

FIJI ISLANDS

Country Report: Anti-terrorism laws & policing

1. Country summary*

- a. **Government:** Currently a military regime. Military leader Josaia Voreqe Bainimarama (Frank Bainimarama) has been interim Prime Minister since January 2007
- b. **Population:** 905 949
- c. **Size:** 18 270 sq km
- d. **Region:** Pacific


- e. **General**

Fiji became independent in 1970, after nearly a century as a British colony. Democratic rule was interrupted by two military coups in 1987 fuelled by concern that Fijians of Indian descent dominated the government. The coups together with the 1990 imposition of a Constitution that attempted to perpetuate indigenous control over government led to the large-scale emigration of Indians from Fiji. The sudden demographic change compounded economic and sociopolitical problems in the country. A more equitable Constitution was drafted in 1997 and enacted by Parliament with unanimous support. Free and peaceful elections in 1999 produced the country's first Indo-Fijian Prime Minister, but a civilian-led coup in May 2000 ushered in a prolonged period of political turmoil. Fresh elections held in August 2001 returned an indigenous-dominated government led by Prime Minister Laisenia Qarase. After his re-election in May 2006, Qarase was ousted from office in December 2006 in a military coup led by Commodore Voreqe Bainimarama, who appointed himself acting president. In January 2007, Bainimarama was appointed interim prime minister.¹ A state of emergency declared by Bainimarama in December 2006 was lifted at the end of May 2007.²

Anti-terrorism measures in the Pacific Islands

Since the 2001, the Pacific Islands have been under pressure to comply with international anti-terrorism conventions. The demands come principally from Australia who considers the Pacific Islands to be at risk of being used by terrorists as transit points to other countries including Australia. Prior to the 2001 attacks, Australia had already been involved in policy and legislative decisions in the Pacific Islands. The Australian Attorney General's Department and the Pacific Islands Forum (PIF) had agreed on the 1992 Honiara Declaration on Law Enforcement Cooperation which requires the Pacific Islands "to have in place policy and legislation to combat transnational organised crime".³ The Nasonini Declaration on Regional Security followed the Honiara Declaration in 2002, with an emphasis on counter-terrorism and the need to conform to the United Nations Transnational Organised Crime Convention and Protocols. Australia already has Memoranda of Understanding with the Fiji Islands and Papua New Guinea although neither country has anti-terrorism legislation in place.

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The PIF has also adopted a Pacific Plan, the ‘Kaliboro Roadmap’.⁴ The Pacific Plan has four pillars aimed at improving economic growth, sustainable development, good governance, and security for the Pacific through regionalism. The fourth pillar on increased security covers anti-terrorism and counter-terrorism.

Most of the Pacific Islands do not have any specific anti-terrorism legislation. However, new legislation has been drafted to secure borders, particularly around maritime and aviation points. Therefore the impact of anti-terrorism is clearest on the policing of border control, customs, immigration, money laundering, port control and airport security. Additionally, there has been a crackdown on transnational crime, an issue that was already prevalent long before 2001. Although security has visibly increased, finding examples of the impact of relevant legislation on policing in the general public is difficult due to the sparse use of the term terrorism in that context. In fact, Pacific Islanders prefer not to use the term loosely and there is a popular opinion that terrorism is not a fundamental issue to be addressed in these countries. As Imrana Jalal of Pacific Regional Rights Resource Team (RRRT) points out, the Pacific does “not wish to be drawn into America’s war on terrorism”.⁵

Critics of the Pacific Plan have voiced distrust with regard to alleged “disproportionate concern about national security, particularly Australian national security. Since [Pacific Island Countries] are not yet to be overly concerned with external threats, there is an argument that security in this context ought to be more about human security...rather than focused only on national security”.⁶ The Pacific Islands have existing internal issues to attend to such as economic, environmental, social and political matters. These issues are regarded as more important in the region than issues of terrorism.

