



HEAD OF STATE AND EXECUTIVE AUTHORITY OF FIJI DECREE 1988

ARRANGEMENT OF SECTIONS

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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 Head of State and Executive Authority of Fiji Decree 1988.

Term of President's Office

2. Subject to the provisions of section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree the President shall hold office until the appointment of a President pursuant to the Constitution yet to be adopted.

Appointment of future president

3. The President, other than the first President, shall be appointed by the Great Council of Chiefs pursuant to a majority vote thereof or in accordance with such other procedure as may be adopted by the Great Council of Chiefs and in any event after consultation with the Prime Minister and the Cabinet and shall hold office until the appointment of a President pursuant to the Constitution yet to be adopted.

Vacancy of President's Office

4. Whenever the office of President is vacant or the holder of the office is absent from Fiji or is for any other reason unable to perform the functions of his office, those functions shall be performed by such person as may be appointed by the Great Council of Chiefs.

When Decree is law

5. Notwithstanding the provision of subsection (ii) of section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree a Decree shall become law when it is signed by the President who shall thereupon cause it to be published in the *Gazette* as a law.

Authorised persons

6. Notwithstanding the provision of subsection (iii) of section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree persons or authorities other than the President shall not be precluded from exercising such functions as may be conferred upon them by law.

Appointment of Prime Minister

7. There shall be a Prime Minister, who, save for the first Prime Minister already appointed pursuant to the Appointment of Prime Minister Decree of the Government of the Republic of Fiji, shall be appointed by the President acting in his own deliberate judgment and who shall appoint the person most able to lead a Cabinet and to command the support of a Cabinet best suited to the needs and interests of Fiji pending the election of a parliament.

Attorney-General etc.

8. There shall be an Attorney-General and such other offices of Minister of the Government as may be established by the President acting in accordance with the advice of, but after consultation with, the Prime Minister.

Appointment of other Ministers

9. The Ministers other than the Prime Minister shall be appointed by the President acting in accordance with the advice of, but after consultation with, the Prime Minister, provided that a person shall not be qualified to be appointed as Attorney-General unless he is entitled to practice as barrister and solicitor in Fiji.

Authority to Act as Attorney-General

10. If the person holding the office of Attorney-General is for any reason unable to perform the functions of his office, those functions may be performed by such other person, being a person entitled to practise as a barrister and solicitor in Fiji, as the President acting in accordance with the advice of, but after consultation with, the Prime Minister may direct.

Tenure of office of Prime Minister

11. If it appears to the President acting in his own deliberate judgment that the Prime Minister no longer commands the support of the Cabinet or for any reason appears not to be the person most able to lead a Cabinet best suited to the needs and interests of Fiji pending the election of a parliament, the President shall remove the Prime Minister from office.

Vacancy of Minister's Office

12. The office of a Minister shall become vacant if the President, acting in accordance with the advice of the Prime Minister, so directs.

The Cabinet

13.—(1) There shall be a Cabinet for Fiji consisting of the Prime Minister and all other Ministers.

(2) The functions of the Cabinet shall be to advise the President in the government of Fiji and the Prime Minister shall keep the President fully informed concerning the general conduct of the government of Fiji and shall furnish the President with such information as he may request with respect to any particular matter relating to the government of Fiji.

Assignment of responsibilities to Ministers

14.—(1) The President, acting in accordance with the advice of, but after consultation with, the Prime Minister, may, by direction in writing, assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Decree and any other law) of any business of the Government, including responsibility for the administration of any department of the Government.

(2) Without prejudice to the assignment of any responsibility to him under the preceding subsection, the Attorney-General shall be the principal legal adviser to the Government.

Performance of Prime Minister's functions during illness or absence

15.—(1) Whenever the Prime Minister is unable, by reason of illness or absence from Fiji or for any other reason, to perform the functions conferred on him by this Decree, the President may, by directions in writing, authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the President.

(2) The powers of the President under this section shall be exercised by him in accordance with the advice of the Prime Minister;

Provided that if the President, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, the President may exercise those powers without that advice and in his own deliberate judgment.

Exercise of President's functions

16.—(1) In the exercise of his functions under this Decree or any other law, the President shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet (notwithstanding a requirement for consultation with him) except in cases where he is required by this Decree to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment.

(2) Where the President is required by this Decree to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the President is required by this Decree to act in accordance with the advice of, or after consultation with, any person or authority, the question whether he has in any matter received or sought any advice or so acted shall not be called in question in any court of law.

Assistant Ministers

17.—(1) The President may appoint Assistant Ministers, not exceeding such number, if any, as the Prime Minister may direct to assist Ministers in the performance of their duties.

