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GOVERNMENT OF THE REPUBLIC OF FIJI DECREE NO. 22

## CONSTITUTION OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI (PROMULGATION) DECREE 1990

WHEREAS by Order in Council made the 20th day of September 1970 Her Majesty the Queen established a Constitution for Fiji (the 1970 Constitution);

AND WHEREAS events in 1987 in Fiji led to the abrogation of the 1970 Constitution;

AND WHEREAS Fiji was declared a Republic on the 7th day of October, 1987 and the first President of the Republic of Fiji was appointed under Section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree, on the 5th day of December, 1987 who, until a Parliament is convened in accordance with a Constitution yet to be adopted-

- (i) shall have the power to appoint the Prime Minister by Decree;
- (ii) shall have the power to make laws for the peace, order and good government of Fiji by Decree, acting in accordance with the advice of the Prime Minister and the Cabinet; and
- (iii) shall exercise the executive authority of Fiji which is hereby vested in him;

save as otherwise provided, that executive authority may be exercised in accordance with the advice of the Cabinet or by any Minister authorised by the Cabinet;

AND WHEREAS the first President of the Republic of Fiji had appointed Ratu Sir Kamisese Kapawai Tuimacilai Mara, G.C.M.G.; K.B.E.; Kt SJ as the first Prime Minister of the Republic of Fiji under the Appointment of Prime Minister Decree;

AND WHEREAS on the advice of and in consultation with the first Prime Minister of the Republic of Fiji the President had appointed Ministers and the Attorney-General who with the first Prime Minister constitute the Cabinet and whereas the Cabinet, the Prime Minister and the President constitute the Interim Government of the Republic of Fiji;

AND WHEREAS the Interim Government was set the objectives to determine and implement financial policies to ensure that the national economy returns to the economic position it enjoyed prior to the events of 1987 and to ensure that a new Constitution that will safeguard the interests of the indigenous Fijian people while at the same time protecting the rights and interests of other communities in Fiji;

AND WHEREAS the events of 1987 were occasioned by a widespread belief that the 1970 Constitution was inadequate to give protection to the interests of the indigenous Fijian people, their values, traditions, customs, way of life and economic well being;

AND WHEREAS attempts to reach a consensus among all the people of Fiji as to the method whereby the said interests are to be protected have been protracted and difficult;

AND WHEREAS it is desired that Fiji should return to parliamentary democracy according to a Constitution sufficient to protect the said interests and the interests of all the people of Fiji;

AND WHEREAS it is desired that full consultations with the people of Fiji is carried out to ensure that the views and voice of all the community, organisation and race in Fiji is heard and considered;

AND WHEREAS a Draft Constitution was prepared by the Interim Government and publicised in September, 1988 for public information and comment as the Interim Government was duty bound to formulate a new Constitution for Fiji before the end of its term in office;

AND WHEREAS to ensure that full consultations with all the communities and interests in Fiji the Interim Government constituted the Fiji Constitution Inquiry and Advisory Committee which was given the following Terms of Reference:-

- (i) To scrutinize and consider the extent to which the Draft Constitution submitted by Cabinet meets the present and future constitutional needs of the people of Fiji, having regard in particular to the failure of the 1970 Constitution to provide adequate and full protection of the rights, interests and concerns of the indigenous Fijian people, and having regard to all the circumstances prevailing in Fiji.
- (ii) To facilitate the possible debate throughout Fiji on the terms of the Draft Constitution and to inquire into and ascertain the variety of views and opinions that may exist in Fiji as to the provisions of the Draft Constitution.
- (iii) To invite and to receive to the extent that is necessarily practicable, representations from the people of Fiji as to the provisions of the Draft Constitution, and to determine the degree of acceptability among the people of Fiji to the provisions of the Draft Constitution.
- (iv) To report fully to Cabinet on all the above and in particular to report upon the degree of acceptability of the terms of the Draft Constitution found by the Committee among the people of Fiji and where the Committee considers appropriate to recommend amendments or additions to the Draft Constitution likely in its view to achieve the objects of the Draft Constitution or its general acceptability.

