

# KIRIBATI

## Country Report: Anti-terrorism laws & policing

### 1. Country summary

- a. **Government:** Parliamentary Republic
- b. **Population:** 103 092
- c. **Size:** 811 sq km
- d. **Region:** Pacific


### 2. General

The Gilbert Islands were granted self-rule by the UK in 1971 and complete independence in 1979 under the new name of Kiribati. The United States relinquished all claims to the sparsely inhabited Phoenix and Line Island groups in a 1979 treaty of friendship with Kiribati. In 1994, Teburo Tito was elected Kiribati's first President. After Tito's controversial decision to shut down all non-government newspapers, he was deposed by a vote of no confidence. Anote Tong, the current President, succeeded Tito in 2003. Tong oversaw the passage of the two major pieces of anti-terrorism legislation in the country.

Kiribati has had very little historical experience with terrorism and has not implemented specific anti-terrorism legislation.<sup>1</sup> It acceded to the International Convention for the Suppression of the Financing of Terrorism in 2000. It incorporated the Convention into its domestic legal system through comprehensive anti-money laundering legislation. In 2006, the Federal Bureau of Investigation (FBI) notified Kiribati's authorities of a suspect plot to set up a flight school on one of the remote islands in the archipelago. The businessman that made a bid to establish the flight school was reportedly connected with flight schools that had trained some of the hijackers of planes in the 11 September 2001 terrorist attacks. Subsequently, President Anote Tong requested the aid of developed countries in the region to combat terrorism in the Pacific, stating that "I think it may put onus on the countries that would be threatened to assist us in providing that security. I think it is in their interest."<sup>2</sup>

### Anti-terrorism measures in the Pacific Islands

Since 11 September 2001, the Pacific Islands have been under pressure to comply with international anti-terrorism conventions. The demands come principally from Australia, which considers the Pacific Islands to be at risk of being used by terrorists as transit points to other countries including Australia. Prior to 2001, 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>3</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>4</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 addresses anti-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 most evident 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 the Pacific Islands. One opinion, expressed by Imrana Jalal of Pacific Regional Rights Resource Team (RRRT), is that the Pacific does “not wish to be drawn into America’s war on terrorism”.<sup>5</sup>

Critics of the Pacific Plan have expressed distrust over the “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>6</sup> The Pacific Islands have existing internal issues to attend to such as economic, environmental, social and political matters. Many regard these issues to be more important to the region than issues of terrorism.


### **3. Relevant legislation**


*Extradition Act 2003 (EA)* – Although it does not create specific terrorism offences or allow for their prosecution, it facilitates the punishment of terrorism in other jurisdictions.

*Proceeds of Crime Act 2003 (POCA)* [Long Title: An Act to provide for the confiscation of proceeds of serious offences, to create the crime of money laundering and for related purposes] – The POCA was passed following Kiribati’s ratification of the International Convention for the Suppression of the Financing of Terrorism in 2000.

### **4. Law summary**

The POCA establishes “the necessary systems to give the High Court power to make and enforce the necessary orders; to require financial institutions and cash dealers to keep appropriate records and report suspicious transactions; and to prevent concealment of the proceeds of crime by, for example, operating a bank account in a false name.”<sup>7</sup> The ambit of the Act is broader than just the prevention of the financing of terrorism, extending to the seizure and the forfeiture of property used in, in connection with, or for facilitating the commission of “serious offences”. The POCA does not provide a





definition of financing terrorism, although it does offer a broad definition of “serious offences” (Section 3(1)). Division 2 of Part 2 establishes the Financial Intelligence Unit within the Kiribati Police, and sets out its functions and powers.

The *Extradition Act* 2003 (EA) aims “to reflect developments in the Commonwealth London Scheme for the Rendition of Fugitive Offenders and the United Nations General Assembly adoption of the United Nations Model treaty on Extradition.”<sup>8</sup> The Act provides a definition of terrorism, and makes provision for the extradition of individuals suspected of terrorist and other serious offences. The extradition procedures are complicated and differ depending on whether the individual is being deported to a Commonwealth Country, “Comity Country” or Pacific Country. Part I EA provides that a person may have a valid objection to extradition if the extradition act was a political act. However, this section also provides that this objection is not available to defendants in the case of terrorist offences. Part I also sets out a definition of terrorism, and provides for accepted cases of political activity. The Act does not ostensibly grant any additional powers to police to arrest a suspect before extradition. The extradition process is subject to judicial appeal at various stages. Section 19(2)(h) provides that the Foreign Minister may refuse to extradite an individual if the individual has been, or may be, subjected in the requesting country to torture or cruel, inhuman or degrading treatment or punishment.

## **5. Provisions**


### **a. Definition**

Section 4 EA provides an extensive definition of terrorism, and attempts to draw a distinction between terrorist offences and legitimate political activity. For the purposes of the EA, it is critical to draw this distinction, keeping in mind that Section 6(a) provides that an individual may object to extradition if the extradition offence is of a political character.

