

EXTRAORDINARY



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EMERGENCY DECREE 2000

INTERIM MILITARY GOVERNMENT DECREE NO. 4

WHEREAS given the escalating civil unrest and political uncertainty in the country with its attendant grave risks to life and property, it is imperative that the emergency situation continues in order to guarantee the safety of the people of Fiji and to maintain law and order.

NOW THEREFORE, in exercise of the powers conferred upon me as the Commander and the Head of the Interim Military Government of Fiji, I proclaim the following—

PART 1—PRELIMINARY

Short title and commencement.

1. This Decree may be cited as the Emergency Decree 2000 and commences on the 2nd day of June, 2000 and is valid for 14 days unless earlier revoked or extended by notice in the *Gazette*.

Interpretation

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

'arm' and 'ammunition' have the same meaning as in the Arms and Ammunition Act (Cap. 188);

'Armed Forces' a member of the Fiji Military Forces, any naval or air forces established or raised in Fiji;

'assembly' has the same meaning as in the Public Order Act, Chapter 20;

'Commissioner of Police' includes the Divisional Police Commanders;

'corrosive substance' means sulphuric acid, nitric acid, hydrochloric acid; formic acid, acetic acid, phenols ammonia, potassium hydroxide, sodium hydroxide and all other substances which are capable, on application to the human body, of causing hurt, harm or injury through corrosive action;

'explosive' has the same meaning as in the Explosives Act (Cap. 189);

'house' includes a place of business;

'meeting' has the same meaning as in the Public Order Act (Cap. 20);

'officer Commanding' means that military Officer Commanding the troops in the area;

'officer in charge of a police District' means that police officer appointed by the Commissioner of Police to be in charge of the Police in a district;

'procession' has the same meaning as in the Public Order Act (Cap. 20);

'public place' includes-

(a) any highway, public street, public road, public park or garden, any sea beach, river, public bridge, wharf, jetty, lane, footway, square, court, alley or passage whether a thoroughfare or not; or

(b) any-

(i) land or open space, whether such land or space is closed or enclosed; or

(ii) place or building of public resort, to which for the time being the public have or are permitted to have access whether on payment or otherwise.

PART II — POWERS FOR MAINTAINING PUBLIC SAFETY

Prohibition and dispersal of assemblies, etc

- 3.—(1) (a) The district officer responsible or the officer in charge of the Police District or the Officer Commanding, may in writing prohibit absolutely or subject to such conditions as he may think fit any procession, meeting or assembly in any place or building whether public or private notwithstanding the fact that a permit for such a procession, meeting or assembly may have already been granted;
- (b) any procession, meeting or assembly in any place whatsoever, whether or not any order shall have been made prohibiting such procession, meeting or assembly under the provisions of the last preceding paragraph, may be ordered to disperse by any police officer or any member of the Armed Forces and it shall there upon be the duty of the person taking part in such procession, meeting or assembly, to disperse accordingly.

(2) Any police officer or any member of the Armed Forces, if in his opinion such action is necessary for the public safety, after giving due warning, may use such force as he considers necessary, including the use of arms, to disperse the procession, meeting or assembly and to apprehend any person present thereafter, and no police officer nor any member of the Armed Forces nor any person acting in aid of such police officer or member using such force shall be liable in any criminal or civil proceedings for having by the use of such force caused harm or death to any person.

(3) Any person who organises or assists in organising any procession, meeting or assembly, held or intending to be held, in contravention of an order made under this section, or who incites any person to take part in such procession, meeting or assembly, or who takes part in such a procession, meeting or assembly, commits an offence.

(4) Any police officer or a member of the Armed Forces may enter any building (other than a dwelling house) used, hired, let or rented for the holding of meetings, for cinematographic exhibitions or other entertainment, where he has reason to believe that a meeting of three or more persons is to be held or is being held and may remain in such building for the purposes of ascertaining whether or not the provisions of the law are being observed and such police officer or a member of the Armed Force when entering, remaining or leaving such building in discharge of his powers under this subsection is deemed to be acting in accordance with his duty under this Decree.

