtain a material benefit, engages in people smuggling, either knowing or being reckless as to the fact that the entry of the person being or to be smuggled into the country is illegal, commits an offence and is liable upon conviction to imprisonment for 15 years.
- (2) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.

**47. Offence to facilitate the stay of an unauthorised person**

Any person who knowingly facilitates the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit commits an offence and is liable upon conviction to imprisonment for 15 years.

**48. Offences related to fraudulent travel or identity documents**

Any person who knowingly, in order to obtain a material benefit—

- (a) produces a fraudulent travel or identity document; or
  - (b) procures, provides or possesses a fraudulent travel or identity document,
- commits an offence and is liable upon conviction to imprisonment for 10 years.

**49. Aggravated offences**

Any person who commits an offence under section 46, 47 or 48 with one or more of the following circumstances of aggravation—

- (a) the unauthorised person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);
  - (b) the life or safety of the person being smuggled is, or is likely to be, endangered,
- is liable upon conviction to imprisonment for life.

**50. Protection for smuggled persons**

- (1) An unauthorised person is not liable to criminal prosecution for an offence under this Part, by reason only of the fact that the person is the object of the following conduct—
  - (a) people smuggling;
  - (b) an offence under section 47;
  - (c) when committed for the purpose of enabling people smuggling, an offence under section 48.
- (2) Subsection (1) does not prevent proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

**51. Obligation on commercial carriers**

- (1) Any commercial carrier which transports a person into a receiving country if, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country commits an offence and is liable upon conviction to a fine of \$100,000.
- (2) A commercial carrier is not guilty of an offence under subsection (1) if—
  - (a) the commercial carrier had reasonable grounds to believe that the documents that the person had are the travel documents required for lawful entry of that person into the receiving country; or
  - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
  - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

**52. Boarding, search and detention of craft**

- (1) This section applies to a craft that is a ship, boat or other machine or vessel used or capable of being used for the carriage of persons by water or over water, except for a foreign warship.
- (2) An authorised officer may stop and board the craft within Kiribati if the authorised officer has reasonable grounds to believe the craft—
  - (a) is being used to commit an offence under section 46; and
  - (b) the craft is in—
    - (i) Kiribati; or
    - (ii) the contiguous zone of Kiribati.
- (3) The authorised officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence under section 46—
  - (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in Kiribati, for the purpose of search; and

- (b) search and detain the craft, anyone on it and anything on it; and
  - (c) question any person on board the craft; and
  - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft; and
  - (e) take a copy of any documents produced; and
  - (f) seize and detain anything found on the craft that appears to him or her to be evidence of an offence under this Part; and
  - (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence under section 46.
- (4) If the craft fails to stop at the request of an authorised officer, the officer may pursue it into international waters and take any action that is reasonably necessary to stop the craft to enable it to be boarded (other than in the territorial sea of another country).
- (5) The authorised officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer under subsection (3)(a).
- (6) The person in charge of the craft must give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (7) Any person who does not comply with a direction of an authorised officer under subsection (3)(a) commits an offence and is liable upon conviction to imprisonment for 10 years.

## **PART IX—GENERAL PROVISIONS**

### **53. Jurisdiction**

Proceedings may be brought for an offence under this Act whether or not the act or omission constituting the offence is committed in or outside Kiribati, if the act or omission—

- (a) is committed by a citizen of Kiribati or a citizen of any country who is ordinarily resident in Kiribati; or
- (b) is committed in order to compel the Government of Kiribati to do or abstain from doing any act; or
- (c) is committed against a citizen of Kiribati; or
- (d) is committed by a person who is, after the commission of the offence, present in Kiribati; or
- (e) is intended to be committed in the Republic; or
- (f) originates in or transits the Republic.

### **54. Consent of Attorney-General**

- (1) Proceedings for any offence under this Act, for which jurisdiction is claimed for an offence committed on board an aircraft while in flight, or a vessel, elsewhere than in or over Kiribati or for any other offence committed outside Kiribati, may only be instituted with the consent of the Attorney-General.

