

THE PREVENTION OF ORGANISED CRIME BILL, 2007

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A Bill for

AN ACT of Parliament to provide for the prevention, detection, investigation and punishment of organised crime; to provide for the recovery of proceeds of organised criminal group activities; to provide for international cooperation and mutual legal assistance, and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I –PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Prevention of Organised Crime Act, 2007, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Interpretation.

2. In this Act, unless the context otherwise requires—

“declared organised criminal group” has the meaning assigned to it in [section 40](#);

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“Minister” means the Minister for the time being responsible for matters relating to internal security;

“monetary instruments” means—

- (a) coins and paper currency of Kenya, or of a foreign country, designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue;
- (b) travellers’ cheques, personal cheques, bank cheques, money orders, investment securities; or
- (c) any other negotiable instruments that are in bearer form, or other form through which title passes upon delivery;

“organised criminal group” means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of—

- (a) committing one or more serious crimes; or
- (b) committing one or more serious crimes in order to obtain, directly or indirectly, a financial or other material benefit or any other advantage,

and includes a declared organised criminal group;

“property” means all monetary instruments and all other real or personal property of every description, including things in action or other incorporeal or heritable property, whether situated in Kenya or elsewhere, whether tangible or intangible, and includes an interest in any such property and

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any such legal document or instrument evidencing title to or interest in such property;

No. 4 of 2003 “public officer” means public officer as defined in the Public Officer Ethics Act, 2003;

“records” includes—

- (a) a photographic record; and
- (b) an electronic or magnetic record, and any computer, disk, tape, apparatus or thing in or on which the record is stored;

“serious crime” means conduct constituting an offence against a provision of any law in Kenya punishable by a term of imprisonment of at least six months, or an offence against a provision of any law in a foreign state for conduct which, if it occurred in Kenya, would constitute an offence against a provision of any law in Kenya; and

“structured group” means a group that is not randomly formed for the immediate commission of an offence, and that does not need to have formally defined roles for its members, continuity of its membership or a developed structure.

**PART II—OFFENCES RELATING TO ORGANISED
CRIMINAL GROUP ACTIVITIES**

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Member of an organised criminal group.

3. A person who belongs, or professes to belong, to an organised criminal group commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding ten years, or both.

Interpretation of member of an organised criminal group.

4. In considering whether a person is a member of an organised criminal group for purposes of this Part, the court shall have regard to the following factors, namely that such person—

- (a) admits to being a member of an organised criminal group;
- (b) is identified as a member of an organised criminal group;
- (c) resides in or frequents a particular organised criminal group's area and adopts the name, colours, symbol, style of dress and grooming, use of hand signs, language, tattoos or other representation associated with the organised criminal group;
- (d) knowingly associates with members of an organised criminal group;
- (e) has been arrested more than once in the company of identified members of an organised criminal group for offences which are consistent with organised criminal group activity;

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- (f) ascribes to the ideologies, values, practices, oathing, mannerisms and general conduct of members of the organised criminal group; or
- (g) knowingly receives any financial or material benefit from an organised criminal group.

Organised
criminal
activity.

5. (1) A person engages in an organised criminal activity where the person—

- (a) acts in concert with other persons in the commission of a serious crime for the purpose of obtaining material or financial benefit or any other purpose;
- (b) with knowledge of the purpose or general criminal activity of an organised criminal group, engages in conduct preliminary to or takes part in—
 - (i) the criminal activity of the organised criminal group;
 - (ii) other activities which the person knows will contribute to a criminal purpose;
- (c) being a member of an organised criminal group, knowingly instructs any person to commit an offence for the benefit of, at the direction of, or in association with, the organised criminal group; or
- (d) knowingly advises, causes, encourages or recruits another person to become a member of

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an organised criminal group.

(2) A person who engages in the activities specified in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding ten years, or both.

Offences relating to organised criminal group activities.