#### **Section 4: Terrorist offence**

- (1) An act or omission constitutes a terrorist offence if:
  - (a) it constitutes an offence within the scope of a counter-terrorism convention listed in subsection (4); or
  - (b) it is mentioned in subsection (2).
  
- (2) For subsection (1)(b), the act or omission:
  - (a) must:
    - (i) involve serious bodily injury to a person; or
    - (ii) involve serious damage to property; or
    - (iii) endanger a person’s life; or
    - (iv) create a serious risk to the health or safety of the public or a section of the public; or
    - (v) involve the use of firearms or explosives; or
    - (vi) involve releasing into the environment or distributing or exposing the public to any:
      - (A) dangerous, hazardous, radioactive or harmful substance; or
      - (B) toxic chemical; or
      - (C) microbial or other biological agent or toxin; or





(vii) be designed or intended to disrupt any computer system or the provision of services directly related to communications infrastructure, banking or financial services, transportation or other essential infrastructure; or

(viii) [be designed or intended to disrupt the provision of essential emergency services such as police, civil defence or medical services; or

(ix) involve prejudice to national security or public safety;] and

(b) must be intended, or by its nature and context, must reasonably be regarded as being intended:

(i) to intimidate the public or a section of the public; or

(ii) to compel a government or an international organisation to do, or refrain from doing, any act; and

(c) must be done for the purpose of advancing a political, ideological or religious cause.

(3) However, an act is not a terrorist act if:

(a) it is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subsection (2) (a) (i), (ii), (iii) or (iv); or

(b) it occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

Subsection 4 of the *Extradition Act* goes on to list the various counter-terrorism conventions that are referenced by the provision and that augment the definition of terrorism. These conventions include the International Convention for the Suppression of Terrorist bombings, adopted by the General Assembly of the United Nations in December 1999 and the International Convention for the Suppression of Terrorism, also adopted by the UN in December 1999.


However, through the Section 5 definition of “extradition offence,” the EA potentially broadens its definition of terrorist activity by importing the offences of other jurisdictions into the Act:

#### **Extradition offence**

5. (1) An offence is an extradition offence if:

(a) it is an offence against a law of the requesting country for which the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more; and

(b) the conduct that constitutes the offence, if committed in Kiribati, would constitute an offence (however described) in Kiribati for which



the maximum penalty is death or imprisonment, or other deprivation of liberty, for a period of 1 year or more.

Thus, even if an activity does not fall within the EA's definition of terrorism, a person may still be made subject to an extradition request and extradition proceedings if the conduct is criminalized in another jurisdiction. However, Section 6 must be kept in mind—that is, the provision that allows an individual to object to extradition proceedings if the activity they participated in may be considered political activity.

**b. Arrest**

Neither the EA nor the POCA include specific provisions for arrest, or confer exceptional powers upon the police to affect arrest.

**c. Detention/custody**


The EA contains some provisions that relate to the detention of individuals prior to extradition or during the extradition trial. The conditions of detention are not exceptional or outside conventional criminal detention procedures.


Section 9 EA provides for the issue of a provisional arrest warrant, where a person is suspected of an “extradition offence.” A person subject to such a warrant may be detained and must be brought before a magistrate as soon as possible. The magistrate may then remand the person in custody or release that person on bail until a final Ministerial order is made in relation to extradition. Section 9(4) provides that a person is not to be remanded in custody pending Ministerial decision for more than 42 days. Section 9(6) provides that, if the Minister for Foreign Affairs considers that the request for extradition for the offence would not be granted, then the Minister must order the person to be immediately released.

Section 22 provides that, if an individual is not surrendered to an extradition country within two months of the issue of a surrender warrant, then that individual is entitled to apply to a Magistrate to be released from custody. Section 22(2)(b) provides that, where the Magistrate finds that there is no reasonable cause for the delay in surrendering the person, the Magistrate shall order that individual's release from custody.

**d. Use of force**

The POCA aims to seize and forfeit any property used in the commission of a serious offence, including but not specifically limited to terrorism. Section 58 POCA allows for the issue of “restraining orders” in relation to property. A restraining order issued by a Court may prohibit the defendant or any other person from disposing of, or otherwise dealing with, the property, either absolutely or except in a way specified in the order; or may enable the State to take custody of the property or a part of it specified in the order, or to manage or otherwise deal with all, or any part of, the property in accordance with the directions of the Court. A restraining order may be issued if the Court is satisfied that a person (the defendant) has been convicted of, or charged with, a serious offence or will be charged with a serious offence within 48 hours (Section 58(1)(a)) or, if the defendant has not been convicted





of the offence, there are reasonable grounds for believing that the defendant committed the offence (Section 58(1)(b)).

Part IV, Division 7 PCA provides for “monitoring orders” to be issued against a specific individual or financial institution. Section 95(1) provides that: a police officer of or above the rank of sergeant may apply to a judge for an order directing a financial institution to give information to a police officer about transactions conducted through an account held by a specified person with the institution during the period specified in the order. Section 95(2) provides that the monitoring order may be issued ex parte. The judge may issue a monitoring order where satisfied that an individual may be about to commit, or has already committed, a serious offence, or is about to be involved in the commission of such an offence. Under the monitoring order, a financial institution will be required to produce otherwise confidential and classified personal account information to the specified police officer. An institution is liable to a fine of \$300,000 for failure to comply (Section 95(7)). A monitoring order may persist—requiring the financial institution to furnish further account information— for 3 months (Section 95(4)(b)).


