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GOVERNMENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI DECREE NO. 3

SUPPRESSION OF TERRORISM DECREE 1991

A DECREE ESTABLISHING A MACHINERY FOR DEALING WITH TERRORISM

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IN exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Force and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree—

Short title

1. This Decree may be cited as the Suppression of Terrorism Decree 1991.

Interpretation

2.—(1) In this Decree, unless the context otherwise requires—

“Armed forces” means the Fiji Military Forces or any naval, military or air forces of or established or raised in Fiji and any forces of any foreign state serving in Fiji at the request or with the approval of the Fiji Government;

“Emergency powers” means any of the powers specified in Sections 10, 11 and 12 of this Decree;

“Intercept” in relation to a private communication, includes hear, listen to, record, monitor, or acquire the communication while it is taking place;

“Private Communication” means any oral communication made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication; but does not include such a communication occurring in circumstances in which any party ought reasonably to expect that the communication may be intercepted by some other person not having the express or implied consent of any party to do so;

“Public place” means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward;

“Road” includes any motorway, regional motorway, regional road, street, private road, accessway, private way, or service lane, and every bridge, culvert, ford, gate, or other thing belonging to any road;

“Terrorist emergency” means a situation in which any person or substantial body of persons whether inside or outside Fiji is threatening, causing, or attempting to cause—

(a) The death of, or serious injury or serious harm to, any person or persons; or

(b) The destruction of, or serious damage or serious injury to—

(i) Any airport, premises, building, erection, structure, installation, or road; or

(ii) Any aircraft, hovercraft, ship or ferry or other vessel, train or vehicle; or

(iii) Any natural feature which is of such beauty, uniqueness, or scientific, economic, or cultural importance that its preservation from destruction, damage or injury is in the national interest; or

(iv) Any chattel of any kind which is of significant historical, archaeological, scientific, cultural, literary, or artistic value or importance; or

(v) any animal; or

(c) The destruction of the economic life of Fiji; or

(d) Any action that is prejudicial to the interests of defence, public safety, public order and the security of Fiji;

in order to coerce, deter, or intimidate—

(e) The Government of Fiji, or any agency of the Government of Fiji; or

(f) The Government of any other country, or any agency of the Government of any other country; or

(g) Any body or group of persons, whether inside or outside Fiji—

for the purpose of furthering, within or outside Fiji, any political aim;

(2) A reference in this Decree to a party to a private communication is a reference to—

(a) Any originator of the communication and any person intended by the originator to receive it; and

(b) A person who, with the express or implied consent of any originator of the communication or any person intended by the originator to receive it, intercepts the communication.

(3) A reference in this Decree to the Prime Minister means:—

(a) Where the Prime Minister is for any reason unavailable, the Acting Prime Minister; and

(b) Where both the Prime Minister and the Acting Prime Minister are for any reason unavailable, the next highest ranked Minister of the State available.

This Decree to bind the State

3. This Decree binds the State.

This Decree not to affect functions, duties, and powers under other Decrees or general law

4. Except as otherwise provided in this Decree, nothing in this Decree shall limit, or be in substitution for, or in any way affect, the functions, duties, or powers of any person under the provisions of any enactment or any rule of law.

Commissioner of Police to inform Prime Minister of existence of terrorist emergency

5. Where the Commissioner of Police believes—

- (a) That an emergency is occurring or has reasonable grounds to believe that it is likely to occur; and
- (b) That the emergency may be a terrorist emergency; and
- (c) That the exercise of emergency powers is or may be necessary to deal with that emergency—

the Commissioner shall forthwith inform the Prime Minister that such an emergency is believed to be occurring or likely to occur and that it is or may be necessary to exercise emergency powers.

Meeting of ministers may authorise exercise of emergency powers

6.—(1) Upon being informed pursuant to section 5 of this Decree, the Prime Minister shall cause a meeting of not fewer than 3 Ministers of the State to be held for the purpose of considering whether to exercise the power conferred by subsection (2) of this section.

(2) The Ministers of the State, not being fewer than 3, present at the meeting held pursuant to subsection (1) of this section may, if they believe, on reasonable grounds—

- (a) That an emergency is occurring or likely to occur; and
- (b) That the emergency may be a terrorist emergency; and
- (c) That the exercise of emergency powers is necessary to deal with that emergency—

may by notice in writing signed by the Minister of the State presiding at the meeting, authorise the exercise, by the Police, of emergency powers and specifying the areas to which the authorisation of the exercise of emergency powers relate.

(3) Every notice given pursuant to subsection (2) of this section—

(a) shall set out—

- (i) The names of the Ministers of the State present at the meeting held pursuant to subsection (1) of this section at which the giving of the notice is approved;
- (ii) The date on which the notice is given;
- (iii) The authority under which the notice is given;
- (iv) The reasons for the giving of the notice;
- (v) The areas to which the notice relate; and
- (vi) the circumstances specified in subsection (4) of this section in which the authority to exercise emergency powers under the notice will expire; and

(b) May contain such other information as may be appropriate in the circumstances.