6. A person who participates in or is a member of an organised criminal group and who-

- (a) willfully aids or abets any criminal activity committed for the benefit of, at the direction of, or in association with an organised criminal group;
- (b) threatens to commit, bring about or perform any act of violence or any organised criminal group activity with the assistance of an organised criminal group; or
- (c) threatens any specific person or persons in general with retaliation in any manner or by any means whatsoever, in response to any act or alleged act of violence,

commits an offence, and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

Training for purposes of organised criminal activity.

7. (1) A person who for the purposes of or in connection with organised criminal activity, provides, receives or invites another to receive instructions or training, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

(2) A person who for the purposes of or in connection with organised criminal activity provides, receives or invites another to receive instructions or training, in the making or use of firearms, explosives or other weapons, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

(3) For the purposes of this section—

- (a) a reference to the provision of instruction includes a reference to making it available either generally or to one or more specific persons; and
- (b) an invitation to receive instruction or training may be either general or addressed to one or more specific persons.

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Directing an organised criminal group.

8. A person who organizes, directs, facilitates or counsels the commission of a serious crime involving an organised criminal group, commits an offence and shall on conviction be liable to imprisonment for life.

Possession of article for criminal purposes.

9. A person who possesses an article for a purpose connected with the commission, preparation or instigation of serious crime involving an organised criminal group, commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

Collection of information for organised criminal group purposes.

10. A person who for purposes of or in connection with organised criminal group activities—

- (a) collects, makes or transmits a record of information of a kind likely to be useful to a person committing or preparing to commit serious crime; or
- (b) possesses a document or record containing information of that kind,

commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

Fund-raising and other support.

11. (1) A person who—

- (a) invites another to provide or make available money or other property and intends that the money or other property should be used for the

purposes of an organised criminal group ;

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- (b) receives money or other property and intends that the money or other property should be used for the purposes of the activities of an organised criminal group; or
- (c) provides or makes available money or other property knowing that the money or other property shall or may be used for the purposes of the activities of an organised criminal group,

commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

Extortion.

12. A person who, being a member of an organised criminal group with intent to extort or gain anything from any person, threatens any person with injury or detriment of any kind, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

Use and possession of organised criminal group property.

13. A person who uses, or who causes or permits any other person to use, money or other property belonging to an organised criminal group for the purposes of the activities of an organised criminal group commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

Assisting in retention or control of organised criminal group

14. (1) A person who enters into or becomes concerned in an arrangement whereby the retention or control by or on behalf of another person of an organised criminal group funds is facilitated, whether—

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funds.

- (a) by concealment;
- (b) by removal from the jurisdiction;
- (c) by transfer to nominees; or
- (d) in any other way,

commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

(2) It is a defence for a person charged with an offence under this section to satisfy the court on a balance of probabilities that he did not know and had no reasonable cause to suspect that the arrangement related to the funds of an organised criminal group.

(3) In this section, “criminal group funds” means—

- (a) funds which may be applied or used for the commission of, or in furtherance of or in connection with, acts of an organised criminal group;
- (b) the proceeds of the commission of acts of a criminal group or of activities in furtherance of or in connection with such acts; or
- (c) the resources of an organised criminal group.

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Support services for activities of an organised criminal group.

15. (1) A person who provides or makes available, or offers to provide or make available—

- (a) a financial service or any service for the safe keeping of any property;
- (b) any forged or falsified travel document;
- (c) access to any premises, vehicle, vessel, aircraft or place;
- (d) access to any communications equipment or capability; or
- (e) any service, skill or expertise of any kind,

intending that the same should be used, or having reasonable cause to suspect that it will be used, for the purposes of a organised criminal group, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

(2) A person who organises, attends or addresses a meeting for the purpose of encouraging support of an organised criminal group or furthering its activities, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

Oathing to belong to organised criminal group.

