

GOVERNMENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI  
DECREE NO. 26

FIJI INTELLIGENCE SERVICE DECREE 1990

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### FIJI INTELLIGENCE SERVICE DECREE 1990

#### A DECREE TO ESTABLISH A NATIONAL INTELLIGENCE SERVICE, TO MAKE PROVISION FOR ITS DIRECTION, STAFFING, FUNCTIONS AND POWERS, TO MAKE PROVISION FOR THE SECURITY OF INFORMATION AND PLACES AND FOR RELATED PURPOSES

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

#### PART I—PRELIMINARY

##### *Short title*

1. This Decree may be cited as the Fiji Intelligence Service Decree, 1990.

##### *Interpretation*

2. In this Decree, unless the contrary intention appears—

“activities prejudicial to security” includes activities concerning which Fiji has responsibilities to a foreign country in respect of security;

“active measures of foreign intervention” means clandestine or deceptive action taken by or on behalf of a foreign power to promote the interests of that power;

“acts of violence” includes the kidnapping or detention of a person;

“Chairman” means the Chairman of the Council;

"Committee" means the Intelligence Advisory Committee established under section 12;  
"Council" means the National Security Council established by section 4;  
"Director" means the Director of the Fiji Intelligence Service appointed under section 16;  
"member" means a member of the Council;  
"Service" means the Fiji Intelligence Service established under section 14;  
"security" means—

(a) the protection of Fiji from—

- (i) espionage; and
- (ii) sabotage; and
- (iii) seditious intentions; and
- (iv) active measures of foreign intervention; and
- (v) terrorism.

whether directed from, or committed within, Fiji or not; and

(b) the carrying out of Fiji's responsibilities to any foreign country in relation to a matter contained in paragraph (a);

"seditious intention" has the meaning given to it in section 65 of the Penal Code (Chapter 17);

"seditious offences" has the meaning given to it in section 66 of the Penal Code (Chapter 17);

"terrorism" includes—

- (a) acts of violence for the purpose of achieving a political objective in Fiji or in a foreign country (including acts of violence for the purpose of influencing the policy or acts of a government in Fiji or in a foreign country); and
- (b) training, planning, preparations or other activities for the purposes of violent subversion in a foreign country or for the purposes of the commission in a foreign country of other acts of violence of a kind referred to in paragraph (a); and
- (c) acts that are offences punishable under any law relating to internationally protected persons, the hi-jacking of aircraft or the protection of aircraft.

*Compliance with Protection of Fundamental Rights and Freedoms Under the Constitution*

3. This Decree, to the extent that it regulates or restricts a right or freedom referred to in Part II of the Constitution is a law that is made for that purpose.

## PART II—NATIONAL SECURITY COUNCIL

*National Security Council*

4. There is established a National Security Council which shall consist of—

- (a) the Prime Minister, who shall be the Chairman;
- (b) the Deputy Prime Minister;
- (c) the Minister responsible for defence matters;
- (d) the Attorney-General and the Minister for Justice;
- (e) the Minister responsible for the Police; and
- (f) the Minister responsible for finance.

*Acting Chairman*

5. The Prime Minister in his absence, may designate a member of the Council to preside in his place.

*Co-opted members*

6. The Chairman may co-opt such other Ministers to be members of the Council from time to time as he considers necessary.

*Functions of the Council*

7. The functions of the Council are—

- (a) to determine and direct the action to be taken in respect of matters affecting the sovereignty, territorial integrity and security of the Sovereign Democratic Republic of Fiji and the security of its people;
- (b) to provide guidance and direction to those elements of Government which are responsible for—

- (i) matters affecting the maintenance of good order in Fiji;
  - (ii) combating subversion and espionage;
  - (iii) providing defence against military attack or armed incursions into Fiji's sovereign territory or the use of military pressures against Fiji or activities designed to undermine the security of Fiji and its people;
- (c) to review, direct and provide guidance for the activities of the Council and of the Service; and
- (d) to prepare national level intelligence collection requirements for use by the service in establishing priorities.

*Meetings of the Council*

8. The Council shall meet at such times as are fixed by the Chairman.

*Quorum*

9. The quorum for a meeting of the Council shall consist of the Chairman and two other members.

*Procedures*

10. The Council shall regulate its own procedures.

*Issuance of warrants*

11. Where at a meeting of the Council a decision is taken in respect of the issuance of a warrant under Part VI of this Decree, any member not present at the meeting shall be advised of the decision at the earliest possible opportunity.

### PART III—INTELLIGENCE ADVISORY COMMITTEE

*Intelligence Advisory Committee*

12. The Council may, at its discretion, appoint an Intelligence Advisory Committee which shall consist of Permanent Secretaries and Heads of Departments of various Ministries and Departments of the Public Service as well as executive officials of statutory bodies and state-owned corporations.

*Functions of the Committee*

13.—(1) The Committee shall serve as staff and secretariat for the Council and may be directed to undertake or coordinate the completion of specific studies requested by the Council, relevant to the duties and responsibilities of the Council as defined under this Decree.

(2) At the request of the Council, the Committee may be required to provide national level intelligence collection requirements for use by the Service in prioritizing its activities.

