



## Public Order Amendment Bill 2016 - No. 23 of 2016

### Introduction

The threat of terrorism is a serious concern worldwide. Fiji is a Member of the United Nations and must comply with United Nations Security Council Resolutions in relation to counter terrorism and other matters. According to the Bill's explanatory note there are a number of domestic laws which currently do not reflect these international requirements. In particular around the financing of terrorist activity and targeted financial sanctions. The Bill seeks to address this issue.

#### What is the United Nations Security Council?

The United Nations maintains international peace and security, promotes sustainable development, protects human rights, upholds international law and delivers humanitarian aid.

The Security Council has primary responsibility for the maintenance of international peace and security. It takes the lead in determining the existence of a threat to the peace or act of aggression. In some cases, the Security Council can resort to imposing sanctions or authorising the use of force to maintain or restore international peace and security.

Under Article 25 of the [UN Charter](#), all Members of the United Nations agree to accept and carry out the decisions of the Security Council.

#### What Act does the Bill amend?

The Bill amends the [Public Order Act 1969 \(Cap20\)](#) in order to bring Fiji's legal framework up to date to meet its international obligations. The Public Order Act contains a wide range of provisions in relation to the maintenance of Public Order. For example, the permits required for processions or meeting in a public place, it also makes committing malicious acts or inciting violent acts an offence.

The Principle Act was amended in [2012](#) and [2014](#) by decree. These decrees make substantial amendments to the Act regarding issues such as terrorism offences or possession of offensive weapons. It is essential to decrees alongside the Act.

The Bill makes the following main amendments to the Act:

- **It criminalise a range of offences** for example, moving nuclear material without the permission of the Prime Minister, hijacking a ship or detaining people against their will.
- It gives **power to authorise certain officers to arrest or detain** any person reasonably suspected of committing terrorist offences on board ships or fixed platforms.

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- It deals with the **declaration in the courts of “specified entities”** (person or entity) that participate in or facilitate a terrorist act.

A “specified entity” is:

- A person who has **knowingly committed**, attempted to commit or participated in the commission of a **terrorist act**.
- Someone who has knowingly **acted on behalf of such as person** (as set out above).
- An organisation or entity directly or indirectly controlled by such a person (as set out above).
- A person or entity already **listed within the relevant UN Security Council Resolutions**.

### What other relevant legislation is there?

The financing of terrorism was first criminalised in the Proceeds of Crime Act 1997 and preventative measures for the financial institutions were incorporated in the Financial Transactions Reporting Act 2004 and subsequent regulations.

### What is the level of terrorist threat in Fiji and what counter terrorist activity is being undertaken?

It was noted, in the April 2016 report by the Finance and Foreign Affairs committee, on the Ministry of Defence Annual Report 2013, that the threat of terrorism in Fiji was considered to be “very low”.

The Fijian Government has a Counter Terrorism Strategy and a National Security and Defence Council (NSDC). This is in addition to the Counter Terrorism Official Group which was formed in 2006. Fiji police also have a counter terrorism unit. In 2008, Fiji became one of the only four countries to fully ratify United Nations Security Council Resolution 1373 –Threats to International Peace and Security Caused by Terrorist Acts. <sup>1</sup>

## Objectives, scope and intent of the Bill

The Public Order Amendment Bill amends the Public Order Act 1969 Cap 20. It intends to amend the provisions in the principal act to comply with international requirements under a number of UN Security Council Resolutions in relation to counter terrorism measures. (UNSCR 2178 / 1267 / 1989 / 1988 / 1373)

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• <sup>1</sup> [Parliamentary Question No. 123/2015 Counter Terrorism Measures](#) (21 May 2015) – *Would the honourable Minister for Defence, National Security and Immigration clarify what counter terrorism measures are in place to address any terrorism and related acts in Fiji?*

## Summary of provisions

**Clause 1** of the Bill provides for the short title and commencement of the Act.

**Clause 2** of the Bill amends the Act by inserting the relevant parts of the Act which will categorise the sections in the Act.

**Clause 3** of the Bill amends the interpretation provision of the Act by inserting **new definitions** according to international standards.

