

EXTRAORDINARY



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[1]

GOVERNMENT OF FIJI

PUBLIC ORDER (AMENDMENT) DECREE 2012
 (DECREE NO. 1 OF 2012)

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

Short title and commencement

1. This Decree may be cited as the Public Order (Amendment) Decree 2012, and shall come into force on the 6th day of January 2012.

Section 2 amended

2. The Public Order Act [Cap. 20] (“the Act”) is amended in section 2 by—

(a) inserting the following new definitions—

“Administration Officer” means any officer holding the public office of administrative officer of any class specified in the annual Estimates of Fiji;

“corrosive and inflammable substance” means sulphuric acid, nitric acid, hydrochloric acid, formic acid, acetic acid, phenols ammonia, potassium hydroxide, sodium hydroxide, petroleum, and all other substances which are capable of causing harm to the person or property.

“explosive” means—

(a) an explosive or other incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or

(b) weapon or devise that is designed or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials;

“Minister” means the Prime Minister;

“offence against public order” means—

(a) the offence of terrorism, as prescribed under Part 3A of this Act;

(b) treason and other offences against Government authority prescribed in sections 63 to 71 of the Crimes Decree 2009;

(c) other offences against public order prescribed in sections 72 to 75 of the Crimes Decree 2009;

(d) offences against the international order prescribed in sections 76 to 132 of the Crimes Decree 2009.

“racial vilification” includes conduct that offend, insult, humiliate, intimidate, incite hatred against, serious contempt for, or revulsion or severe ridicule of another person or group of people on the grounds of their race, colour, national or ethnic origin;

“religious vilification” includes conduct that offend, insult, humiliate, intimidate, incite hatred against, serious contempt for, or revulsion or severe ridicule of another person or group of people on the grounds of their religious belief or activity;

“terrorism” means an act, omission or threat, in or outside Fiji:

(a) *that:*

- (i) *causes serious physical harm or death;*
 - (ii) *involves serious damage to property;*
 - (iii) *creates a serious risk to the health or safety of the public or a section of the public;*
 - (iv) *involves the use of weapons;*
 - (v) *involves introducing into the environment, distributing or exposing the public to any—*
 - (a) *dangerous, hazardous, radioactive or harmful substance;*
 - (b) *toxic chemical; or*
 - (c) *microbial or other biological agent or toxin;*
 - (vi) *involves serious disruption to any critical infrastructure or to the provision of services directly related to communications, banking or financial services, utilities, transportation or other essential infrastructure;*
 - (vii) *be intended or, by its nature and context, reasonably be regarded as being intended to—*
 - (a) *intimidate the public or a section of the public; or*
 - (b) *compel a government or an international organisation to do, or refrain from doing, any act; or*
 - (viii) *involves the use of internet based attacks including acts of deliberate, large-scale disruption of computer networks, especially of personal computers attached to the internet, disruption attacks against information systems for the primary purpose of creating alarm and panic by the means of tools such as, but are not limited to computer viruses; and*
- (b) *the action is done or threat is made with the intention of advancing a political, religious, or ideological cause; and*
- (c) *the action is done or threat is made with the intention of coercing or influencing by intimidation the Government of the Republic of Fiji or intimidating the public or a section of the public.”*

(b) *deleting the definition of “appropriate authority” and substituting with—*

“appropriate authority” means the Divisional Police Commander;

Section 3 amended

3. Section 3 of the Act is amended—

- (a) *in subsection (2), by deleting “six months” and substituting “3 years” and deleting “two hundred dollars” and substituting “\$5000”.*
- (b) *by inserting the following new subsections after subsection (2)—*
 - “(3) The Minister, if he or she considers it is in the public interest so to do, may by order, prohibit the manufacture, sale, use, display or possession of any flag, banner, badge, emblem, device, picture, photograph, uniform or distinctive dress.*
 - (4) Any person contravening any provision of subsection (3) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.*

- (5) If any person, for any purpose prejudicial to the public safety or the maintenance of public order, uses or wears without lawful authority any naval, military, air force, police, prisons or other official uniform, or any clothing so nearly resembling the same to be worn or carried by any member of such forces with the intention that he or she may be believed or with the knowledge that he or she is likely to be believed to be a member of any such force falsely represents himself or herself to be a person who is or has been entitled to wear such uniform he or she shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.
- (6) If any person pretends to be a police or prisons officer, knowing that he or she is not, or falsely impersonates any police or prisons officer and in such assumed character does or attempts to do any act under the pretence of being such a police or prisons officer, he or she shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.”