### PART IV—FIJI INTELLIGENCE SERVICE

*Establishment of Fiji Intelligence Service*

14. There is established an organization to be known as the Fiji Intelligence Service, (hereinafter referred to as the "Service") which shall consist of a Director who shall be the head of the Service and such other staff as are provided for in this Decree.

*Functions of Fiji Intelligence Service*

15. The functions of the Fiji Intelligence Service are to collect, collate and process intelligence information and to provide to the National Security Council and other Departments, agencies or persons approved by the Council, timely, accurate and impartial assessments, forecasts and reports in respect of—

- (a) matters affecting the maintenance of good order in the country;
- (b) the combating of seditious intentions espionage and sabotage and the provision of warning of potential military attack, or armed incursions into the territory of Fiji;
- (c) the preservation of national sovereignty and the detection of any attempts by a foreign power or person to engage in political, military or economic activities contrary to Fiji's interests;
- (d) the prospect for world and regional, political, economic and social stability insofar as these could have implications for or could affect Fiji; and
- (e) future trends of the availability of resources and of prices as these could have implications for Fiji.

*Appointment, Duties and Powers of the Director*

- 16.—(1) The Director shall be appointed by the President, acting on the advice of the Prime Minister and the National Security Council.
- (2) The Director shall be directly responsible to the Prime Minister and the Chairman of the Council.
- (3) Subject to the Higher Salaries Commission Act, the Director shall be paid such salary and allowance as are determined by the Prime Minister after consultation with the Public Service Commission.
- (4) For the period of his appointment the Director shall be an officer of the Public Service.
- (5) The President, acting on the advice of the Prime Minister and the National Security Council, may revoke the appointment of the Director on the grounds of incompetence, misbehaviour or physical or mental incapacity.

*Functions and duties of Director*

17.—(1) It shall be the functions and duties of the Director to—

- (a) supervise and control the Service;
- (b) provide assessments, forecasts and reports as required by this Decree, to the Council; and
- (c) make enquiries and provide assessments, forecasts and reports as he on his own initiative, consider necessary;
- (d) carry out such other functions and duties as may be assigned to him by the Prime Minister or the Council.

(2) The Council may direct the Director to provide assessments, forecasts and reports on any matter covered under this Decree.

(3) Where the Council has commissioned a specific assessment, forecast or report, the Director shall not, without the consent of the Council, issue the assessment, forecast or report other than to the Council.

(4) The Director shall take all necessary steps in ensuring that—

- (a) the work of the Service is limited to what is necessary for the purpose of the discharge of its functions under this Decree; and
- (b) the Service is kept free from any influence or considerations not relevant to its functions and that nothing is done that might promote any suggestion that it is concerned to further or protect the interests of any particular section of the Community, or with any matters other than the proper discharge of its functions.

*Powers of Director*

18. Subject to this Decree, the Director has, in addition to the powers conferred upon him by this Decree, power to do all things that are necessary for or in connection with the performance of his functions, and, in particular has power—

- (a) to obtain full access to information relating to international matters that are of political, military, strategic, social or economic significance to Fiji, or which concern internal security in Fiji, being information in possession of any Ministry, Department, statutory authority or state-owned Corporations; and
- (b) to enter into intelligence exchange, co-operation and liaison arrangements with the appropriate authorities of such foreign countries as the Prime Minister may, from time to time approve.

*Collection of intelligence information outside Fiji*

19.—(1) Subject to subsection (2), the Director shall authorise the Service to collect intelligence information outside the country by overt means only.

(2) Where the Director receives written authority so to do from the Prime Minister or the Council in respect of a particular matter the Prime Minister or the Council may authorise the Service to collect intelligence information outside the country by other than overt means.

*Reports*

20.—(1) The Director shall, before 31 March in each year, present to the Prime Minister a report on the work carried out by the Service during the previous year.

(2) The Director may, at anytime where he considers it necessary or desirable to do so, or where required so to do by this Decree, present to the Prime Minister a report on the work, either in general or in reference to a specific matter, of the Service.

*Budget*

21.—(1) The Director shall be required to prepare and submit an annual budget to the Council before the end of November each year, for the succeeding year.

(2) The budget shall be a confidential document for review and approval by the Council and such funds approved shall be published in the Government's annual budget under the Maintenance and Operations of the Office of the Prime Minister.

(3) The budget shall not be specified in any publication available for public consumption.

PART V—STAFF OF THE SERVICE

*General Staff*

22.—(1) Subject to this Decree, any staff required by the Service shall be officers or employees of the Public Service.

(2) For the purpose of section 92 of the Constitution, the Director shall, in respect of the staff referred to in subsection (1) be deemed to be the Departmental Head within the meaning of that provision.

(3) A person is not eligible for employment in the Service unless he has obtained security clearance to the satisfaction of the Director.

*Other staff*

23.—(1) The Director may make arrangements with—

- (i) the Public Service Commission, or
- (ii) the head of a Statutory Authority.

for the services of a person, approved by the Director, who is employed in the Public Service or in the Statutory Authority, to be made available to assist in the performance of the functions of the Services.

(2) A person made available under subsection (1) shall perform such duties as are assigned to him by the Director and is, in the performance of those duties, subject to the direction of the Director.

(3) The Director is authorised to employ and reimburse persons on a confidential basis for the purpose of obtaining information—

Provided that the Director maintains confidential records concerning such expenditures subject only to audit by the Council or persons specifically authorised for that purpose by the Council.