Closing of roads, etc

4.—(1) The Commissioner of Police, the officer in charge of the Police District, or the Officer Commanding may as he thinks fit, regulate, restrict, control or prohibit the use of any road, street, path or waterway or any public place, or to close any road, street, path or waterway or any public place, and that the situation is too urgent to communicate with an officer having authority under this paragraph, an officer above the rank of Sergeant, may exercise the powers conferred by this paragraph on the Commissioner of Police or an officer in charge of the Police District or the Officer Commanding.

(2) Any person who fails to comply with an order made under this section commits an offence.

Control of persons

5.—(1) Where the Commissioner of Police or Officer Commanding is satisfied that any person—

- (a) has been recently concerned in acts involving or likely to cause or provoke a breach of the peace, or likely to be prejudicial to the success of measures taken to maintain or restore public order, or in the preparation or institution of such acts, or that by reason of his words or conduct he is likely to be concerned in such acts; and
- (b) that by reason thereof it is necessary to exercise temporary control over such person, the Commissioner of Police or Officer Commanding may by order exercise in respect of such person any one or more of the following powers—
- (i) exclude such person from such place or area or any part thereof;
 - (ii) require such person to reside in such place or area as may be specified and not to leave such place or area without the permission of the Head of the Military Government and subject to such conditions as may be specified;
 - (iii) require such person to remain indoors during such hours as may be specified;
 - (iv) require such person to notify to the police at such place or places and in such manner as may be specified, his place of residence and any change thereof and to report to the police at such times and dates and in such manner as may be specified; and

- (v) require such person to enter into a bond for such an amount and with such sureties as may be specified for his good behaviour or for due compliance with the terms and conditions of this Decree.

Control of movement of persons

6.—(1) The Commissioner of Police, a Commissioner of a Division or Officer Commanding if he considers such action to be necessary for the securing of public safety, or for the maintenance of public order, or for maintaining supplies and services essential to the life of the community, may, by order, provide for the prohibition or regulation of the entry of persons into or the exit of persons from any Division, province, island, city, town, district, or other area or place in Fiji.

- (2) An order made under subsection (1) may provide—
- (a) for any absolute or conditional exemptions from the operation of the order;
 - (b) for the granting by any specified authority or persons of permits or conditional permits allowing entry into or exit from any such Division, province, island, city, town or district or other area or place;
 - (c) for the application of such order to specific classes or descriptions of persons or communities; or
 - (d) for such incidental and supplementary matters as appear to the Commissioner of Police, a Commissioner of a Division or Officer Commanding to be necessary or expedient for the purposes of such order.

Curfew

7.—(1) The Commissioner of Police, Officer Commanding, the officer in charge of a Police District may by order in the Gazette require every person within a specified area to remain within doors between such hours as may be specified in the order unless in possession of a written permit in that behalf by a police officer or the officer in charge of a Police District or a district officer or a military Officer to issue such permits.

- (2) No order under subsection (1) applies to—
- (a) police officer in uniform;
 - (b) any member of the Armed Forces in uniform;
 - (c) any member of a fire brigade, or the driver and orderlies attached to a hospital ambulance, while on duty; and
 - (d) any person or class of persons exempted from this section by the Head of the Military Government.
- (3) Any person who is out of doors without a permit in writing within an area declared under this section and between such hours as have been specified to remain indoors commits an offence.

Control of arms

8.—(1) The Head of the Military Government, notwithstanding that licences or permits have been issued under any written law, may by order in the Gazette prohibit the buying, selling or otherwise dealing in any arm, ammunition, or explosives in any part of Fiji for such period as may be specified in such order, and may at the same time give directions—

- (a) for the taking into custody of arms, ammunition and explosives;
- (b) for removal to a place approved by the Commissioner of Police, or the Officer Commanding of any arms, ammunition and explosives;
- (c) for the keeping of arms, ammunition, and explosives in a secure place approved by the Commissioner of Police or the Officer Commanding;
- (d) for the cancellation or suspension of licences or permits for arms, ammunition and explosives for the period specified in such order; and
- (e) generally for the carrying into effect of such order, and any person who neglects to comply with such an order, commits an offence.

