

**Security Council**

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Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities**Note verbale dated 13 March 2007 from the Permanent Mission of Tuvalu to the United Nations addressed to the Chairman of the Committee**

The Permanent Mission of Tuvalu to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities, and in reference to the note verbale from the latter dated 11 February 2004 concerning the reports called for under paragraph 6 of resolution 1455 (2003), has the honour to submit the report of the Government of Tuvalu on the actions it has taken to implement the said resolution (see annex).



**Annex to the note verbale dated 13 March 2007 from the
Permanent Mission of Tuvalu to the United Nations addressed
to the Chairman of the Committee**

**Report of Tuvalu on actions taken by the Government to
implement Security Council resolution 1455 (2003)**

I. Introduction

1. There has been no detected activity by Usama bin Laden, Al Qaeda, the Taleban or their associates in Tuvalu to-date, nor have any specific threats or trends been identified in this regard.

II. Consolidated List

2. The government has, to the greatest extent permitted by constraints in human resources, technology, and infrastructure incorporated the 1267 list within its legal system, administrative structure, including financial supervision, police, immigration control, customs and consular authorities.

4. No designated individuals or entities have been identified.

5. Tuvalu has nothing to report in this regard.

6. Not applicable.

7. Not applicable.

8. Tuvalu does not currently have legislation specifically covering recruitment, training or support for Al-Qaida or other terrorist groups. Some acts of this type may be covered by Tuvalu's *Penal Code* if linked to actual or attempted criminal offences such as murder or kidnapping, which carry heavy penalties. The *Hostages Act* (1984) makes it an offence, punishable by life imprisonment, to detain and threaten any person in order to compel a State, international or governmental organization, or person to act or refrain from acting in a particular manner.

Additionally, legislation such as the *Arms and Ammunition Act* (1964) and *Explosives Act* (1927) may, in some circumstances, criminalise the possession or use of items capable of being used in terrorist attacks.

III. Financial and economic asset freeze

9. Under the *Proceeds of Crime Act (2004)* (POCA) the government has criminalised money laundering, established mechanisms for the identification, reporting and analysis of suspicious transactions, and providing for the restraint and confiscation of proceeds of crime. The Act also imposes a range of obligations on financial institutions regarding customer identification, record keeping and internal controls.

Currently, Tuvalu does not have legislation specifically criminalizing terrorist financing or addressing other counter-terrorism issues. However, the definition of "serious offence" in the POCA includes any offences against a law of Tuvalu, or offences in other countries that would constitute an offence punishable by a maximum penalty of imprisonment for 12 months or longer. Under this definition, money or other assets of

terrorists found in Tuvalu that have been used, or are intended for use in terrorist attacks could be subject to the provisions of the Act.

The government recognises that it is highly desirable to have specific counter terrorism legislation. It is therefore considering whether it will adopt, with necessary modifications, draft counter terrorism and trans-national crime legislation developed under the auspices of the Pacific Islands Forum Secretariat. It expects this assessment to be completed by mid 2007.

Key provisions in the model legislation include:

- Criminal offences required to implement the requirements of the 1999 Terrorist Financing Convention, including offences of financing terrorists, providing property or services to terrorists, harbouring of persons committing terrorist acts, provision of weapons to terrorists, and recruitment or participation in terrorist groups;
- Offences and provisions implementing obligations under the following Conventions and Protocols:

1963 Tokyo Convention;

1970 Hague Convention (Hijacking);

1971 Montreal Convention

1973 Internationally Protected Persons Convention;

1979 Hostages Convention;

1979 Nuclear Material Convention;

1988 Protocol on Unlawful Acts against the Safety of Civil Aviation;

1988 Maritime Safety Convention

1988 Fixed Platforms Protocol

1991 Plastic Explosives Convention

1997 Terrorist Bombing Convention

2002 Trans national Organised Crime Convention and related Protocols on People Smuggling and Migrant Trafficking.

The enactment of this or similar legislation would significantly enhance Tuvalu's implementation of its obligations to have effective counter terrorism legislative frameworks under UN Security Council Resolutions and Counter Terrorism Conventions.

