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ADMINISTRATION OF JUSTICE DECREE 2000

(INTERIM MILITARY GOVERNMENT DECREE NO. 5 OF 2000)

IN exercise of the powers vested in me as Commander and Head of the Interim Military Government of Fiji, I hereby make the following Decree:

Short title and commencement

1. This Decree may be cited as the Administration of Justice Decree 2000 and is deemed to have commenced on the 29th May, 2000.

Judicial Services Commission

2.—(1) There shall be a Judicial Services Commission consisting of:—

- (a) the Chief Justice who is to be its Chairperson;
- (b) the President of the Court of Appeal;
- (c) the President of the Fiji Law Society; and
- (d) the Chairman of the Public Service Commission.

(2) The Secretary of the Judicial Services Commission shall be the Chief Registrar of the High Court.

Appointment of Chief Justice, etc

3.—(1) The Chief Justice and the President of the Court of Appeal shall be appointed by the Head of the Military Government on the advice of the Executive Council.

(2) Justices of Appeal and Puisne Judges of the High Court shall be appointed by the Head of the Military Government on the advice of the Judicial Services Commission.

(3) Subject to confirmation by the Head of the Military Government, all persons holding appointment on 29th May, 2000 in any of the offices under subsections (1) and (2) continue to hold such offices and appointments.

(4) The remuneration and other terms and conditions of persons appointed under this section or continued under subsection (3) shall not be altered to their disadvantage after their appointment or continuation of office.

Functions of the Judicial Services Commission

4.—(1) The Judicial Services Commission may make appointments to the following offices:

- (a) Central Agricultural Tribunal;
- (b) Master of the High Court;
- (c) Chief Registrar of the High Court;
- (d) Deputy Registrar of the High Court;
- (e) Chief Magistrate;
- (f) Resident Magistrate;
- (g) Third Class Magistrate;
- (h) Senior Court Officer;
- (i) Court Officer;
- (j) Assistant Court Officer.

(2) The appointment of the Master of the High Court and a magistrate expires upon his or her reaching the age of 65, and shall not be appointed or re-appointed if he or she has reached that age.

(3) The power to appoint persons under section 4(1)(h), (i) and (j) may be delegated by the Judicial Services Commission to the Chief Registrar except the power to take disciplinary action.

(4) The power to appoint persons under this section includes the power to dismiss, suspend, or to take disciplinary action.

Establishment and Jurisdiction of the High Court

5.—(1) The High Court of Fiji established by the Constitution of Fiji 1990 and the High Court Act (Cap. 13) is re-established under this Decree and shall have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other jurisdiction and powers as may be conferred on it by this Decree or any other Decree.

(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate Court and may make such orders, issue such writs and given such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such Court.

Judges of the High Court

6.—(1) The Judges of the High Court consist of the Chief Justice and such number of Puisne Judges that is not less than 12 as may be prescribed by the Decree after consultation with the Chief Justice.

(2) Persons eligible for appointment as Judges of the High Court of Fiji shall:

- (a) hold or have held judicial office at least equivalent to the office of a Judge of the High Court of Fiji in any country outside Fiji but within the Commonwealth or such other country as the Judicial Services Commission deems appropriate; or
- (b) be qualified to practise and have practised as an advocate and have been so qualified for not less than 7 years in such Court.

(3) Computation of the period of qualification for the purpose of subsection (2) includes any period served as a judicial officer in addition to any time spent as a qualified practitioner as required by subsection (2).

(4) During any vacancy in the office of Chief Justice or if the Chief Justice is unable for whatever reason to perform the functions of such office, then until an appointment has been made or the Chief Justice has resumed office, those functions shall be performed by a Puisne Judge of the High Court as the Head of the Military Government, acting on the advice of the Judicial Services Commission, may appoint for that purpose.

(5) During any vacancy in the office of the Puisne Judge for whatever reason or where the Head of Military Government is advised by the Chief Justice that the state of business in the High Court requires a temporary increase in the number of Judges, the Head of the Military Government may appoint a person qualified for appointment to act as a Judge of the High Court for a period not exceeding 12 months on the advice of the Judicial Services Commission.

Provided that despite the expiry or revocation of appointment, the appointee shall deliver judgement or do anything necessary in relation to the proceedings that were commenced before such judge.

(6) Subject to subsection (9), the Chief Justice and Puisne Judges of the High Court shall hold office until attaining retiring age on which date they shall vacate office.

(7) Where a judge has attained retiring age, the judge may continue in office for so long thereafter as may be necessary to enable judgements to be delivered or to do any act in relation to proceedings commenced before such judge prior to attaining retiring age.

(8) Subject to subsection (7)—

- (a) the retiring age of the Chief Justice is 75; and
- (b) the retiring age of Puisne Judges of the High Court is 70.

(9) The Chief Justice and the Puisne Judges of the High Court may, notwithstanding subsection (6) be appointed for a term of not less than 2 years.

Removal of Judges

7.—(1) The Chief Justice, the President of the Court of Appeal, the Justices of Appeal and the Puisne Judges of the High Court may be removed from office only for—

- (a) inability to perform the functions of such office whether from infirmity of body or mind or any other cause; or
- misbehavior.

(2) Removal of the Chief Justice, President of the Court of Appeal, Justices of Appeal and Puisne Judges of the High Court from office shall only occur in accordance with this section.

(3) Where the question of removal has been raised either by the Chief Justice or by the Head of the Military Government, it shall be referred to a tribunal to be set up after consultation between members of the Executive Council excluding the Head of the Military Government.