Possession of arm, etc.

9.—(1) Any person who, without lawful excuse, the onus of proving which shall be upon him, carries or has in his possession or under his control—

- (a) any arm, not being an arm which he is permitted to carry or possess or is duly licensed to carry or possess under any written law; or
- (b) any ammunition or explosive, or any corrosive or inflammable substance, without lawful authority therefore, commits an offence.

(2) Notwithstanding subsection (1), the Head of the Military Government may by order in the Gazette prohibit in the Fiji Islands, or in any area of the Fiji Islands specified in the order, arm, ammunition, or explosive, or any corrosive or inflammable substance, which any person is permitted or licensed to carry under any written law. Any person who contravenes any such order shall be guilty of an offence.

(3) This section does not apply to any police officer, prisons officer or to any member of the Armed Forces, in the execution of his duty.

Conorting with person in possession of arms, etc

10.—(1) Any person who consorts with or is found in the company of another person who is carrying or who has in his possession any arm, ammunition or explosive, or any corrosive or inflammable substance, in contravention of section 9, in circumstances which raise reasonable presumption that he intends to do or is about to act with or has recently acted with such other person in a manner prejudicial to public security commits an offence.

(2) Any person who consorts with or is found in the company of a person who is carrying or has in his possession any arms, ammunition or explosives, or any corrosive or inflammable substances, in contravention of subsection (1) in circumstances which raise a reasonable presumption that he knew such other person had in his possession such arms, ammunition or explosives, or such corrosive or inflammable substances, commits an offence.

(3) Where in any prosecution for an offence against of this section, it is established to the satisfaction of the court that the accused person was consorting with or was in the company of any person carrying or having possession of any arm, ammunition or explosive, or any corrosive or inflammable substance, it shall be presumed until the contrary is proved that such last mentioned person was carrying or was in possession of such arm, ammunition or explosives, or such corrosive or inflammable substance, in contravention of section 9.

Possession of offensive weapons

11.—(1) Any person who, without lawful excuse, the onus of proving which shall be upon him, carries or has in his possession or under his control any offensive weapon commits an offence.

(2) Without prejudice to the general meaning of the words 'offensive' weapons in this section includes a sword, spear, cane knife, cutlass, club, axe, hatchet, knife or other dangerous weapon, stick or stone, or any object, article or thing (whether similar to the foregoing or otherwise) intended or likely to be used for an aggressive or unlawful purpose.

Carrying an arm while drunk or disorderly

12. Any person who is drunk or behaves in a disorderly manner while carrying an arm, an explosive or a corrosive or inflammable substance commits an offence.

Failure to report an offence of possession of an arm, etc

13.—(1) Any person who, knowing or having reasonable cause to believe that another person contravenes section 9, fails to report the same to a police officer or member of the Armed Forces at the earliest possible opportunity commits an offence.

(2) Where any person is charged with an offence under subsection (1), the burden of proving that there was no opportunity of making a report to any of the officers referred to in subsection (1) or that such a report was in fact made at the earliest opportunity, shall lie on the accused.

Loudspeakers may be prohibited

14. Where the Commissioner of Police or the Officer Commanding has reason to believe that the use of any loudspeaker or amplifying device at public meetings or in any public place may give rise to disorder and may thereby cause undue demands to be made upon the Armed Forces or the police, or may result in a breach of the peace, or promote disaffection or public alarm, the Commissioner of Police or the Officer Commanding may direct the prohibition of the use of any such loudspeaker or device at any public meeting or in any public place within such area as he may specify.

Act calculated to cause mutiny, etc

15. Any person who attempts or does any act calculated or likely to cause mutiny, sedition or disaffection among members of the Armed Forces, the Fiji Police or the Fiji Prison Service, any fire brigade or among the civilian population or to impede, delay or restrict any measures taken for securing or regulating any essential or necessary service or threatens the safety of the civilian population commits an offence.