16. (1) A person who—

- (a) is present at and consents to the administering

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of any oath or engagement in the nature of an oath purporting to bind the person who takes it to belong to an organised criminal group or engage in an organised criminal activity;

- (b) administers an oath or engagement in the nature of an oath purporting to bind the person who takes it to belong to an organised criminal group or engage in an organised criminal activity;
- (c) takes any such oath or engagement in the nature of an oath not being compelled to do so; or
- (d) by use of physical force ,or by threat or intimidation of any kind compels another person to take an oath or engagement in the nature of an oath,

commits an offence and shall on conviction be liable to imprisonment for life.

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(2) It shall not be a defence for a person who takes any oath or engagement in the nature of an oath referred to in subsection (1) to prove that he was compelled to do so unless, within five days after the taking of such oath or engagement in the nature of an oath, he reported the matter to the police.

Endangering life and causing damage to property.

17. (1) A member of an organised criminal group who endangers the life of any person or causes serious damage to the property of any other person commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

(2) If as a result of the offence referred to in subsection (1)—

(a) a person dies, the member of the organised criminal group shall on conviction be liable to imprisonment for life;

(b) grievous bodily harm is caused to any person,

the member of the organised criminal group shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

Aiding and abetting.

18. A person who aids, abets, counsels or procures the commission of or who conspires with another person to commit an offence under this Act, commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

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Attempt to
commit an
offence.

19. A person who attempts to commit an offence under this Act commits an offence and shall on conviction be liable to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding fourteen years, or both.

PART III—OBSTRUCTION OF JUSTICE

Obstructing
justice.

20. (1) A person who willfully attempts in any way to obstruct, pervert or defeat the course of justice under this Act commits an offence.

(2) A person who, in relation to a witness or a public officer in any proceedings to which this Act applies—

- (a) uses physical force or threats;
- (b) intimidates or attempts to intimidate;
- (c) dissuades or attempts to dissuade a person from giving evidence;
- (d) induces false evidence;
- (e) interferes with the giving of evidence; or
- (f) interferes with the production of evidence for the purpose of interfering with the judicial process,

commits an offence.

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Retaliation
against
witnesses.

21. A person who, by act or omission, does anything against a person, or a member of the family of the person, in retaliation for the person having given evidence under this Act commits an offence.

Obstructing a
public officer.

22. A person who resists or willfully obstructs a public officer in the execution of his duties under this Act, or a person lawfully acting in aid of the public officer, commits an offence.

False statement.

23. A person who, with intent to mislead, makes a false statement under this Act knowing that the statement is false, commits an offence.

Intimidation.

24. A person who, for the purpose of compelling another person—

- (a) to abstain from doing anything that the person has a lawful right to do; or
- (b) to do anything that the person has a lawful right to abstain from doing under this Act,

causes the person to reasonably fear for his safety or the safety of anyone known to him, commits an offence.

Disclosure of information, etc.

25. (1) A person who, knowing or having reasonable cause to suspect that a police officer is conducting an investigation into the activities of an organised criminal group—

- (a) discloses to another person anything which is likely to prejudice the investigation; or
- (b) interferes with material which is likely to be relevant to the investigation,

commits an offence.

(2) It is a defence for a person charged with an offence under this section to satisfy the court—

- (a) that he did not know and had no reasonable cause to suspect that the disclosure or interference was likely to affect an investigation carried out under this Act; or
- (b) that he had a lawful excuse for the disclosure or interference.

Penalty under this Part

26. A person who commits an offence under this Part shall on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

PART IV—TRACING, CONFISCATION, SEIZURE AND FORFEITURE OF PROPERTY

Property tracing.

27. (1) Where the Attorney-General has reasonable grounds to suspect that a person, a member of an organised

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criminal group or an organised criminal group has committed, is committing or is about to commit a crime or is in possession of property that belongs to an organised criminal group, he may, for the purposes of the investigation of an offence under this Act, apply to the High Court for an order—

- (a) compelling the person to deliver up any document or record relevant to identifying, locating or quantifying any property belonging to him or to the organised criminal group, or in his possession or control;
- (b) requiring a bank or any other financial institution, trustee, cash dealer or custodian to produce all information and deliver up all documents and records regarding any business transaction conducted by or on behalf of the person concerned.

