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GOVERNMENT OF THE REPUBLIC OF FIJI DECREE NO. 12

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL DECREE 1988

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In exercise of the powers vested in me as President and Commander-in-Chief of the Republic of Fiji, I hereby make the following decree—

Short title

1. This Decree may be cited as the Protection of Fundamental Rights and Freedoms of the Individual Decree 1988.

Fundamental rights and freedoms of the individual

2. Whereas every person in Fiji is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, religion, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely—

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association; and
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this Decree shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

Protection of right to life

3.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection of right to personal liberty

4.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Fiji or elsewhere, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (f) under the order of a court or with the consent of his parent or guardian, for his education or welfare during any period ending not later than the date when he attains the age of eighteen years;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Fiji, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Fiji; or
- (j) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Fiji or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person with a view to the making of any such order or relating to such an order after it has been made, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Fiji in which, in consequence of any such order, his presence would otherwise be unlawful.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons of his arrest or detention.

(3) Any person who is arrested or detained—

- (a) for the purpose of bringing him before a court in execution of the order of a court; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court.

(4) Where any person is brought before a court in execution of the order of a court in any proceedings or upon suspicion of his having committed or being about to commit an offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon the order of a court.

(5) If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(6) Subject to the provisions of section 25 of the Head of State and Executive Authority of Fiji Decree 1988 and the provisions of any law made in pursuance of the exercise of the President's power under that section any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person, or from any other person or authority on whose behalf that other person was acting.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

Protection from slavery and forced labour

5.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section the expression "forced labour" does not include—

- (a) any labour required in consequence of the sentence or order of a court;
- (b) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service;
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.

Protection from inhuman treatment

6. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

Protection from deprivation of property

7.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except under the authority of a law that—

- (a) requires the acquiring authority to give reasonable notice of the intention to take possession of, or acquire the interest in or right over, the property to any person owning the property or having any other interest or right therein that would be affected by such taking of possession or acquisition;
- (b) requires the acquiring authority to apply to the High Court for an order authorising such taking of possession or acquisition or to apply thereto within thirty days of such taking of possession for such an order as aforesaid;
- (c) requires the High Court not to grant such an order unless it is satisfied that the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or utilisation of any property in such a manner as to promote the public benefit;
- (d) requires the acquiring authority to pay damages in respect of such taking of possession prior to an application to the High Court when such an order is not granted and requires the prompt payment of adequate compensation for the taking of possession or acquisition where such an order is granted;

- (e) requires the acquiring authority, if no agreement as to the amount and manner of payment of compensation has been concluded with any claimant to compensation within thirty days of the grant of the order referred to in paragraph (b) of this subsection, to apply to the High Court for the determination of those matters in relation to that claimant (including, where necessary, any question as to his entitlement to compensation); and
- (f) requires the acquiring authority to pay the costs reasonably incurred by any other party in connection with the proceedings before the High Court for any of the aforesaid purposes, including any appeal (not made unreasonably or frivolously) from any decision of that Court or the Fiji Court of Appeal given for those purposes.

(2) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question authorises the taking of possession of property compulsorily during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community and makes provision that—

- (a) requires the acquiring authority promptly to inform any person owning the property of the taking of possession;
- (b) enables any such person to notify the acquiring authority that he objects to the compulsory possession of the property by that authority;
- (c) requires the acquiring authority, in the case of any such notification, to apply within thirty days thereafter to an independent and impartial tribunal, appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji, for a determination of the authority's entitlement to compulsory possession of the property;
- (d) requires the tribunal to order the acquiring authority to return the possession of the property unless the tribunal is satisfied that its possession by that authority is reasonably justifiable, in the circumstances of the situation existing, for the purpose of dealing with that situation;
- (e) requires the prompt payment of adequate compensation for the taking of possession; and
- (f) enables application to be made by any claimant to compensation to the tribunal for the determination of the amount and manner of payment of compensation in relation to that claimant (including, where necessary, any question as to his entitlement to compensation).