PART VI—SPECIAL POWERS OF THE SERVICE

*Interpretation of this Part*

24. In this Part, unless the contrary intention appears—

"address" means any premises or place (including a post office box or bag service) to which postal articles may be addressed;

"agent" in relation to Fiji Posts and Telecommunications Company Limited, includes any person performing services for the Company;

"examination" includes any part or process for the purpose of producing sounds, images or information from a record, and "examine" has a corresponding meaning;

"listening device" means any instrument, device or equipment capable of being used, whether above or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

"postal article" includes letters, post cards, letter-cards, newspapers, packets or parcels and all other articles transmissible by post and includes a telegram when transmitted by post;

"premises" includes any land, place, vehicle, vessel or aircraft;

"record", when used as a noun, means—

(a) a document (including any written or printed material); or

(b) an object (including a sound recording, magnetic tape or disc, microfilm, photograph or film) by which words, images, or sounds are recorded or stored or from which information can be obtained.

*Director may request warrant*

25.—(1) Where the Director considers it necessary, that a warrant be issued under this Part, he shall apply to the Council for the issue of the warrant.

(2) An application for a warrant under this Part may be written or oral, but where it is not written, the Director shall, as soon as is practicable, forward to the Council a written request for the issue of the warrant.

(3) An application for warrant under this Part shall specify the facts and other grounds on which the Director considers it necessary that the warrant should be issued and, where appropriate, the grounds on which the Director suspects a person of being engaged in, or having been engaged in, or of being likely to be engaged in, activities prejudicial to national security and interests.

*Authority of the Service under warrant to be exercised only by the Director*

26. The authority of the Service under a warrant issued under this Part shall be exercised on behalf of the Service only by the Director and persons approved by him for such purpose.

*Searches*

27.—(1) It shall be unlawful for any officer, employee or agent of the Service to search, for the purpose of the Service, any person or premises unless that officer, employee or agent—

- (a) has obtained the consent of that person or owner of the premises to the search; or
- (b) does so in accordance with a warrant under this Part.

(2) An officer, employee or agent of the Service that contravenes the provision of subsection (1) is liable for a fine not exceeding \$200 or imprisonment for a term not exceeding 12 months or, to both such fine and imprisonment.

(3) For the purposes of subsection (1), "owner" includes lessee, tenant and any person who, in the opinion of the Director, is lawfully resident in or in control of the premises.

*Warrant for entry and search, etc.*

28.—(1) Where, upon receipt by the Council of an application by the Director for a warrant under this section, the Council is satisfied that there are reasonable grounds for believing that there are in any premises any records without access to which by the Service the collection of intelligence by the Service in accordance with this Decree in respect of a matter that is important in relation to national security would be seriously impaired, the Council may, by warrant under the hands of the Chairman and two other members, as shown in Form I of the Second Schedule to this Decree authorise the Service to do such of the following acts and things as the Council considers appropriate in the circumstances, namely—

- (a) to enter the premises;
- (b) to search the premises for the purpose of finding records relevant to that matter, and for that purpose to open any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records may be found;
- (c) to inspect or otherwise examine any records found in the premises and to make copies or transcripts of any record so found that appears to be relevant to the collection of intelligence by the Service in accordance with this Decree;
- (d) to remove any records so found for the purposes of its inspection or other examination, and making of copies or transcripts, in accordance with the warrant to retain a record so removed for such time as is reasonable for those purposes; and
- (e) to stop and search any person found in the premises.

(2) The Council shall not issue a warrant under this section on a ground that relates to a seditious intention in Fiji unless it is satisfied that a person or organization occupying or using, or that has recently occupied or used, the premises specified in the warrant is engaged in activities constituting, or in preparation for, a seditious offence in Fiji.

(3) A warrant under this section shall specify—

- (a) the premises to which it relates; and
- (b) whether entry may be made at any time of the day or night or only during specified hours; and
- (c) whether entry may be made, and containers opened, without first seeking permission, and if so, on what conditions, if any; and
- (d) the period for which the warrant is to remain in force, being a period not exceeding seven days.

(4) Where, in terms of subsection (3)(c), a warrant specifies that entry may not be made without first seeking permission, and permission is not granted, entry shall not be made without further warrant authority.

(5) The provisions of subsection (3)(d) shall not prevent—

- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; or
- (b) the issue of a further warrant in respect of the same premises.

(6) Where a person is to be searched under subsection (1)(e)—

- (a) a person conducting the search may, subject to this subsection, touch the body and clothing of the person being searched;
- (b) the search shall be conducted with due regard to decency;
- (c) a person conducting the search shall not use any greater force than is reasonable in the circumstances;
- (d) if that person is a female, the search shall, subject to paragraph (e), only be carried out in the presence of an adult female;
- (e) if that person is a female reasonably believed to be carrying a firearm, or other effective weapon, the person may, notwithstanding the absence of an adult female, be searched for the purposes of locating and seizing the weapon.

*Use of listening devices*

29.—(1) It is unlawful for any officer, employee or agent of the Service to use, for the purposes of the Services, a listening device for listening to or recording words while they are being spoken by another person unless—

- (a) the officer, employee or agent is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard; or
- (b) in the case of the recording of words otherwise than by a person, or a member of a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard, the officer, employee or agent records the words with the consent of the speaker; or
- (c) the officer, employee or agent does so in accordance with a warrant issued under this Part.