(2) The provisions of this Decree shall apply in relation to Assistant Ministers as they apply in relation to Ministers other than the Prime Minister.

Oaths to be taken by Ministers

18. A Minister or an Assistant Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by Schedule I to this Decree.

Direction, etc. of government departments

19. Where any Minister has been charged with responsibility for the administration of any department of the Government he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or of some other supervising officer whose office shall be a public office:

Provided that —

- (a) any such department may be under the joint supervision of two or more supervising officers; and
- (b) different parts of any such department may respectively be under the supervision of different supervising officers.

Secretary to the Cabinet

20.—(1) There shall be a Secretary to the Cabinet whose office shall be a public office.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister for arranging the business for, and keeping the minutes of, the Cabinet or any committee thereof and for conveying the decisions of the Cabinet or any committee thereof to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct.

Commissioner of Police

21.—(1) There shall be a Commissioner of Police, whose office shall be a public office.

(2) The Police Force shall be under the command of the Commissioner of Police.

(3) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with respect to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.

(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 14(1) of this Decree for the organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

Director of Public Prosecutions

22.—(1) There shall be a Director of Public Prosecutions whose office shall be a public office.

(2) Power to make appointments to the office of Director of Public Prosecutions shall vest in the Judicial and Legal Services Commission:

Provided that the Commission shall not select for appointment to hold that office a person who is not a citizen of Fiji unless the Prime Minister has agreed that such a person may be so selected.

(3) A person shall not be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a Judge of the Supreme Court.

(4) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(5) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(6) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (4) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(7) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(8) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings to any other court, shall be deemed to be part of those proceedings:

Provided that the power conferred on the Director of Public Prosecutions by subsection (4)(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such a person.

Constitution of offices

23. Subject to the provisions of this Decree and of any other law, the President may constitute offices for Fiji, make appointments to any such office and terminate any such appointment.

Prerogative of Mercy

24.—(1) The President may, in the Republic's name and on behalf of the Republic—

- (a) grant to any person convicted of any offence under the law of Fiji a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for such an offence; or
- (d) remit the whole or part of any punishment imposed on any person for such an offence or of any penalty or forfeiture otherwise due to the state on account of such an offence.

(2) There shall be a Commission on the Prerogative of Mercy (hereinafter in this section referred to as "the Commission") consisting of a Chairman and not less than two other members appointed by the President acting in his own deliberate judgment.

(3) A member of the Commission shall vacate his seat on the Commission—

- (a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or
- (b) if his appointment is revoked by the President, acting in his own deliberate judgment.

(4) In the exercise of the powers conferred upon him by subsection (1) of this section, the President shall act in accordance with the advice of the Commission.

(5) The validity of the transaction of business by the Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) Whenever any person has been sentenced to death (otherwise than by a court martial) for an offence, a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Commissioner shall be taken into consideration at a meeting of the Commission, which shall then advise the President whether or not to exercise his powers under subsection (1) of this section in that case.

(7) A Minister having responsibility for any matters relating to the treatment of offenders may consult the Commission with respect to such matters.

Immunity from Criminal Prosecutions and Civil Proceedings

25.—(1) Notwithstanding the provisions of this Decree and any other law the President acting in his own deliberate judgment may by decree in the Republic's name and on behalf of the Republic grant to any person or persons immunity against criminal prosecution and the person or persons subject of such decree shall be immune from prosecution in any Court of law. The grant of immunity under this subsection shall be effective notwithstanding that a prosecution has commenced and notwithstanding the powers of the Director of Public Prosecutions under section 22 of this Decree.

(2) Subject to subsection (1) of this section no civil proceedings shall be commenced or if commenced, continue, in any Court of law against a person or persons covered by such decree and no action in damages shall lie in respect of actions direct or indirect resulting from such person or persons criminal conduct.

(3) For the avoidance of any doubt it is hereby declared that no compensation shall be payable by the State to any person in respect of any damage or injury to his person or property caused by or consequent upon any act for which immunity has been granted by the President under this section.

Jurisdiction of Court on exercise of functions

26. No provision of this Decree that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Decree shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Decree or any other law or should not perform those functions.

Power to amend and revoke instruments, etc.

27. Where any power is conferred by this Decree to make any decree, order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such decree, order, regulation, rule or direction.

Consultation

28. Where any person or authority other than the President is directed by this Decree to exercise any function after consultation with any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

Existing law

29.—(1) Subject to the provisions of this Decree or any decree hereafter made by the President the laws in force immediately before the 25th day of September 1987 shall continue in force and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Decree.

(2) For the avoidance of doubt, save as may be expressly provided in this Decree, the Fiji Constitution 1970 remains revoked and save as herein or in any other Decree are expressly revoked the decrees of the Fiji Military Government remain in force.