(3) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Fiji.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question authorises—

- (a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party; or
- (b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of any property—
 - (i) in satisfaction of any tax, duty, rate, cess or due;
 - (ii) by way of penalty for breach of the law, or forfeiture in consequence of a breach of the law;
 - (iii) as an incident of a grant, lease, tenancy, mortgage, charge, bill of sale, pledge, contract, permission or licence;
 - (iv) in the execution of judgments or order of a court;
 - (v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;
 - (vi) in consequence of any law with respect to the limitation of actions or acquisitive prescription; or

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, for the purposes of the carrying out thereon of work of soil conservation or the conservation of other natural resources or work relating to agricultural development or improvement (being work relating to such development or improvement that the owner or occupier of the land has been required, and has without reasonable excuse refused or failed to carry out), except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual;

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of any of the following property (including an interest in or right over property), that is to say—

- (i) enemy property;
- (ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(6) Notwithstanding the provisions of any other law but subject to the provisions of paragraph (b) herein:—

- (a) any royalties received by the State under the provisions of the Mining Act in respect of any minerals or the Petroleum (Exploration and Exploitation) Act in respect of any petroleum, obtained in the course of prospecting, mining operations or petroleum exploration and exploitation in or under any land, or in or under the seabed, over which there exist any customary fishing rights registered under the Fisheries Act, shall from the date of commencement of this section become payable to the owner of the surface of that land or those customary fishing rights as the case may be;
- (b) the State shall retain part of any royalties payable under paragraph (a) as may be approved by Cabinet from time to time and may also retain in addition the cost of the administration by the State of any prospecting, mining operations or petroleum exploration and exploitation;
- (c) for the avoidance of doubt, it is hereby declared that nothing in this subsection shall affect or alter any rights or interests granted by the State under the Mining Act or the Petroleum (Exploration and Exploitation) Act which are in existence at the date of commencement of this subsection;
- (d) this subsection shall come into force on a date to be notified in the Gazette by the Minister responsible for mineral resources.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision for the compulsory taking possession of any property or the compulsory acquisition of any interest in or right over property where that property, interest or right is held by a body corporate, established by law for public purposes, in which no moneys have been invested other than moneys provided from public funds.

(8) For the purposes of subsections (1) and (2) of this section "acquiring authority" means the person or authority intending to take possession of, or acquire the right or interest in, the property compulsorily or who has taken possession of, or acquired the interest or right in, the property compulsorily, as the context may require.

Protection for privacy of home and other property

8.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

- (b) for the purpose of protecting the rights or freedoms of other persons;
- (c) that authorises an officer or agent of the Government, or of a local authority, or of a body corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything thereon for the purpose of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate, as the case may be; or
- (d) that authorises, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order.

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual.

Provisions to secure protection of law

9.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence —

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
- (e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the preceding subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) subsection (2) (a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection 2 (e) to this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so, however, that any court so trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) For the purposes of subsection (2) of this section a person who has been served with a summons or other process requiring him to appear at the time and place appointed for his trial and who does not so appear shall be deemed to have consented to the trial taking place in his absence.

Protection of freedom of conscience

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it wholly maintains.

(3) No religious community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community, whether or not that community is in receipt of any government subsidy, grant or other form of financial assistance designed to meet, in whole or in part, the cost of such course of education.

(4) Except with his own consent (or, if he is a person who has not attained the age of eighteen years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion which is not his own.

(5) No person shall be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner which is contrary to his religion or belief.

(6) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health;

(b) for the purpose of protecting the rights or freedoms of other persons, including the right to observe and practise any religion without the unsolicited intervention of members of any other religion; or

- (c) with respect to standards of qualifications to be required in relation to places of education including any instruction (not being religious instruction) given at such places, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual.

(7) References in this section to a religion shall be construed as including references to a religious denomination, and cognate expressions shall be construed accordingly.