(2) An officer, employee or agent of the Service who contravenes the provisions of subsection (1) shall be guilty of an offence under this Decree and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

*Warrant authorizing use of listening device in respect of a person*

30.—(1) Where, upon receipt by the Council of an application by the Director for the issue of a warrant under this section authorizing the use of a listening device in relation to a person, the Council is satisfied that—

- (a) that person is engaged in, or is reasonably suspected by the Director of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) the use by the Service of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist the Service in carrying out its function of obtaining intelligence relevant to security.

the Council may, by warrant under the hand of the Chairman and two members, as shown in Form 2 of the Second Schedule to this Decree authorize the Service to use a listening device for the purpose of listening to or recording words spoken by or to that person.

(2) A warrant under this section—

- (a) may specify conditions or restrictions subject to which it is to be used; and
- (b) may authorize the Service to enter any premises in which the person is, or is likely to be, for the purposes of installing, maintaining, using or recovering a listening device; and
- (c) shall, where entry to any premises is authorized, specify—
  - (i) whether entry may be made at any time of the day or night, or only during specified hours; and
  - (ii) whether entry may be made without first seeking permission, and if so, on what conditions, if any; and



(d) shall specify the period for which the warrant is to remain in force.

(3) The provisions of subsection (2)(d) shall not prevent—

- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; or
- (b) the issue of a further warrant in respect of the same person.

*Warrant authorising use of listening device in respect of premises*

31.—(1) Where, upon receipt by the Council of an application by the Director for the issue of a warrant under this section authorizing the use of a listening device in relation to particular premises, the Council is satisfied that—

- (a) those premises are used, or are likely to be used or frequented by a person engaged in, or reasonably suspected by the Director of being engaged in or of being likely to engage in, activities prejudicial to State security; and
- (b) the use of the Service of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist the Service in carrying out its function of obtaining intelligence relevant to security,

the Council may, by warrant under the hand of the Chairman and two members, as shown in Form 3 of the Second Schedule to this Decree authorize the Service to use a listening device for the purpose of listening to or recording words spoken by or to that person while the person is in those premises.

(2) A warrant under this section—

- (a) may specify conditions or restrictions subject to which it is to be used; and
- (b) may authorize the Service to enter those premises for the purpose of installing, maintaining, using or recovering a listening device; and
- (c) shall, where entry to any premises is authorized, specify—
  - (i) the premises to which it relates; and
  - (ii) whether entry may be made at any time of the day or night, or only during specific hours; and
  - (iii) whether entry may be made without first seeking permission and if so, on what conditions, if any; and

(d) shall specify the period for which the warrant is to remain in force.

(3) The provisions of subsection (2)(d) shall not prevent—

- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; or
- (b) the issue of a further warrant in respect of the same premises.

*Access to postal article*

32.—(1) Subject to subsection (2), it is unlawful—

- (a) for any officer, employee or agent of the Service, acting in his capacity as such, to seek from any person employed in connection with the postal services under the Posts and Telecommunications Decree, 1989;
- (b) for any person employed in connection with the postal services under the Posts and Telecommunications Decree, 1989 to provide to any officer, employee or agent of the Service,

access to a postal article that is in the course of the post or information concerning the contents or cover of any postal article except in pursuance of, or for the purposes of a warrant under this Part.

(2) An officer, employee or agent of the Service who contravenes the provisions of subsection (1) is guilty of an offence under this Decree and shall be liable on conviction for a term of imprisonment not exceeding 5 years.

(3) The provisions of subsection (1) do not apply in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of the Service.

*Warrant to intercept postal article addressed to specified person*

33.—(1) Where, upon receipt by the Council of an application for a warrant under this section in relation to a person, the Council is satisfied that—

- (a) the person is engaged in or is reasonably suspected by the Director of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Service to postal articles posted by or on behalf of, or addressed to or intended to be received by, that person, while the articles are in the course of the post, will, or is likely to, assist the Service in carrying out its function of obtaining intelligence relevant to security.

the Council may, by warrant under the hand of the Chairman and two members, as shown in Form 4 of the Second Schedule to this Decree authorize the Service to do such of the following acts and things as the Council considers appropriate in the circumstances with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to that person, or are reasonably suspected by a person authorized by the Service to be intended to be received by that person:—

- (c) to inspect and make copies of any such postal articles;
  - (d) to open any such postal articles;
  - (e) to inspect and make copies of the contents of any such postal articles.
- (2) A warrant under this section shall specify—
- (a) the person in respect of whom it is issued; and
  - (b) the period for which it is to remain in force, being a period not exceeding 90 days.
- (3) The provisions of subsection (2)(b) shall not prevent—
- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; and
  - (b) the issue of a further warrant in respect of the same person.
- (4) Where the Council issues or revokes a warrant under this section it shall—
- (a) forthwith cause the Fiji Posts and Telecommunications Company Limited to be informed of the issue of the warrant or of the revocation; and
  - (b) cause a copy of the warrant or of the instrument of revocation, certified in writing by the Chairman to be a true copy, to be forwarded as soon as practicable to the Fiji Posts and Telecommunications Company Limited.