(4) The Tribunal referred to under subsection (3) consists of a Chairperson and 2 other members, selected by the Executive Council in consultation with the Judicial Services Commission from among persons who have held high judicial office at least at the High Court level in Commonwealth countries or such countries as may be deemed appropriate or from retired Fiji Puisne Judges or Justices of Appeal.

(5) The Tribunal shall enquire into the matter and report on the facts together with a recommendation and advise the Executive Council whether it should order removal of such Judge.

(6) The Executive Council shall act in accordance with the advice given under subsection (5).

(7) Pending the conduct of the inquiry and its recommendations the Judge so affected shall be suspended from office, such suspension to be revoked forthwith on receipt of the Tribunal's recommendation that no action be taken for the removal of the Judge.

Oath of office

8.—(1) A Puisne Judge of the High Court of Fiji shall not enter upon the duties of such office until such judge has subscribed to the oath of allegiance and due execution of office as are prescribed by *Schedule 1*.

(2) For the purpose of subsection (1), no person shall be required to take either of such oaths if such person shall have taken such oaths within Fiji on any previous occasion.

Jurisdiction of the Court of Appeal

9. The Court of Appeal of Fiji established by the Constitution 1990 is re-established under this Decree and shall have such jurisdiction and powers as are conferred on it by the Court of Appeal Act (Cap. 12) or any other written law.

Justices of the Court of Appeal

10.—(1) The Justices of the Court of Appeal shall be—

- (a) the President of the Court;
- (b) the Vice President of the Court;
- (c) the Puisne Judges of the High Court;
- (d) such Justices of Appeal as may be appointed under section 12.

(2) The Chief Justice shall be an *ex-officio* member of the Court of Appeal and shall take precedence whenever the Chief Justice sits in that Court.

Appointment of Justices of Appeal

11.—(1) Justices of Appeal shall be appointed by the Head of the Military Government on the advice of the Judicial Services Committee.

(2) A person shall not be qualified to be appointed under subsection (1) unless such person is qualified for appointment as a Puisne Judge of the High Court.

(3) A person shall not be appointed a Justice of Appeal after reaching 72 years of age.

Justice of Appeal not to sit on certain appeals

12. A Justice of Appeal shall not sit as a Judge of the Court on the hearing of an appeal—

- (a) from any decision given by such judge or any decision given by any Court of which he or she was sitting as a member, or
- (b) against a conviction or sentence if he or she was the Judge by or before whom the appellant was convicted.

Vacation of office

13. A Justice of Appeal appointed under subsection 12(1) shall vacate such office upon the expiration of the period of appointment to that office. Such period shall be not less than 3 years.

Oath of office

14.—(1) A Justice of Appeal appointed under section 12(1) shall not enter upon the duties of his office until such person has taken and subscribed the oath of allegiance and the due execution of his office as is prescribed by *Schedule 1*.

(2) For the purpose of subsection (1), no person shall be required to take either of such oaths if such person has taken such oaths within Fiji on any previous occasion.

Appeals

15. An Appeal to the Court of Appeal shall lie from decisions of the High Court in the following cases:

- (a) as of right from final decisions in any civil or criminal proceedings;
- (b) as of right from final decisions given in exercise of the jurisdiction conferred on the High Court by section 6; and
- (c) in such other cases as may be prescribed.

Final appellate court

16.—(1) The Court of Appeal is the final court of appeal.

(2) The Court shall be duly constituted as provided by section 6 of the Court of Appeal Act (Cap. 12).

(3) If the Court so constituted under subsection (2) is satisfied that the subject matter of an appeal pending before it raises a matter of great public importance it shall be joined by 2 more Justices of the Court and shall then proceed to hear and determine the appeal.

Repeal and saving

17.—(1) The Supreme Court Act (Act No. 14 of 1998) is repealed.

(2) Any judgment or decision of the Court of Appeal that was pending in the former Supreme Court shall be heard and determined by a Court of Appeal consisting of 5 Justices of the Court of Appeal none of whom was a member of the Court of Appeal which delivered the judgment or decision which is under appeal and only if the pending judgement or decision raises a matter of great public importance.

18.—(1) For the avoidance of doubt and subject to any changes that the appointing authorities may introduce or otherwise, nothing in this Decree affects the continuance in office of the Chief Justice, President of the Court of Appeal, Justices of Appeal, Puisne Judges of the High Court holding office prior to the Interim Military Government taking over State power and removing the Constitution (Amendment) Act 1997.

(2) For the avoidance of doubt and subject to any changes that the appointing authorities may introduce or otherwise, nothing in this Decree affects the continuance in office or all persons listed in the posts specified in section 4(1).

(3) Nothing in this Decree affects any pending appeal in respect of any appointment or promotion relating to an officer or position set out under section 4(1) before the commencement of this Decree.

(4) If there is any inconsistency with this Decree or any other written law, this Decree shall prevail.

Interpretation

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

“Executive Council” means the Executive Council established by section 6 of the Interim Military Government and Finance Decree No. 3;

“Head of the Military Government” means the Commander and Head of the Interim Military Government;

“Judicial Services Commission” means the Judicial Services Commission established by section 2;

“oath” includes affirmation.

SCHEDULE
(Section 12)

OATH OF ALLEGIANCE

I do (swear/solemnly affirm) that I will be faithful and bear true allegiance to the Republic of Fiji, according to law. So help me God. (To be omitted in affirmation).

OATH FOR DUE EXECUTION OF JUDICIAL OFFICE

I do (swear/solemnly affirm) that I will well and truly serve the Republic of Fiji in the office of () and will do right to all manner of people in accordance with the laws and usages of Fiji without fear or favour, affection or ill-will. So help me God. (To be omitted in affirmation).

Made at Suva this 8th day of June 2000.

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