(4) Subject to sections 7 and 8 of this Decree, the authority to exercise emergency powers under any notice given pursuant to subsection (2) of this section shall expire—

- (a) Once the Commissioner of Police is satisfied that the emergency is not a terrorist emergency; or
- (b) When the terrorist emergency ends; or
- (c) At the close of the day specified in the notice as the day when that notice expires; or
- (d) At the close of the seventh day after the day on which the notice is given— whichever occurs first.

(5) The Minister of the State who signs any notice given pursuant to subsection (2) of this section shall forthwith give public notice of the giving of that notice by such means as are reasonable in the circumstances, and the notice shall be published in the *Fiji Republic Gazette* as soon as practicable.

(6) Notwithstanding anything to the contrary in any other Decree, every notice given pursuant to subsection (2) of this section shall come into force when it is signed by the Minister of the State presiding at the meeting of Ministers held pursuant to subsection (1) of this section.

The President may extend authority to exercise emergency powers

7.—(1) Where any notice is given pursuant to section 6(2) of this Decree authorising the exercise, by the Police, of emergency powers, the Minister of the State who signed that notice shall inform the Cabinet of the reasons why it was given at the next sitting of the Cabinet, and the Prime Minister shall inform the President at the earliest opportunity.

(2) Where the Cabinet is informed, pursuant to subsection (1) of this section, that a notice has been given pursuant to section 6 (2) of this Decree authorising the exercise, by the Police, of emergency powers, the President may, on the advice of the Cabinet from time to time extend that authority to exercise emergency powers for such period, not exceeding 7 days in each instance.

(3) Nothing in subsection (2) of this section authorises any person to exercise any emergency power after the emergency in respect of which authority to exercise emergency powers has been given under this Decree ends.

President may revoke authority to exercise emergency powers

8. Notwithstanding anything in section 6 or section 7 of this Decree, the President on the advice of Cabinet, may at any time, revoke—

- (a) any authority to exercise emergency powers under any notice given pursuant to section 6 (2) of this Decree;
- (b) any extension of any such authority pursuant to section 7 (2) of this Decree.

Proof of identity

9. Every member of the Police or Armed Forces shall, when exercising any emergency power—

- (a) where it is reasonable and practical in the circumstances—
 - (i) Identify himself or herself to every person who is directly affected by the exercise of that power; and
 - (ii) Inform such persons of the authority under which that member is acting and the power or powers that that member is exercising; and
- (b) If that member of the Police or the Armed Forces is not in uniform, and if requested to do so, produce evidence that he or she is a member of the Police or Armed Forces.

Emergency Powers

10.—(1) This section applies to any emergency in respect of which the Police are authorised, by or under section 6 (2) or section 7 of this Decree, to exercise emergency powers.

(2) Subject to this Decree, any member of the Police or Armed Forces may, for the purpose of dealing with any emergency to which this section applies, or of preserving life or property threatened by that emergency—

- (a) require the evacuation of any premises or place (including any public place), or the exclusion of persons or vehicles from any premises or place (including any public place), within the area in which the emergency is occurring;
- (b) Enter, and if necessary break into, any airport or premises or public place, or any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle, within the area in which emergency is occurring;
- (c) Totally or partially prohibit or restrict public access, with or without vehicles, on any road or public place within the area in which the emergency is occurring;
- (d) Remove from any airport or road or public place within the area in which the emergency is occurring any aircraft, hovercraft, ship or ferry or other vessel, train or vehicle impeding measures to deal with that emergency; and, where reasonably necessary for that purpose, may use force or may break into any such aircraft, hovercraft, ship or ferry or other vessel, train or vehicle;
- (e) Destroy any property which is within the area in which the emergency is occurring and which that member of the Police believes, on reasonable grounds, constitutes a danger to any person;
- (f) Require the owner or person for the time being in control of any land, building, vehicle, boat, apparatus, implement, or equipment (in this paragraph referred to as requisitioned property) that is within the areas in which the emergency is occurring forthwith to place that requisitioned property under the direction and control of that member of the Police, or of any other member of the Police;
- (g) Totally or partially prohibit or restrict land, air, or water traffic within the area in which the emergency is occurring;
- (h) Search any person, any land, building, vehicle, boat, apparatus, implement, package, equipment, baggage (personal or otherwise) within the emergency area;
- (i) Use arms, ammunition and explosives that is deemed by the Commissioner of Police reasonable in the circumstances of the emergency;
- (j) Take such measures, including means dangerous or fatal to human life as he considers necessary to ensure that no person prohibited from entering or remaining in an emergency area shall enter or remain in such area, or to ensure that any person causing or continuing to cause the terrorist emergency is overcome;
- (k) Detain any person found within the emergency area, who is found to be behaving in a suspicious manner;

Provided that anyone detained under this provision must be taken before a Magistrate within 36 hours from the time of his detention, if not sooner released or charged.