**Clause 4** of the Bill provides for the **new sections** that are to be **inserted in Part 3A of the Act**. The Principal Act is amended by inserting the following new sections after section 12E. **Section 12 deals with terrorism offences and was inserted into the Principal Act by the 2012 decree.**

The new sections are as follows—

- a) **section 12F** criminalises the offence against internationally protected persons with intent to compel the Government of a country or an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person. The offence is liable, upon conviction, of a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years or both;
- b) **section 12G** criminalises detaining a person or threatening to detain a person with intent to compel the Government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person. The offence is liable, upon conviction, of a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years or both;
- c) **section 12H** criminalises the movement of nuclear material into and out of the country without a licence or permission by the Prime Minister. The offence is liable, upon conviction, to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or both;
- d) **section 12I** criminalises the possession or use of nuclear weapon(s) without lawful authority. The offence is liable, upon conviction, of a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years or both;
- e) **section 12J** criminalises the possession of radioactive material or devices with the intent to cause bodily harm or substantial damage to property or environment. The offence is liable, upon conviction, of a fine not exceeding \$200,000 or imprisonment for a term not exceeding 25 years or both;
- f) **section 12K** criminalises acts of violence or hijacking of a ship or fixed platform with the intent to compel another person to do or to refrain from doing any act. The offence is

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liable, upon conviction, of a fine not exceeding \$200,000 or imprisonment for a term not exceeding 25 years or both;

- g) **section 12L** criminalises the use of nuclear material on board ships or fixed platforms with the intent to intimidate a population, or compelling a Government or international organisation to do or to refrain from doing any act. The offence is liable, upon conviction, of a fine not exceeding \$200,000 or imprisonment for a term not exceeding 25 years or both;
- h) **section 12M** gives powers to the masters of a registered ship in Fiji, the police officers and other officers from authorised law enforcement agencies to arrest, detain and deliver to appropriate authorities any person reasonably suspected to commit an offence under sections 12K or 12L. It constitutes an offence if they fail to notify the authorities in the other convention states before delivering the person or fail to give the authorities evidence that the person has committed the crime. This is liable, upon conviction, of a fine not exceeding \$20,000 or imprisonment for a term not exceeding 5 years or both ;
- i) **section 12N** criminalises the manufacturing, possession and transporting of unmarked plastic explosives. This offence is liable, upon conviction, of a fine not exceeding \$50,000 or to imprisonment of a term not exceeding 10 years, or both. It is not an offence if the manufacturer is approved by the Commissioner of Police, solely for the use of research, development, testing, training in explosives detection and for forensic scientific purposes; and
- j) **Section 12O** criminalises detonation of an explosive or other lethal device with the intention to cause death or serious bodily injury. Any person committing an offence under this section is liable, upon conviction, of a fine not exceeding \$200,000 or imprisonment for a term not exceeding 25 years or both.

**Clause 5** of the Bill **amends the Act by inserting Part 3B after Part 3A** which deals with the declaration of specified entities. **Specified entities are those entities that participated or facilitated in the commission of a terrorist act.** The sections for Part 3B are as follows—

- a) **section 12P(1)** provides that the Prime Minister, through the Attorney-General may apply to the court for a declaration of an entity, believed to have knowingly committed or attempted to commit or participated in committing or facilitated the commission of a terrorist act;
- b) **section 12P(2)** further provides that the court must deal with the Minister's application ex parte . It will be mandatory upon the court to deal with the Minister's application ex parte since giving prior notice to the proposed specified entity carries a significant risk of tipping off the entity with the associated risk of asset flight;

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- c) **section 12P(3)** provides that it is mandatory for the court to declare an entity to be a specified entity if the court is satisfied on reasonable ground rather than proof beyond reasonable doubt;
- d) **section 12P(4)** the declaration of the specified entity by the court should be published in the Gazette;
- e) **section 12Q** provides that the Prime Minister must by notice in the Gazette list the specified entities listed by the United Nations Security Council as specified entities;
- f) **section 12R** provides that a declaration for a specified entity made under section 12P can be revoked by the court, if the court on reasonable grounds, decides that the specified entity should not be listed;
- g) **section 12S** provides for the procedures for the hearing of submission according to sections 12Q and 12R;
- h) **section 12T** provides for the review of the declarations for sections 12P and 12Q every 3 years to determine whether there are still reasonable grounds;
- i) **section 12U** provides that the Attorney-General may appeal to the court of Appeal on advice of the Prime Minister in relation to decisions made against submission pursuant to sections 12Q and 12R;
- j) **section 12V** stipulates that it is the duty of every citizen of Fiji to disclose any relevant information relating to terrorist property and terrorist groups. Failure to comply with this section or purposefully disclosing false information is liable upon conviction of a fine not exceeding \$150,00 or a term of imprisonment not exceeding 20 years, or both;
- k) **section 12W** deals with terrorist financing offences. It provides that being involved with a specified entity, whether directly or indirectly knowing that the entity is listed as a specified entity is liable upon conviction. For example, making available a property or financial service. The offence comes with a fine not exceeding \$150,000 or imprisonment of a term not exceeding 20 years, or both. In prosecution of the offence it is not necessary to prove that the property was actually used in full or part to carry out a terrorist act. Any property referred to in this section is deemed as 'freezable'; and
- l) **section 12X** deals with 'foreign terrorist fighters'. It provides that a person who is found to have been involved in the recruitment, facilitation and the planning of a terrorism activity is liable upon conviction of a fine not exceeding \$150,000 or imprisonment of a term not exceeding 20 years, or both.