(c) by renumbering the existing subsection (3) as subsection (7).

New Part inserted

4. The Act is amended by inserting the following new Part after section 7—

“PART 2A – CONTROL OF ARMS AND AMMUNITION

Control of arms

7A.—(1) The Commissioner of Police, notwithstanding that licences or permits have been issued under the provisions of any written law, may by written order, prohibit the buying, selling or otherwise dealing of any arm, ammunition or explosives in any part of Fiji for such period as may be specified in such order, and may at the same time give directions—

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

(2) Any person who fails to comply with an order made under subsection (1), shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

Possession of arms, etc.

7B.—(1) Any person who, without lawful excuse, the onus of providing which shall be upon him or her, carries or has in his or her possession or under his or her control—

- (a) any arm, not being an arm which he or she is permitted to carry or possess or is duly licensed to carry or possess under the provisions of any law; or
- (b) any ammunition or explosive, or any corrosive or inflammable substance, without lawful authority thereof,

shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

(2) Notwithstanding subsection (1), the Commissioner of Police may by written order prohibit in Fiji, or in any area of Fiji specified in the order, the carrying by any person without a permit granted by a police officer of any arm, ammunition or explosive, or any corrosive or inflammable substance, including any arm, ammunition or explosive, or any corrosive or inflammable substance, which any person is permitted or licensed to carry under the provisions of any law and any person who contravenes any such

order shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

(3) This section shall not apply to any police officer, prisons officer or to any member of the Republic of Fiji Military Forces, in the execution of his or her duty.

Consorting with person in possession of arms, etc.

7C.—(1) Any person who consorts with or is found in the company of another person who is carrying or who has in his or her possession any arm, ammunition or explosive, or any corrosive or inflammable substance, in contravention of section 7B, in circumstances which raise a reasonable presumption that he or she intends to do or is about to act with or has recently acted with such other person in a manner prejudicial to public security shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

(2) Any person who consorts with or is found in the company of a person who is carrying or has in his or her possession any arms, ammunition or explosives, or any corrosive or inflammable substances, in contravention of section 7B in circumstances which raise a reasonable presumption that he or she knew such other person had in his or her possession such arms, ammunition or explosives, or such corrosive or inflammable substances, shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

(3) Where in any prosecution for an offence against the provisions of this section it is established to the satisfaction of the court that the accused person was consorting with or was in the company of any person carrying or having possession of any arm, ammunition or explosive, or any corrosive or inflammable substance, it shall be presumed until the contrary is proved that such last mentioned person was carrying or was in possession of such arm, ammunition or explosives, or such corrosive or inflammable substance, in contravention of section 7B.

Possession of offensive weapons

7D.—(1) Any person who, without lawful excuse, the onus of providing which shall be upon him or her, carried or has in his or her possession or under his or her control any offensive weapon shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

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

Carrying arms while drunk or disorderly

7E. Any person who is drunk or behaves in a disorderly manner while carrying an arm, an explosive or a corrosive or inflammable substance shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

Failure to report offence of possession of arm, etc.

7F.—(1) Any person who, knowing or having reasonable cause to believe that another person is guilty of an offence against section 7B, fails to report the same to a police officer at the earliest possible opportunity shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 3 years, or to both.

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

Section 8 amended

5. Subsection (5) of section 8 of the Act is repealed and substituted with the following—

“(5) The appropriate authority may, in its discretion, refuse to grant a permit under this section to any person or organisation that has on any previous occasion been refused a permit by virtue of any written law

or to any person or organisation that has on any previous occasion failed to comply with any conditions imposed with respect to any meeting or procession or assembly, or any person or organisation which has on any previous occasion organised any meeting or procession or assembly which has prejudiced peace, public safety and good order and/or which has engaged in racial or religious vilification or undermined or sabotaged or attempted to undermine or sabotage the economy or financial integrity of Fiji.”