(3) Notwithstanding anything in any other law, but subject to this Decree, any member of the Police may, for the purpose of preserving life threatened by any emergency to which this Decree applies—

- (a) Connect any additional apparatus to, or otherwise interfere with the operation of, any part of the telephone system; and
- (b) Intercept private telephonic communications—in the area in which the emergency is occurring.

(4) The power specified in subsection (3) of this section may be exercised only by, or with the authority of, a Gazetted or Inspectorate officers of the Police, and only if that officer believes, on reasonable grounds, that the exercise of that power will facilitate the preservation of life threatened by the emergency.

Additional emergency power

11.—(1) The Commissioner of Police, upon a notice having been issued under the provision of section 6 (2), may authorise and direct the protection of other areas not being areas specified in the notice issued under Section 6 (2) for the purpose of protecting individuals who in the Commissioner's opinion are threatened or likely to be threatened as a result of the terrorist emergency.

(2) Any Member of the Police or Armed Forces who is engaged for the purpose of protecting individuals under subsection (1) may exercise any of the emergency powers specified under Section 10 (2) of this Decree.

Requisitioning powers

12.—(1) Any member of the Police exercising any power conferred on that member by section 10 (2) (f) of this Decree to requisition any property shall give to the owner or person in charge of the requisitioned property a written statement specifying the property that is requisitioned and the person under whose control the property is to be placed.

(2) Where the owner or person for the time being in control of any property that may be requisitioned under section 10 (2) (f) of this Decree cannot be immediately found, any member of the Police may assume forthwith the control and direction of the requisitioned property.

(3) Where any member of the Police assumes the control and direction of any property under subsection (2) of this section, that member shall ensure that, as soon as reasonably practicable in the circumstances, a written statement specifying the property that has been requisitioned, and the person under whose control it has been placed, is given to the owner or person formerly in charge of the requisitioned property.

Members of Armed Forces assisting Police may exercise emergency powers

13.—(1) Subject to this Decree any emergency power may be exercised by any member of the Armed Forces who is assisting the Police to deal with any emergency to which section 10 of this Decree applies as if that member of the Armed Forces were a member of the Police.

(2) Any member of the Armed Forces who is authorised by subsection (1) of this section to exercise any emergency power may exercise any such power only at, and in accordance with, the request of a member of the Police.

Compensation payable where property requisitioned or destroyed

14.—(1) Where any requisitioned property has come under the control of any person acting under section 10 (2) (f) or section 12 or section 13 of this Decree, there shall, on application by any person having an interest in the requisitioned property, be payable, out of money appropriated by Cabinet for the purpose, reasonable compensation for—

- (a) The use of that requisitioned property while under that control; and
- (b) Any loss of, or damage or injury to, that requisitioned property suffered or incurred while under that control.

(2) Where any property (other than requisitioned property, or any property belonging to any person and used by that person for the purpose of, or in the course of, causing an emergency in respect of which authority to exercise emergency powers has been given under this Decree) is damaged or injured or destroyed as a result of any action taken by any member of the Police, or any member of the Armed Forces assisting the Police, in the course of dealing with that emergency, there shall, on application by any person having an interest in the property, be payable, out of money appropriated by Cabinet for the purpose, reasonable compensation for such loss of, or damage or injury to, that property.

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(3) Where there is any dispute as to the entitlement of any person to compensation under this section, or as to the amount of such compensation, or as to the liability of the State to pay any such compensation, the matter shall be determined by any Court of competent jurisdiction.

Prime Minister may prohibit publication or broadcasting of certain matters relating to terrorist emergency

15.—(1) Where, in respect of any emergency in respect of which authority to exercise emergency powers has been given under this Decree, the Prime Minister believes, on reasonable grounds, that the publication or broadcasting of—

- (a) The identity of any person involved in dealing with that emergency; or
- (b) Any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with that emergency—
would be likely to endanger the safety of any person involved in dealing with that emergency, or of any other person, the Prime Minister may, by notice in writing, prohibit or restrict—
- (c) The publication, in any newspaper or other document; and
- (d) The broadcasting, by radio or television or otherwise—

of the identity of any person involved in dealing with that emergency, and any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with that emergency.

(2) Where, in respect of any emergency in respect of which authority to exercise emergency powers has been given under this Decree the Prime Minister believes, on reasonable grounds, that the publication or broadcasting of any information or material (including a photograph) relating to any equipment or technique lawfully used to deal with that emergency would be likely to prejudice measures designed to deal with terrorist emergencies, the Prime Minister may, by notice in writing prohibit or restrict—

- (a) The publication, in any newspaper or other document; and
- (b) The broadcasting, by radio or television or otherwise—

of any information or material (including a photograph) of any such equipment or technique.