*Warrant to intercept postal article on specified premises*

34.—(1) Where, upon receipt by the Council of an application for a warrant under this section in relation to an address, the Council is satisfied that—

- (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in or reasonably suspected by the Director of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Service to postal articles posted to that address and intended to be received by that person, while the articles are in the course of the post, will, or is likely to, assist the Service in carrying out its function of obtaining intelligence relevant to security,

the Council may, by warrant under the hand of the Chairman and two members, as shown in Form 5 of the Second Schedule to this Decree authorize the Service to do such of the following acts and things as the Council considers appropriate in the circumstances with respect to postal articles in the course of the post that are addressed to that address, or are reasonably suspected by a person authorised by the Service to be intended to be received by the person referred to in paragraph (a)—

- (c) to inspect and make copies of any such postal articles;
  - (d) to open any such postal articles;
  - (e) to inspect and make copies of the contents of any such postal articles.
- (2) A warrant under this section shall specify—
- (a) the address in respect of which it is issued; and
  - (b) the period for which it is to remain in force, being a period not exceeding 90 days.
- (3) The provisions of subsection (2)(b) shall not prevent—
- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; and
  - (b) the issue of a further warrant in respect of the same premises.

(4) Where the Council issues or revokes a warrant under this section it shall—

- (a) forthwith cause the Fiji Posts and Telecommunications Company Limited to be informed of the issue of the warrant or of the revocation; and
- (b) cause a copy of the warrant or of the instrument of revocation, certified in writing by the Chairman to be a true copy, to be forwarded as soon as practicable to the Fiji Posts and Telecommunications Company Limited.

*Fiji Posts and Telecommunications Company Limited to assist where warrant issued*

35. The Fiji Posts and Telecommunications Company Limited shall give to a person acting in pursuance of a warrant issued under section 33 or 34 all reasonable assistance.

*Discontinuance of action in pursuance of warrant*

36. Where, before a warrant under this Part ceases to be in force, the Director is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall forthwith inform the Council and take such steps as are necessary to ensure that action in pursuance of the warrant (other than recovery of a listening device) is discontinued.

*Destruction of copy or record which is not required*

37. Where the Director is satisfied that any record or copy made by virtue of a warrant under this Part is not required for the purposes of the performance of functions or exercise of powers under this Decree, he shall cause the record or copy to be destroyed.

*Director to furnish report in respect of each warrant*

38. The Director shall furnish to the Council, in respect of each warrant issued under this Part, a written report on the extent to which the action taken under the warrant has assisted the Service in carrying out its functions of obtaining information relevant to security.

*Offence of hindering or obstructing a person acting in pursuance of a warrant*

39. A person who, without reasonable excuse, obstructs or hinders a person acting in pursuance of a warrant under this Part is guilty of an offence under this Decree and is liable on conviction to a fine not exceeding \$200 or to imprisonment for a term not exceeding 12 months.

*Improperly obtaining a warrant*

40. It is unlawful for the Director, by misrepresentation of facts, improperly to obtain a warrant under this Part.

*Disclosure of facts relating to warrant, etc.*

41.—(1) Subject to subsection (2), a person who, being in possession of any facts or information relating to—

- (a) an application for a warrant; or
- (b) a warrant; or
- (c) the execution of a warrant,

under this Part, discloses, except with the prior written consent of the Prime Minister, such facts or information to a person other than a person directly involved in—

- (i) the application for the warrant; or
- (ii) the issuing of the warrant; or
- (iii) the execution of the warrant,

is guilty of an offence and is liable on conviction to a fine not exceeding \$200 or imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

(2) The provisions of subsection (1) do not apply after a warrant has been fully executed or has expired, to—

- (a) a person who was the subject of the warrant; or
- (b) any person other than a person who was directly involved in—
  - (i) the application for the warrant; or
  - (ii) the issuing of the warrant; or
  - (iii) the execution of the warrant.

*No powers of arrest, etc.*

42.—(1) For avoidance of doubt, the Fiji Intelligence Service does not have any powers of arrest or detention under this Decree.

(2) Where an agent or officer of the Service in pursuit of his duties under this Decree obtain information bearing on criminal activity, the Service is required to report such matters to the Council for further investigation or action by the appropriate enforcement agency.

#### PART VII—SECURITY OF INFORMATION AND PLACES

##### *Interpretation of this Part*

43. In this Part, unless the contrary intention appears—

“adverse or qualified security assessment” means a security assessment in respect of a person which contains any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of that person;

“Government Authority” includes the Public Service, Ministries, Departments, Statutory Authorities, and Corporations wholly owned by the State;

“right of controlled access” means controlling or limiting access to any information or place on security grounds to persons—

(a) who have a need to know that information or who need to enter specified places; and

(b) who may reasonably be expected to respect the confidentiality of that information and the activities that are conducted, or the contents of, a specified place;

“security assessment” means a written statement furnished by the Service to a Minister or Government Authority expressing any recommendation, opinion or advice on, or otherwise referring to, the question whether it would be consistent with the requirements of security for a particular person to be denied the right of controlled access, or for other administrative action to be taken in respect of such a person.

##### *Director to provide guidance on security of information and places*

44. The Director shall provide guidance and advice from time to time as to the nature of information and places to which access should be controlled or limited and the measures which should be adopted to preserve the security of such information and such places.