AND WHEREAS the Fiji Constitution Inquiry and Advisory Committee conducted thirty-two public hearings in fourteen urban and rural centres in Fiji receiving one hundred and seventy-five oral submissions from individuals and one hundred and seventy-four oral submissions from groups representing various political, religious, social indigenous and

trade union interests, and receiving a total of two hundred and nine written submissions, one hundred and four of which from individuals and one hundred and five from groups and organisations representing political parties, trade unions, provincial councils, religious groups, social and cultural groups;

AND WHEREAS the Fiji Constitution Inquiry and Advisory Committee having deliberated and having considered the submissions received by it made its recommendations in its report dated the 30th day of August, 1989 to His Excellency the President of the Republic of Fiji;

AND WHEREAS the report of the Fiji Constitution Inquiry and Advisory Committee was considered by the Interim Government and particularly the Cabinet on the 21st and 28th day of September 1989;

AND WHEREAS the Draft Constitution incorporating the amendments agreed to by the Interim Government and particularly the Cabinet was submitted to the BOSE LEVU VAKATURAGA (Great Council of Chiefs) for its deliberation and consideration on the 14th to the 16th day of March 1989 and 21st to the 25th day of June 1990;

AND WHEREAS THE BOSE LEVU VAKATURAGA at its meeting on the 21st to the 25th day of June 1990 accepted the Draft Constitution which was submitted for its deliberation by the Interim Government bearing in mind that-

- (a) the events of 1987 have demonstrated a continuing need for the Constitution of Fiji to take account of its different racial communities;
- (b) there is a need to provide a balanced and fair degree of protection for all, and a society in which all can live in harmony and tolerant understanding; and
- (c) that in a changing and evolving society attitudes and perceptions may change, and there exist special needs in Fiji which require special provision:

NOW THEREFORE, IN EXERCISE OF THE POWERS VESTED IN ME AS PRESIDENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI, AND ACTING IN ACCORDANCE WITH THE ADVICE OF THE PRIME MINISTER AND THE CABINET OF THE INTERIM GOVERNMENT OF THE REPUBLIC OF FIJI, I HEREBY DECREE AS FOLLOWS -

Short title

1. This Decree may be cited as the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990.

Promulgation of the Constitution of the  
Sovereign Democratic Republic of Fiji

2(1) There shall be for Fiji a Constitution which shall be as set out in the Schedule to this Decree.

(2) The Constitution set out in the Schedule to this Decree shall come into force on the 25th day of July 1990 (the appointed day) except as otherwise provided for under this Decree.

(3) Wherever it may hereafter be necessary for the Constitution to be printed it shall be lawful for the Government Printer to omit all parts of this Decree apart from the Schedule and the Constitution as so printed shall have the force of law notwithstanding the omission.

Continuance of governance of Fiji

3. For the continuance of the governance of Fiji the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of this Decree shall apply.

Election

4. Notwithstanding the provision of Section 79 of the Constitution and section 2(2) of this Decree, writs for the first general election of members of the House of Representatives shall be issued within the period of eighteen months from the date of coming into force of the Constitution.

Office of the President

5(1) The President shall in accordance with the provision of Section 4 of the Appointment of Head of State and Dissolution of Fiji Military Government Decree continue to hold the office of President until a Parliament of Fiji is convened in accordance with the Constitution.

(2) The President shall continue to exercise the executive authority of Fiji and all the powers that are vested in him under the Appointment of Head of State and Dissolution of Fiji Military Government Decree until a Parliament is convened in accordance with the Constitution.

Office of the Prime Minister and Cabinet

6(1) The Prime Minister appointed under the Appointment of Prime Minister Decree shall continue to hold the office of Prime Minister until a Parliament of Fiji is convened in accordance with the Constitution.

(2) The Prime Minister and Cabinet shall continue to exercise all the authority and power vested in the Prime Minister and the Cabinet under the Appointment of Head of State and Dissolution of Fiji Military Government Decree until a Prime Minister is appointed and a Cabinet is constituted in accordance with the Constitution.

Head of State and Executive Authority  
of Fiji Decree 1988

7. The provisions of Sections 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of the Head of State and Executive Authority of Fiji Decree 1988 shall continue to be in force until Parliament is convened in accordance with the provisions of the Constitution:

Provided that if any other provision of that Decree is inconsistent with the provisions of the Constitution, that provision shall to the extent of the inconsistency, be deemed repealed.

Existing Laws

8(1) All existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and this Decree.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this Section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing laws that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Decree) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The President may, by Order published in the Gazette make such amendments to any existing law as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Decree or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under this Section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(5) It is hereby declared, for the avoidance of doubt, that save as otherwise provided either expressly or by necessary implication, nothing in this Decree shall be construed as affecting the continued operation of any existing law.

(6) The provisions of this Section shall be without prejudice to any powers conferred by this Decree or any other law upon any person or authority to make provision for any matter, including the amendments or repeal of any existing law.