- (2) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

#### **55. Restricted grounds for refusal to extradite or provide mutual assistance**

- (1) Notwithstanding anything in the *Extradition Act 2003* or the *Mutual Assistance in Criminal Matters Act 2003*, an offence under this or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition or mutual assistance, 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 the *Mutual Assistance in Criminal Matters Act 2003*, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

#### **56. Liability of a body corporate**

- (1) This Act applies to a body corporate in the same way as it applies to an individual and a body corporate may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.
- (2) For an offence under this Act, the conduct or state of mind of an employee, agent or officer of a body corporate is taken to be attributed to the body corporate if that person is acting—
- (a) within the scope of the person's employment; or
  - (b) within the scope of the person's actual or apparent authority; or
  - (c) with the consent or agreement (express or implied) of a director, servant or agent of the body corporate, and giving that consent is within the actual or apparent authority of the director, servant or agent.
- (3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

#### **57. Controlled delivery of property**

- (1) This section applies to an authorised officer who has reasonable grounds to believe that a person has committed, is committing or is about to commit an offence under this Act.
- (2) The authorised officer may allow property that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act, to enter, leave or move through Kiribati for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.
- (3) An authorised officer does not commit an offence under this Act if—
- (a) the authorised officer is engaged in investigation of a suspected offence under this Act; and
  - (b) the offence involves property that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act; and

- (c) the authorised officer does not take action that the authorised officer would otherwise be required to take under this Act for the purpose of the investigation.

**58. Provision of information relating to persons, goods or craft entering or leaving Kiribati**

- (1) The operator of a craft—
  - (a) arriving in or departing from Kiribati; or
  - (b) registered in Kiribati, departing from any place outside Kiribati,must give the Commissioner of Police any information in his or her possession, relating to persons or goods on board, or expected to be on board, the craft.
- (2) Any person who contravenes subsection (1) commits an offence and is liable upon conviction to imprisonment for 10 years.
- (3) The Commissioner of Police may give the competent authority in a foreign country any information—
  - (a) in his or her possession relating to persons entering or leaving Kiribati; and
  - (b) that is required under the laws of the foreign country.
- (4) The provision of information under subsection (1) or (3) is taken not to be a contravention of any provision of law prohibiting the disclosure of the information.
- (5) No information provided to the Commissioner of Police under subsection (1) may be used or disclosed by the Commissioner of Police except for the purpose of protecting border security, national security or public safety.
- (6) Regulations made under section 59 may prescribe the types or classes of information that may be—
  - (a) provided under this section; or
  - (b) disclosed to the competent authority of a foreign country.

**59. Regulations**

- (1) The Attorney-General, acting in accordance with the advice of the Cabinet, may make regulations prescribing matters—
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may add or omit items to or from Schedule 1.

**SCHEDULE 1 - THE COUNTER TERRORISM CONVENTIONS**

1. *Convention on Offences and certain Other Acts committed on Board Aircraft* done at Tokyo on 14 September 1963
2. *Convention for the Suppression of Unlawful Seizure of Aircraft* done at The Hague on 16 December 1970
3. *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation* done at Montreal on 23 September 1971
4. *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
5. *International Convention against the taking of Hostages* adopted by the General Assembly of the United Nations on 17 December 1979
6. *Convention on the Physical Protection of Nuclear Material* done at Vienna and New York on 3 March 1980
7. *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
8. *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* done at the Rome on 10 March 1988
9. *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
10. *Convention on the Marking of Plastic Explosives for the Purposes of Detection* done at Montreal on 1 March 1991
11. *International Convention for the Suppression of Terrorist Bombings* adopted by the General Assembly of the United Nations on 15 December 1997
12. *International Convention for the Suppression of the Financing of Terrorism* adopted by the General Assembly of the United Nations on 9 December 1999

## MEASURES TO COMBAT TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT 2005

### EXPLANATORY MEMORANDUM

With this legislation we endeavour to honour our obligations under the *Nasonini Declaration*, in that this Act seeks to give effect to a number of international instruments—

- the United Nations Security Council Resolution 1373, which deals with terrorist financing;
- eight of the 12 United Nations conventions and protocols on terrorist activities; and
- the *Convention on Transnational Organised Crime*, with its protocols on trafficking in persons and people smuggling.

Of the four remaining UN counter terrorism conventions, three are dealt with by the *Aircraft Security Act 1990* and the fourth is dealt with by the *Civil Aviation Act 2004*.

The Act is divided into nine Parts. Part I deals with preliminary matters, including definitions. Section 3, in particular, defines the expression ‘terrorist act’.

Part II deals with specified entities. The term includes each person or group classified as a terrorist by the United Nations Security Council, unless the Attorney-General by regulation removes them from the list as it applies to Kiribati. The Attorney-General can apply to the Court for a declaration that a person or group not on the Security Council list should be declared a specified entity if there are reasonable grounds to believe the person or group is involved in terrorist activities. The Part sets out the procedure for applications and for revocation of declarations. All declarations must be reviewed periodically.

Part III sets out general offences relating to terrorist activity, including terrorism financing, provision of property or services to specified entities, dealing with terrorist property, harbouring of persons committing terrorist acts, provision of weapons to terrorist groups and recruitment of persons to be members of terrorist groups or to participate in terrorist acts. Generally, this is in line with the *International Convention for the Suppression of the Financing of Terrorism*.

Part IV deals with the management and forfeiture of terrorist property, and is divided into three Divisions.

Division 1 provides that on application by the Attorney-General, the Court can direct the Administrator (who is appointed under the *Proceeds of Crime Act 2003*) to take custody and control of terrorist property. Notice of a direction must be given to the person who owns or controls the property (if the person or the person’s representative is in Kiribati) and to anyone else the Attorney-General thinks may have an interest in the property. The Court can then vary or revoke the direction on application by the Attorney-General or the person who owns or controls the property. A direction is revoked automatically if the entity that owns it ceases to be a specified entity or if a forfeiture order is made for the property. An appeal against a direction lies to the Court of Appeal.

Division 2 provides for the Attorney-General to apply to the Court for a forfeiture order against terrorist property. Notice must be given to the persons known to own or control the property. The Court will direct how the notice is to be given and can order service of the application on anyone else the Court thinks has an interest in the property, and publication of notice of the application. Anyone who claims an interest is entitled to appear and present evidence at the hearing of the application.

The Court can order forfeiture of the property if it is satisfied, on the balance of probabilities, that it is terrorist property. The Court can also exclude the interests of persons from the order. Within six months of the making of an order, a person who claims an interest in the property and was not given notice of the application can apply to have that person's interest excluded from the order. The Attorney-General or any person affected by the Court's decision can appeal to the Court of Appeal.

Division 3 of Part IV requires a financial institution to inform the Financial Intelligence Unit if it knows or has reasonable grounds to suspect that any property it holds or controls is owned or controlled by a specified entity, or any dealings it has relate to the commission of a terrorist act. The Financial Intelligence Unit may share that information with equivalent authorities in other countries. However, information received can only be disclosed for law enforcement purposes.

Part V requires authorised officers (in this case, usually immigration officers) to prevent the entry of anyone reasonably suspected of involvement or planning of a terrorist act. The Minister responsible for immigration can order a person who is not a citizen to leave Kiribati on the same grounds.

Part VI provides for specific criminal offences under the counter terrorism conventions.

Division 1 deals with the *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents*. It creates a special offence of attacking or threatening internationally protected persons, their official premises, private accommodation or means of transport.

Division 2 deals with the *International Convention against the taking of Hostages*. It creates an offence of taking a hostage to try to force a government, an international organisation or a person or group of persons to do something or not to do something.

Division 3 deals with the *Convention on the Physical Protection of Nuclear Material*. It controls the movement of nuclear material in and out of Kiribati, requiring the written permission of the Minister responsible for transport. To get a licence or permit, the person must assure the Minister that the material will be protected at the levels required by the Convention. It is an offence to make a false statement or provide a false assurance. There are also a number of offences dealing with the use of nuclear material, where the fact that the material is nuclear makes the behaviour more dangerous because of the inherent risks involved.

Division 4 deals with the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation* and the associated *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf*. It includes a number of offences covering damage or destruction of a ship or fixed platform, acts of violence or damage on or to them, damaging or interfering with navigational facilities, or endangering safe navigation by providing false information. The master of a ship is given power to arrest and detain a person suspected of committing one of the offences, and to hand the person over to the appropriate authorities of a state party to the Convention.

Division 5 deals with the *Convention on the Marking of Plastic Explosives for the Purposes of Detection*. Marking plastic explosives allows for them to be traced back to their last legitimate owner if they are used for terrorist activities. The Division creates offences of manufacturing, possessing, transporting, importing or exporting unmarked plastic explosives. There are limited circumstances in which their use may be permitted.

Division 6 deals with the *International Convention for the Suppression of Terrorist Bombings*. It provides offences for the use of explosives or other lethal devices in places that are accessible to the

public, facilities or conveyances associated with government, public service or the judiciary, public transport services or public utility infrastructure.

Part VII addresses matters covered by the *Convention on Transnational Organised Crime*. It creates an offence of participating in an organised criminal group, and an offence of corruption, dealing with offering or taking bribes connected with official duties.

Part VIII deals with the *Protocols on People Trafficking and People Smuggling* under the Transnational Organised Crime Convention. It creates offences of engaging in people trafficking. Consent by the person being trafficked is not a defence. A trafficked person may be subject to removal from Kiribati, but is not to be punished for being the victim of trafficking. It also provides for offences of people smuggling, being involved in keeping smuggled people in Kiribati and dealing with fraudulent travel or identity documents. Additional penalties are provided if the subjects of people smuggling are treated badly or otherwise endangered. There is protection from prosecution for persons being smuggled, although only for offences involved with being the object of people smuggling. A commercial carrier is given the responsibility to make sure that people being transported have the necessary travel documents for lawful entry into the destination country. An authorised officer can stop and board craft to investigate suspicions of people smuggling.

Part IX sets out some general provisions to give effect to the legislation. A broad jurisdiction to prosecute is provided for, in line with the international expectation that those who commit terrorist acts shall be denied safe haven. In certain circumstances the Attorney-General must expressly consent to a prosecution. Offences under this Act are declared not to be political or fiscal offences, so that extradition or mutual assistance cannot be refused on those grounds. Also, bank secrecy cannot be relied on to refuse a request for mutual assistance. A body corporate can be guilty of an offence in the same way as an individual. The legislation also provides for controlled delivery, where an authorised officer who suspects that property may be involved in an offence can allow movement of the property as part of the investigation of suspected offences. There is a general reporting requirement for the operator of any craft arriving in or leaving Kiribati to give information to the Commissioner of Police about the persons or goods on board. This requirement extends to the operators of craft registered in Kiribati for each leg of their voyage. Finally, there is a general regulation-making power that includes power for the addition or removal of names of counter terrorism conventions listed the Schedule.

The Schedule lists the 12 international counter terrorism conventions and protocols.

David Lambourne  
Solicitor-General  
8 October 2004

**CERTIFICATE OF THE CLERK OF THE MANEABA NI MAUNGATABU**

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on 14 June 2005 and is found by me to be a true and correctly printed copy of the said Bill.

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Ioataake Timeon  
Clerk of the Maneaba ni Maungatabu

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Clerk of the Maneaba ni Maungatabu