

EXTRAORDINARY



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ADMINISTRATION OF JUSTICE DECREE 2009

GOVERNMENT OF FIJI
 (DECREE NO. 9)

IN exercise of the powers vested in me as the President and Commander in Chief of the Republic of the Fiji Military Forces, I hereby make the following Decree:

Short title and commencement

1. This Decree may be cited as the Administration of Justice Decree 2009 and shall be deemed to come into force on 10th April 2009.

Establishment of the Courts

2. There shall be for the Republic of Fiji, the following Courts upon which the judicial power of the State shall vest:

- (a) the Supreme Court, which shall be the final appellate Court;
- (b) the Court of Appeal;
- (c) the High Court; and
- (d) such other Courts as may be established by law.

Initial Appointments to the Courts

3.—(1) Notwithstanding the provisions of this Decree as to the appointment of Judges of the State, all initial appointments (immediately upon the commencement of this Decree) to the following judicial offices shall be made by the President in his discretion:

- (a) Judge of the High Court
- (b) Justice of Appeal of the Court of Appeal
- (c) Judge of the Supreme Court
- (d) Master of the High Court
- (e) Chief Magistrate
- (f) Resident Magistrates
- (g) Such other judicial offices, as the President may deem fit.

(2) The Judicial Service Commission, established under section 16 of this Decree, shall only commence its functions under this Decree at such time as the President so directs by order.

(3) All appointments made by the President under subsection (1) above, shall be valid and deemed to have been made in accordance with this Decree.

(4) The provisions of this Decree, including the provisions on jurisdiction of the Courts and transition provisions, shall be applicable and binding on all persons appointed by the President under subsection (1) above.

Independence of the Judicial Branch

4. Every Court and the judges of the State are independent of the executive branch of Government or any other authority, in the exercise of its judicial functions.

Jurisdiction of the Courts

5.—(1) Each of the High Court, the Court of Appeal and the Supreme Court has the jurisdiction, including the inherent jurisdiction, conferred on it by this Decree or by any other law.

(2) No Court shall be vested with jurisdiction save as is or may be conferred on it by this Decree or any other law.

(3) Notwithstanding anything contained in this Decree or any other law, no Court shall have the jurisdiction to accept, hear and determine any challenges whatsoever (including any application for judicial review) by any person to the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 (Decree No. 1) and such other Decrees made or as may be made by the President.

(4) Notwithstanding anything contained in this Decree or any other law, no Court shall have the jurisdiction to accept, hear and determine, or in any other way entertain, any challenges whatsoever (including any application for judicial review) by any person to the validity or legality of any Decrees made by the President from 10 April 2009 and any Decrees as may be made by the President.

Jurisdiction of High Court

6.—(1) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Decree or any other law.

(2) The High Court has jurisdiction, subject to the conferral by written law of rights of appeal and to such requirements as may be prescribed by law, to hear and determine appeals from all judgments of subordinate courts.

(3) The High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the subordinate court.

Jurisdiction of Court of Appeal

7.—(1) The Court of Appeal has jurisdiction, subject to this Decree and to such requirements as prescribed by law, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by law.

(2) Appeals lie to the Court of Appeal, as of right or with leave, from other judgments of the High Court in accordance with such requirements as prescribed by law.

Jurisdiction of Supreme Court

8.—(1) The Supreme Court has exclusive jurisdiction, subject to such requirements as prescribed by law, to hear and determine appeals from all final judgments of the Court of Appeal.

(2) An appeal may not be brought from a final judgment of the Court of Appeal unless:

- (a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or
- (b) the Supreme Court gives special leave to appeal.

(3) In the exercise of its appellate jurisdiction, the Supreme Court has power to review, vary, set aside or affirm decisions or orders of the Court of Appeal and may make such orders (including an order for a new trial and an order for award of costs) as are necessary for the administration of justice.

- (4) Decisions of the Supreme Court are, subject to subsection (5), binding on the courts of the State.
- (5) The Supreme Court may review any judgment, pronouncement or order made by it.

Contempt of court

9. The Supreme Court, the Court of Appeal and the High Court have power to punish persons for a contempt of court in accordance with the law.

Rules of court

10. The President of the Supreme Court may make rules of court, not inconsistent with this Decree or any other law, for regulating and prescribing the practice and procedure to be followed in the Supreme Court.

Composition of High Court

11.—(1) The High Court consists of:

- (a) the Chief Justice;
- (b) a number of puisne judges that is not less than 10 or such greater number as may be prescribed by law.
- (c) Masters of the High Court.

