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[LEGAL NOTICE No.1]

CONSTITUTION ABROGATION—MILITARY GOVERNMENT AND FINANCE DECREE 1987

FIJI INTERIM MILITARY GOVERNMENT DECREE NO. 3

1. The Military Government shall have power to make laws for the peace, order and good Government of Fiji or any part thereof with respect to any matter whatsoever.

2.—(1) The power of the Military Government to make laws shall be exercised by means of Decrees signed by the Head of the Military Government.

(2) A Decree may be made known to the public by means of a sound or television broadcast, or by publication in writing or in any other manner.

3. In so far as a Decree published on any date in the *Fiji Gazette* makes provision with respect to the same matter as a Decree which—

(a) was made known to the public on or before that date; but

(b) has not been published in the *Fiji Gazette*, the Decree published in the *Fiji Gazette* shall prevail.

4.—(1) A decree is made when it is signed by the Head of the Military Government, whether or not it then comes into force.

(2) Where as other provision is made as to the time when a particular provision contained in a Decree or subsidiary instrument is to come into force, it shall subject to subsection (3), below, come into force on the day when the Decree or subsidiary instrument as the case may be is made.

(3) Where a provision contained in a Decree or subsidiary instrument is expressed to come into force on a particular day, it shall be construed as coming into force immediately on the expiration of the previous day.

(4) In this section "subsidiary instrument" means any order, rules, regulation, rules of court or by-laws made in the exercise of powers conferred by Decree.

5.—(1) No question as to the validity of this or any other Decree shall be entertained by any Court of Law in Fiji.

(2) The Executive Authority of the Republic of Fiji shall be vested in the Head of the Military Government and may be exercised by him either directly or through persons or authorities subordinate to him.

Provided that nothing in this subsection shall prevent any authority having power to make laws from conferring functions on persons or authorities other than the Head of the Military Government.

(3) The Executive Authority of the Republic of Fiji shall extend to the execution and maintenance of the Constitution of the Republic, as enacted, modified and supplemented by this or any other Decree, and to all other matters whatsoever throughout Fiji.

6.—(1) There shall be for Fiji an Executive Council.

(2) The Executive Council shall consist of:

(a) The Head of the Fiji Military Government who shall be President of the Executive Council.

(b) Such other persons who are appointed by the Commander and Head of the Interim Military Government of Fiji to serve on the Council.

- (3) The Attorney-General of the Republic of Fiji shall attend the meetings of the Executive Council.
- (4) The Executive Council established by this section may regulate its own procedure and, subject to its rules of procedure, may act notwithstanding any vacancy in membership or the absence of any member.
- (5) The Head of the Military Government may subject to such conditions (if any) as he thinks fit, delegate any functions conferred on him by law (including the Constitution of the Republic of Fiji) to the Executive Council or to any other authority in Fiji.

Provided that this subsection shall not apply to the functions of signing decrees.

- (6) The Executive Council may, subject to such conditions (if any) as it may think fit, delegate any function conferred on it by any law (including the Constitution of the Republic of Fiji) to an officer in the public service of the Republic.
- (7) Any function of the Head of the Military Government or of the President of the Executive Council may be exercised by the Head of the Military Government or the President notwithstanding any delegation of that function for the time being in force under the foregoing provisions of this section.
- (8) References in this section to functions conferred by law do not include reference to executive functions conferred by Section 6 of the Decree.

7.—(1) Where a power to make an instrument is conferred on the Head of the Military Government or the Executive Council by any law, then, without prejudice to the exercise of the power by the Head of the Military Government in person or by the Executive Council itself, as the case may be, any instrument made in exercise of that power may be executed under the hand of the Secretary to the Military Government.

- (2) Where a power to make an instrument is conferred on the Executive Council by any law, then, without prejudice to the exercise of the power by the Council itself, any instrument made in exercise of that power may be executed under the hand of the Permanent Secretary to the department of the Government of the Republic of Fiji responsible for the matter to which the instrument relates, or under the hand of the Secretary to the Military Government.

