

# VANUATU

## Country Report: Anti-terrorism laws & policing

### 1. Country summary

- a. Government:** Parliamentary democracy
- b. Population:** 218 000
- c. Size:** 12 189 sq km
- d. Region:** Pacific

### 2. General

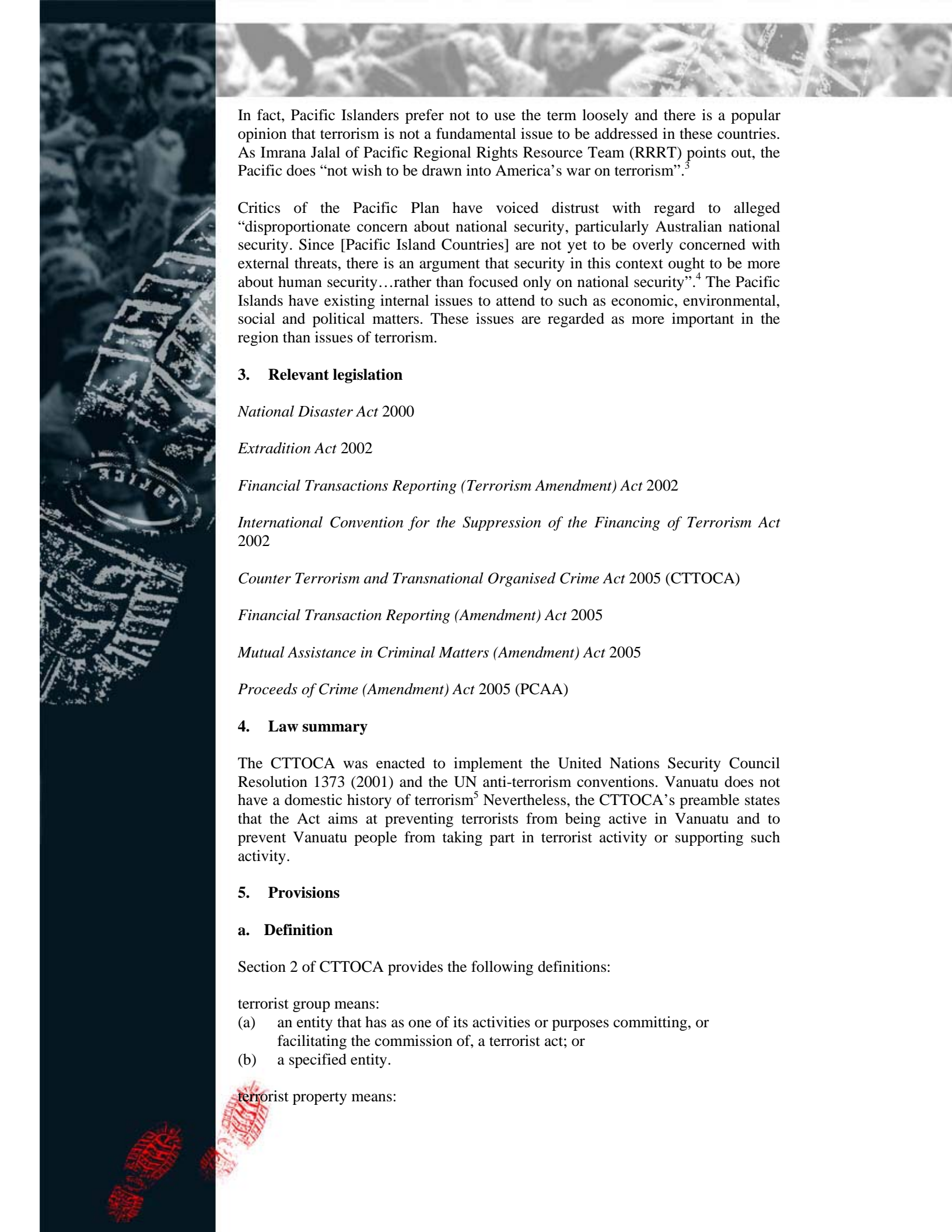
Vanuatu attained independence in 1980, after a two-decade movement for self-governance and independence. The country fell into political instability in the 1990s, resulting in an attempted coup in 1996 by the Vanuatu Mobile Force. The situation stabilised and elections were held in 1997 and 2004.

#### 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".<sup>1</sup> 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.

The PIF has also adopted a Pacific Plan, the "Kaliboro Roadmap".<sup>2</sup> 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”.<sup>3</sup>

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”.<sup>4</sup> 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.