(3) Anything done under any existing law before its modification by or under this section which would, but for this subsection, cease by virtue of that modification to have effect, shall continue to have effect as if done under that law as so modified.

(4) In subsection (3), "modification" includes amendment, adaptation or other alteration authorised by subsection (1).

(5) Where under any existing law any prerogative or privilege is vested in Her Majesty the Queen or the Crown in respect of Fiji, that prerogative or privilege shall from the making of this decree be taken to have vested in the State, and subject to this Decree and any other law, the President shall have power to do all things necessary for the exercise thereof.

(6) All actions, suits and other legal proceedings pending before any Court on the making of this Decree, save those actions relating to the 1970 Fiji Constitution pending in the High Court and which arose out of the dissolution of Parliament on 19 May, 1987, shall continue before that Court, including the High Court established by the Judicature Decree, 1988 as if they had been commenced in that court under this Decree.

(7) Any criminal proceedings pending in any Court immediately before the making of this Decree may be continued with the State as a party.

(8) All property which immediately before the making of this Decree vested in the Head of the Military Government of Fiji or any Minister of the Military Government, including property held or trust for the purpose of the Military Government shall vest in the State.

(9) Any property which, immediately before the making of this Decree was liable to escheat or to be forfeited to Her Majesty the Queen and is similarly liable to escheat or forfeit to the Military Government of Fiji shall be liable to escheat or to be forfeited to the State.

(10) All rights, liabilities and obligations of Her Majesty in respect of the Government of Fiji and all such rights, liabilities and obligations of the Fiji Military Government in respect of the Government of Fiji shall on the making of this decree be the rights, liabilities and obligations of the State.

(11) All rights, liabilities and obligations of the Governor General or the holder of any other office under the Crown in respect of Fiji shall upon the making of this decree be the rights, liabilities obligations of the State.

(12) In subsections (10) and (11) above, rights, liabilities and obligations include rights, liabilities and obligations arising from contract or otherwise other than rights mentioned in subsections (5) and (8).

(13) Subject to the provisions of this Decree, every person who immediately before this Decree holds or is acting in a public office shall, as from the making of this Decree, continue to hold or act in the like office as if he had been appointed thereto in accordance with the provisions of this Decree.

(14) Any person who holds any public office, including that of Prime Minister, Minister, Auditor-General, member of a Service Commission, as from the making of this Decree, by virtue of having been the holder of any office before that day, shall be deemed to have complied with the requirements of this Decree or any other law in force in Fiji relating to the taking of oaths with respect of that office.

Interpretation

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

“Constitution yet to be adopted” has the same meaning assigned to it by the Appointment of Head of State and Dissolution of Fiji Military Government Decree;

“disciplinary law” means a law regulating the discipline of any disciplined force;

“disciplined force” means —

- (a) a naval, military or air force;
- (b) the Police Force;
- (c) the Fiji Prisons Service;
- (d) a fire or forest guard service established by any law in force in Fiji;

“the Gazette” means the *Fiji Gazette* or *Fiji Republic Gazette* published by the Order of Government and includes Supplements thereto and any Extraordinary Gazette so published;

“the Government” means the Government of the Republic of Fiji;

“the President” means the President and Commander-in-Chief for Fiji;

“public office” means subject to the provisions of section 14 of the Fiji Service Commissions Decree 1988 an office or emoluments in the public service;

“public officer” means a person holding or acting in any public office;

“oath” includes affirmation;

“oath of allegiance” means such oath of allegiance as is prescribed in Schedule 1 to this Decree;

“State” means the Republic of Fiji.

(2) Save as otherwise provided in this Decree, the Interpretation Act 1889 (a) shall apply, with the necessary adaptations, for the purpose of interpreting this Decree and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Act of the Parliament of United Kingdom.

Decree No. 3 of 1987 repealed

31. The provisions of the Constitution (Abrogation) Military Government and Finance Decree No. 3, 1987 so far as they are inconsistent with this Decree are hereby repealed.

Prerogative of Mercy Decree repealed

32. The provisions of the Prerogative of Mercy Decree, 1987 are hereby repealed.

Coming into force

33. This Decree shall be deemed to have come into force on the 5th of December, 1987.

Dated this 13th day of January, 1988.

PENAIA K. GANILAU
President and Commander-in-Chief

SCHEDULE 1
Oath and Affirmation

I. OATH OR AFFIRMATION OF ALLEGIANCE

I....., do swear [or solemnly affirm] that I will be faithful and bear true allegiance to the People and the Republic of Fiji, according to Law.

So help me God. [To be omitted in affirmation]