#### **e. Immunity**

Under the EA, the initial decision of the Magistrate to remand an individual in custody or release the individual on bail are subject to judicial appeal. It would appear that the Ministerial surrender orders made under Section 19 would not be subject to judicial review.

Section 18(1) EA provides that, if a magistrate orders that a person be held until a surrender determination is made or refused, the person may apply to the High Court for a review of the order. Under Subsection (5), the High Court may confirm or quash the order of the magistrate and order that the person be released. Subsection (7) provides that a High Court order to release an individual from custody must be performed accordingly.

Section 6 of the EA provides a number of grounds upon which an individual may object to their extradition from Kiribati. Primarily, an individual may object to their extradition on the basis that the extradition offence is properly regarded as a political offence (Section 6(a)). An individual may also object to their extradition if there are substantial grounds for believing that surrender is being sought for the purpose of prosecuting or punishing the person because of his or her race, religion, nationality, political opinions, sex or status, or for a political offence in the requesting country (Section 6(c)); or on surrender, the person may be prejudiced at his or her trial, or punished, detained or restricted in his or her personal liberty, because of his or her race, religion, nationality, political opinions, sex or status (Section 6(d)). Also, an individual enjoys immunity against repeated trial for the same offence, and may object to extradition if they have already been acquitted or pardoned in the requesting country or Kiribati, or punished under the law of that country or Kiribati, for the offence or another offence constituted by the same conduct as the extradition offence. Finally, a person may object to their extradition on the basis they will likely be tried ex parte in the requesting country, or there is no provision in the law of the requesting country entitling the person to appear before a court and raise any defence the person may have (Section 6(h)).





Section 19 of the EA, relating to the Ministerial power to order surrender for extradition, also provides that the Foreign Minister may forebear from ordering extradition where the person has been, or may be, subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting country. However, as mentioned above, the final decision to deport remains in the hands of the Minister, and is not subject to judicial review or appeal.

#### **f. General**

Under the EA, extradition proceedings for serious offences are not made exempt to normal criminal procedure and are subject to the same safeguards. Section 15 EA specifically provides that Extradition proceedings must be conducted in the same manner as criminal proceedings, and that in particular, the rules that apply in criminal proceedings to the following matters apply to extradition proceedings, summoning witnesses; remanding defendants; ordering the production of documents; administration of oaths and affirmations; payment of witness expenses; contempt of court, privilege and other matters relating to the administration of courts; and the imposition and level of fines for offences.

Section 12(3) of the POCA creates the basic offence of money laundering, which extends to cover the financing of terrorism or harboring the proceeds of terrorism. It provides that a person commits the offence of money laundering where the person: engages in a transaction that involves money or property that is the proceeds of crime, and the person knows or ought reasonably to have known, that it had been derived from unlawful activity. A person may also be guilty of money laundering if the person acquires, possesses or uses, receives or brings money or other property into Kiribati that is directly or indirectly proceeds of crime and the person knows or ought reasonably to know that it is derived whether directly or indirectly from some form of unlawful activity. The offence thus does not require any actual knowledge or intent; rather constructive knowledge—the idea that a person “ought reasonably to have known” the origins of the money or property—is sufficient to be found guilty. This Part leaves open the possibility that an individual who unwittingly receives funds from an organisation somehow indirectly involved in terrorism related activities may be subjected to the severe penalties under the Act.

#### **Financial Intelligence Unit in the Kiribati Police**

Division 2 of the PCA provides for the creation of a Financial Intelligence Unit as a particular subsection of the Kiribati police. Under Section 17, the Unit is empowered to receive and review reports of suspicious transactions. The Unit is also empowered under Section 18 to obtain from a Judge or Justice of the Peace a warrant to enter the premises of a financial institution and seize any document, property or material on the premises.

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<sup>1</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).

<sup>2</sup> Peter Lewis, “Kiribati seeks Australian help to counter terrorism” (15 November 2006) *ABC News*: <http://www.abc.net.au/am/content/2006/s1788919.htm>, as on 12/03/07.

<sup>3</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>4</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>5</sup> 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](http://www.aiaa.asn.au/national/7_Jalal_Through_Pacific_Eyes.html) as on 5 March 2007.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Proceeds of Crime Act 2003*, Explanatory Memorandum: [http://www.paclii.org/cgi-pacii/disp.pl/ki/legis/num\\_act/poca2003160/poca2003160.html?query=~+money+laundering](http://www.paclii.org/cgi-pacii/disp.pl/ki/legis/num_act/poca2003160/poca2003160.html?query=~+money+laundering)

<sup>8</sup> <http://www.parliament.gov.ki/acts/2003/ExtraditionAct.pdf>.