### **3. Relevant legislation**

*National Disaster Act 2000*

*Extradition Act 2002*

*Financial Transactions Reporting (Terrorism Amendment) Act 2002*

*International Convention for the Suppression of the Financing of Terrorism Act 2002*

*Counter Terrorism and Transnational Organised Crime Act 2005 (CTTOCA)*

*Financial Transaction Reporting (Amendment) Act 2005*

*Mutual Assistance in Criminal Matters (Amendment) Act 2005*

*Proceeds of Crime (Amendment) Act 2005 (PCAA)*

### **4. Law summary**

The CTTOCA was enacted to implement the United Nations Security Council Resolution 1373 (2001) and the UN anti-terrorism conventions. Vanuatu does not have a domestic history of terrorism<sup>5</sup> Nevertheless, the CTTOCA’s preamble states that the Act aims at preventing terrorists from being active in Vanuatu and to prevent Vanuatu people from taking part in terrorist activity or supporting such activity.

### **5. Provisions**

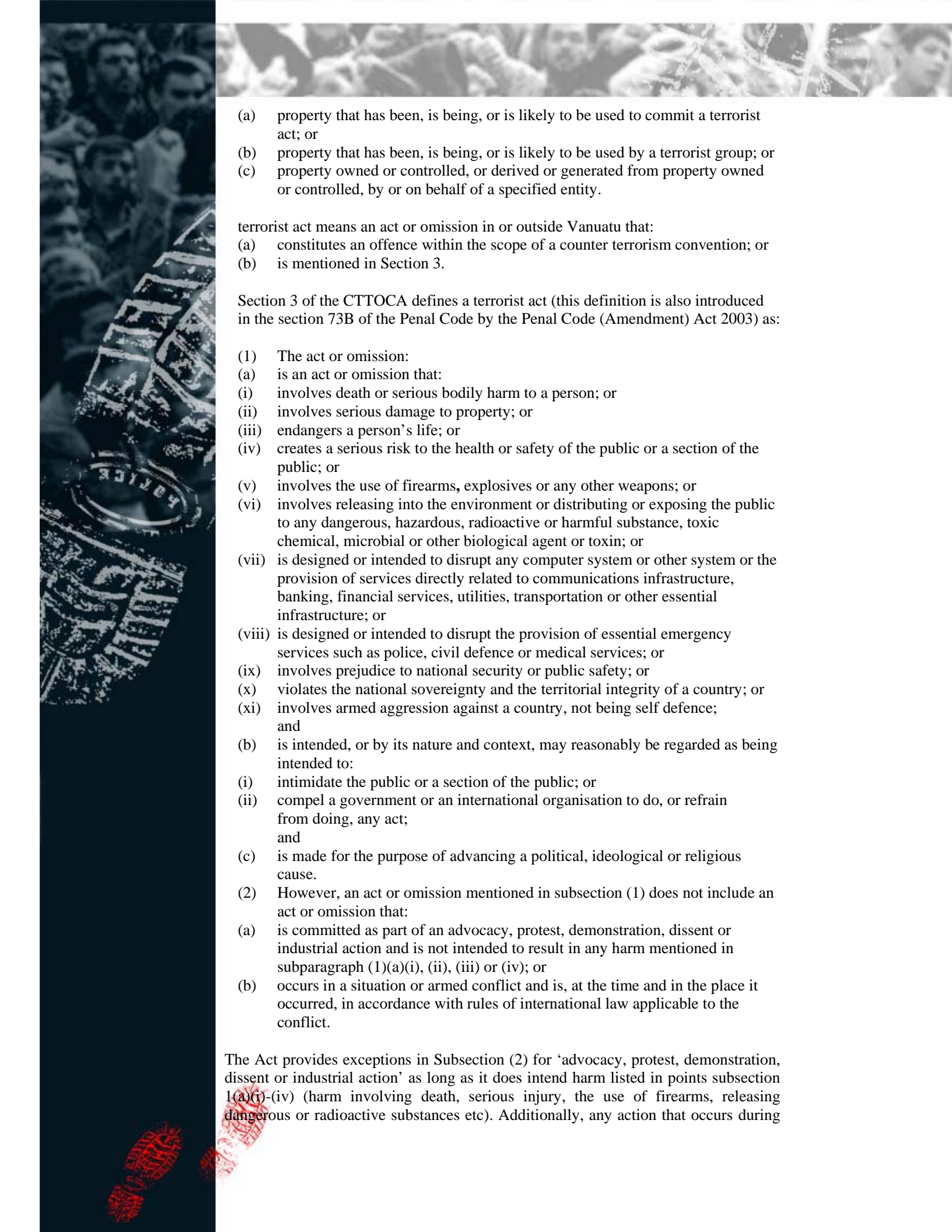
#### **a. Definition**

Section 2 of CTTOCA provides the following definitions:

terrorist group means:

- (a) an entity that has as one of its activities or purposes committing, or facilitating the commission of, a terrorist act; or
- (b) a specified entity.

terrorist property means:

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- (a) property that has been, is being, or is likely to be used to commit a terrorist act; or
  - (b) property that has been, is being, or is likely to be used by a terrorist group; or
  - (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.

terrorist act means an act or omission in or outside Vanuatu that:

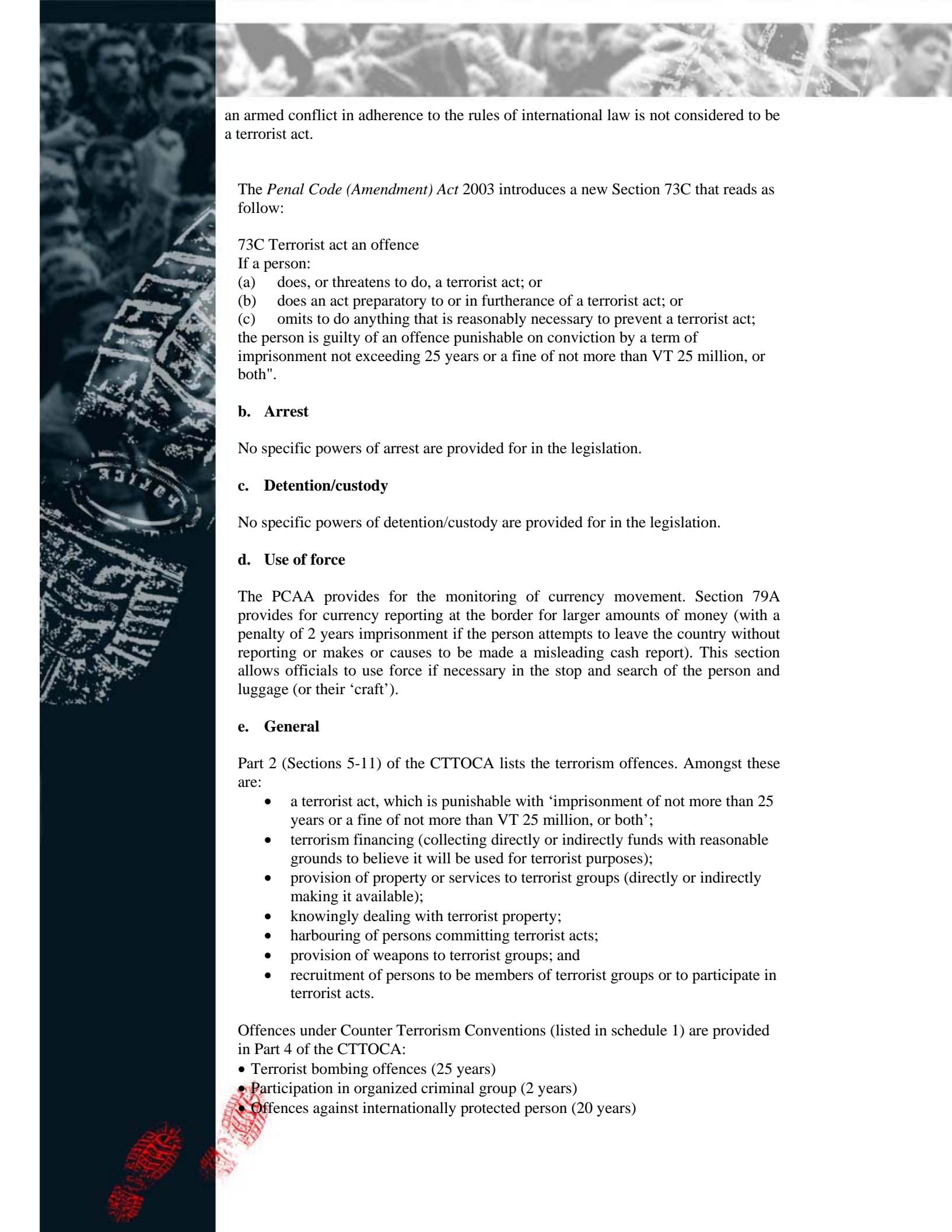
- (a) constitutes an offence within the scope of a counter terrorism convention; or
- (b) is mentioned in Section 3.

Section 3 of the CTTOCA defines a terrorist act (this definition is also introduced in the section 73B of the Penal Code by the Penal Code (Amendment) Act 2003) as:

- (1) The act or omission:
  - (a) is an act or omission that:
    - (i) involves death or serious bodily harm to a person; or
    - (ii) involves serious damage to property; or
    - (iii) endangers a person's life; or
    - (iv) creates a serious risk to the health or safety of the public or a section of the public; or
    - (v) involves the use of firearms, explosives or any other weapons; or
    - (vi) involves releasing into the environment or distributing or exposing the public to any dangerous, hazardous, radioactive or harmful substance, toxic chemical, microbial or other biological agent or toxin; or
    - (vii) is designed or intended to disrupt any computer system or other system or the provision of services directly related to communications infrastructure, banking, financial services, utilities, transportation or other essential infrastructure; or
    - (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; or
    - (x) violates the national sovereignty and the territorial integrity of a country; or
    - (xi) involves armed aggression against a country, not being self defence; and
  - (b) is intended, or by its nature and context, may reasonably be regarded as being intended to:
    - (i) intimidate the public or a section of the public; or
    - (ii) compel a government or an international organisation to do, or refrain from doing, any act; and
  - (c) is made for the purpose of advancing a political, ideological or religious cause.
- (2) However, an act or omission mentioned in subsection (1) does not include an act or omission that:
  - (a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subparagraph (1)(a)(i), (ii), (iii) or (iv); or
  - (b) occurs in a situation or armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

The Act provides exceptions in Subsection (2) for 'advocacy, protest, demonstration, dissent or industrial action' as long as it does not intend harm listed in points subsection 1(a)(i)-(iv) (harm involving death, serious injury, the use of firearms, releasing dangerous or radioactive substances etc). Additionally, any action that occurs during





an armed conflict in adherence to the rules of international law is not considered to be a terrorist act.

The *Penal Code (Amendment) Act* 2003 introduces a new Section 73C that reads as follow:

**73C Terrorist act an offence**

If a person:

- (a) does, or threatens to do, a terrorist act; or
  - (b) does an act preparatory to or in furtherance of a terrorist act; or
  - (c) omits to do anything that is reasonably necessary to prevent a terrorist act;
- the person is guilty of an offence punishable on conviction by a term of imprisonment not exceeding 25 years or a fine of not more than VT 25 million, or both".

**b. Arrest**

No specific powers of arrest are provided for in the legislation.

**c. Detention/custody**

No specific powers of detention/custody are provided for in the legislation.

**d. Use of force**

The PCAA provides for the monitoring of currency movement. Section 79A provides for currency reporting at the border for larger amounts of money (with a penalty of 2 years imprisonment if the person attempts to leave the country without reporting or makes or causes to be made a misleading cash report). This section allows officials to use force if necessary in the stop and search of the person and luggage (or their 'craft').


**e. General**

Part 2 (Sections 5-11) of the CTTOCA lists the terrorism offences. Amongst these are:

- a terrorist act, which is punishable with 'imprisonment of not more than 25 years or a fine of not more than VT 25 million, or both';
- terrorism financing (collecting directly or indirectly funds with reasonable grounds to believe it will be used for terrorist purposes);
- provision of property or services to terrorist groups (directly or indirectly making it available);
- knowingly dealing with terrorist property;
- harbouring of persons committing terrorist acts;
- provision of weapons to terrorist groups; and
- recruitment of persons to be members of terrorist groups or to participate in terrorist acts.

Offences under Counter Terrorism Conventions (listed in schedule 1) are provided in Part 4 of the CTTOCA:

- Terrorist bombing offences (25 years)
- Participation in organized criminal group (2 years)
- Offences against internationally protected person (20 years)

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- Offences of taking a hostage (20 years)
  - Offences related to nuclear material (25 years)
  - Other offences relating to nuclear material (25 years)
  - Offence of Hijacking (20 years),

Other offences included in the CTTOCA relate more to international organised crime than terrorism.

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<sup>1</sup> 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.

<sup>2</sup> 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](http://www.dfat.gov.au/geo/spacific/regional_orgs/pif36_communique.html) as on 06/03/07.

<sup>3</sup> Jalal, I (2006) at the National President's Forum (14 July 2006), "Through Pacific Eyes: Australia and the Pacific Islands" at the *National President's Forum*: [http://www.aiia.asn.au/national/7\\_Jalal\\_Through\\_Pacific\\_Eyes.html](http://www.aiia.asn.au/national/7_Jalal_Through_Pacific_Eyes.html) as on 5 March 2007.

<sup>4</sup> Ibid.

<sup>5</sup> 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).