##### *Responsibility to determine security of information and places*

45. It is the responsibility of—

(a) Ministers; and

(b) Departmental Heads; and

(c) Chief Executive of other Government Authorities.

to determine what information and places relative to their respective functions and responsibilities shall be subject to controlled or limited access and the measures which shall be adopted to preserve the security of such information and places.

##### *Duties of Director where security measures not taken*

46. Where, in the opinion of the Director, the appropriate measures are not being taken by a Minister or Government Authority to preserve the security of particular items of information or places, he shall—

(a) give a written report of the circumstances and of the appropriate measures to be taken to the Minister or Government Authority concerned; and

(b) if no remedial action is taken following a report under paragraph (a), give a written report to the Prime Minister.

##### *Responsibility to determine persons to have right of controlled access*

47.—(1) Subject to this section, it is the responsibility of—

(a) Ministers;

(b) Departmental Heads; and

(c) Chief Executives of Government Authorities.

to determine the persons who shall have a right of controlled access to information and places relevant to their functions and responsibilities.

(2) (a) a Minister; or

(b) a Departmental Head; or

(c) a Chief Executive of a Government Authority.

shall not—

- (i) grant a right of controlled access to; or
- (ii) employ in a position in which he is required to have access to information or to a place which is secure,

a person unless a security assessment, other than an adverse or qualified security assessment, has been obtained in respect of that person.

(3) Where—

- (a) a Minister; or
- (b) a Departmental Head; or
- (c) a Chief Executive of a Government Authority.

is of the opinion that a person in respect of whom a security assessment, other than an adverse or qualified security assessment, has been obtained, is being unreasonably denied, controlled or limited access to information or places, he may refer the matter to the National Executive Council who shall decide whether such access should be given.

*Director to provide security assessments*

48.—(1) The Director shall, upon request by—

- (a) a Minister; or
- (b) a Departmental Head; or
- (c) a Chief Executive of a Government Authority.

provide a security assessment in respect of any person for whom a right of controlled access is sought.

(2) Where it comes to the notice of the Director that a person who has a right of controlled access should not, on security grounds, have such a right, he shall provide a written adverse or qualified security assessment to—

- (a) the Minister; or
- (b) the Departmental Head; or
- (c) the Chief Executive of a Government Authority.

who is responsible for that person's right of controlled access or whose functions and responsibilities could be affected by that person.

(3) On receipt of an adverse or qualified security assessment under subsection (2) in respect of any person—

- (a) the Minister; or
- (b) the Departmental Head; or
- (c) the Chief Executive of the Government Authority.

concerned, shall take such steps as are necessary to ensure that the person in respect of whom the adverse or qualified security assessment has been provided, is denied access to controlled information and places.

*Failure to take appropriate action in respect of adverse or qualified security assessments*

49. Where the Director is satisfied that a person in respect of whom an adverse or qualified security assessment has been provided continues to obtain a right of controlled access, he shall report the circumstances in writing to the Prime Minister.

*Special security assessment*

50. Where a foreign government or agency—

- (a) makes available or provides information, equipment, stores, materials or things to or in Fiji on a specially restricted basis; and
- (b) requires guarantees that such information, equipment, stores, materials or things be seen or handled only by persons with a right of controlled access.

the Director shall furnish a special security assessment, and only those persons who have such an assessment may be accorded a right of controlled access to such information, equipment, stores, materials or things.

*Review of adverse or qualified security assessment*

51. Where the Director provides an adverse or qualified security assessment in respect of a person, he shall cause the Service to review, from time to time and upon a request by a responsible authority, the status of that assessment and shall give written notice to a responsible authority where a person, previously the subject of an adverse or qualified security assessment may be granted a right of controlled access.

*Prime Minister to take appropriate action on receipt of report under this Part*

52. On receipt of a report from the Director under this Part, the Prime Minister shall consult with appropriate Ministers and direct that such administrative action, as he sees fit, be taken to remove any perceived threat to the security of information or places.

PART VIII—SECRECY

*Oath of secrecy*

53.—(1) Before entering upon his duties under this Decree—

- (a) the Director; and
- (b) all officers and employes of the Service, shall take an oath of secrecy in the Form set out in the First Schedule to this Decree.

(2) The oath of secrecy referred to in subsection (1) shall be taken—

- (a) in the case of the Director—before the Prime Minister or a person authorized by the Prime Minister for the purpose; and
- (b) in any other case—before the Director or an officer authorized by the Director for the purpose.

*System of classification*

54. The Director may, in consultation and with the approval of the Council, recommend a national system of classification to protect sensitive information and the sources and methods of obtaining such information.

*Confidential information*

55.—(1) Subject to subsection 2, the information—

- (a) contained in any assessment, forecast or report by the Service; and
- (b) information coming to the knowledge of any person who is required to make the oath of secrecy under section 50 in connection with the preparation of any assessment, forecast or report,

is confidential, and shall not be divulged to any person or authority other than the recipient, without the express approval of the Director.

- (2) (a) the Prime Minister; or
- (b) the Council,

may, notwithstanding any direction by the Director, direct that an assessment, forecast or report be granted wider distribution than that authorized by the Director.