Part 3 amended

6. Part 3 of the Act is amended by deleting sections 9, 10 and 11 and inserting the following new sections—

“Prohibition and dispersal of assemblies

9.—(1) The Commissioner of Police or a Divisional Police Commander, if he or she considers such action to be necessary for the securing of public safety, or for the maintenance of public order, or for maintaining supplies and services essential to the life of the community, may, by order—

- (a) prohibit absolutely or subject to such conditions as he or she may think fit, any procession, meeting or assembly in any place or building, whether public or private, notwithstanding the fact that a permit for such a procession, meeting or assembly may have already been granted;
- (b) direct any procession, meeting or assembly in any place whatsoever, whether public or private, whether or not any order shall have been made prohibiting such procession, meeting or assembly under subsection (a), to disperse, and it shall thereupon be the duty of the person taking part in such procession, meeting or assembly, to disperse accordingly;

(2) The Commissioner of Police or any Divisional Police Commander may prohibit any procession, meeting or assembly in any place (whether public or private) or may direct any procession, meeting or assembly (whether in public or private) to disperse, if the Commissioner of Police or any Divisional Police Commander is satisfied that any person or organisation organising, assisting or participating in any such procession, meeting or assembly has on any previous occasion been refused a permit under section 8 or any such person or organisation has on any previous occasion failed to comply with any conditions imposed with respect to any meeting or procession or assembly, or any such person or organisation has on any previous occasion organised any meeting or procession or assembly which has prejudiced peace, public safety and good order and/or which has engaged in racial or religious vilification or undermined or sabotaged or attempted to undermine or sabotage the economy or financial integrity of Fiji.

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

Offences and penalties

10.—(1) Any person who—

- (a) takes part in a meeting or procession in a public place for which no permit has been issued under the provisions of section 8(1);
- (b) takes part in a meeting or procession held in contravention of any condition of a permit issued under the provisions of this Act; or
- (c) takes part in any meeting, assembly or procession convened or taking place in contravention of an order made under the provisions of section 9 or of any of the conditions specified in such order,

shall be guilty of any offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years, or to both.

(2) Any person who organises or assists in organising any procession, meeting or assembly, held or intending to be held, in contravention of an order made under the provisions of section 9, or who incites any person to take part in such procession, meeting or assembly, or who takes part in such a procession, meeting or assembly shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years, or to both.

Closing of roads, etc

11.—(1) The Commissioner of Police or the officer in charge of the Police District, if he or she considers such action to be necessary for the securing of public safety, or for the maintenance of public order, or for maintaining supplies and services essential to the life of the community, may, by order or in such other manner he or she thinks fit, regulate, restrict, control or prohibit the use of any road, street, path or waterway or any public place, or close any road, street, path or waterway or any public place.

(2) If, in the event that the situation is too urgent to communicate with an officer having authority under the provisions of subsection (1), a police officer of or above the rank of Inspector may exercise the powers conferred by subsection (1) on the Commissioner of Police or an officer in charge of the Police District; Provided however, that no such order shall be valid after the expiry of a period of twenty-four hours from the time such order was made, unless the order has been made or confirmed by the Commissioner of Police or the officer in charge of the Police District.

(3) Any person who fails to comply with an order made under this section shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years, or to both.

Control of persons

11A. Where the Commissioner of Police is satisfied that any person or persons—

- (a) has been—
 - (i) concerned in acts involving or likely to cause or provoke a breach of the peace,
 - (ii) involved (whether directly or indirectly) in acts involving or likely to constitute, cause or provoke an offence against public order or an offence under this Act,
 - (iii) concerned in acts involving or likely to be prejudicial to the success of measures taken to maintain or restore public order, or in the preparation or institution of such acts, or
 - (iv) by reason of his or her words or conduct is likely to be concerned in such acts; and
- (b) that by reason thereof it is necessary to exercise temporary control over such person,

the Commissioner of Police may, if he or she considers such action to be necessary for the securing of public safety, or for the maintenance of public order, or for ensuring that the economic and financial integrity of the Republic of Fiji is not undermined or sabotaged, or for maintaining supplies and services essential to the life of the community, by written notice exercise, in respect of such person or persons, any one or more of the following powers: —