10. The structures or mechanisms in place to identify and investigate Usama bin Laden, Al Qaida or Taliban related financial networks, or those that provide support to them or associated persons or entities.

The Police is the primary agency responsible for security and law enforcement agency in Tuvalu and has overall operational responsibility for the investigation and prosecution of suspected terrorist activity. Police also has responsibility for immigration and prison functions.

The POCA established a *Transaction Tracking Unit (TTU)*, located within Police, to receive reports of suspicious transactions, to keep statistics and to establish training requirements for financial institutions. The TTU can enter the premises of a financial institution or cash dealer to inspect records and give directions to facilitate an investigation. While the unit works closely with Police it does not undertake any investigation into suspected money-laundering offences. This function remains the responsibility of the Police. However, the

Unit can apply for a search warrant or a monitoring order, and can obtain an order against a financial institution or cash dealer to comply with their obligations under the Act.

Immigration and Customs officers operate at the border to detect any suspicious activity by persons entering or leaving Tuvalu. No electronic information system operates but authorities do have access to intelligence sources through the relationship between Police and the Australian Federal Police (AFP). The AFP has real time electronic access to lists of designated persons and entities maintained by the 1267 Committee.

Other government agencies that contribute to counter terrorism measures include the Ministry of Foreign Affairs and Trade, the Immigration Service and Ministry of Finance.

11. Describe the steps banks and other financial institutions are required to take to locate and identify assets of terrorists or associated persons or entities. A description of customer due diligence or know your customer requirements and details of government agency for enforcement.

The POCA imposes obligations on “*financial institutions*” and “*cash dealers*” aimed at preventing money laundering. *Financial institutions* are defined as persons carrying on a business of doing any of the following:

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (c) financial leasing;
- (d) providing money transmission services;
- (e) issuing and administering means of payment (for example, credit cards, travellers’ cheques and bankers’ drafts);
- (f) entering into guarantees and commitments;
- (g) trading for the institution’s own account, or for account of customers, in money market instruments (for example, cheques, bills and certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting share issues and participation in such issues;
- (i) giving advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
- (j) money-broking;
- (k) providing portfolio management and advice;
- (l) safekeeping and administration of securities;
- (m) providing credit reference services;
- (n) providing safe custody services.

Cash dealers are defined as:

- (a) a person who carries on a business of an insurer, an insurance intermediary, a securities dealer or a futures broker; and
- (b) a person who carries on a business of dealing in bullion, of issuing, selling or redeeming travellers’ cheques, money orders or similar instruments, or of collecting, holding and delivering cash as part of a business of providing payroll services; and

- (c) an operator of a gambling house, casino or lottery; and
- (d) a trustee or manager of a unit trust.

Under Part II of the POCA, it is an offence, punishable by a maximum fine of \$12,000 and imprisonment for up to 2 years, or both for financial institutions or cash dealers to permit customers to establish or operate accounts under false names.

Furthermore, the Act requires institutions to obtain “official records” (e.g. Passports etc.) that are “reasonably capable” of establishing the customers true identity upon opening facilities. The Act requires institutions to keep and maintain customer and transaction records for a period of at least seven years.

The TTU within Police is the agency primarily responsible for monitoring compliance with these obligations by financial institutions. The Unit operates in close collaboration with the Ministry of Finance.

The government of Tuvalu is committed to working with potential donors of technical assistance to develop a more robust legislative framework and operational measures to protect the country’s financial system from misuse by criminals or terrorists. A detailed summary of the specific assistance sought appears later in this report.

12. A list of terrorist assets that have been frozen in accordance with Resolution 1455.

To date, no assets of individuals or entities listed in the 1267 list have been located or frozen in Tuvalu.

13. A description of any terrorist assets that have been frozen but released.

Not applicable. Refer 12.

14. A description of the laws and mechanisms in place to control the movement of funds or assets to designated terrorists or associated entities and persons.

The Ministry of Foreign Affairs receives updated lists of entities or associated persons designated by the 1267 Committee. These lists are available to other government agencies, but in particular the Police, the Ministry of Finance, Customs and Immigration Services. Regulated institutions are expected to use the lists in identifying suspicious transactions and applying other internal controls required by the POCA. A failure by institutions to adequately apply these controls or to report suspicious transactions that may constitute proceeds of crime exposes them to potential offences, either for money laundering or other breaches of POCA requirements. The POCA does not currently impose transaction reporting obligations on financial or non-financial institutions relating to suspected terrorist financing. These terrorist-specific obligations are contained in the draft legislation currently being considered for adoption by the government.

Required bank reporting procedures, if any, including the use of Suspicious Transaction Reports (STR’s), and how such reports are reviewed and evaluated.

Under the POCA (s101) financial institutions and cash dealers are required to report suspicious transactions if they have reasonable grounds for suspecting that a transaction in which they are involved may be relevant to the investigation or prosecution of a person for a serious offence. Reports must be filed with authorities as soon as possible but no later than 3 working days after forming that suspicion, and if possible before the

transaction is carried out. It is an offence, punishable by fines of up to \$150,000 and imprisonment for 5 years, to fail to comply with these requirements.

Upon receipt of suspicious transaction reports, the TTU will analyse them, seek any additional information necessary and where appropriate forward reports onto Police and Attorney General for investigation and prosecution.

Requirements, if any, placed on financial institutions other than banks to provide STR's, and how such reports are reviewed and evaluated.

See above.

Restrictions or regulations, if any, placed on the movement of precious commodities such as gold, diamonds, and other related items.

Under the POCA the definition of *Cash dealers* includes any person who carries on a business of dealing in bullion. These businesses are therefore subject to requirements relating to the identification and reporting of suspicious transactions, customer due diligence, record keeping and internal controls.

Restrictions or regulations, if any, applicable to alternate remittance systems such as, or similar to, "hawala", as well as on charities, cultural and other non profit organizations engaged in the collection and disbursement of funds for social or charitable purposes.

Under POCA, (s110) authorised officers may seize and detain any currency that exceeds \$1,000 that is being imported into or exported from Tuvalu if there are reasonable grounds for suspecting that it is property derived from a serious offence; or intended by any person for use in the commission of a serious offence. Furthermore, groups, organizations or individuals could be liable for the offence of money laundering if they engage, directly or indirectly, in a transaction that involves money, or other property, that they know, or ought reasonably to know, to be proceeds of crime; or if they receive, possess, conceal, dispose of or bring such money or property into Tuvalu. The maximum penalty for money laundering is a fine of \$120 000, or imprisonment for 20 years or both if the offender is a natural person; or a fine of \$600,000 if the offender is a body corporate.

IV. Travel Bans

Under the sanction regime, all States shall take measures to prevent the entry into or transit through their territories of listed individuals.

15. Please provide an outline of the legislative and/or administrative measures, if any, taken to implement the travel ban.

The government considers the risk of persons designated under UNSCR 1267 entering Tuvalu to be low, primarily because of the countries remote geographical location and the limited number of commercial air links originating from neighbouring countries. However, a number of measures do exist by which the travel ban can be enforced in the country.

The *Immigration Act* (1969) is the principal legislative means by which Tuvalu fulfils its obligations under this element of relevant resolutions. The Act provides the basis for Tuvalu's visa system regulating entry of persons into the country. It also sets out the process by which "*prohibited immigrants*" can be prevented from entering

or remaining in the country. The Act empowers the Principal Immigration Officer to deny entry to specified categories of persons, including any classes of person prescribed by the Minister of Immigration (Section 10 2(g)). The Minister could exercise this power to deny entry of persons designated under UNSCR 1267 into Tuvalu.

The Minister of Immigration may also order the removal from Tuvalu of any person convicted of being in the country unlawfully. (s 13)

The Act imposes obligations on all operators of aircraft or vessels arriving in Tuvalu to provide manifests of all passengers and crew to the Immigration Service prior to disembarkation.

Currently, this information is provided manually to authorities on arrival or, upon request, by e-mail. At present there are no systems in place for Advanced Passenger Information (API) or Advanced Passenger Processing (APP). Immigration officers process travel and arrival documentation of visitors entering Tuvalu manually at the point of entry.

16. Have you included the names of listed individuals in your national ‘stop list’ or border checkpoint list? Briefly outline the steps taken and any problems encountered.

Currently, there is no national “stop list” or border checkpoint list operating in Tuvalu. Generally, persons of potential interest to authorities in that country for reasons related to terrorism or trans-national crime must be identified by authorities in other countries. However, agencies in Tuvalu have access through Police to intelligence sources of the Australian Federal Police.

17. How often is the updated list transmitted to border control authorities? Is there the capability of searching list data using electronic means at all entry points?

Refer to 16 above. Authorities in Tuvalu do not currently have this capability.

18. Have you stopped any of the listed individuals at any of your border points or while transiting your territory? If so, please provide additional information, as appropriate.

No listed individuals have been identified and stopped at Tuvalu’s border or in transit.

19. Please provide an outline of the measures, if any, taken to incorporate the List in the reference database of your Consular offices. Have your visa-issuing authorities identified any visa applicant whose name appears on the List?

Consular offices have no role in the issuing of visas. Visas permitting stays of up to 30 days in Tuvalu are issued to all persons permitted to enter the country at the border. All applications for extended visas are received and assessed by the Immigration Department’s office in Tuvalu. Background checks are conducted on applicants for extended visas or those who provide some basis for suspicion by Police utilising intelligence sources available through the Australian Federal Police (AFP). The AFP has access to a number of international watch-lists that include the 1267 list. Visa-issuing authorities have not identified any visa applicant whose name has appeared on the 1267 list.

V. Arms Embargo

Under the sanctions regime, all States are requested to prevent the direct or indirect supply, sale and transfer, to Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals and entities associated with them, from their territories or by their nationals outside their territories of arms and related materiel of all types, including the provision of spare parts and technical advice, assistance, or training related to military activities (paragraph 2(c) of resolution 1390 (2002) and paragraph 1 of resolution 1455 (2003)).

What measures, if any, do you now have in place to prevent the acquisition of conventional arms and weapons of mass destruction (WMD) by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them? What kind of export control do you have in place to prevent the above targets from obtaining the items and technology necessary for weapons development and production?

20. Refer to response 23 below.

21. What measures, if any, have you adopted to criminalize the violation of the arms embargo directed at Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them?

Refer to response 23 below.

22. Please describe how your arms/arms broker licensing system, if any, can prevent Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them from obtaining items under the established arms embargo.

Refer to response 23 below.

23. Do you have any safeguards that the weapons and ammunition produced within your country will not be diverted/used by Usama bin Laden, members of Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated?

In response to Questions 20-23. The number of firearms in Tuvalu is very small and there are tight controls on their importation, possession or use as well as explosives.

The *Arms and Ammunition Act* (1964) and *Explosives Act* (1927) are the primary means by which the provision of arms to or acquisition of arms by, persons or entities on the 1267 list is controlled. These Acts restrict the importation, exportation, manufacture, possession or use of arms, ammunition or explosives to persons authorised under permits issued by the Commissioner of Police. The Commissioner of Police takes security issues into account when considering applications for permits. Persons undertaking these activities without the required permits commit offences punishable by fines or imprisonment.

The Acts provide Police with powers of entry, search and seizure when investigating suspected offences.

VI. Assistance and conclusion

24. Would your state be willing or able to provide assistance to other States to help them implement the measures contained in the above-mentioned resolutions? If so, please provide additional details or proposals.

Not applicable.

25. Please identify areas, if any, of any incomplete implementation of the Taliban/Al-Qaida sanctions regime, and where you believe specific assistance or capacity building would improve your ability to implement the above sanctions regime.

The draft legislation developed by the Pacific Islands Forum Secretariat that is under consideration by the government would considerably enhance Tuvalu's compliance with the terrorist financing and asset freezing elements of relevant UN Security Council Resolutions. Tuvalu requires technical assistance in developing and implementing a more comprehensive legislative framework in relation to counter terrorist financing and anti-money laundering.

Technical assistance is also required to develop the operational capability of the TTU to performing the functions of a Financial Intelligence Unit that meets current international standards.

26. Please include any additional information you believe pertinent.

Not applicable.
