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INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

GENEVA CONVENTIONS PROMULGATION 2007
 (PROMULGATION No. 52 OF 2007)

IN EXERCISE of the powers conferred upon the Interim Government, and upon exercise of my own deliberate judgement as President of the Republic of Fiji Islands as to what is best and good for the people of Fiji, and by the executive authority of the State in accordance with Section 85 of the Constitution and such other powers as may be appertain, and with the advice of the Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation to—

ENABLE EFFECT TO BE GIVEN TO CERTAIN CONVENTIONS DONE AT GENEVA ON 12 AUGUST 1949 AND TO THE PROTOCOLS ADDITIONAL TO THOSE CONVENTIONS DONE AT GENEVA ON 8 JUNE 1977, AND 8 DECEMBER 2005, AND FOR RELATED PURPOSES

PART I—PRELIMINARY

Short title and commencement

- 1.—(1) This Promulgation may be cited as the Geneva Conventions Promulgation 2007.
 (2) This Promulgation shall come into force on the 1st day of January 2008.

Interpretation

- 2.—(1) In this Promulgation, unless the contrary intention appears:

“court” does not include a court-martial or other military court;

“the First Convention” means the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 1;

“the Second Convention” means the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annex to that Convention) is set out in Schedule 2;

“the Third Convention” means the Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 3;

“the Fourth Convention” means the Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949, a copy of which Convention (not including the annexes to that Convention) is set out in Schedule 4;

“the Conventions” mean the First Convention, the Second Convention, the Third Convention and the Fourth Convention;

“prisoners’ representative”, in relation to a particular protected prisoner of war at a particular time, means the person by whom the functions of prisoners’ representative within the meaning of Article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war;

“protected internee” means a person protected by the Fourth Convention or Protocol I, and interned in Republic of Fiji Islands;

- "protected prisoner of war" means a person protected by the Third Convention or a person who is protected as a prisoner of war under Protocol I;
- "the protecting power", in relation to a protected prisoner of war or a protected internee, means the power or organization which is carrying out, in the interests of the power of which he or she is a national, or of whose forces he or she is, or was at any material time, a member, the duties assigned to protecting powers under the Third Convention, the Fourth Convention or Protocol I, as the case may be;
- "Protocol I" means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977, a copy of which Protocol (including Annex 1 to that Protocol) is set out in Schedule 5;
- "Protocol II" means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977, a copy of which Protocol is set out in Schedule 6;
- "Protocol III" means the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of the Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005, a copy of which Protocols is set out in Schedule 7.
- "the Protocols" means Protocol I and Protocol II.

(2) If the ratification on behalf of Republic of Fiji Islands of any of the Conventions or of either of the Protocols is subject to a reservation or is accompanied by a declaration, that Convention or that Protocol shall, for the purposes of this Promulgation, have effect and be construed subject to and in accordance with that reservation or declaration.

PART II—PUNISHMENT OF OFFENDERS AGAINST THE CONVENTIONS AND PROTOCOL I

Punishment of grave breaches of the Conventions and Protocol I

- 3.—(1) Any person, whatever his or her nationality, who, in Republic of Fiji Islands or elsewhere, commits, or aids, abets or procures any other person to commit, a grave breach of any of the Conventions or of Protocol I, is guilty of an indictable offence.
- (2) For the purposes of this section:
- (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in Article 50 of that Convention committed against persons or property protected by that Convention;
 - (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention;
 - (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in Article 130 of that Convention committed against persons or property protected by that Convention;
 - (d) a grave breach of the Fourth Convention is a breach of that Convention involving an act referred to in Article 147 of that Convention committed against persons or property protected by that Convention; and
 - (e) a grave breach of Protocol I is anything referred to as a grave breach of the Protocol in paragraph 4 of Article 11, or paragraph 2, 3 or 4 of Article 85, of the Protocol.
- (3) In the case of an offence against this section committed outside Republic of Fiji Islands, a person may be proceeded against, indicted, tried and punished therefore in any place in Republic of Fiji Islands as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential on the trial or punishment thereof, be deemed to have been committed in that place.