(2) Where any person fails to comply with, is delaying or is otherwise obstructing an order made under this section, the High Court may, upon information sworn to that effect by the Attorney-General, authorise the Attorney-General or any officer deputed by him to enter any premises, including a bank or other financial institution, and search the premises and remove any documents or records for the purposes of executing the order.

(3) An order under this section shall lapse upon the expiry of thirty days from the date of the order unless the High Court, after hearing the parties, otherwise directs.

Restraint orders.

28. (1) The Attorney-General may make an *ex parte*

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application to the High Court for a provisional order temporarily suspending dealings relating to all monies and other property due or owing or belonging to, or held on behalf of—

- (a) a person charged or about to be charged with an offence under this Act; or
- (b) any other specified person.

(2) The Attorney-General may make an *ex parte* application to the High Court for a provisional order temporarily suspending dealings relating to all moneys and other property due or owing or belonging to, or held on behalf of —

- (a) an organised criminal group;
- (b) a specified person reasonably suspected of being a member of such organised criminal group; or
- (c) any other specified person.

(3) An order made under this section may—

- (a) prohibit any person from making money or other property available to or for the benefit of the organised criminal group or suspect;
- (b) provide for the granting of authority to make money or other property available to such

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persons and on such conditions as may be specified in the order;

- (c) require a person to provide such information or produce such documents or records as may be reasonably required for the investigation of an offence under this Act; or
- (d) include such other condition as the court may impose.

(4) The Attorney-General shall—

- (a) cause notice of an order made under this section to be published in the next issue of the Gazette and in two daily newspapers with countrywide circulation;

- (b) give notice of the order to—

- (i) banks, financial institution and cash dealers;

- (ii) any other interested or affected parties; and

- (iii) any other person who he knows or suspects may hold or be vested with property belonging to or held on behalf of the organised criminal group or suspect.

(5) An order under this section shall lapse upon the expiry of thirty days from the date of the order unless the

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High Court, after hearing the parties, otherwise directs.

Seizure and
detention of
organised
criminal group
cash.

29. (1) An authorised officer who has reasonable grounds to suspect that any cash which is being imported into or exported from Kenya, or is being brought to any place in Kenya for the purpose of being exported from Kenya, is the property of an organised criminal group, may seize the cash.

(2) An authorised officer may seize cash under this section even if he reasonably suspects part only of the cash to be the property of an organised criminal group, where it is not reasonably practicable to seize that part only of the cash.

(3) An authorised officer may exercise his powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with the cash concerned.

(4) The authorised officer shall, as soon as is reasonably practicable and in any event not later than seven days after the seizure of cash under this section, make an application to the High Court for a detention order with respect to that cash.

(5) The court shall not make an order for detention of the cash unless it is satisfied that there are reasonable grounds for suspecting that the cash is the property of an organised criminal group.

(6) Subject to subsection (8), any order made under this section shall remain valid for a period of sixty days, and, unless the cash is sooner produced before the court in proceedings against any person for an offence with which the

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cash is connected, may be renewed for further periods of not more than thirty days at a time, by the High Court, on further application.

(7) Any cash detained under this section shall be deposited by the authorised officer in an interest-bearing account with a reputable bank.

(8) The cash, with the interest, shall be released by order of the High Court to a person appearing to the court to be lawfully entitled to it—

- (a) where the conditions under subsection (5) are no longer met; or
- (b) if no proceedings have been brought in connection with the cash within six months of the seizure of the cash.

(9) In this section—

“authorized officer” means—

- (a) a Commissioner of Customs and Excise holding office under the Kenya Revenue Authority Act;
- (b) the Commissioner of Police; or
- (c) the Attorney-General;

“cash” has the meaning assigned to the term “monetary instruments” in section 2 of this Act.