(2) The appointment of Masters of the High Court and their jurisdiction and powers, shall be prescribed under the High Court Act or any other law.

Composition of Court of Appeal

12. The Court of Appeal consists of:

- (a) a judge, other than the Chief Justice, who is appointed as President of the Court of Appeal;
- (b) such other judges as are appointed as Justices of Appeal; and
- (c) the puisne judges of the High Court.

Composition of Supreme Court

13. The Supreme Court consists of:

- (a) the Chief Justice, who is to be President of the Supreme Court;
- (b) such other judges as are appointed as judges of the Supreme Court;
- (c) the Justices of Appeal; and
- (d) the puisne judges of the High Court.

Disqualification of judge

14. A judge who has sat in a trial of a matter that is the subject of appeal to a higher court must not sit in the appeal.

Qualifications for appointment

15. A person is not qualified for appointment as a judge unless he or she:

- (a) holds, or has held, high judicial office in Fiji or in another country prescribed by law; or
- (b) has had not less than 10 years practice as a barrister or solicitor or not less than 10 years post-admission legal or academic experience in Fiji or in another country prescribed by law.

Judicial Service Commission

16.—(1) This section establishes a Judicial Service Commission consisting of:

- (a) The Chief Justice, who is to be its chairperson;

- (b) The President of the Court of Appeal;
 - (c) A Legal Practitioner with not less than 15 years post-admission practice, to be appointed by the President on the advice of the Attorney-General;
 - (d) A person, not being a legal practitioner, appointed by the President on the advice of the Attorney-General.
- (2) The quorum of the Judicial Service Commission shall consist of the Chairperson and one other member.
- (3) In addition to the functions conferred on it elsewhere in this Decree, the Judicial Service Commission may investigate complaints about judges and judicial officers of courts subordinate to the High Court and may take disciplinary action against them.
- (4) For the purposes of taking disciplinary action under subsection (3) above, the Judicial Service Commission may make such Rules as it deems fit for the performance its functions.
- (5) The members of the Judicial Service Commission are entitled to such allowances as may be fixed by law.
- (6) The Secretary of the Judicial Service Commission shall be the Chief Registrar, or any other person performing the functions of that Office.

Appointments of judges

- 17.—(1) The Chief Justice and the President of the Court of Appeal are appointed by the President following consultation with the Prime Minister and the Attorney-General.
- (2) The judges of the Supreme Court, the Justices of Appeal and the puisne judges of the High Court are appointed by the President on the recommendation of the Judicial Service Commission following consultation by it with the Attorney-General.
- (3) The President may, following consultations with the Prime Minister and the Attorney-General, appoint a judge or a person who is qualified for appointment as a judge to act as Chief Justice during any period, or during all periods, when the office of Chief Justice is vacant or when the Chief Justice is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.
- (4) The President may, on the recommendation of the Judicial Service Commission following consultation by it with the Attorney-General, appoint a person to act as a puisne judge of the High Court during any period, or during all periods, when an office of puisne judge of the High Court is vacant or when a puisne judge is absent from duty or from Fiji or is, for any reason, unable to perform the functions of office.
- (5) A person is not eligible to be appointed under paragraph 4 unless he or she is qualified for appointment as a judge.

Other appointments

- 18.—(1) Appointments to the following offices are made by the Judicial Service Commission:
- (a) an office of Magistrate;
 - (b) the office of Central Agricultural Tribunal under the Agricultural Landlord and Tenant Act;
 - (c) all judicial offices for which provision is made by law.
- (2) In making appointments under paragraph (1)(a) or (b), the Judicial Service Commission must consult with the Prime Minister and the Attorney-General.
- (3) If a written law so provides, the Judicial Service Commission may also make appointments of persons to offices that are not judicial offices.

(4) The Judicial Service Commission must get the consent of the Prime Minister before recommending a non-citizen for appointment to a judicial office (other than an office of judge).

Oath of office

19. Before taking office, a judge must make before the President, the oath of office set out in the Schedule of this Decree.

Judges' remuneration

20. The remuneration of judges must not be reduced during their terms of office.

Retirement ages for judges

21.—(1) The term of appointment of the Chief Justice, President of the Court of Appeal, a Justice of Appeal or a judge of the Supreme Court expires upon his or her reaching the age of 70.

(2) The term of appointment of a puisne judge of the High Court expires upon his or her reaching the age of 65, and a person must not be appointed if he or she has reached that age.