Punishment of other breaches of the Conventions and Protocols

- 4.—(1) Any person, whatever his or her nationality, who, in Republic of Fiji Islands, commits, or aids, abets or procures any other person to commit, a breach of any of the Conventions or Protocols not covered by section 3, is guilty of an indictable offence.
- (2) Any national of Republic of Fiji Islands who, outside Republic of Fiji Islands, commits, or aids, abets or procures the commission by another person of a breach of any of the Conventions or Protocols not covered by section 3 is guilty of an indictable offence.

Penalties and procedure

5.—(1) The punishment for an offence against section 3 or section 4 is:

- (a) where the offence involves the willful killing of a person protected by the relevant Convention or by Protocol I – imprisonment for life or for any lesser term; and
- (b) in any other case – imprisonment for a term not exceeding 14 years.

(2) An offence against section 3 or section 4 shall not be prosecuted in a court except by indictment by or on behalf of the Director of Public Prosecutions.

Proof of application of the Conventions or Protocols

6. If, in proceedings under this Part in respect of a breach of any of the Conventions or of either of the Protocols, a question arises under:

- (a) Article 2 or Article 3 of that Convention (which relate to the circumstances in which the Convention applies);
- (b) Article 1 or Article 3 of Protocol I (which relate to the circumstances in which that Protocol applies); or
- (c) Article 1 of Protocol II (which relates to the circumstances in which that Protocol applies);

a certificate under the hand of the Attorney General of Fiji certifying to any matter relevant to that question is prima facie evidence of the matter so certified.

Jurisdiction of courts

7.—(1) A person shall not be tried for an offence against section 3 or section 4 by a court other than the High Court of Fiji.

(2) The enactments relating to the trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts-martial convened in Republic of Fiji Islands as if this Part had not been passed.

PART III—LEGAL PROCEEDINGS IN RESPECT OF PROTECTED PERSONS

Notice of trial of protected persons to be served on protecting power, etc.

8.—(1) The court before which:

- (a) a protected prisoner of war is brought up for trial for an offence; or
- (b) a protected internee is brought up for trial for an offence for which that court has power to sentence him or her to imprisonment for a term of two years or more;

shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in sub-section (2), so far as they are known to the prosecutor, has been served not less than 3 weeks previously on the protecting and, if the accused is a protected prisoner of war, on the accused and the prisoners' representative.

(2) The particulars referred to in subsection (1) are:

- (a) the full name, date of birth and description of the accused, including his or her profession or trade; and where the accused is a protected prisoner of war, the accused's rank and his or her army, regimental, personal and serial number;
- (b) the accused's place of detention, internment or residence;
- (c) the offence with which the accused is charged; and
- (d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section, a document purporting:

- (a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and
- (b) to be an acknowledgement of the receipt by that power, representative or person on a specified day of a notice described in the document as a notice under this section;

shall, unless the contrary is shown, be sufficient evidence that the notice required by subsection (1) was served on that power, representative or person on that day.

(4) A court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other law, remand the accused for the period of the adjournment.

Legal representation of certain persons

9.—(1) The court before which:

- (a) any person is brought up for trial for an offence under section 3 or section 4 of this Promulgation; or
- (b) a protected prisoner of war is brought up for trial for any offence:

shall not proceed with the trial unless –

- (i) the accused is represented by counsel; and
- (ii) it is proved to the satisfaction of the court that a period of not less than 14 days has elapsed since instructions for the representation of the accused at the trial were first given to the counsel;

and, if the court adjourns the trial for the purpose of enabling the requirements of this subsection to be complied with, then, notwithstanding anything in any other law, the court may remand the accused for the period of the adjournment.

(2) Where the accused is a protected prisoner of war, in the absence of counsel accepted by the accused as representing him or her, counsel instructed for the purpose on behalf of the protecting power shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of that subsection as representing the accused.

(3) If the court adjourns the trial in pursuance of subsection (1) by reason that the accused is not represented by counsel, the court shall direct that a counsel be assigned to watch over the interests of the accused at any further proceedings in connection with the offence, and at any such further proceedings, in the absence of counsel either accepted by the accused as representing him or her or instructed as mentioned in subsection (2), counsel assigned in pursuance of this subsection shall, without prejudice to the requirements of paragraph (ii) of subsection (1), be regarded for the purposes of subsection (1) as representing the accused.