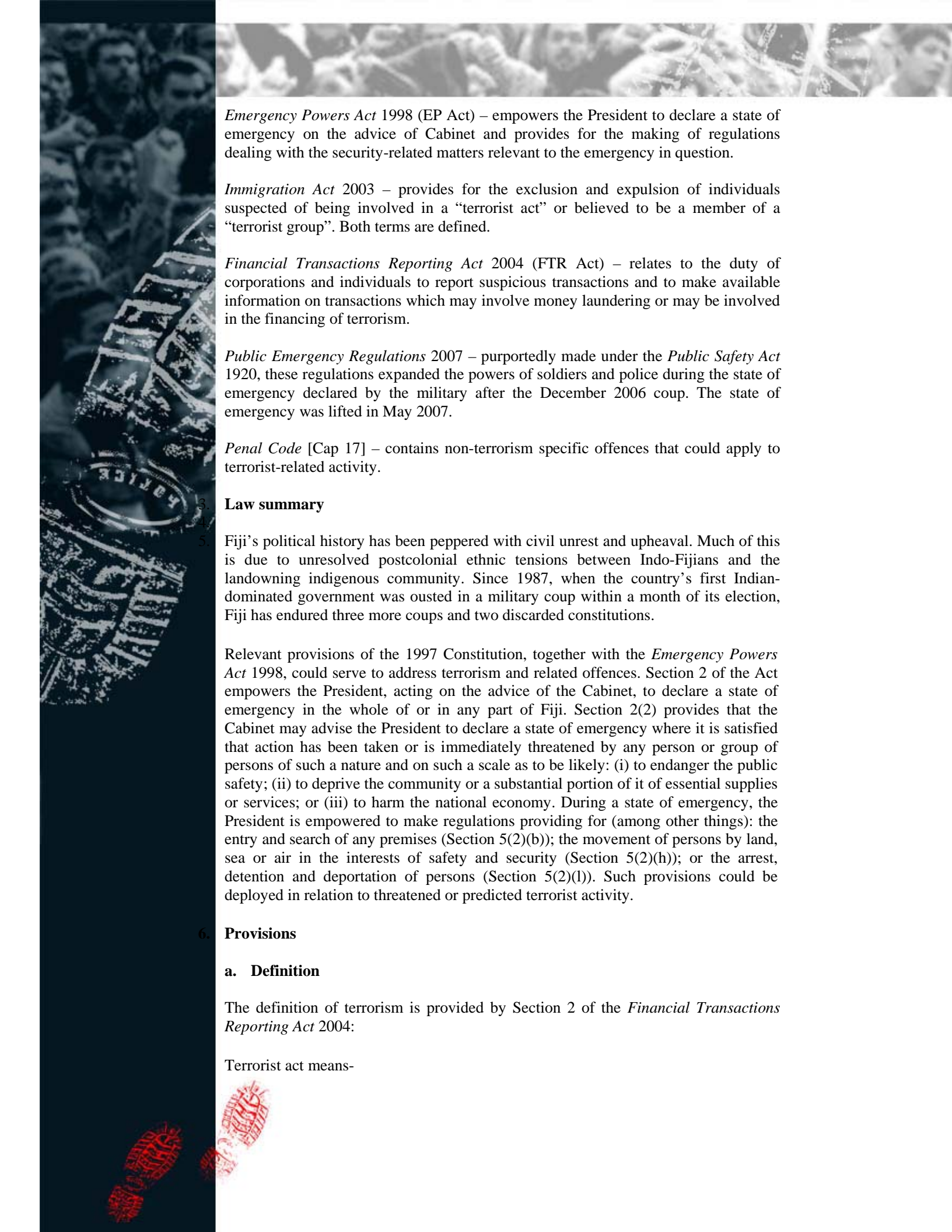
Fiji does not have specific anti-terrorism legislation. The country is currently in another post-coup situation and was recently under a state of emergency that included the suspension of many human rights. There has been a shift in policing with the military taking responsibility for maintaining order. This military takeover has resulted in critics of the interim government and military being intimidated and attacked.⁷ In addition to these incidents, the acting President has granted immunity to the coupsters. This lack of accountability in the present regime has rendered Fiji unstable and dangerous for those opposing the new regime.

Despite human rights violations occurring as a result of policing practices, these incidents are not relevant examples for this report as they relate to policing under a military coup, not to an anti-terrorism framework. However, the impact of the campaign against terrorism on policing can be detected in heightened security around aviation and maritime points.⁸

2. Relevant legislation

There is no specific legislation in Fiji enacted to address terrorism,⁹ although a series of enactments provide the definition of terrorism and potentially provide the executive with powers to deal with terrorist related activity.

Constitution Amendment Act 1997 – includes an extensive Bill of Rights and specifies which rights are derogable in a state of emergency. Redress for violations of these rights is available through the courts.



Emergency Powers Act 1998 (EP Act) – empowers the President to declare a state of emergency on the advice of Cabinet and provides for the making of regulations dealing with the security-related matters relevant to the emergency in question.

Immigration Act 2003 – provides for the exclusion and expulsion of individuals suspected of being involved in a “terrorist act” or believed to be a member of a “terrorist group”. Both terms are defined.

Financial Transactions Reporting Act 2004 (FTR Act) – relates to the duty of corporations and individuals to report suspicious transactions and to make available information on transactions which may involve money laundering or may be involved in the financing of terrorism.

Public Emergency Regulations 2007 – purportedly made under the *Public Safety Act 1920*, these regulations expanded the powers of soldiers and police during the state of emergency declared by the military after the December 2006 coup. The state of emergency was lifted in May 2007.

Penal Code [Cap 17] – contains non-terrorism specific offences that could apply to terrorist-related activity.

Law summary

Fiji’s political history has been peppered with civil unrest and upheaval. Much of this is due to unresolved postcolonial ethnic tensions between Indo-Fijians and the landowning indigenous community. Since 1987, when the country’s first Indian-dominated government was ousted in a military coup within a month of its election, Fiji has endured three more coups and two discarded constitutions.


Relevant provisions of the 1997 Constitution, together with the *Emergency Powers Act 1998*, could serve to address terrorism and related offences. Section 2 of the Act empowers the President, acting on the advice of the Cabinet, to declare a state of emergency in the whole of or in any part of Fiji. Section 2(2) provides that the Cabinet may advise the President to declare a state of emergency where it is satisfied that action has been taken or is immediately threatened by any person or group of persons of such a nature and on such a scale as to be likely: (i) to endanger the public safety; (ii) to deprive the community or a substantial portion of it of essential supplies or services; or (iii) to harm the national economy. During a state of emergency, the President is empowered to make regulations providing for (among other things): the entry and search of any premises (Section 5(2)(b)); the movement of persons by land, sea or air in the interests of safety and security (Section 5(2)(h)); or the arrest, detention and deportation of persons (Section 5(2)(l)). Such provisions could be deployed in relation to threatened or predicted terrorist activity.

6. Provisions

a. Definition

The definition of terrorism is provided by Section 2 of the *Financial Transactions Reporting Act 2004*:

Terrorist act means-



(a) an act or omission in or outside the Fiji Islands which constitutes an offence within the scope of a counter-terrorism convention;


(b) an act or threat of action in or outside the Fiji Islands which -

- (i) involves serious bodily harm to a person;
- (ii) involves serious damage to property;
- (iii) endangers a person's life;
- (iv) creates a serious risk to the health or safety of the public or a section of the public;
- (v) involves the use of firearms or explosives;
- (vi) involves releasing into the environment or any part thereof or distributing or exposing the public or any part thereof to any dangerous, hazardous, radioactive or harmful substance, any toxic chemical, or any microbial or other biological agent or toxin;
- (vii) is designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure;
- (viii) is designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or
- (ix) involves prejudice to national security or public safety;

and is intended, or by its nature and context, may reasonably be regarded as being intended to-

- (A) intimidate the public or a section of the public;
or
- (B) compel a government or an international organisation to do, or refrain from doing, any act; or
- (C) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation;

but does not include an act which disrupts any services, and is committed in pursuance of a protest, demonstration or stoppage of



work if the act is not intended to result in any harm referred to in subparagraphs, (i), (ii), (iii) or (iv).

This definition of terrorism forms the basis of several financing offences under the Act (see 'f. Other' below). The definition appears rather comprehensive, and allows for exception in the case of disruption though legitimate political activity.

b. Arrest

In the absence of any specific legislation creating an offence of terrorism and providing for its prosecution, the *Criminal Procedure Code* applies to arrests in relation to terrorism. Section 13(2) provides that a police officer may employ 'whatever means necessary' to effect an arrest, although the force used should be no more than reasonably necessary and proportional in the circumstances.

c. Detention/custody

As mentioned above, the President may make regulations relating to the detention and arrest of persons under the EP Act. However, these powers are limited by the 1997 Constitution.

Section 23(3) of the Constitution provides that if a person is detained pursuant to a measure authorised under a state of emergency, the detainee shall be given a statement in writing within seven days to notify him or her of the grounds of detention. Subsection (b) provides that notice of the detention shall be published in the Government Gazette within 14 days of the start of the detention. Subsection (c) provides that a detained individual shall be given the opportunity to communicate with and be visited by his or her spouse or next of kin, a religious worker or social worker. Subsection (d) provides that the individual shall be given reasonable facilities to consult with a lawyer of his or her choice. Subsection (e) provides that the detention ordered must be reviewed within one month, and thereafter at intervals of not more than six months, by an impartial judicial tribunal.

Section 21 of the Constitution stipulates that the Bill of Rights is binding on the legislative, executive or judicial branches of government at all levels, and on all persons performing any functions of any public office.


d. Use of force

There are no specific provisions that relate to the use of force by police when affecting arrests in relation to terrorism. Sections 22, 25 and 187 of the Constitution provide that the right to life and the right to freedom from torture and cruel, inhumane, degrading or disproportionately severe treatment or punishment are non-derogable even in a state of emergency.

e. Immunity

There are no specific provisions in any specific legislation that refer to immunity against judicial review for any acts done to apprehend individuals in relation to terrorism. Technically, the President would be free to make such provisions under the *Emergency Powers Act*, however the Constitution would limit this power.