Protection of freedom of expression

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Notwithstanding the provisions of subsection 1 of this section no person shall without reasonable justification or excuse cause:—

- (i) any expression to be made that would tend to lower the respect, dignity and esteem of institutions and values of the Fijian people, or, that would tend to show disrespect to the Great Council of Chiefs and the traditional Fijian System and titles;
- (ii) any expression to be made that would tend to lower the respect, dignity and esteem of institutions and values of other races in Fiji, or, that would tend to show disrespect to their institutions and traditional systems;

and any person making any such expression may be liable for Sedition under the Penal Code.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the reputations, rights or freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting or television; or
- (c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual.

*Protection of freedom of assembly
and association*

12.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons including the freedom to belong to any associations or trade unions for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights or freedoms of other persons; or
- (c) for the imposition of restrictions upon public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual

Protection of freedom of movement

13.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Fiji, the right to reside in any part of Fiji, the right to enter Fiji, the right to leave Fiji and immunity from expulsion from Fiji.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

- (a) for imposing restrictions on the movement or residence within Fiji of any person or on any person's right to leave Fiji that are reasonably required in the interests of defence, public safety or public order;
- (b) for imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of persons generally or any class of persons in the interests of defence, public safety, public order, public morality or public health, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual;
- (c) for imposing restrictions, by order of a court, on the movement or residence within Fiji of any person or on any person's right to leave Fiji either in consequence of his having been found guilty of a criminal offence or for the purpose of ensuring that he appears before a court at a later date for trial for such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or lawful removal from Fiji;
- (d) for imposing restrictions on the movement or residence within Fiji of any person who is not a citizen of Fiji or for excluding or expelling any such person from Fiji;
- (e) for imposing restrictions on the acquisition or use by any person of any property in Fiji;
- (f) for imposing restrictions on the movement or residence within Fiji or on the right to leave Fiji of any public officer;
- (g) for the removal of a person from Fiji to be tried or punished in some other country for a criminal offence under the law of that other country or to undergo imprisonment in some other country in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or
- (h) for imposing restrictions on the right of any person to leave Fiji that are reasonably required in order to secure the fulfilment of any obligations imposed on that person by law, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual.

(4) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in paragraph (a) of the preceding subsection so requests at any time during the period of that restriction not earlier than three months after the order imposing that restriction was made or three months after he last made such a request, as the case may be, his case shall be reviewed by an independent and impartial tribunal presided over by a person appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors in Fiji.

(5) On any review by a tribunal in pursuance of the preceding subsection of the case of any person whose freedom of movement has been restricted, the tribunal may make recommendations concerning the necessity or expediency of continuing that restriction to the authority by whom it was ordered and, unless it is otherwise provided by law, that authority shall be obliged to act in accordance with any such recommendations.

*Protection from discrimination
on the grounds of race, etc*

14.—(1) Subject to the provisions of this Decree—

- (a) no law shall make any provision that is discriminatory either of itself or in its effect; and
- (b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

(3) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) (a) of this section to the extent that the law in question makes provision—

- (a) for the appropriation of revenue or other funds of Fiji;
- (b) with respect to persons who are not citizens of Fiji;
- (c) for the application, in the case of persons of any such description as is mentioned in the preceding subsection (or of persons connected with such persons) of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description;
- (d) for the application of customary law with respect to any matter in the case of persons who, under that law, are subject to that law;
- (e) whereby persons of any such description as is mentioned in the last foregoing subsection may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is reasonably justifiable in a society that has proper respects for the rights and freedoms of the individual;
- (f) for standards or qualifications (not being standards or qualifications specifically relating to race, place of origin, political opinions, colour or creed) to be required of any person who is appointed to, or to act in, any public office, any office in the service of a local authority or any officer in a body corporate established by any law for public purposes; or
- (g) for authorising the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period.

(4) Subsection (1) (b) of this section shall not apply to—

- (a) anything that is expressly or by necessary implication authorised to be done by any provision of law that is referred to in the preceding subsection; or
- (b) the exercise of any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Decree or any other law.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

- (a) if the law in question was in force immediately before 23rd September 1966 and has continued in force at all times since that day; or
- (b) to the extent that it repeals and re-enacts any provision which has been contained in any written law at all time since immediately before that day.