- (i) exclude such person or persons from such place or area or any part thereof;
- (ii) require such person or persons reside in such place or area as may be specified and not to leave such place or area without the permission of the Commissioner of Police, and subject to such conditions as may be specified;
- (iii) require such person or persons remain indoors during such hours as may be specified;
- (iv) require such person or persons not leave Fiji, for such duration and subject to such conditions as may be specified;
- (v) require such person or persons notify the Police of his or her place of residence and any change thereof and to report to the nearest police station at such times and dates and in such manner as may be specified;
- (vi) require such person or persons enter into a bond for such amount and with such sureties as may be specified for his or her good behaviour or for due compliance with the terms and conditions of this Act; or
- (vii) provide for the prohibition or regulation of the entry of such person or persons into or the exit of persons from any Division, province, island, city, town, district or other area or place in Fiji.

New Part 3A inserted

7. The Act is amended by inserting the following new Part 3A after section 12—

“PART 3A – TERRORISM OFFENCES*Act of terrorism*

12A. Any person, who commits an act of terrorism, shall be guilty of an offence and shall be liable upon conviction to imprisonment for life.

Harbouring of persons committing acts of terrorism

12B. Any person who harbours or conceals, prevents, hinders or interferes with the apprehension of, any other person knowing or having reason to believe that the other person—

- (a) has committed, is planning or likely to commit an act of terrorism; or
- (b) is a member of a group involved in the act of terrorism,

commits an offence and shall be liable upon conviction to imprisonment for life.

Provision of weapons

12C. Any person who knowingly provides or offers to provide a weapon to—

- (a) a person, group or organisation involved in the act of terrorism;
- (b) a member of any such group or organisation involved in the act of terrorism;
- (c) any other person for use by or for benefit of, a group or organisation involved in the act of terrorism or a member of any such group or organisation,

commits an offence and shall be liable upon conviction to imprisonment for life.

Participation in groups involved in the act of terrorism

12D. Any person who knowingly participates (whether as a member, associate member or prospective member) in a group involved in the act of terrorism knowing that it is a terrorist group commits an offence and shall be liable upon conviction to imprisonment for life.

Recruitment of persons to be members of terrorist groups or to participate in terrorist acts

12E. Any person who knowingly recruits or agrees to recruit another person to—

- (a) be a member of a group or organisation involved in the act of terrorism; or
- (b) participate in the act of terrorism,

commits an offence and shall be liable upon conviction to imprisonment for life.”

New Part 4A Inserted

8. The Act is amended by inserting the following new Part 4A, after section 17—

“PART 4A – POWERS OF ARREST AND RELATED MATTERS*Power to detain suspected persons*

17A.—(1) If any police officer has reasonable suspicion that a person—

- (a) has acted or is about to act in a manner prejudicial to public safety or the preservation of the peace, or is about to commit an offence against public order or an offence against this Act, or
- (b) upon being by a police officer, fails to satisfy the police officer as to his or her identity, address or place of employment, or as to the purpose for which he or she is in the place in which he or she is found,

then such police officer may, arrest without warrant him or her and detain him or her pending enquiries.

(2) No person shall be detained under the powers conferred by subsection (1) for a period exceeding 48 hours except with the authority of the Minister on whose directions such a person may be detained for a further period of 14 days if the Minister is satisfied that the necessary enquiries cannot be completed within forty-eight hours.

(3) Any person detained under the powers conferred by subsection (1) shall be deemed to be in lawful custody and may be detained in any prison or any police station or in any other place authorised generally or specifically by the Commissioner of Police.

(4) Without prejudice to the provisions of subsection (1), if any police officer of or above the rank of Inspector reasonably suspects that any person has acted or is about to act, or is likely to act in any manner prejudicial to public safety or the preservation of the peace or is about to commit an offence against public order or an offence against this Act, he or she may arrest that person and detain him or her pending enquiries, and the provisions of subsection (2) and (3) of this section shall apply in the case of every person so arrested and detained as if he or she had been arrested and detained under the provisions of subsection (1).