(3) Nothing in subsections (1) and (2) above, prevents the appointment of the Chief Justice, President of the Court of Appeal, a judge of the Supreme Court, a Justice of Appeal or a puisne judge of the High Court, who has reached the applicable retiring age, from being appointed on a fixed-term contract, for which the applicable retiring age shall not apply.

(4) The applicable retiring age under this section does not apply to a person appointed as an acting judge under subsection 17(4).

Removal of judges for cause

22.—(1) A judge may be removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

(2) Removal of a judge from office must be by the President.

(3) If the President considers that the question of removing a judge from office ought to be investigated, then:

(a) the President appoints:

(i) in the case of alleged misbehaviour a tribunal, consisting of a chairperson and not less than 2 other members, selected by the President from among persons who hold or have held high judicial office in Fiji or in another country prescribed by a written law; and

(ii) in the case of alleged inability to perform the functions of office a medical board, consisting of a chairperson and 2 other members, each of whom is a qualified medical practitioner;

(b) the tribunal or medical board enquires into the matter and furnishes a written report of the facts to the President and advises the President of its recommendation.

(c) In deciding whether or not to remove a judge, the President must act in his or her own deliberate judgement and may either accept or reject the recommendation of the tribunal or medical board.

(4) The President may, on such terms and conditions as he or she deems fit, suspend the judge from office pending investigation and pending referral to and appointment of a Tribunal or a Medical Board under subsection (3), and may at any time, revoke the suspension.

Transition

23.—(1) For the avoidance of doubt, the Courts established by the Constitution Amendment Act 1997 (or any previous Constitutions or written law), and all Judicial appointments made under the Constitution Amendment Act 1997 (or any previous Constitutions or written law) have been revoked pursuant to the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 and the Revocation of Appointment of Judicial Officers Decree 2009.

(2) Subject to subsections 3 and 4 below, all proceedings in the Courts established by the Constitution Amendment Act 1997 (or any previous Constitutions or written law) that had commenced before the revocation and abrogation of the Constitution Amendment Act 1997 but had not been determined, shall continue on and after the revocation and abrogation of the Constitution Amendment Act 1997, as if the provisions of this Decree were in force at their commencement.

(3) Any proceeding, of any form whatsoever, commenced (but not yet determined) in the Courts established by the Constitution Amendment Act 1997 (or any previous Constitutions or written law), which purports:

- (a) to challenge the validity or legality of any Promulgations, Decrees and Declarations made between 5 December 2006 to 9 April 2009, on any ground whatsoever;
- (b) to challenge any decision of the President and the Head of the State, made between 5 December 2006 to 9 April 2009, on any ground whatsoever;
- (c) to challenge any decision of a Minister made between 5 December 2006 to 9 April 2009, on any grounds whatsoever;
- (d) to challenge any decision made by the Minister responsible for Immigration, the Permanent Secretary for Immigration, Director of Immigration & employees of the Immigration Department from 5 December 2006 to 9 April 2009, to remove a person from Fiji, on any ground whatsoever;
- (e) to challenge any decision of the President, or the Executive or the Government or employees of the Government to terminate any employment (whether in a public office or not) between 5 December 2006 and 7 January 2007, on any ground whatsoever;
- (f) to challenge any decision of the Judicial Service Commission made between 7 January 2007 and 9 April 2009 (including any challenge as to the composition of the Judicial Service Commission) on any ground whatsoever, or any decision made by a judicial officer made in administrative capacity, including the making of Rules of any Court or any directions, on any ground whatsoever; and
- (g) to challenge any decision of the Executive or of the Government or of the employees of the Government made between 5 December 2006 and 9 April 2009, on the grounds of being inconsistent with or contrary to the Constitution Amendment Act 1997;

shall wholly terminate immediately upon the commencement of this Decree, and a Certificate to that effect shall be issued by the Chief Registrar to all the parties.

(4) Subject to subsection (3) above, any other proceeding commenced (but not yet determined) in the Courts established by the Constitution Amendment Act 1997 (or any previous Constitutions or written law), such as applications for constitutional redress, shall continue as if commenced pursuant to this Decree and such other Decrees as may be made by the President, and these proceedings shall be determined, not in accordance with the Constitution Amendment Act 1997, but shall be determined in accordance with the Decrees made by the President and such other Decrees as may be made by the President; Provided however, that in these proceedings, no Court shall entertain any application challenging any Promulgation or Decrees made by the President from 5 December 2006 or any challenges of the types mentioned in subsection (3)(a) to (g) above.

Interpretation, Definitions, Repeals, etc

24.—(1) In this Decree, unless the contrary intention appears:

“**Law**” or “**written law**” means an Act, Decree, Promulgation, and subordinate legislation made under those Acts, Decrees and Promulgations, but does not include the Constitution Amendment Act 1997

“**Decree**” means:

- (a) a Decree made by the President before the convening of the Parliament under the Constitution of 1990; or
- (b) a Decree made before 5 December 1987 by the Commander and Head of the Fiji Military Government;

- (c) a Decree made by the President and the Commander in Chief of the Republic of Fiji Military Forces on or after 10 April 2009

“Act” means an Act of the Parliament or a Decree or a Promulgation (but does not include the Constitution Amendment Act 1997)

“Promulgation” means the Promulgations, Decrees and Declarations made between 5 December 2006 to 9 April 2009

“Judge” means a Judge of the High Court (including the Chief Justice), a Justice of Appeal (including the President of the Court of Appeal) or a Judge of the Supreme Court

“Oath” includes affirmation

“Person” includes a company or association or body of persons whether corporate or unincorporated

“President” means the President of Fiji and Commander in Chief of the Republic of Fiji Military Forces appointed under the Executive Authority of Fiji Decree 2009 (as may be amended from time to time)

“Prime Minister” and **“Attorney-General”** means the Prime Minister and the Attorney-General appointed by the President under Executive Authority of Fiji Decree 2009 (as may be amended from time to time)

“Proceedings” shall include, but not limited to, appeals, applications for judicial review, habeas corpus, applications for constitutional redress, and all applications brought, or as may be brought, under the Rules of the Courts, any written law and the inherent jurisdiction of the Courts

“Subordinate Court” means any court of law established for the State other than the High Court, Court of Appeal, Supreme Court or a court established by disciplinary law

“Subordinate Legislation” means any instrument made in exercise of a power to make the instrument conferred by an Act, Promulgation, or Decree

(2) The Office of Judge shall be a public office, but shall not be public service, for the purposes of this Decree or any other Decree or laws.

(3) In this Decree, a reference to the power to make appointments includes a reference to:

- (a) a power to make appointments on promotion and transfer to the office; and
- (b) a power to appoint a person to act in the office while it is vacant or its holder is unable to perform the functions of the office.

(4) In this Decree, unless the contrary intention appears, a reference to the holder of an office by the term designating his or her office includes a reference to any person for the time being acting in the office.

(5) A reference in this Decree to a power to remove a person from a public office includes a reference to:

- (a) a power to require or permit the person to retire from office;
- (b) a power to terminate the contract on which the person is employed; and
- (c) a power not to renew the contract on which the person is employed.

(6) A person, authority or body upon which functions are conferred by this Decree has power to do everything necessary or convenient to be done for, or in connection with, performance of those functions.

(7) A reference in this Decree to the Minister in relation to the doing of anything, participation in any consultation or the receipt of any report is a reference to the Minister who, for the time being, has been assigned responsibility for the part of the business of the Government relating to the subject matter of the activity concerned.

SCHEDULE
(Section 19)

OATH OR AFFIRMATION OF ALLEGIANCE

Oath

I, A.B. do swear that I will be faithful and bear true allegiance to the Republic of Fiji, according to law. So help me God!

Affirmation

I, A.B. do solemnly, sincerely and truly declare and affirm that I will be faithful and bear true allegiance to the Republic of Fiji, according to law.

OATH OR AFFIRMATION FOR DUE EXECUTION OF JUDICIAL OFFICE

Oath

I, A.B. do swear that I will well and truly serve the Republic of Fiji, in the office of []. I will in all things uphold the Administration of Justice Decree 2009 and such other laws made or as may be made by the President; and I will do right to all manner of people in accordance with the laws and usages of the Republic, without fear or favour, affection or ill will. So help me God!

Affirmation

I, A.B. do solemnly, sincerely and truly declare and affirm that I will well and truly serve the Republic of Fiji, in the office of []. I will in all things uphold the Administration of Justice Decree 2009 and such other laws made or as may be made by the President; and I will do right to all manner of people in accordance with the laws and usages of the Republic, without fear or favour, affection or ill will.

DATED this 16th day of April 2009

RATU J. I. ULUIVUDA
President and Commander in Chief
of the Republic of the Fiji Military Forces