PART III—PROTECTED PLACES AND PROTECTED AREAS

Protected places

16.—(1) If, as respects any area, premises or place, it appears to a Commissioner of Police or Officer Commanding to be necessary to expedite in the interests of public safety that special precautions should be taken to prevent the entry of unauthorised persons, he may by order in the Gazette declare such area hereinafter referred to as the 'protected place', place or premises to be a protected place for the purpose of this Decree; and so long as the order is in force no person shall, subject to subsection (2) enter the prohibited place.

(2) Where, in pursuance to this section, any person is granted permission to be in a protected place, that person shall, while holding such permission, comply with such directions for regulating his conduct as may be given by the Officer Commanding or by the authority or person granting the permission.

(3) Any authorised person, including any person authorised in that behalf by the occupier of the premises, may search any person entering or seeking to enter, or being in a protected place, and may detain any such person for the purpose of searching him: Provided that no woman may be searched except by another woman.

(4) If any person is in a protected place in contravention of this section, or, while in such a place, fails to comply with any directions given under the provisions of this section, then, without prejudice to any proceedings which may be taken against him, he may be removed from the place by any authorised officer including any person authorised in that behalf by the occupier of the premises.

(5) Any person who is in a protected place between 6 p.m. and 6 a.m. or such other hours as the Commissioner of Police or Officer Commanding may, by order in the Gazette, specify in relation to that particular protected place, and who fails to stop after being challenged by an authorised officer to do so, may be arrested by force, which force may, if necessary to effect the arrest, extend to the use of weapons including arms.

(6) The Commissioner of Police or the Officer Commanding may take or cause to be taken such steps as he may deem necessary for the protection of any protected place, and such steps may extend to the taking of defensive measures which involve or may involve danger to the life of any person entering or attempting to enter the protected place. Where any measures involving such premises as aforesaid are adopted, the Commissioner of Police or the Officer Commanding shall cause such precautions to be taken, including the prominent display of warning notices, as he deems reasonably necessary to prevent inadvertent or accidental entry into such a protected place, and, where such precautions have been duly taken, no person shall be entitled to compensation or damages in respect of injury received or death caused as a result of any unauthorised entry or attempted entry into a such protected place.

(7) For the purpose of this section, 'authorised officer' means—

- (a) any police officer;
- (b) any member of the Armed Forces;
- (c) any prisons officer; and
- (d) any other person performing the duties of a guard or watchman in a protected place and especially authorised in that behalf by a police officer or a member of the Armed Forces.

PART IV—GENERAL USE OF REASONABLE FORCE

17. Where a sudden and grave circumstance has arisen which in the reasonable opinion of a member of the Armed Forces demands his immediate intervention to prevent imminent threat to life, he may use reasonable force including the use of arms to prevent such imminent threat to life or property.

PART IV—POWER TO DETAIN SUSPECTED PERSONS

Power to detain suspected persons

18.—(1) If any person, upon being questioned by a police officer or a member of the Armed Forces, fails to satisfy the police officer or member of the Armed Forces as to his identity, address or place of employment, or as to the purpose for which he is in the place in which he is found, such police officer or member of the Armed Forces may, if he reasonably suspects that that person has acted or is about to act in a manner prejudicial to public safety or the preservation of the peace, or is about to commit an offence against this Decree arrest and detain such person pending enquiries.

(2) No person shall be detained under this section for a period exceeding 24 hours except with the authority of a magistrate or the Commissioner of Police or the Officer Commanding on whose direction such a person may be detained for a further period of 48 hours: Provided that if a magistrate is satisfied that the necessary enquiries cannot be completed within such further period of 48 hours, such magistrate may direct such person to be detained for a further period not exceeding 7 days.

(3) Any person detained under this section is deemed to be in lawful custody and may be detained in any prison or any police station or in any other place authorised generally or specially by the Commissioner of Police or the Officer Commanding.

(4) Without prejudice to subsection (1), if any police officer of or above the rank of Inspector, a member of the Armed Forces of or above the rank of Sergeant reasonably suspects that any person has acted or is about to act, or is likely to act in any manner prejudicial to public safety or the preservation of the peace, or is about to commit an offence against this Decree, he may arrest and detain such person pending enquiries, and subsections (2) and (3) apply to every person arrested and detained as if such person had been arrested and detained under subsection (1).