(6) Subject to the provisions of the next following subsection, no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating-houses or places of public entertainment or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (2) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 8, 10, 11, 12 and 13 of this Decree, being such a restriction as is authorised by section 8(2), section 10(5), section 11(3), section 12(2), or section 13(3) (a) or (b), as the case may be.

*Protection of persons detained
under emergency laws*

15.—(1) Where a person is detained by virtue of a law that authorises the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists in Fiji during that period, the following provisions shall apply, that is to say—

- (a) he shall, as soon as reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing, in a language that he understands, specifying in detail the grounds upon which he is detained;

- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter, during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice from among persons qualified to practise as barristers and solicitors in Fiji;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal; and
- (e) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice.

(2) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

(3) Nothing contained in subsection (1) (d) or (e) of this section shall be construed as entitling a person to legal representation at public expense.

Exceptions

16. Nothing in this Decree shall invalidate any other decree or laws that is made that regulates or restricts the exercise of a right or freedom referred to in this Decree whether generally or to the extent that the regulation or restriction is necessary taking into account the multi-ethnic and multi-cultural character of the Republic of Fiji, and for the purpose of giving effect to the public interest in development of the under-privileged or less advanced groups or areas.

Courts jurisdiction

17.—(1) If any person alleges that any of the provisions of this Decree has been, is being, or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction—

- (a) to hear and determine any application made in pursuance of the preceding subsection;
- (b) to determine any question which is referred to it in pursuance of the next following subsection,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Decree:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) If any proceedings in any subordinate court any question arises as to the contravention of any of the provisions of this Decree, the person presiding in that court may, and shall, if any party to the proceedings so requests, refer the question to the High Court unless, in his judgment, which shall be final, the raising of question is merely frivolous or vexatious.

(4) Where any question is referred to the High Court in pursuance of the last foregoing subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if that decision is the subject of an appeal to the Fiji Court of Appeal or to the Supreme Court, in accordance with the decision of the Fiji Court of Appeal or, as the case may be, of the Supreme Court.

(5) No appeal shall lie from any determination by the High Court that an application made in pursuance of subsection (1) of this section is merely frivolous or vexatious.

(6) The High Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that court more effectively to exercise the jurisdiction conferred on it by this section.

(7) The Chief Justice may make rules for the purposes of this section with respect to the practice and procedure of the High Court (including rules with respect to the time within which applications may be brought and references shall be made to the High Court).

Interpretation and savings

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

- “contravention”, in relation to any requirement includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;
- “court”, means any court of law having jurisdiction in Fiji, but excepting, save in sections 3 and 5 of this Decree, a court established by a disciplinary law;
- “criminal offence”, means a criminal offence under the law of the Republic of Fiji;
- “legal representative” means a person lawfully in or entitled to be in Fiji and entitled to practise in Fiji as a barrister and solicitor;
- “member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in sections 11, 12 or 13 of Decree shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(3) In relation to any person who is a member of a disciplined force of Fiji, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Decree other than sections 2, 3 and 5.

(4) In relation to any person who is a member of a disciplined force that is not a disciplined force of Fiji and who is present in Fiji in pursuance of arrangements made between the Government of Fiji and another Government or an international organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Decree.

(5) No measures taken in relation to a person who is a member of a disciplined force of a country with which Fiji is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Decree.

(6) In this Decree “period of public emergency” means any period during which—

- (a) Fiji is engaged in any war; or
- (b) there is in force a decree by the President declaring that a state of public emergency exists.

Repealed Decrees

19. The provisions of the following Decrees so far as they are inconsistent with this Decree are hereby repealed:

- Fundamental Freedoms Decree No. 12
- Fundamental Freedoms (Amendment)(No.1) Decree No. 13.

Coming into force

20. This Decree shall be deemed to have come into force on 5th December 1987.

Dated this 29th day of January 1988.

PENAIK K. GANILAU
President and Commander-in-Chief