(3) The Prime Minister may issue a notice under subsection (1) or subsection (2) of this section notwithstanding that the emergency in respect of which the notice is issued has ended.

(4) Where any notice is issued under subsection (1) or subsection (2) of this section, the Prime Minister shall forthwith give public notice of the issue of that notice by such means as are practicable in the circumstances, and the notice shall be published in the *Fiji Republic Gazette* as soon as practicable.

Commencement, revocation, expiry, and renewal of notice issued under section 15

16.—(1) Notwithstanding anything in any other Decree, every notice issued under section 15 of this Decree shall become effective in relation to any person either—

- (a) When that notice is delivered to that person; or
- (b) On the giving of public notice of the issue of that notice pursuant to subsection (4) of that section—

whichever occurs first.

(2) The Prime Minister may at any time, by notice in the *Fiji Republic Gazette*, revoke any notice issued under section 15 of this Decree.

(3) Subject to subsections (2) and (4) of this section, every notice issued under section 15 of this Decree shall expire 1 year after the date on which the notice was issued, or on such earlier date as may be specified in the notice.

(4) Subject to subsection (2) of this section, the Prime Minister may, from time to time, by notice in the *Fiji Republic Gazette*, renew any notice issued under section 15 of this Decree for such period, not exceeding 5 years in each instance, as is specified in the notice of renewal if the renewal of the notice is necessary—

- (a) to protect the safety of any person; or
- (b) to avoid prejudice to measures designed to deal with international terrorist emergencies.

Protection from liability

17.—(1) Except as provided by section 14 of this Decree, no action or proceeding shall be brought against the State, or any member of the Police, or any member of the Armed Forces, to recover damages for any loss of, or damage or injury to, any property where that loss, damage, or injury is due directly or indirectly to an emergency in respect of which authority to exercise emergency powers has been given under this Decree, whether the loss or damage or injury is caused by any person taking any action, or failing to take any action, in the exercise or performance in good faith of that person's functions, duties, or powers under this Decree or any other law.

18.—(1) As soon as practicable after the end of any emergency in respect of which authority to exercise emergency powers is given under this Decree, the Commissioner of Police shall, if any emergency power was exercised under this Decree during that emergency, make a report to the Cabinet on the exercise of that power.

Prohibition on disclosure of private communications lawfully intercepted

19. No person who—

- (a) Pursuant to the power conferred by section 10(3) of this Decree, intercepts or assists in the interception of a private communication; or
- (b) Acquires knowledge of a private communication as a direct or indirect result of that interception—

shall knowingly disclose the substance, meaning, or purport of that communication, otherwise than in the performance of that person's duty.

Notice to be given of intention to produce evidence of private communication

20. Particulars of a private communication intercepted pursuant to the power conferred by section 10(3) of this Decree shall not be received in evidence by any Court against any person unless the party intending to adduce it has given to that person reasonable notice of that party's intention to do so, together with—

- (a) A transcript of the private communication where that party intends to adduce it in the form of a recording, or a written statement setting forth the full particulars of the private communication where that party intends to adduce oral evidence of it; and
- (b) A statement of the time, place, and date of the private communication, and of the names and addresses of the parties to the communication, if they are known:

Provided that in relation to a private communication intercepted pursuant to the power conferred by section 10(3) of this Decree disclosing evidence relating to any offence that is not related to that emergency, no particulars of that communication which relate to that offence shall be received in evidence by any Court against any person.

Offence

21.—(1) Every person commits an offence who—

- (a) Without lawful excuse, fails or refuses to comply with any direction, requirement, prohibition, or restriction given to or imposed upon that person pursuant to section 10 of this Decree—
 - (i) By any member of the Police; or
 - (ii) By any member of the Armed Forces acting under section 13 of this Decree.
- (b) Contrary to any notice issued by the Prime Minister under section 15 of this Decree, publishes or causes or allows to be published in a newspaper or other document, or broadcasts or causes or allows to be broadcast by radio or television or otherwise—
 - (i) The identity of any person involved in dealing with an emergency in respect of which authority to exercise emergency powers has been given under this Decree, or any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with any such emergency; or
 - (ii) Any information or material (including a photograph) of any equipment or technique lawfully used to deal with any such emergency.

(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction—

- (a) In the case of an individual, to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$5,000;
- (b) In the case of a body corporate, to a fine not exceeding \$20,000.

(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$2,000 who acts in contravention of section 19 of this Decree.

Coming into force

22. This Decree shall be effective from the 15th day of January 1991.

Dated this 19th day of January 1991.

PENAIA K. GANILAU
President of the Sovereign Democratic
Republic of Fiji and Commander-in-Chief of the
Armed Forces