## International comparisons

The UN conducts analysis of country / regions performance in implementing their resolutions. For example, in the [second report on the implementation of Security Council resolution 2178 \(2014\)](#) it considers a regional analysis for areas such as Western Europe, America and Oceania. It stated that:

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“Gaps remain in Member States’ legislation on countering the financing of terrorism and measures to freeze terrorist assets. In some States, no specific measures are implemented to disrupt and prevent financial support for foreign terrorist fighters. There is an increasing need for Member States’ anti- money-laundering/combating the financing of terrorism regulators to engage with financial institutions to communicate potential red flags that may indicate financial activity that supports ISIL and groups associated with Al-Qaida in order to prevent those groups and groups associated with Al-Qaida from accessing the international financial system.

The use of financial intelligence can also be effective in identifying foreign terrorist fighters and tracking and preventing their travel.”

## Gender Analysis

Neither women nor men will be disproportionately impacted by this Bill.

## Other interest groups

Groups that may take an interest or could potentially be impacted by the Bill are...

- Terrorists or those associated with actual, or suspected, terrorist acts, property or finances
- Law enforcement agencies
- Masters of registered ships in Fiji
- Owners of fixed platforms.
- Legal and illegal importers or transporters of nuclear material.
- The Judicial Court system

## Further information

[Parliamentary Question No. 123/2015 Counter Terrorism Measures](#) 21 May 2015 – Would the honourable Minister for Defence, National Security and Immigration clarify what counter terrorism measures are in place to address any terrorism and related acts in Fiji?

## Disclaimer

This briefing was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.



## Annexe A – Definitions used in the Bill

“Convention State” means a country which is a State party to the relevant Convention;

“**entity**” includes an organisation, group or an individual;

“**fixed platform**” means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration for, or exploitation of, resources or for other economic purposes;

“**foreign terrorist fighters**” means a person who travel to a state other than his or her state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict;

“**freezable property**” means any property that—

- a) Is owned or controlled by a specified entity; or
- b) is a property of a listed entity pursuant to section 12Q(1); or
- c) is derived or generated from property mentioned in paragraph (a) or (b)

“**nuclear material**” means special nuclear material with the potential to be made into nuclear weapons;

“**Nuclear Materials Convention**” refers to the Convention on the Physical Protection of Nuclear Materials;

“**Plastic Explosives Convention**” refers to the Convention on the Marking of Plastic Explosives for the Purpose of Detection; and

“**specified entity**” means a person or entity—

- a) for which a declaration under section 12P has been made; or
- b) that is a United Nations listed entity as described in section 12Q



## Annexe B – UN Security Council Membership

### Current Members

#### Permanent and Non-Permanent Members

The Council is composed of 15 Members:

- five permanent members: [China](#), [France](#), [Russian Federation](#), [the United Kingdom](#), and [the United States](#),
- and ten non-permanent members elected for two-year terms by the General Assembly (with end of term date):
  - [Angola](#) (2016)
  - [Egypt](#) (2017)
  - [Japan](#) (2017)
  - [Malaysia](#) (2016)
  - [New Zealand](#) (2016)
  - [Senegal](#) (2017)
  - [Spain](#) (2016)
  - [Ukraine](#) (2017)
  - [Uruguay](#) (2017)
  - Venezuela (Bolivarian Republic of) (2016)

#### Non-Council Member States

More than 60 United Nations Member States have never been Members of the Security Council.

A State which is a Member of the United Nations but not of the Security Council may participate, without a vote, in its discussions when the Council considers that that country's interests are affected. Both Members and non-members of the United Nations, if they are parties to a dispute being considered by the Council, may be invited to take part, without a vote, in the Council's discussions; the Council sets the conditions for participation by a non-member State.



## **Annexe C – Security Council Resolutions referenced in the explanatory note**

[UNSCR 2178 \(2014\)](#) - Addressing the growing issue of foreign terrorist fighters

[UNSCR 1989 \(2011\)](#) - Reaffirms the assets freeze, travel ban and arms embargo affecting all individuals and entities on the Committee's Al-Qaida Sanctions List.

[UNSCR 1988 \(2011\)](#) –Establishes the Security Council Committee which oversees the sanctions measures imposed by the Security Council.

[UNSCR 1373 \(2001\)](#) - Creation of Counter Terrorism Committee (CTC)

[UNSCR 1267 \(1999\)](#) - Establishes Security Council Committee; imposes limited air embargo and financial embargo on the Taliban (paras 4 & 6)