



GUYANA

ACT No. 8 of 2008

HIJACKING AND PIRACY ACT 2008

I assent,

Bharrat Jagdeo,
President,
31st July, 2008.

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A.D. 2008]

HIJACKING AND PIRACY

[No. 8

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AN ACT to make special provisions for punishment for the offences of armed robbery, hijacking and piracy and for matters connected therewith.

A.D.2008 Enacted by the Parliament of Guyana:-

Short title. 1. This Act may be cited as the Hijacking and Piracy Act 2008.

Interpretation. 2. In this Act-

(a) "armed robbery" means an act of robbery, not amounting to piracy, committed with any unlawful act of violence or detention or any act of depredation using firearms or other dangerous or offensive weapons and directed against a vessel or against any person or property on board a vessel within the rivers, internal waters or territorial sea of Guyana;

(b) "hijacking", in relation to a vessel, means taking away the vessel unlawfully by force, coercion or threat of imminent danger or by any other form of intimidation or unlawfully seizing or exercising, or attempting to take over the control of the vessel;

(c) "Minister" means the Minister of Home Affairs;

(d) "pirate vessel" means a vessel intended to be used by persons in its dominant control for the purpose of committing one of the acts referred to in section 5;

(e) "vessel" means any steamship, ship, sloop, boat or other floating craft whether used for fishing or not and includes any description of aircraft.

Punishment for armed robbery. 3. Every person who commits armed robbery commits an offence and is liable on conviction on indictment to imprisonment for life together with a fine of one million dollars.

Punishment for hijacking. 4. Every person who hijacks a vessel commits an offence and is

liable on conviction on indictment to imprisonment for life together with a fine of one million dollars.

Piracy defined.

5. Piracy consists of any of the following acts-

(a) any illegal act of violence or detention or any act of depredation committed for private ends by any person on board including the crew or the passengers of a private vessel and directed-

(i) on the rivers, internal waters or the territorial sea of Guyana against another vessel, or against persons or property on board such vessel;

(ii) on the high seas against a vessel or persons or property in a place outside the jurisdiction of Guyana;

(b) any act of voluntary participation in the operation of a vessel or with knowledge of facts making it a pirate vessel;

(c) any act of inciting or of intentionally facilitating an act described in paragraph (a) or (b).

Punishment for piracy.

6. Every person who commits any of the acts of piracy described in section 5 commits an offence and is liable on conviction on indictment to imprisonment for life together with a fine of not less than two hundred thousand dollars nor more than one million dollars.

Punishment for armed robbery, piracy or hijacking when murder is involved.

7. Every person who murders a person on board a vessel that is under attack while committing an offence of armed robbery, piracy or hijacking is liable on conviction on indictment to suffer death.

Punishment of accessories.

8. In the case of every indictable offence punishable under this Act every principal in the second degree and every accessory before the fact is punishable in the same manner as the principal in the first degree is by this Act punishable, and every accessory after the fact to any such offence punishable under this Act is liable on conviction on indictment to imprisonment for ten years together with a fine of three hundred thousand dollars.

Forfeiture of vessel, etc.

9. Any building owned by an accused and used for the commission of any offence under this Act and any vessel, machinery,

accessories, weapons and any other thing used or intended to be used in the commission of the offence and together with all things found in the vessel shall on conviction on indictment be forfeited to the State.

Restraint
order in
respect of
certain
properties.

10. (1) Where, on an application made to the Court trying an offence under this Act by the Director of Public Prosecutions that –

(a) the accused person is in possession or control of –

- (i) a specified property that constitutes, directly or indirectly, the proceeds of the alleged crime; or
- (ii) a specified property that was acquired by the accused, in whole or in part, with or in connection with the property that, directly or indirectly constitutes the proceeds of the alleged crime; and

(b) the value of the property or, as the case may be, the total value of the property referred to in paragraph (a) is not less than two million dollars,

the Court shall make a restraint order prohibiting the accused or any other person from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless it is shown to the satisfaction of the Court, on evidence tendered by the accused or any other person claiming that –

- (i) the particular property does not constitute, directly or indirectly, the proceeds of the alleged crime and was not acquired, in whole or in part, with or in connection with the property that, directly or indirectly, constitutes the proceeds of the alleged crime; or
- (ii) the value of all the property to which the order would relate is less than two million dollars.

(2) The Court shall not make an order under subsection (1) if it is satisfied that there would be a serious risk of injustice or irreparable loss to any one if the order is made.

Civil
forfeiture
order.

11. (1) Subject to subsection (2), the Court, on application made to it by the Director of Public Prosecutions, may make a civil forfeiture order directing that the whole or, if appropriate, a specified part of the property of the person convicted under this Act be transferred, subject to such terms and conditions as the Court may specify, to a receiver or to another person as the Court may

determine.

(2) Subject to subsections (6) and (8), the Court shall not make a civil forfeiture order in relation to any property the subject of an application under subsection (1) unless it is shown to its satisfaction that the particular property constitutes, directly or indirectly, proceeds of the crime or was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes the proceeds of the crime.

(3) The Director of Public Prosecutions shall give notice to the person convicted under this Act and to such other person if any as the Court may direct of an application made by the Director of Public Prosecutions under this section.

(4) A civil forfeiture order shall operate to deprive any person convicted under this Act of his rights if any in or to the property to which it relates and, upon making of the order, the property shall stand transferred to the receiver appointed by the Court or to the other person as the Court may determine.

(5) The receiver may sell or otherwise dispose of any property transferred to him under this section, at the direction of the Court, and any proceeds of such disposition and any moneys transferred to him under this section shall be paid into the Consolidated Fund.

(6) In any proceedings under subsection (1), before deciding whether to make a civil forfeiture order or not, the Court shall give to the convicted person and to any other person claiming any right, title or interest in the property an opportunity of being heard and to show cause why the order should not be made.

(7) The Court, if it considers it appropriate to do so in the interest of justice, on the application of the Director of Public Prosecutions or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under subsection (1) for a period not exceeding two years as it considers reasonable.

(8) The Court shall not make a civil forfeiture order if it is satisfied that there would be a serious risk of injustice.

Burden of
proof.

12. When a person is accused of having committed an offence

under this Act, the burden of proving that the property held by him or someone on his behalf is not proceeds of any crime and is untainted property shall be on the accused person and the person claiming on his behalf.

Bail not to be granted in certain cases.

13. (1) A Court shall not grant bail to any person charged with an offence under section 7.

(2) Subject to subsections (3) and (4), a Court may grant bail to any person charged with an offence other than an offence under section 7.

(3) While considering an application for grant of bail to a person charged with an offence other than an offence under section 7, the Court shall take into consideration the following matters-

(a) any previous conviction of the accused of an indictable offence;

(b) the possibility of the accused interfering with the course of justice or any investigation, if bail is granted;

(c) the likelihood of the accused misusing his liberty by indulging in criminal activities;

(d) the likelihood of any attempt by the accused to tamper with evidence or witnesses;

(e) any threat to the safety of the accused person, a witness, the victim or any other person;

(f) any other criminal charges against the accused pending before the Court or a court of summary jurisdiction.

(4) No application under subsection (2) shall be disposed of by the Court without giving the prosecution an opportunity of being heard.

Jurisdiction.

14. (1) Subject to subsection (2), where an offence under this Act is committed outside Guyana, the person committing such offence may be dealt with in respect of the commission of the offence as if the offence had been committed at any place within Guyana or its territorial waters.

(2) A Court in Guyana shall not take cognizance of an offence punishable under this Act which is committed outside Guyana

unless-

- (a) the offence is committed on board a vessel registered in Guyana;
- (b) the offence is committed on board a vessel being leased without crew to a lessee who has his principal place of business in Guyana or where he has no such place of business, his permanent residence is in Guyana; or
- (c) the alleged offender is a citizen of Guyana or is on board a vessel in relation to which the offence is committed when it enters Guyana or is found in Guyana.

Act not in
derogation.

15. The provisions of this Act are in addition to and not in derogation of the provisions of any other law.

Power to
make
regulations.

16. Subject to negative resolution of the National Assembly, the Minister may make regulations for carrying out the provisions of this Act.

Passed by the National Assembly on 3rd July, 2008.

S.E. Isaacs,
Clerk of the National Assembly.

(BILL No. 7 of 2008)