#### Public Officers

9(1) Every person who immediately before the appointed day holds or is acting in a public office shall, as from the appointed day, hold or act in that office or the corresponding public office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution and shall be deemed to have taken any oaths required upon such appointment by any existing law:

Provided that any person who under any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution upon the expiration of that period or upon the attainment of that age.

(2) The provision of this Section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.

#### Finance

10. Notwithstanding the provisions of Chapter XI of the Constitution the Finance Decree 1988 shall continue to be in force until a Parliament of Fiji is convened in accordance with the Constitution.

#### Legal Proceedings

11(1) All proceedings commenced or pending immediately before the appointed day before the High Court, the Court of Appeal or the Supreme Court established by the Judicature Decree 1988 may continue on and after that day before the High Court, the Court of Appeal or the Supreme Court as the case may be, established by the Constitution.



(2) Any decision given before the appointed day by the High Court or the Court of Appeal established by the Judicature Decree 1988 shall, for the purposes of its enforcement or of any appeal therefrom, have effect on and after that day as if it were a decision of the High Court or the Court of Appeal, as the case may be, established by the Constitution.

#### Magistrate's Courts and Magistrates

12(1) Any person who immediately before the appointed day is a person appointed to hold a Magistrate's Court of the first, second, or third class magistrate respectively, (which offices are hereby constituted and established), and accordingly as from the appointed day -

- (a) the jurisdiction and powers under any existing law of persons appointed to hold magistrate's courts of the first, second or third class, or of magistrate's courts of such classes, shall vest in the offices of first, second or third class magistrate respectively, as constituted and established as aforesaid:

Provided that a person who holds or is acting in the office of Chief Magistrate immediately before that day shall have and exercise all the powers and jurisdiction conferred upon a first class magistrate by the provision of this subsection;

- (b) references to persons holding the office of first, second or third class magistrate, or the magistrate's courts of the first, second or third class, in any existing law, or in any instrument, document or legal proceedings, subsisting or continuing upon the appointed day, shall be construed as references to first, second or third class magistrate's respectively.

(2) The terms of service which apply immediately before the appointed day to a person appointed to hold a magistrate's court of the first, second or third class shall apply to such person in respect of his tenure of the office of first, second or third class magistrate by virtue of the provisions of the preceding subsection.

Transitional provision relating to Commissions

13(1) Any person who immediately before the appointed day holds or is acting in any office to which this subsection applies shall, as from the appointed day, hold or act in the corresponding office established by the Constitution as if he had been appointed to do so in accordance with the provisions of the Constitution:

Provided that any such person who under the provisions of the existing laws would have been required to vacate his office on the expiration of any period or at any other time specified in the instrument by which he was appointed shall vacate his office at the expiration of that period or at that time.

(2) A person shall become and continue to be the holder of the corresponding office by virtue of the preceding subsection, and may be re-appointed under the Constitution to that office at any time, notwithstanding that circumstances exist on the appointed day and continue to exist thereafter that under the Constitution would cause him to be disqualified for appointment to that office if the office to which that office corresponds was held by that person on the 5th day of December, 1987 and the like circumstances existed on that date.

(3) Subsection (1) of this Section applies to the office of appointed member of the Judicial and Legal Services Commission established by the Fiji Service Commissions Decree 1988 and to the office of any member of the Public Service Commission or the Police Service Commission established by that Decree.

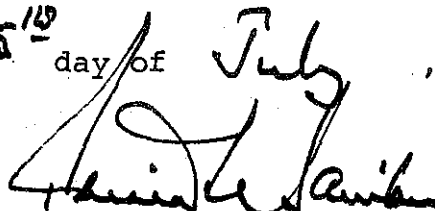
(4) Any power that immediately before the appointed day, is vested in a Commission established by the Fiji Service Commissions Decree 1988 and that under that Decree is then delegated to some other person or authority shall be deemed to have been delegated to that person or authority on the appointed day in accordance with the provisions of the Constitution; and any proceedings commenced or pending before any such Commission immediately before the appointed day may be carried on before the corresponding Commission established by Chapter IX of the Constitution.

Repeal of certain Decrees

14. The following Decrees are deemed repealed on the appointed day:

- (i) Judicature Decree 1988;
- (ii) Fiji Service Commissions Decree 1988;
- (iii) Public Service Decree 1988; and
- (iv) Protection of Fundamental Rights and Freedoms of the Individual Decree 1988.

MADE at Suva the 25<sup>th</sup> day of July, 1990.



PENAIA K. GANILAU  
President of the Sovereign Democratic  
Republic of Fiji and  
Commander-in-Chief of the Armed Forces