Power of arrest, search and to use force

17B. — (1) Notwithstanding anything to the contrary contained in any other written law, it shall be lawful for any police officer -

- (a) to effect the arrest of any person whom he or she has reasonable grounds for suspecting to have committed an offence against public order, or an offence against this Act;
- (b) to search any person whom he or she has reasonable grounds for suspecting to have committed an offence against public order or an offence against this Act;
- (c) to search any building, vehicle, cargo or baggage which he or she has reasonable grounds for suspecting may contain any matter connected with an offence against public order or an offence against this Act, and for the purpose of effecting the arrest of any person whom he or she has reasonable grounds for suspecting to have committed an offence against public order or an offence against this Act to use such force as he or she considers necessary, including the use of arms, and no police officer nor any person acting in aid of such police officer or member using such force shall be liable in criminal or civil proceedings for any harm or loss caused by the use of such force.

Performance of prison and police duties by the Republic of Fiji Military Forces

17C. — (1) It shall be lawful for any member of the Republic of Fiji Military Forces when so directed by his or her commanding officer at the request of or with the concurrence of the Commissioner of Prisons and Corrections Service or the Commissioner of Police as the case may be to perform all or any of the duties and functions of a prisons officer or police officer.

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

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

(4) For the purposes of this section—

‘prisons officer’ means a prisons officer appointed to the Fiji Prisons and Corrections Service under the provisions of the Fiji Prisons and Corrections Service Act 2006;

‘police officer’ means a police officer within the meaning of the Police Act, (Cap. 85).

Section 13 repealed

9. The Act is amended by repealing section 13.

Section 14 amended

10. The Act is amended in section 14 (b) by deleting “three months” and substituting “3 years” and deleting “one hundred dollars” and substituting “\$5,000”.

Section 15 amended

11. The Act is amended in section 15 by deleting “one year” and substituting “3 years” and deleting “one thousand dollars” and substituting “\$5,000”.

Section 16 amended

12. The Act is amended in section 16 by deleting “two years” and substituting “3 years” and deleting “one thousand dollars” and substituting “\$5,000”.

Section 17 amended

13. The Act is amended in section 17 by—

(a) inserting the following new paragraphs in subsection 1(a):

“(iv) *incite or promote religious, ethnic or communal hatred or dislike; or*

(v) *undermine or sabotage or attempt to undermine or sabotage the economy or financial integrity of Fiji.*”

(b) inserting in subsection 1(b) the words, “religion, ethnicity or community” after the word “race” wherever it appears;

(c) deleting in subsection 1 (c) “one year” and substituting “10 years” and deleting “five hundred dollars” and substituting “\$50,000”;

(d) deleting subsection (2);

(e) deleting in subsection (3) “six months” and substituting “10 years” and deleting “two hundred dollars” and substituting “\$50,000”; and

(f) inserting a new subsection (5)—

“A person commits an offence against this section whether or not the conduct constituting the alleged offence occurs in Fiji and whether or not a result of the conduct constituting the alleged offence occurs in Fiji.”

Section 18 repealed

14. The Act is amended by repealing section 18.

New section inserted

15. The Act is amended by inserting the following new section after section 20—

“Certain decisions not to be challenged

21.—(1) No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any way entertain any challenge at law, in equity or otherwise (including any applications for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body in relation to the validity, legality or propriety of any decision made by the Commissioner of Police, any Divisional Police Commander or the Minister or any public official under this Act.

(2) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any Court, Tribunal, Commission or any other adjudicating body, in respect of any of the subject matters in subsection (1), then the presiding judicial officer, without hearing or in any way determining the proceedings or the application, shall immediately transfer the proceedings or the application to the Chief Registrar for termination of the proceedings or the application and a certificate to that effect shall be issued by the Chief Registrar.

(3) A certificate under subsection (2) is, for the purposes of any proceeding in a Court, Tribunal, Commission or any other person exercising a judicial function, conclusive of the matters stated in the certificate.

(4) A decision of the Chief Registrar to issue a certificate under subsection (2) is not subject to challenge in any Court, Tribunal, Commission or any other adjudicating body.”

Schedule amended

16. The Schedule in the Act is amended by deleting “Divisional Commissioner” and substituting “Divisional Police Commander” wherever it appears.

Given under my hand this 5th day of January 2012.

EPELI NAILATIKAU
President of the Republic of Fiji