(4) Counsel shall be assigned in pursuance of subsection (3) in such manner as may be prescribed in regulations or, in the absence of provision in the regulations, as the court directs, and counsel so assigned shall be entitled to be paid by [the Minister] such sums in respect of fees and disbursements as may be prescribed by regulations.

Appeals by protected prisoners of war and internees

10.—(1) Where a protected prisoner of war or a protected internee has been sentenced to imprisonment for a term of two years or more, the time within which the person must give notice of appeal or notice of application for leave to appeal to the Fiji Court of Appeal shall, notwithstanding anything in any enactment relating to such appeals, be the period from the date of conviction or, in the case of an appeal against sentence, of sentencing, to the expiration of 10 days after the date on which the person receives a notice given –

- (a) in the case of a protected prisoner of war, by an officer of Republic of Fiji Military Forces; or
- (b) in the case of a protected internee, by or on behalf of the governor or other person in charge of the prison or place in which he or she is confined;

that the protecting power has been notified of his or her conviction and sentence.

(2) Where, after an appeal against the conviction or sentence by a court of a protected prisoner of war or a protected internee has been determined, the sentence remains or has become a sentence of imprisonment for a term of two years or more, the time within which the person must apply to the Attorney General of Fiji for a certificate authorizing an appeal to the Fiji Court of Appeal shall be the period from the date of the previous decision on appeal until seven days after the date on which the person receives a notice given by a person referred to in paragraph (a) or (b), as the case may require, of subsection (1) that the protecting power has been notified of the decision of the court on the previous appeal.

(3) Where subsection (1) or (2) applies in relation to a convicted person, then, unless the court otherwise orders, an order of the court relating to the restitution of property or the payment of compensation to an aggrieved person shall not take effect, and a provision of a law relating to the revesting of property on conviction shall not take effect in relation to the conviction, while an appeal by the convicted person against his or her conviction or sentence is possible.

(4) Subsections (1) and (2) do not apply in relation to an appeal against a conviction or sentence, or against the decision of a court upon a previous appeal, if, at the time of the conviction or sentence, or of the decision of the court upon the previous appeal, as the case may be, there is no protecting power.

Reduction of sentence and custody of protected prisoners of war and internees

11.-(1) In any case in which a protected prisoner of war or a protected internee is convicted of an offence and sentenced to a term of imprisonment, it shall be lawful for the Attorney-General of Fiji to direct that there shall be deducted from that term a period, not exceeding the period, if any, during which that person was in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), before the sentence began, or is deemed to have begun, to run.

(2) In a case where the Courts are satisfied that a protected prisoner of war accused of an offence has been in custody in connection with that offence, either on remand or after committal for trial (including the period of the trial), for an aggregate period of not less than three months, it shall be lawful for the Courts to direct that the prisoner shall be transferred from that custody to the custody of an officer of the Republic of Fiji Military Forces and thereafter remain in military custody at a camp or place in which protected prisoners of war are detained, and be brought before the court at the time appointed by the remand or committal order.

**PART IV MISUSE OF THE RED CROSS AND OTHER EMBLEMS, SIGNS,
SIGNALS, IDENTITY CARDS, INSIGNIA AND UNIFORMS**

Use of red cross, red crescent and other emblems, etc.

12.-(1) Subject to the provisions of this section, it shall not be lawful for any person, without the consent in writing of the Minister of Home Affairs or a person authorized in writing by the Minister to give consent under this section, to use or display for any purpose whatsoever any of the following:

- (a) the emblem of a red cross with vertical and horizontal arms of the same length on, and completely surrounded by, a white ground, or the designation "Red Cross" or "Geneva Cross";
- (b) the emblem of a red crescent moon on, and completely surrounded by, a white ground, or the designation "Red Crescent";
- (c) the following emblem in red on, and completely surrounded by, a white ground, that is to say, a lion passing from right to left of, and with its face turned towards, the observer, holding erect in its raised right forepaw a scimitar, with, appearing above the lion's back, the upper half of the sun shooting forth rays, or the designation "Red Lion and Sun";
- (d) the emblem of a white or silver cross with vertical and horizontal arms of the same length on, and completely surrounded by, a red ground, being the heraldic emblem of the Swiss Confederation;
- (e) the sign of an equilateral blue triangle on, and completely surrounded by, an orange ground, being the international distinctive sign of civil defence;
- (f) the emblem of a red frame in the shape of a square on edge on a white ground;
- (g) any of the distinctive signals specified in Chapter III of Annex I to Protocol I, being the signals of identification for medical units and transports;
- (h) the sign consisting of a group of three bright orange circles of equal size, placed on the same axis, the distance between each circle being one radius, being the international special sign for works and installations containing dangerous forces;
- (i) a design, wording or signal so nearly resembling any of the emblems, designations, signs or signals specified in paragraph (a), (b), (c), (d), (e), (f) or (g) as to be capable of being mistaken for, or, as the case may be, understood as referring to, one of those emblems, designations, signs or signals.

(j) such other flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms as are prescribed for the purpose of giving effect to the Conventions or Protocols.

(2) The Minister of Home Affairs or a person authorized in writing by the Minister to give consent under this section, shall not give such consent except for the purpose of giving effect to the provisions of the Conventions or Protocols and may refuse or withdraw such consent as necessary.

(3) This section extends to the use in or outside Republic of Fiji Islands of an emblem, designation, sign, signal, design, wording, identity card, identification cards, insignia or uniform referred to in subsection (1) on any ship or aircraft registered in Republic of Fiji Islands.

Offences and penalties

13.—(1) Any person who contravenes section 12(1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.00 or to imprisonment for a term not exceeding five years imprisonment or both.

(2) Where a court convicts a person of an offence against section 12(1), the court may order the forfeiture to the State of:

- (a) any goods or other article upon of in connection with which an emblem, designation, sign, signal, design or wording was used by that person; and
- (b) any identity cards, identification cards, insignia or uniforms used in the commission of the offence.

(3) Where an offence against section 12(1) committed by a body corporate is proved to have been committed with the consent or connivance of a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, he or she, as well as the body corporate, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(4) Proceedings under section 12(1) shall not be instituted without the consent in writing of the Director of the Public Prosecution.

Saving

14. In the case of a trade mark registered before the passing of this Promulgation, sections 12 and 13 do not apply by reason only of its consisting of or containing a sign specified in subparagraph 12(1) (b) or (c) or a design resembling such a sign, and where a person is charged with using such a sign or design for any purpose and it is proved that the person used it otherwise than as, or as part of, a trade mark so registered, it is a defence for the person to prove:

- (a) that the person lawfully used that sign or design for that purpose before the passing of this Promulgation; or
- (b) in a case where the person is charged with using the sign or design upon goods or any other article, that the sign or design had been applied to the goods or that article before the person acquired them or it by some other person who had manufactured or dealt with them in the course of trade and who lawfully used the sign or design upon similar goods or articles before the passing of this Promulgation.

PART V—REGULATIONS

Regulations

15. The Minister of Home Affairs may make regulations:

- (a) prescribing the form of flags, emblems, designations, signs, signals, designs, wordings, identity cards, information cards, insignia or uniforms for use for the purposes of giving effect to the Conventions or the Protocols or both, and regulating their use;
- (b) prescribing the penalty that may be imposed in respect of contravention of, or non-compliance with, any regulations made under paragraph (a) of this section, which may be a fine not exceeding \$5,000.00 or imprisonment for a term not exceeding five years imprisonment or both; and

- (c) providing for such other matters as are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Promulgation.

SCHEDULE

1. The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, adopted at Geneva on 12 August 1949;
2. The Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted at Geneva on 12 August 1949;
3. The Geneva Convention relative to the Treatment of Prisoners of War, adopted at Geneva on 12 August 1949;
4. The Geneva Convention relative to the Protection of Civilian Persons in Time of War, adopted at Geneva on 12 August 1949;
5. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), done at Geneva on 8 June 1977;
6. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), done at Geneva on 8 June 1977.
7. The Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of the Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005.

Given under my hand this 13th day of December 2007.

J. I. ULUIVUDA
President
of the Republic of Fiji