8.—(1) Subject to this and any other Decree all existing law, that is to say, all law (other than the Constitution of Fiji 1970 Cap. 1) which, whether being a rule of law or a provision of an act of Parliament or if any other enactment or instrument whatsoever, was in force immediately before 25 September 1987 or having been passed or made before that date comes or came into force on or after that date, shall, until that law is altered by an authority having power to do so, have effect with such modifications (whether by way of addition, alteration or commission) as may be necessary to bring that into conformity with the Constitution of the Republic of Fiji as effected by this or any other Decree, and with the provisions of any Decree relating to the performance of any functions which are conferred by law on any person or authority.

- (2) It is hereby declared that the abrogation by this or any other Decree of any provision of the former Constitution of the Republic of Fiji shall be without prejudice to the continued operation in accordance with subsection (1) of any law which immediately before 25th September 1987 was in force by virtue of that provision.
- (3) Any function which is conferred by any existing law within the meaning of subsection (1) above on the Prime Minister or any other Minister of the Government of Fiji or the House of Representatives or the Senate shall, until other provision in respect of that function is made by an authority having power to do so, vest in the Executive Council.

9.—(1)† Subject to this and any other Decree, any court of law authority or office which was established, any appointment which was made, and any other thing whatsoever which was done before 25th September 1987 in pursuance of any provision of the Constitution of Fiji being a provision that:

- (a) is not suspended by this or any other Decree; but
- (b) is modified by this Decree, or which was deemed by virtue of any such provision to be so established, made or done before that date, shall be deemed to have been duly established, made or done in pursuance of that provision as modified by this Decree.

10.—(1) Without prejudice to the generality of section 9 of this Decree, all property which, was held immediately before 25th September 1987 or any Minister of the Government of Fiji who held on behalf of or in trust for the Government of Fiji shall on 25th September 1987, by virtue of this subsection and without further assurance, vest in the Head of the Military Government. It shall be held by him on behalf of or as the case may be, on the like trusts for the benefit of of the Military Government until proclamation and promulgation of the Constitution of the Republic of Fiji.

(2) Without prejudice to the generality of Section 9 of this Decree or of other provisions of this Section, any contract or other arrangement entered into before 25th September 1987 by any person or authority on behalf of the Government of Fiji shall from 25th September 1987 be deemed to have been entered into on behalf of the Military Government of Fiji.

(3) Without prejudice to the generality of Section 9 of this Decree or of other provisions of this Section, all promissory notes, stock, bonds and debentures issued under any law before 25th September 1987 by the responsible Minister of the former Government of Fiji responsible for finance, or by any person acting on his behalf, shall so far as any liability of the Government of Fiji invested thereof remain undischarged immediately before that date be deemed—

(a) to have been duly issued under the Act in question by the Executive Council; and

(b) to have been issued on the date on which and with the date of redemption with which they were actually issued; and the principal sums and interest represented or secured thereby shall accordingly continue to be charged on the Consolidated Revenue Fund.

(4) Subsections (1) and (2) above shall, with the necessary modifications, apply in relation to rights, liabilities and obligations arising out of a contract or after arrangement as they apply in relation to property.

11. All revenues or other moneys raised or received for purposes of the Interim Military Government of Fiji (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may be or under any retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

12. No moneys shall be withdrawn from the Consolidated Fund except as follows:

(a) to meet expenditure that is charged upon the Fund by the Decree and any further decree or by any other law in force in Fiji in accordance with Existing Laws Decree 1987.

(b) where the issue of those moneys has been authorised by an Appropriation Decree by the Executive Council.

13. No moneys shall be withdrawn from any public fund of Fiji other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a Decree of the Fiji Interim Military Government or an Appropriation Decree issued by the Executive Council.

14. No moneys shall be withdrawn from any Consolidated Fund except in the manner prescribed.

15. It shall be lawful for the deposit of any moneys forming part of the Consolidated Fund with a bank or with the duly authorised and accredited agents of the Interim Military Government of Fiji for Overseas Governments and Administrations or the investment of any such moneys in securities in which under the law for the time being in force in Fiji, trustees are authorised to invest, or the making of advances to such extent and in such circumstances as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section of this Decree.

16. The member of the Executive Council responsible for finance shall cause to be prepared and laid before the Executive Council within 28 days of the dated of this Decree and thereafter before the commencement of each financial year estimates of the revenues and expenditures of Fiji for that year.

17. In respect of the head of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Decree or or any other decree) shall be included in a decree to be known as an Appropriation Decree which shall be tabled before the Executive Council to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums referred to in the said decree.

18. If it is found in any financial year that the amount appropriated by the Appropriation Decree for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation Decree; or that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purpose included in that head by the Appropriation Decree or for a purpose for which no amount has been appropriated by the Appropriation Decree, a supplementary estimate setting out the sums required or spent shall be tabled before the Executive Council seeking approval of such supplementary expenditure.

19. In the event of an Appropriation Decree in respect of any financial year not being operative or extant, the member of the Executive Council responsible for finance may, to the extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Revenue Fund for the purpose of meeting expenditure necessary to carry on the purpose of meeting expenditure necessary to carry on the services of the Military Government until the expiration of three months from the beginning of that financial year or the coming into operation of the Appropriation Decree which ever is earlier.

20.—(1) The Executive Council may if they think it fit to do so establish and make provision for a contingency fund and to authorise the Executive Council member responsible for finance, if satisfied that there has arisen an urgent and unforeseen need for expenditure for which no provision exists, to make advances from the Fund to meet that need.

(2) On an advance being made out of the Contingency Fund, a supplementary estimate shall be tabled before the Executive Council, and a decree introduced for the purpose of replacing the amount so advanced.

21. Salaries shall be paid to the holders of the following officers at the salaries and allowances as may be prescribed:

- (a) Commander and Head of the Military Government of Fiji.
- (b) Members of the Executive Council.
- (c) Justices and Judges of the Court of Appeal and Supreme Court.
- (d) Judicial Advisory Committee.
- (e) Members of the Public Service Commission.
- (f) Members of the Police Service Commission.
- (g) Director of Public Prosecutions.
- (h) Ombudsman; and
- (i) Auditor-General.

22. All debt charges for which the Military Government of Fiji is liable shall be charged on the Consolidated Fund. Debt charges include interest, sinking fund charges, the repayment or amortisation of debt, together with all expenditure in connection with the raising of loans on the security of the revenues of Fiji or the Consolidated Fund and the service and redemption of debt thereby created.

23. Without prejudice to the generality of Section 9 of this Decree, the Interpretation Act Cap. 7 shall apply in relation to a Decree as it applies in respect of an Act of Parliament; and accordingly any reference in that Act to an enactment shall include a reference to any provision of a Decree.

24. In this Decree and in any other law—

“Decree means an instrument made by the Fiji Military Government and expressed to be made as a Decree:” “The Head of the Military Government” means the Head of the Military Government in Fiji, Supreme Commander of the Armed Forces of the Republic of Fiji.

25.—(1) This Decree may be cited as the Constitution (Abrogation) Military Government and Finance Decree No. 3 1987 and shall apply throughout Fiji.

(2) This Decree shall be deemed to have come into force on 25th September 1987.

(3) Where a power to delegate a function is conferred by this Decree, that power includes—

- (a) power to delegate the function to a limited extent only; and
- (b) power to delegate the function to different purposes, or in respect of different matters or different parts of Fiji.

(4) In this Decree “Functions” includes powers and duties.

(5) For the avoidance of doubt it is hereby declared that any power to make laws conferred by this Decree includes power to make laws having extraterritorial operation.

Dated 3rd October 1987.

COL. SITIVENI LIGAMAMADA RABUKA, O.B.E. (Mil.)
Commander and Head of the Interim Military Government of Fiji