Section 21(2) of the Constitution provides that the rights outlined in the Bill of Rights are only subject to limitation as provided for in the Constitution. Furthermore, the



following rights are non-derogable (Section 187(3)): the right to life, freedom from cruel or degrading treatment, freedom from unreasonable searches and seizure, the rights of people arrested or detained, and the rights of people charged with offences.

The Constitution provides that individuals who feel their rights have been violated may seek redress through the courts. The Fiji Human Rights Commission also has the statutory power to investigate alleged human rights violations.

Section 41 of the Constitution provides that an individual who feels that his or her rights have been or are about to be violated may apply to the High Court for redress. Where the individual is being detained, Subsection (1) provides that another person may apply to the High Court on his or her behalf.

f. Other

The *Financial Transactions Reporting Act* 2004 establishes a series of offences relating to the financing of terrorism. For the purposes of the Act, a terrorist group is taken to mean an entity that has as one of its activities the commission or facilitation of a terrorist act, or an organisation that is proscribed by regulation.

Section 10 provides that a financial institution must pay special attention to any large and unusual transactions, or large transactions with countries that do not have a comprehensive system for preventing and deterring money laundering or the financing of terrorism. The fines for this offence are considerable: \$30,000 or five years imprisonment or both for an individual, or a fine of \$150,000 for a body corporate.

Section 14 provides for the reporting of suspicious transactions. Where a financial institution has information relating to transactions which may be related to an offence of financing terrorism or preparatory to such an offence, the institution is obliged to report the transaction to the Financial Intelligence Unit.

Part 4 provides for the powers and functions of the Financial Intelligence Unit. Section 25 provides that if the Unit has reasonable grounds to suspect that a transaction may lead to the commission of a serious offence including the financing of terrorism, or be preparatory to the financing of terrorism, the Unit may apply for an *ex parte* order before a judge of the High Court seeking that the institution refrain from that particular transaction.

¹ Information sourced from the CIA World Factbook, <https://www.cia.gov/cia/publications/factbook/geos/fj.html>

² BBC News, <http://news.bbc.co.uk/1/hi/world/asia-pacific/6707105.stm>

³ Attorney-General's Department, Australian Government (2006) *Australia's Aid Program in the Pacific: Submission by the Attorney-General's Department*, 30 June: <http://www.aph.gov.au/house/committee/jfadt/pacificaid/subs/sub15.pdf> as on 6 March 2007.

⁴ See Australian Government: Department of Foreign Affairs and Trade (25-27 October 2005), *Thirty-Sixth Pacific Islands Forum*, p.2, http://www.dfat.gov.au/geo/spacific/regional_orgs/pif36_communique.html as on 06/03/07.

⁵ Jalal, I (14 July 2006) "Through Pacific Eyes: Australia and the Pacific Islands", *National President's Forum*, 14 July: http://www.aiaa.asn.au/national/7_Jalal_Through_Pacific_Eyes.html as on 5 March 2007.

⁶ Ibid.

⁷ Women Human Rights Defenders (26 December 2006) *Human Rights Defenders Harassed and Arrested*: http://www.defendingwomendefendingrights.org/fiji_hrd_harrassed.php as on 4/03/07; Fiji Times Online (3 January 2007) *Activists were Warned: Army*: <http://www.fijitimes.com/story.aspx?id=54512&reason=0>; Pacific Media Watch (24 January 2007) *Military regime questions lawyer critic Richard Naidu*: <http://www.pmw.c2o.org/2007/fiji5105.html>; Pacific Media Watch (20 January 2007) *President grants immunity to 2006 coupsters*: <http://www.pmw.c2o.org/2007/fiji5100.html>; Pacific Media Watch (9 December 2006) *Army warns Fiji Times correspondents*: <http://www.pmw.c2o.org/2006/fiji5075.html>.

⁸ Secretariat of the Pacific Community (7/12/06), *Port Security- Fiji*, http://www.spc.int/maritime/index.php?option=com_content&task=view&id=47&Itemid=39; The Fiji Times Online (27/02/07), *New security measures hit Fiji flights*, <http://www.fijitimes.com/story.aspx?id=57863>.

⁹ In the absence of internationally accepted definitions of the terms “terrorism”, “terrorist” and “terrorist act”, in this report these terms refer to either the definition as enshrined in the country’s legislation, or the common use of the term. The use and meaning of these terms is addressed in CHRI’s report “Stamping Out Rights: The impact of anti-terrorism laws on policing” (2007).