(3) For the purposes of subsection (1), "recipient" includes any member of a Department or Government Authority or staff to which the assessment, forecast or report is addressed or for which it was compiled, and who has the need to know the information contained therein and who has a right of controlled access.

(4) For the purposes of this section "Government Authority" has the meaning given to it under section 43.

(5) For the purposes of subsection (2), a certificate under the hand of the Prime Minister that the Committee has made a direction under subsection (2) is conclusive evidence of such direction.

*Assessments, etc., privileged*

56.—(1) Subject to subsection (3), an assessment, forecast or report prepared under this Act shall not be used as evidence in any proceedings in a court without the prior written consent of the Director.

(2) Subject to subsection (3), a person employed under this Decree shall not be required to divulge, whether by producing documents or otherwise—

- (a) the contents of any assessment, forecast or report prepared under this Decree; or
- (b) any information coming to his knowledge during the preparation of any assessment, forecast or report prepared under this Decree,

to a court or other person having power to summon witnesses.

(3) The Director may, by written notice, authorize—

- (a) a person employed under this Decree to divulge matters referred to in subsection (2); and
- (b) the use as evidence of an assessment, forecast, or report prepared under this Decree.

*Identity of officers, etc., not to be divulged*

57. A person who, except with the written consent of the Minister or of the Director, publishes or causes to be published in a newspaper or other publications, or by radio broadcast or television, or otherwise makes public, any matter stating, or from which it could reasonably be inferred, that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer (not including the Director), employee or agent of the Service, or is in any way connected with such an officer, employee or agent, is guilty of an offence under this Decree and is liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment.

*Protection of sources of information*

58.—(1) Where the Director is of the opinion that it is necessary or expedient to protect the identity of the source of any information received in connection with the work of the Service, he may refuse to divulge the identity of such source or such other information likely to lead to the identification of such source and may issue a certificate to the effect that such identification or the information shall not be divulged.

(2) Where a certificate has been issued under subsection (1), no officer or employee of the Service shall be compelled in any court to disclose the identity or information referred to in the certificate.

**PART IX—OTHER OFFENCES UNDER THIS DECREE**

59.—(1) Except as provided under any other section of this Decree, a person who is or has been employed under this Decree who, except in the course of his duty under this Decree, divulges—

- (a) the contents of an assessment, forecast or report prepared under this Decree; or
- (b) any information coming to his knowledge during his employment under this Decree,

is guilty of an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 5 years or to both such fine and imprisonment.

(2) A person who, while acting in pursuance of a warrant issued under Part VI, fails to comply with the terms and conditions of that warrant is guilty of an offence and is liable on conviction to a fine not exceeding \$1,000 or imprisonment for a term not exceeding 2 years, or to both such fine and imprisonment.

*Obstruction*

60. Except as provided under any section of this Decree, a person who wilfully—

- (a) obstructs; or
- (b) seeks to obstruct; or
- (c) causes any other person to obstruct,

any person employed under this Decree in the execution of his duty is guilty of an offence and is liable on conviction to a fine not exceeding \$3,000 or to imprisonment for a term of not exceeding 4 years, or to both such fine and imprisonment.

*Personating officer or employee of the Service*

61. A person who—

- (a) personates an officer or employee of the Service on an occasion when the officer or employee is required to do any act or attend in any place by virtue of his employment; or
- (b) falsely represents himself to be an officer or employee of the Service and assumes to do any act or attend in any place for the purpose of doing any act by virtue of that employment,

is guilty of an offence and is liable on conviction to a fine of \$5,000 or to imprisonment for a term not exceeding 4 years, or to both such fine and imprisonment.

#### PART X—MISCELLANEOUS

##### *Regulations*

62. The Prime Minister may make Regulations not inconsistent with this Decree, prescribing all things that by this Decree are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Decree.

Dated this 17th day of September 1990.

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

#### SCHEDULES

##### FIRST SCHEDULE

##### OATH OF SECRECY (Section 52)

I \_\_\_\_\_ make oath and swear that I shall regard and deal with all documents and information which may come into my possession or to my knowledge in the course of my duties, as secret, and I that I shall not reveal any such document or information to any person or permit any person to have access to any such document or information, save in the circumstances in which I am permitted to do so under the Fiji Intelligence Service Decree, 1990.

I also do solemnly swear that in the exercise of my duties, I will abide by, uphold, preserve and protect the Constitution and laws of the Sovereign Democratic Republic of Fiji.

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

\_\_\_\_\_  
Witness



## WARRANTS

## FIJI INTELLIGENCE SERVICES DECREE, 1990

NATIONAL SECURITY FORM I  
(Section 28)

## WARRANT FOR ENTRY AND SEARCH, ETC.

Whereas the Council is satisfied, upon application made to it, under section 28 of the Fiji Intelligence Service Decree, 1990 that there are reasonable grounds for believing that there are in the premises at \_\_\_\_\_ records or documents without access to which by the Fiji Intelligence Service the carrying out effectively of functions relating to State security will be seriously impaired.