Forfeiture of
property of
organised
criminal group.

30. (1) The court by or before which a person is convicted of—

- (a) an offence under this Act; or
- (b) an offence under any other Act that constitutes an act of an organised criminal group within the meaning of this Act,

may make a forfeiture order in accordance with the provisions of this section.

(2) Where a person is convicted of an offence under this Act, the court may order the forfeiture of any money or other property—

- (a) which, at the time of the offence, he had in his possession or under his control; or
- (b) which, at that time, he intended should be used for the purposes of the activities of the organised criminal group; or
- (c) which, at that time, he knew would or might be used for the purposes of the activities of the organised criminal group;
- (d) to which the arrangement in question related; and
- (e) which, at the time of the offence, he knew was

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the property of an organised criminal group or would or might be used for the purposes of the activities of the organised criminal group.

(3) Where a person is convicted of an offence under this Act, the court may order the forfeiture of any money or other property which wholly or partly, and whether directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(4) Before making an order under this section, a court shall afford any person—

- (a) who is not a party to the proceedings; and
- (b) who claims to be the owner of or otherwise interested in any of the property which may be forfeited under this section,

an opportunity to be heard.

Proceedings.

31. All proceedings under this Part shall be civil in nature.

PART V—MUTUAL ASSISTANCE AND EXTRADITION

Mutual assistance.

32. The Attorney General, at the request of a competent authority of a foreign State, may cause to be disclosed to that authority any information relating to any of the following—

- (a) the actions or movements of persons suspected of involvement in activities of an organised

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- criminal group;
- (b) the use of forged or falsified travel papers by such persons;
- (c) traffic in weapons and sensitive materials by such persons;
- (d) the use of communications technologies by such persons;
- (e) the commission of offences by any person against this Act;
- (f) any other information relevant to the matters being investigated,

if the disclosure is not prohibited by any provision of law and will not be prejudicial to national security or national interest or public safety.

Other requests
from foreign
States.

33. (1) Where a foreign State makes a request for assistance in the investigation or prosecution of an offence committed by a member of an organised criminal group, or an organised criminal group, for the tracing, seizure, restraint, or forfeiture of the property of an organised criminal group located in Kenya, the Attorney-General may—

- (a) execute the request; or
- (b) decline to execute the request, or delay its execution, and inform the foreign State making the request of the reasons therefore.

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(2) Where the Attorney-General decides to execute a request for assistance under subsection (1), he may in the manner prescribed apply to the High Court for—

- (a) an order in writing authorising an officer—
 - (i) to search the premises and any person, and inspect any document, record or thing, found therein; and
 - (ii) to seize and retain any relevant material, including any relevant document, record or thing, found therein;
- (b) a property tracing order under [section 27](#);
- (c) a restraint order under [section 28](#); or
- (d) an order for forfeiture of property under [section 30](#).

(3) The High Court may make an order under this section on such conditions as it may deem fit to impose, including any conditions as to payment of debts, sale, transfer or disposal of any property.

(4) For the purposes of subsection (3), the provisions of this Act relating to the tracing, seizure, restraint, and forfeiture of property shall apply, *mutatis mutandis*, in respect of any act done or alleged to have been done outside Kenya—

- (a) which constitutes an offence under this Act; or

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- (b) which would, if it had been done in Kenya, constitute such an offence.

(5) A power conferred by an order under this section to inspect any record shall, in relation to an electronic or magnetic record, be construed as a power to require full and free access to the record using the facilities of the occupier of the premises.

(6) A power conferred by an order under this section to seize and retain a record includes, in relation to an electronic or magnetic record, a power to seize any disk, computer or other thing on which the record is stored:

Provided that, where a person having custody or control of a computer, magnetic tape or other thing on which a record is stored captures the record on a disk or other more portable object from which the officer executing the order is capable of obtaining ready access to the record, the power shall be exercised in relation to the more portable object.

Requests to
foreign States.

