

THE OFFICIAL GAZETTE 7TH APRIL, 2008
LEGAL SUPPLEMENT — C

BILL No. 4 of 2008

Monday 7th April, 2008

PARLIAMENT OFFICE.
Public Buildings,
Georgetown,
Guyana.

7th April, 2008.

The following Bill which will be introduced in the National Assembly is published for general information.

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



BILL No. 4 of 2008

HIJACKING AND PIRACY BILL 2008

ARRANGEMENT OF SECTIONS

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A BILL
Intituled

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 and 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 and 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 and 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. A person who causes the death of any 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 and 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 properties 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.

13. A person accused of an offence under this Act shall, if in custody, not be released on bail or on his own bond unless the Court gives the prosecution an opportunity of being heard:

Provided that a person charged under section 7 shall not be admitted to bail.

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.

EXPLANATORY MEMORANDUM

Of late, there have been a considerable number of cases where sea-going vessels are hijacked or otherwise attacked, the passenger boats crossing rivers are robbed or the fishing boats fishing in the rivers and territorial waters of Guyana are looted by armed robbers or pirates. It is found that the provisions of the Criminal Laws (Offences) Act (Cap.8:01) relating to robbery and piracy are not stringent enough to have a deterrent effect on the crime.

If piracy, armed robbery and hijacking continue to be unchecked by deterrent punishment, the fishermen will reduce their fishing activities, the country's food security will be jeopardized and the exports diminished. The passengers will also be under constant threat of fear. In the circumstances, it has become necessary to have stringent measures to deal with these menaces. This Bill, therefore, seeks to make special provisions for punishment for the offences of armed robbery, hijacking and piracy committed in rivers, internal waters and territorial sea of Guyana and the high seas.

Clause 1 of the Bill sets out the short title of the proposed legislation.

Clause 2 seeks to define certain expressions used in the Bill. These are "armed robbery", "hijacking", "pirate vessel" and "vessel".

Clause 3 seeks to provide for the punishment for armed robbery.

Clause 4 seeks to provide for the punishment for the commission of hijacking.

Clause 5 seeks to define piracy. The definition of piracy as given in this clause is in general conformity with the definition of "piracy" as provided in article 101 of the United Nations Convention of the Law of the Sea with modifications of a drafting nature.

Clause 6 seeks to provide for the punishment for the commission of piracy when murder is not involved.

Clause 7 provides for the punishment of death as the punishment for armed robbery, piracy or hijacking when murder is involved.

Clause 8 deals with the punishment of accessories in respect of the offences punishable under the proposed legislation.

Clause 9 seeks to provide for the forfeiture to the State of the building owned and used by the accused, any vessel, all things, machinery and accessories and weapons made use of or intended to be used in the commission of an offence under the proposed legislation.

Clause 10 seeks to empower the Court to issue restraint order in respect of certain properties of the accused person which are suspected to be proceeds of the crime and are likely to be alienated or disposed of in case no such order is issued.

Clause 11 seeks to provide for issuance by the Court of a civil forfeiture order in respect of proceeds of crime or ill gotten property.

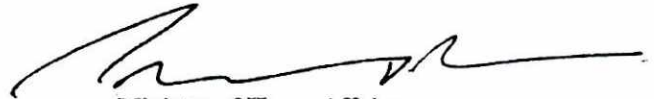
Clause 12 seeks to lay down a provision shifting the burden of proof to the accused person or the person claiming under him any right, title or interest in the property in respect of which a restraint order may be issued.

Clause 13 seeks to provide that a person accused of an offence under the proposed legislation shall not, if in custody, be released on bail or on his own bond unless the Court gives the prosecution an opportunity of being heard. However, there shall be no bail in respect of an offence under section 7.

Clause 14 seeks to specify the jurisdiction of the Court in respect of the offences specified in the proposed legislation.

Clause 15 seeks to clarify that the provisions of the proposed legislation are in addition to and not in derogation of any other law.

Clause 16 seeks to empower the Minister to make regulations subject to negative resolution of the National Assembly.



Minister of Home Affairs.