



REPUBLIC OF GHANA

EMERGENCY POWERS ACT, 1994 (ACT 472)

ARRANGEMENT OF SECTIONS

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THE FOUR HUNDRED AND SEVENTY-SECOND

ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA ENTITLED

THE EMERGENCY POWERS ACT, 1994.

AN ACT to provide for powers to be exercised in cases of state of emergency.

DATE OF ASSENT: 14th February, 1994.

BE IT ENACTED by Parliament as follows—

Section 1—Declaration of a State of Emergency.

The President may acting in accordance with the advice of the Council of State, by proclamation published in the Gazette, declare that a state of emergency exists in Ghana or in any part of Ghana.

Section 2—Parliament to be Informed.

(1) Notwithstanding any other provision of this Act, where a proclamation is published under section 1 of this Act, the President shall place immediately before Parliament the facts and circumstances leading to the declaration of the state of emergency.

(2) Parliament shall, within seventy-two hours after being so notified, decide whether the proclamation should remain in force or should be revoked; and the President shall act in accordance with the decision of Parliament.

Section 3—Duration of a State of Emergency.

(1) A declaration of a state of emergency shall cease to have effect at the expiration of a period of seven days beginning with the date of publication of the declaration, unless, before the expiration of that period, it is approved by a resolution passed for that purpose by a majority of all the members of Parliament.

(2) Subject to subsection (2) of section 4, a declaration of a state of emergency approved by a resolution of Parliament shall continue in force until the expiration of a period of three months beginning with the date of its being so approved or until such earlier date as may be specified in the resolution.

Section 4—Revocation of State of Emergency.

(1) Parliament may, by resolution passed by a majority of all members of Parliament, extend its approval of the declaration for periods of not more than one month at a time.

(2) Parliament may, by a resolution passed by a majority of all the members of Parliament, at any time, revoke a declaration of a state of emergency approved by Parliament.

Section 5—Circumstances Under which a State of Emergency may be Declared.

The circumstances under which a state of emergency may be declared under this Act include a natural disaster and any situation in which any action is taken or is immediately threatened to be taken by any person or body of persons which—

(a) is calculated or likely to deprive the community of the essentials of life; or

(b) renders necessary the taking of measures which are required for securing the public safety, the defence of Ghana and the maintenance of public order and of supplies and services essential to the life of the community.

Section 6—Consequential Powers.

(1) On the declaration of a state of emergency under section 1 of this Act, the President may take such measures as he considers are reasonably justifiable for the purpose of dealing with the situation that exists during the period that the state of emergency is in force.

(2) Without prejudice to subsection (1) of this section, the President during the period of emergency, may—

(a) in the case of an emergency affecting the whole of Ghana prevent assistance to an enemy in case of war; and

(b) in the case of an emergency affecting the whole or any part of Ghana cause the doing of any or all of the following-

(i) the detention of persons or the restriction of their movement;

(ii) the deportation and expulsion from Ghana of persons who are not Ghanaians;

(iii) the taking possession or control on behalf of the state of any property;

(iv) the acquisition of any property;

(v) the searching without warrant of any premises;

(vi) the payment of compensation to any person affected by any action taken under the emergency;

(vii) the arrest, trial and punishment of persons for breach of any instruments, orders or declaration related to the state of emergency;

(viii) the suspension of operation of any law; and

(ix) the removal of any person from the emergency area where the emergency relates only to a part of the country.

(3) The powers conferred on the President may be exercised by the issue of executive instruments, orders or declarations published in the Gazette.

(4) Any instrument or declaration published may

(a) empower other persons or authorities specified in it to take such steps or such action as may be specified therein;

(b) contain such incidental and supplementary provisions as appear to the President to be necessary or expedient for dealing with the situation.

Section 7—Contradiction of Act to Articles 12 to 30 of Chapter Five of Constitution.

No action or step taken in pursuance of a declaration of a state of emergency under this Act or any other enactment shall be held to be inconsistent or in contravention of the provisions contained in article 12 to 30 of the Constitution.

Section 8—Person on Detained Under Emergency Law.

(1) Where a person is restricted or detained pursuant to a declaration of a state of emergency, the following provisions shall apply—

(a) he shall as soon as practicable, and in any case not later than twenty-four hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds upon which he is restricted or detained and the statement shall be read or interpreted to the person restricted or detained;

(b) the spouse, parent, child or other available next of kin of the person restricted or detained shall be informed of the detention or restriction within twenty-four hours after the commencement of the detention or restriction and be permitted access to the person at the earliest practicable opportunity, and in any case within twenty-four hours after the commencement of the restriction or detention.

Section 9—Gazette Publication of Detained Persons.

(1) Not more than ten days after the commencement of the restriction or detention of a person under section 8, a notification shall be published in the Gazette and in the media stating that he has been restricted or detained and the grounds of his restriction or detention.

(2) Not more than ten days after the commencement of the restriction or detention, and after that, during the restriction or detention, at intervals of not more than three months, the case shall be reviewed by a tribunal composed of not less than three Justices of the Superior Court of Judicature appointed by the Chief Justice; except that the same tribunal shall not review more than once the case of a person restricted or detained.

(3) The person detained shall be afforded every possible facility to consult a lawyer of his choice who shall be permitted to make representations to the tribunal appointed for the review of the case, and at the hearing of his case, he shall be permitted to appear in person or by a lawyer of his choice.

(4) On a review by a tribunal of the case of a restricted or detained person, the tribunal may order the release of the person and the payment to him of adequate compensation or uphold the grounds of his restriction or detention, and the authority by which the restriction or detention was ordered shall act accordingly.

Section 10—Report to Parliament of Persons Detained Under Emergency Powers.

(1) In every month in which there is a sitting of Parliament, the Minister authorised by the President shall make a report to Parliament of the number of persons restricted or detained by virtue of this Act or any other enactment conferring emergency powers and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this Act.

(2) Notwithstanding subsection (1) of this section, the Minister referred to in subsection (1) shall publish every month in the Gazette and in the media—

(a) the number and the names and addresses of the persons restricted or detained;

(b) the number of cases reviewed by the tribunal; and

(c) the number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this Act.

(3) For the avoidance of doubt, it is hereby declared that at the end of an emergency declared under section 1 of this Act, a person in restriction or detention or in custody as a result of the declaration of the emergency shall be released immediately.

Section 11—Hearing of Proceedings in Camera.

(1) A court sitting in any part of Ghana where a proclamation under section 1 of this Act is in force may, if it is satisfied that it is in the interest of the public safety or the defence of the State—

(a) direct that throughout or during any part of its proceedings such persons or classes of persons as the court may determine shall be excluded; and

(b) prohibit or restrict the disclosure of information relating to its proceedings.

(2) A person who contravenes the directions of the court under subsection (1) commits an offence and is liable on conviction to imprisonment for not less than 14 days.

Section 12—Military Courts.

Nothing in this Act shall authorise the making of any provision for the trial of a non-military person by a military court.

Section 13—Act not to Derogate from Other Powers.

The provisions of this Act are in addition to, and not in derogation of any other powers vested in or conferred on the President, public officers, the courts or other persons by any other law.

(3) The register of voters for public elections and referenda in existence immediately before the coming into force of this Act shall until revised have effect on the coming into force of this Act as if it was compiled under this Act.