34. (1) The Attorney-General may make a request to any foreign State—

- (a) to provide evidence or information relevant to an offence under this Act; or
- (b) for the tracing, seizure, restraint, or forfeiture of the property of an organised criminal group located in that State.

(2) Where the foreign State to which a request for assistance is made under subsection (1) requires the request to be signed by an appropriate competent authority, the Attorney-General shall, for the purposes only of making such

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a request, be considered as the appropriate competent authority.

(3) The Attorney-General may, in respect of any proceedings for an offence under this Act, apply to the High Court for an order directed to any person resident in a foreign State to deliver himself or any document, record, material or thing in his possession, or under his control, to the jurisdiction of the court or, subject to the approval of the foreign State, to the jurisdiction of a court of the foreign State for the purpose of giving evidence in relation to those proceedings.

(4) Evidence taken, pursuant to a request under this section, in any proceedings in a court of a foreign State may, if it is authenticated, be admitted in evidence in any proceedings to which it relates.

(5) For the purposes of subsection (4), a document is authenticated if—

- (a) it purports to be signed or certified by a judge, magistrate or officer in or of a foreign State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with the official seal of the Government of the foreign State.

Form of requests.

35. (1) A request under [sections 32, 33 and 34](#) shall be in writing and shall be dated and signed by or on behalf of the person making the request.

(2) The request may be transmitted in writing or by facsimile or by any other electronic device or other means.

- (3) The request shall—
- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected offence related to the activities of an organised criminal group or that a person has been convicted of an offence related to the activities of an organised criminal group;
 - (b) state the grounds on which any person is being investigated or prosecuted for an offence related to the activities of an organised criminal group or details of the conviction of the person;
 - (c) give sufficient particulars of the identity of the person;
 - (d) give particulars sufficient to identify any bank, financial institution, cash dealer or other person believed to have information, documents, records or materials which may be of assistance to the investigation or prosecution;
 - (e) request assistance to obtain from a bank, financial institution, cash dealer or other person all and any information, document, record or material which may be of assistance to the investigation or prosecution;
 - (f) specify the manner in which, and the person to whom, any information, document, record or material obtained pursuant to the request is to be produced;

(g) state whether an attachment order or forfeiture order is required and identify the property to be the subject of such an order; and

(h) contain such other information as may assist the execution of the request.

(4) A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with subsection (3) where the Attorney-General is satisfied that there is sufficient compliance to enable him to execute the request.

(5) Where the Attorney-General considers it appropriate, pursuant to an international agreement and in the public interest, he may order that the whole or any part of any property forfeited under [section 30](#), or the value thereof, be returned or remitted to the requesting State.

(6) Once each year, the Attorney-General shall lay before the Parliamentary committee responsible for matters relating to national security a report detailing all requests dealt with by him under this Part.

Transnational
organised crime
convention as a
basis of
extradition.

36. (1) Where Kenya is a party to a transnational organized crime convention and there is in force an extradition agreement between the Government of Kenya and another state which is a party to that convention, the extradition agreement shall be deemed, for the purposes of the Extradition Acts, to include provision for extradition in respect of offences falling within the scope of that convention.

(2) Where Kenya is a party to a transnational organised crime convention and there is no extradition agreement in force between the Government of Kenya and another state which is a party to that convention, the Minister may, by order published in the Gazette, deem the transnational organized crime convention, for the purposes of the Extradition Acts, to be an extradition agreement between the Government of Kenya and that state, providing for extradition in respect of offences falling within the scope of that convention.

(3) Where a citizen of Kenya has been arrested in another country under a law of that country relating to the activities of an organised criminal group, the Attorney-General shall employ all due diligence to ascertain the circumstances of the case and, if necessary, to extend such legal and other assistance as the circumstances of the case may require.

Cap. 77

Cap. 76

(4) In this section, “Extradition Acts” means the Extradition (Commonwealth Countries) Act, and the Extradition (Contiguous and Foreign Countries) Act.