The Fiji Intelligence Service is hereby authorised to enter, accompanied by law enforcement officer, by day or by night, and if need be, by force, and search the premises at \_\_\_\_\_ for the purpose of finding the records or documents therein kept and, for this purpose, without permission—

- (a) to break open any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that the records or documents may be found;
- (b) to inspect or otherwise examine any records or documents found in the premises and to make copies or transcript of any records or documents so found which appears to be relevant;
- (c) to remove any records or documents found at the premises for the purpose of its inspection or other examination and to retain any records or documents so removed for such time as is reasonable for those purposes; and
- (d) to stop and search any person found at the premises, subject to the provisions of subsection (6) of section 28 of the Decree.

This warrant shall remain in force for a period not exceeding seven days from the date it is issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

FIJI INTELLIGENCE SERVICES DECREE, 1990

NATIONAL SECURITY COUNCIL FORM 2  
(Section 30)

WARRANT AUTHORISING USE OF LISTENING DEVICE  
IN RESPECT OF A PERSON

Whereas the Council is satisfied, upon application made to it, under Section 30 of the Fiji Intelligence Services Decree, 1990 that \_\_\_\_\_ of \_\_\_\_\_ is engaged in (or is about to engage in) (or is reasonably suspected of being engaged in or if being likely to be engaged in) activities prejudicial to State security and that the use of listening device to record words spoken by or to the above-mentioned person will or is likely to assist the Services in carrying out its functions relevant to State security and interest.

The Fiji Intelligence Service, is hereby authorised to use listening device, as is necessary, to listen to or record words spoken by or to \_\_\_\_\_ of \_\_\_\_\_ and for that purpose the authorised officer of officers of the Fiji Intelligence Service may enter without permission, by day or by night any premises in which is or is likely to be, for the purpose of installing, maintaining, using or recovering listening device.

This warrant shall remain in force for a period not exceeding \_\_\_\_\_ days from the date it is issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

FIJI INTELLIGENCE SERVICES DECREE, 1990

NATIONAL SECURITY COUNCIL FORM 3  
(Section 31)

WARRANT AUTHORISING USE OF LISTENING DEVICE  
IN RESPECT OF PREMISES

Whereas the Council is satisfied, upon application made to it, under Section 31 of the Fiji Intelligence Services, that the premises at \_\_\_\_\_ are being used (or are likely to be used) (or are frequented) by a person engaged in (or reasonably suspected to be engaged in or likely to be engaged in) activities prejudicial to State security and interest and that, the use of listening device to listen to or record words spoken by or to a person in the above-mentioned premises will (or is likely to) assist the Service in carrying out its functions relevant to State security.

The Fiji Intelligence Service is hereby authorised to use listening device, as is necessary, to listen to or record words spoken at the premises at \_\_\_\_\_ by or to a person thereat and, for this purpose, the officers of the Fiji Intelligence Services may, without permission, enter by day or by night the above-mentioned premises for the purpose of installing, maintaining, using or recovering listening device.

This warrant shall remain in force for a period not exceeding \_\_\_\_\_ days from the date it is issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

## FIJI INTELLIGENCE SERVICES DECREE, 1990

\_\_\_\_\_  
 NATIONAL SECURITY COUNCIL FORM 4  
 (Section 33)  
 \_\_\_\_\_

**WARRANT TO INTERCEPT POSTAL ARTICLES ADDRESSED  
 TO SPECIFIED PERSON**

Whereas the Council is satisfied, upon an application made to it under Section 33 of the Fiji Intelligence Service Decree, 1990 that \_\_\_\_\_ of \_\_\_\_\_ is engaged in (or is reasonably suspected to be engaged in or likely to be engaged in) activities prejudicial to State security and that access by the Fiji Intelligence Service to postal articles posted by, or on behalf of, or addressed to, or intended to be received by the above-mentioned person, while the articles are in the course of the post, will or is likely to assist the Service in carrying out its functions relevant to State security.

The Fiji Intelligence Services, is hereby authorised to intercept postal articles, while in the course of the post, which are posted by or on behalf of or are addressed to or are reasonably suspected to be intended to be received by \_\_\_\_\_ of \_\_\_\_\_ and, without permission, in the presence of law enforcement officer, to open, inspect and make copies of such postal articles or/and of the contents thereof.

This Warrant shall remain in force for a period not exceeding ninety days from the date it is issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
 CHAIRMAN

\_\_\_\_\_  
 MEMBER

\_\_\_\_\_  
 MEMBER

FIJI INTELLIGENCE SERVICES DECREE, 1990

NATIONAL SECURITY COUNCIL FORM 5  
(Section 34)

WARRANT TO INTERCEPT POSTAL ARTICLES ON  
SPECIFIED PREMISES

Whereas the Council is satisfied, upon application made to it under section 34 of the Fiji Intelligence Service Decree, 1990 that some or all of the postal articles that are sent (or are being sent) (or are likely to be sent) to the premises at \_\_\_\_\_ are for, (or are intended for) (or are reasonably suspected to be or likely to be for) activities prejudicial to State security and interests and that access by the Fiji Intelligence Service to the postal articles while they are in the course of the post or delivery will or is likely to assist the Services in carrying out its functions relevant to State security.

The Fiji Intelligence Services is hereby authorised to intercept postal articles sent to or delivered at the premises at \_\_\_\_\_ and, without permission, in the presence of law enforcement officer, to open, inspect, and make copies or transcript of such postal articles or of the contents thereof.

This warrant shall remain in force for a period not exceeding ninety days from the date it is issued.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
CHAIRMAN

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER