

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,408 of 9th November, 2017

B. 21/17

BILL

FOR

AN ACT to amend the Proceeds of Crime Act 2015 and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Proceeds of Crime (Amendment No.2) Act 2017.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Proceeds of Crime Act 2015.

3.(1) The Proceeds of Crime Act 2015 (“the Act”) is amended in accordance with the provisions of this section.

(2) In section 1B(2)(a) of the Act for “or senior customs officer” substitute “, senior customs officer or such other suitably qualified person as appointed by the Attorney General”.

(3) In section 1C(d) of the Act for “section 3A and section 3B” substitute “section 4A and section 4B”.

(4) After section 70(2) of the Act insert–

“(2A) Conduct which–

- (a) occurs in a country or territory outside Gibraltar;
- (b) constitutes, or is connected with, the commission of a gross human rights abuse or violation in accordance with section 70A; and
- (c) if it occurred in Gibraltar, would be an offence triable under the criminal law on indictment or triable either way,

is also unlawful conduct.”.

(5) After section 70 of the Act insert—

“Gross human rights abuse or violation”.

70A.(1) Conduct constitutes the commission of a gross human rights abuse or violation if all three of the following conditions are met.

(2) The first condition is that—

- (a) the conduct constitutes the torture of a person who has sought—
 - (i) to expose illegal activity carried out by a public official or a person acting in an official capacity; or
 - (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms; or
- (b) the conduct otherwise involves the cruel, inhuman or degrading treatment or punishment of such a person.

(3) The second condition is that the conduct is carried out in consequence of that person having sought to do anything falling within subsection (2)(a)(i) or (ii).

(4) The third condition is that the conduct is carried out—

- (a) by a public official, or a person acting in an official capacity, in the performance or purported performance of his official duties; or
 - (b) by a person not falling within paragraph (a) at the instigation or with the consent or acquiescence—
 - (i) of a public official; or
 - (ii) of a person acting in an official capacity, who is instigating the conduct, or in consenting to or acquiescing in it, is acting in the performance or purported performance of his official duties.
- (5) Conduct is connected with the commission of a gross human rights abuse or violation if it is conduct by a person that involves—
- (a) acting as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation;
 - (b) directing, or sponsoring, such activities;
 - (c) profiting from such activities; or
 - (d) materially assisting such activities.
- (6) Conduct that involves the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture for the purposes of subsection (2)(a).
- (7) It is immaterial whether the pain or suffering is physical or mental and whether it is caused by an act or omission.
- (8) The cases in which a person materially assists activities for the purposes of subsection (5)(d) include, but are not limited to, those where the person—
- (a) provides goods or services in support of the carrying out of the activities; or

- (b) provides any financial or technological support in connection with their carrying out.

“Gross human rights abuse or violation” – Supplementary.

70B.(1) Subject to subsection (2), sections 70(2A) and 70A apply–

- (a) in relation to conduct, so far as that conduct constitutes or is connected with the torture of a person, whether the conduct occurs before or after the coming into force of those sections.
 - (b) in relation to property obtained through such conduct, whether the property is obtained before or after the coming into force of those sections;
 - (c) in relation to conduct, so far as that conduct involves or is connected with the cruel, inhuman or degrading treatment or punishment of a person, only if the conduct occurs after the coming into force of those sections.
- (2) Proceedings under Chapter 1 of Part V may not be brought in respect of property obtained through unlawful conduct of the kind mentioned in section 70(2A) after the end of the period of 20 years from the date on which the conduct constituting the commission of the gross human rights abuse or violation occurs.
- (3) Proceedings under that Chapter are brought when–
- (a) a claim form is issued;
 - (b) an application is made for a property freezing order under section 74; or
 - (c) an application is made for an interim receiving order under section 81,

whichever is the earliest.”.

- (6) In section 145 after the definition for “share” insert–

““triable either way” has the same meaning as in section 2(1) of the Crimes Act 2011.”.

EXPLANATORY MEMORANDUM

This Bill expands the definition of ‘unlawful conduct’ within the Proceeds of Crime Act 2015 to include conduct outside Gibraltar by a public official that constitutes gross human rights abuse (defined as torture or inhuman, cruel or degrading treatment) of a person on the grounds that they have been obtaining, exercising, defending or promoting human rights, or have sought to expose gross human rights abuse conducted by a public official. As a result, any property obtained through this conduct will be subject to the existing civil recovery powers within the Act.

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