PART VI—MISCELLANEOUS

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General penalty. **37.** A person who commits an offence under this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or both.

Amendment of Cap 76. **38.** The Schedule to the Extradition (Contiguous and Foreign Countries) Act is amended by inserting before the matter relating to “Piracy and Similar Offences” the following matter—

Organised Criminal Group Offences.

Amendment of Cap 77. **39.** The Schedule to the Extradition (Commonwealth Countries) Act is amended by inserting at the end, with appropriate numbering, the following matter—

Organised Criminal Group Offences.

Declaration that organisation is an organised criminal group. **40.** (1) For the purposes of this Act, a group is a declared organised criminal group if—

- (a) it has, by a notice in force under this Act, been declared to be engaged in organised criminal activity; or
- (b) it operates in the same name as a group referred to in paragraph (a).

(2) Subsection (1) (b) has effect subject to the terms of any notice published under this section.

(3) The Minister may by notice published in the Gazette—

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(a) declare that a specified group is engaged in organised criminal activity; or

(b) revoke any notice previously published under this section.

(4) The Minister may exercise his power under subsection (3) (a) in respect of a group only if he believes that it is engaged in organised criminal activity .

(5) For the purposes of subsection (4), a group is engaged in organised criminal activity if it—

(a) commits or participates in organised criminal activity;

(b) prepares for the commission of organised criminal activity;

(c) promotes or encourages commission of organised criminal activity; or

(d) is otherwise concerned in commission of organised criminal activity.

(6) Any person aggrieved by the decision of the Minister under this section may apply to the High Court for redress within fourteen days from the date of publishing the order.

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Rules. **41.** The Minister may make rules for or with respect to any matter which by this Act is required or permitted to be prescribed, or which is necessary or expedient to be prescribed for carrying out or giving effect to this Act.

Evidence. **42.** (1) A document which purports to be—
(a) a notice or direction given or order made by the Minister or the Attorney-General for the purposes of a provision of this Act; and
(b) signed by him or on his behalf,

shall be received in evidence and shall, until the contrary is proved, be deemed to have been given or made by the Minister or the Attorney-General, as the case may be.

(2) A document bearing a certificate which—

- (a) purports to be signed by or on behalf of the Minister or the Attorney-General; and
- (b) states that the document is a true copy of a notice or direction given or order made by the Minister or the Attorney-General for the purposes of a provision of this Act,

shall be evidence of the document in legal proceedings.

Cap. 80. (3) Nothing in this section limits the operation of any provision of the Evidence Act.

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are to provide for the prevention, detection, investigation, criminalisation and punishment of organized crime; to provide for the recovery of proceeds of organized criminal group activities, to provide for international cooperation and mutual legal assistance and to provide for matters incidental and connected therewith.

Part I (clauses 1 – 2) contains preliminary provisions.

Part II (clauses 3 – 19) prescribes certain offences relating to organized criminal group and organized crime related activities. It criminalizes membership to an organised criminal group, participation in the activities of a organized criminal group, directing organised criminal group, possession of article for criminal purpose, collection of information for criminal purpose, fundraising for and assisting organised criminal group and providing support services to a organised criminal group.

Part III (clauses 20 – 26) sets out offences relating to obstruction of justice and unauthorized disclosure of information.

Part IV (clauses 27 – 31) contains provisions that allow the tracing, confiscation, seizure and forfeiture of organized criminal group property.

Part V (clauses 32 – 36) provides for co-operation between Kenya and other States in relation to the investigation of organized crime and the tracing, seizure, forfeiture of organized criminal group property. It also provides for the furnishing of information by the Attorney General, the taking in Kenya of evidence and action at the request of other States and for the making of similar requests by Kenyan authorities.

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Part VI (clauses 37 – 42) contains miscellaneous provisions including the amendment of laws of Kenya relating to extradition and the power of the Minister to make rules. This Part also empowers the Minister to declare groups as organised criminal groups.

The enactment of this Bill will not occasion additional expenditure of public funds.

Dated the 27th July, 2007

JOHN MICHUKI,
Minister Provincial Administration and Internal Security.

The Schedule to Cap. 76 which it is proposed to amend–

EXTRADITION CRIMES

Criminal Homicide and Similar Offences

Murder and attempt and conspiracy to murder.

Manslaughter.

Injury to Persons Not Amounting to Homicide

Wounding or inflicting grievous bodily harm.

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Assault occasioning actual bodily harm and other aggravated assaults punishable by imprisonment for five years or more.

Abduction, Rape and Similar Offences

Rape, defilement and unlawful carnal knowledge.

Abortion and offences relating thereto

Child-Stealing.

Kidnapping and false imprisonment.

Procuration.

Narcotic and Dangerous Drugs

Offences relating to narcotics.

Offences relating to traffic in dangerous drugs.

Damage to property

Malicious damage to property.

Arson.

Falsification of Currency and Similar Offences

Counterfeiting and altering money, and uttering counterfeit or altered money.

Offences relating to counterfeiting.

Forgery and Similar Offences

Theft, and offences relating thereto
Fraudulent conversion.

Burglary and housebreaking, robbery with violence.

Threats by letter or otherwise with intent to extort; intimidation.

Obtaining money or goods by false pretences.

Perjury and subornation of perjury.

Bribery and corruption.

Offences by bankruptcy against bankruptcy law, or any cognizable
offence under the laws relating to bankruptcy.

Fraudulent misappropriations and fraud.

Receiving stolen property.

Piracy and Similar Offences

Piracy by the law of nations.

Sinking or destroying a vessel at sea or an aircraft in the air, or
attempting or conspiring to do so.

Assault on board a ship on the high seas or an aircraft in the air with
intent to destroy life or to do grievous bodily harm.

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Revolt or conspiracy to revolt, by two or more persons, on board a ship on the high seas or an aircraft in the air against the authority of the master, or captain of the aircraft.

Hijacking and offences committed in relation thereto offences relating to aircraft set out in section 5 of the Protection of Aircraft Act.

Slave Dealings

Offences against the Slave Trade Act 1873, or otherwise in connexion with the slave trade, committed on the high seas or on land, or partly on the high seas and partly on land.

General

Counselling, procuring, aiding and abetting, or being an accessory before or after the fact to any of the foregoing.

The Schedule to Cap.77 which it is proposed to amend—

SCHEDULE

DESCRIPTION OF EXTRADITION OFFENCES

1. Murder of any degree.
2. Manslaughter of culpable homicide.
3. An offence against the law relating to abortion.
4. Maliciously or wilfully wounding or inflicting grievous bodily harm.
5. Assault occasioning actual bodily harm.
6. Rape.
7. Unlawful sexual intercourse with a female.

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8. Indecent assault.
9. Procuring, or trafficking in women or young persons for immoral purposes.
10. Bigamy.
11. Kidnapping, abduction or false imprisonment, or dealing in slaves,
12. Stealing, abandoning, exposing or unlawfully detaining a child.
13. Bribery.
14. Perjury or subornation of perjury or conspiring to defeat the course of justice.
15. Arson or fire-raising.
16. An offence concerning counterfeit currency.
17. An offence against the law relating to forgery.
18. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud.
19. Burglary, housebreaking or any similar offence.
20. Robbery.
21. Blackmail or extortion by means of threats or by abuse of authority.
22. An offence against bankruptcy law or company law.
23. Malicious or wilful damage to property.
24. Acts done with the intention of endangering vehicles, vessels or aircraft.
25. An offence against the law relating to dangerous drugs or narcotics.
26. Piracy.
27. Revolt against the master of a ship or the commander of an aircraft.
28. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals.
29. Hijacking and offences committed in relation thereto.
30. Offences relating to aircraft set out in section 5 of the Protection of Aircraft Act.

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