



Tonga

TRANSNATIONAL CRIMES ACT

2007 Revised Edition



TRANSNATIONAL CRIMES ACT

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TRANSNATIONAL CRIMES ACT

AN ACT TO PROVIDE FOR TRANSNATIONAL CRIMES AND THE SUPPRESSION OF TERRORISM¹

Commencement [11th August 2006²]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Transnational Crimes Act.

2 Interpretation

In this Act unless the context otherwise requires —

“**act of terrorism**” shall have the same meaning as in section 78A of the Criminal Offences Act;

“**authorised officer**” means a police officer, custom officer, immigration officer, member of the Tonga Defence Services or any other person designated by the Attorney General under section 33;

“**child**” means a person under the age of 18 years;

“**detection agent**” means a substance 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 internal organs;

“explosive or other lethal device” means —

- (a) an explosive, 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;

“financial institution” shall have the same meaning as in the National Reserve Bank of Tonga Act;

“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;

“illegal entry” means entering the Kingdom or any other country without complying with the requirements for lawful entry of that country;

“Nuclear Material Convention” means the Convention on the Physical Protection of Nuclear Material, signed at Vienna and New York on 3 March 1980;

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

“plastic explosive” means an explosive that is –

- (a) 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 degrees C;
- (b) formulated with a binder material; and
- (c) 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, signed at Montreal on 1 March 1991;

“property” includes –

- (a) assets of every kind, whether real or personal, 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;

“receiving country” means for –

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

“Rome Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted at Rome on 10 March, 1988;

“specified entity” means a person or entity that is prescribed under section 5;

“terrorist property” shall have the same meaning as in section 78C (2) of the Criminal Offences Act;

“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;

“Transaction Reporting Authority” means a person appointed by the Attorney General under the Money Laundering and Proceeds of Crime Act;

“unauthorised person” means a person who is not a citizen of a country or is not in possession of all the documents required by the law of that 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 set out in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention;

“weapon” includes a firearm, chemical, biological or nuclear weapon.

3 Jurisdiction

- (1) Prosecutions may be brought for an offence under this Act if it was committed —
 - (a) in the Kingdom;
 - (b) on board a ship or aircraft registered in the Kingdom; or
 - (c) outside the Kingdom by a person who is now in the Kingdom.

- (2) Prosecutions may be brought for an offence against this Act whether committed in or outside the Kingdom —
- (a) by a Tongan subject or a citizen of any country who is ordinarily resident in the Kingdom;
 - (b) in order to compel the Government to do or abstain from doing any act;
 - (c) against a Tongan subject; or
 - (d) by a person who is, after the commission of the offence, present in the Kingdom.

4 Consent of the Attorney General

- (1) Prosecutions for any offence under this Act where the offence is committed outside the Kingdom 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.

5 Specified entities

The Attorney General may, with the consent of Cabinet, by notice in the Gazette prescribe as a specified entity a person or group specified as such by a resolution of the Security Council of the United Nations.

PART II - TERRORISM-FINANCING AND RECRUITMENT

6 Terrorist property

A person who, by any means provides or collects, property and having reasonable grounds to believe that the property will be used in connection with an act of terrorism, commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

7 Provision of services to specified entity

Any person, who makes available property, financial or other services for the benefit of, a specified entity, other than for the purposes of humanitarian aid or legal services, commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

8 Dealing with terrorist property

- (1) Any person who —
- (a) deals in any terrorist property;
 - (b) collects or acquires or possesses terrorist property;
 - (c) enters, or facilitates any transaction in respect of terrorist property;
or
 - (d) converts, conceals or disguises terrorist property,
- commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.
- (2) It is a defence to an offence under subsection (1) if that person as soon as he is aware that the property is terrorist property informs the Attorney General in writing and acts in accordance with any directions of the Attorney General for that property.

9 Harboursing of terrorists

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

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

commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 15 years.

10 Provision of weapons to specified entity

Any person who 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 upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

11 Recruitment of terrorists

Any person who wilfully recruits another person to —

- (a) be a member of a specified entity; or
- (b) participate in the commission of an act of terrorism,

commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

12 Controlled delivery of property

An authorised officer may allow property that he reasonably suspects has been, is being or may be used to commit an offence under this Act, to enter, leave or move through the Kingdom for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

PART III - COUNTER-TERRORISM CONVENTIONS

13 Definition of “nuclear material”

For the purpose of this Part, “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; or
- (e) a substance containing nuclear material.

14 Movement of nuclear material

- (1) Any person who imports or exports nuclear material to or from the Kingdom except with written permission by the Prime Minister, with the consent of Cabinet, commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.
- (2) Any person who transports nuclear material within or over the Kingdom or through international waters or airspace without written permission from the Prime Minister commits an offence and upon conviction shall be liable to imprisonment for term not exceeding 25 years.

15 Licence for nuclear movement

- (1) For the purposes of this section, “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.
- (2) Written permission for the purposes of section 14(2) may be given only if the Prime Minister has received a written assurance from the person that the material will, during international nuclear transport, be protected at the levels in the Nuclear Material Convention.
- (3) Any person who makes a false statement or provides a false assurance for the purposes of subsection (2) commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 15 years.

16 Offences relating to nuclear material

Any person who –

- (a) 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;
- (b) steals nuclear material;
- (c) embezzles or fraudulently obtains nuclear material;
- (d) demands nuclear material by threat or use of force or any other form of intimidation; or
- (e) threatens to –
 - (i) use nuclear material to cause death or serious injury to any person or substantial damage to any property; or
 - (ii) steal nuclear material to compel a person, State or an international organisation made up of States or its agents to do or refrain from doing any act,

commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

17 Definition of “ship”

For the purposes of sections 18 and 19 –

- (a) “ship” means a vessel that is not permanently attached to the sea bed including a hovercraft, hydrofoil, submarine or other floating craft, but 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; and

- (b) a duty of a master of a ship to arrest, detain, deliver and notify the appropriate authority in Tonga shall include any other country that is party to the Rome Convention.

18 Maritime safety offences

Any person who –

- (a) seizes, or exercises control over a ship or fixed platform by force or threat of force or other form of intimidation;
- (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;
- (c) destroys a ship or fixed platform;
- (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;
- (e) places, or causes to be placed, on a ship or fixed platform a device or substance, likely –
 - (i) to destroy the ship, or to cause damage to the ship or its cargo or likely to endanger the safe navigation of the ship; or
 - (ii) to destroy the fixed platform or to endanger its safety;
- (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;
- (g) communicates information, that he knows to be false, endangering the safe navigation of a ship; or
- (h) injures or kills a person in the course of committing an offence under this section,

commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

19 Arrest and delivery

- (1) The master of a ship registered in Tonga who has reasonable grounds to believe that a person has committed an offence under section 18 shall –
 - (a) arrest and detain the person;
 - (b) deliver the person to the appropriate authority in Tonga; and
 - (c) give to the authorities evidence in his possession that the person has committed the offence.

- (2) Where a person is delivered to a police officer under this section the police officer shall take the person into custody and deal with that person according to law.
- (3) The master of a ship who contravenes subsection (1), commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 10 years.

20 Plastic explosives offences

- (1) Any person, who manufactures unmarked plastic explosives, commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.
- (2) Any person, who possesses or transports unmarked plastic explosives, commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.
- (3) Any person, who imports or exports unmarked plastic explosives, commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

21 Exemptions

It is not an offence under section 20 if –

- (a) the person has the approval in writing of the Prime Minister with the consent of Cabinet for use in -
 - (i) research, forensic science purposes, development or testing of new or modified explosives; or
 - (ii) training in explosives detection or in the development or testing of explosives detection equipment;
- (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices including a shell, bomb, projectile, mine, missile, rocket, shaped charges, grenade or perforator, lawfully manufactured exclusively for military or police purposes in Tonga within 3 years after the coming into force of the Plastic Explosives Convention.

PART IV - TERRORISM BOMBING AND TRANSNATIONAL ORGANISED CRIME

22 Terrorist bombing offence

- (1) Subsection (2) applies to an action that is intended by a person to cause –

- (a) death or serious bodily injury; or
- (b) extensive damage to a place, facility or system set out in subsection (2),

if the damage results in or is likely to result in major economic loss.

- (2) Any person who 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;
 - (b) facility whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or
 - (c) 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 upon conviction shall be liable to imprisonment for a term not exceeding life.

23 Organised criminal group

- (1) For the purpose of this section, “organised criminal group” means a group of at least three persons that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a penalty of at least four years imprisonment.
- (2) Any person who participates as a member, associate member or prospective member in an organised criminal group and his participation contributes to the occurrence of criminal activity commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

24 Offence of trafficking in persons

Any person engaged in trafficking in persons commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 25 years.

25 Offence of trafficking in children

Any person engaged in trafficking a child commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 30 years.

26 Consent not a defence

It is not a defence for offences under sections 24 and 25 that the –

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

27 Offence of people smuggling

- (1) Any person who intentionally, and in order to obtain, directly or indirectly, a financial or other material benefit, engages in people smuggling commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 15 years.
- (2) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.

28 Offence of facilitation of unauthorised person

Any person who facilitates the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit including financial or non-financial payment commits an offence and upon conviction shall be liable to imprisonment for a term not exceeding 15 years.

29 Definition of “craft”

For the purpose of sections 30 and 31 a “craft” means an aircraft, ship, boat, or other machine or vessel used or capable of being used for the carriage of persons by water or over water.

30 Boarding, searching and detention of craft

- (1) An authorised officer may stop and board the craft within Tonga if the authorised officer has reasonable grounds to believe the craft is being used to commit an offence of people smuggling in Tonga.
- (2) The authorised officer may, in connection with an offence of people smuggling –
 - (a) direct the craft to stay where it is, or to be taken to a suitable place in Tonga, for the purpose of search;
 - (b) search and detain the craft, anyone on it and anything on it;
 - (c) question any person on board the craft;
 - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft;
 - (e) take a copy of any documents produced;

- (f) seize and detain anything found on the craft that appears to him to be evidence of an offence against this Act; and
- (g) remain on the craft for such period as is necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence of people smuggling.

31 Right of Hot Pursuit

- (1) An authorised officer may pursue a craft, which fails to stop at his request, into international waters and take any action that is necessary to stop the craft to enable it to be boarded other than in the territorial sea of another country.
- (2) 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 an authorised officer.
- (3) The person in charge of the craft shall give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (4) Any person who fails to comply with a direction of the authorised officer under this section shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding \$75,000 or imprisonment for a term not exceeding 15 years, or both.

PART V - GENERAL

32 Aggravated offences

A person who in the course of committing any offence under this Act -

- (a) subjects an unauthorised person to torture, exploitation or to any other cruel, inhumane or degrading treatment; or
- (b) endangers the life or safety of the unauthorised person,

commits an aggravated offence under this Act and is liable upon conviction to imprisonment for life.

33 Authorised officers

The Attorney General may designate any person, he considers appropriate to carry out any of the powers under this Act, as an authorised officer.

34 Regulations

The Attorney General may, with the consent of Cabinet, make regulations for the effective administration of this Act.

ENDNOTES

¹ Act 14 of 2005

² Date of Gazettal, 15 December 2005