Prohibition of uniforms, etc

19.—(1) The Head of the Interim Military Government, if he considers it in the public interest so to do, may by order in the Gazette prohibit the manufacture, sale, use, display or possession of any flag, banner, badge, emblem, device, picture, photograph, uniform or distinctive dress.

(2) Any person contravening any provision of any order made under subsection (1) commits an offence.

(3) If any person, for any purpose prejudicial to the public safety or the maintenance of public order, uses or wears without lawful authority any naval, military, air force, police, prisons or other official uniform, or any clothing so nearly resembling the same to be worn or carried by any member of such forces with the intention that he may be believed or with the knowledge that he is likely to be believed to be a member of any such force falsely represents himself to be a person who is or has been entitled to wear such uniform he shall be guilty of an offence.

(4) If any person pretends to be a police or prisons officer or a member of the Armed Forces, knowing that he is not, or falsely impersonates any police or prisons officer or member of the Armed Forces and in such assumed character does or attempts to do any act under colour of being such a police or prisons officer or member of the Armed Forces, commits an offence.

Obstruction of officer

20 Any person who wilfully obstructs, knowingly misleads, or otherwise interferes with or impedes, or withholds any information in his possession or control which he may reasonably be required to furnish to, any officer or other person who is otherwise acting in accordance with his duty under this Decree commits an offence.

Power of arrest, search and to use force

21.—(1) Notwithstanding any other written law, any police officer or member of the Armed Forces may—

- (a) arrest of any person whom he has reasonable grounds for suspecting to have committed an offence against these Regulations;
- (b) search any person whom he has reasonable grounds for suspecting to have committed an offence against this Decree;
- (c) search any building, vehicle, vessel, cargo or baggage which he has reasonable grounds for suspecting may contain any matter connected with the commission of an offence against this Decree, and for the purpose of effecting the arrest of any person whom he has reasonable grounds for suspecting to have committed an offence against this Decree to use such force as he considers necessary, including the use of arm, and no police officer nor any member of the Armed Forces nor any person acting in aid of such police officer or member of the Armed Forces using such force shall be liable in any criminal or civil proceedings for having by the use of such force cause harm or death to any person or damage to property.

(2) This section does not derogate from the right of defence under in section 17 of the Penal Code.

Power to take photographs, etc

22.—(1) Any police officer or member of the Armed Forces may use reasonable force to take, for use and record, photographs, descriptions, measurements, fingerprints, palm-prints and footprints or of any person who has been arrested under this Decree.

(2) Any person arrested under the of this Decree who refuses to submit to the taking of any of the methods of identification authorised to be taken under subsection (1) commits an offence.

Performance of prison and police duties by the Armed Forces

23.—(1) During the continuance in force of this Decree any member of the Armed Forces when so directed by his commanding officer at the request of or with the concurrence of the Commissioner of Prisons or the Commissioner of Police, the member of the Armed Forces may perform all or any of the duties and functions of a prisons officer or police officer.

(2) In and to the extent necessary for the performance by him or any of the duties or functions of a prisons officer under this section, any member of the Armed Forces shall have all the powers, protection and privileges of a prisons officer.

(3) In and to the extent necessary for the performance by him or any of the duties or functions of a police officer under this section, any member of the Armed Forces shall have all the powers, protections and privileges of a police officer.

(4) For the purposes of this section—

'prisons officer' means a prison officer appointed the Prisons Act;

'police officer' means a police officer appointed under the Police Act.

Hearing in camera

24. Notwithstanding any other written law, the court may order that the whole or any part of the trial before it for an offence against this Decree or for any offence arising out of or in connection with an occasion of public safety shall be dealt with in camera if it is satisfied that it is expedient in the interests of justice or of public safety or security so to do.

Penalty

25. Any person who is convicted of an offence under these Regulations is liable to a fine of \$2,000 and to imprisonment for 4 years.

GIVEN under my hand this 2nd day of June 2000.

COMMODORE J. V. BAINIMARAMA
MSD, jssc, psc
Commander and Head of the
Interim Military Government of Fiji