

GOVERNMENT OF THE REPUBLIC OF FIJI DECREE NO. 6

JUDICATURE DECREE 1988

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Establishment of the courts
3. Composition of the High Court
4. Appointment of Judges of the High Court
5. Acting appointments
6. Retiring age
7. Resignation
8. Powers to hear and determine civil and criminal cases
9. Jurisdiction of High Court with respect to existing laws
10. Original jurisdiction of High Court in questions relating to protection of fundamental rights and freedoms of individuals
11. High Court and subordinate courts
12. Appeals to Fiji Court of Appeal and Supreme Court of Fiji
13. Composition of the Fiji Court of Appeal
14. Appeals in criminal cases
15. Jurisdiction of the Fiji Court of Appeal with respect to existing laws
16. Composition of the Supreme Court

17. Practice and procedure of the Supreme Court
18. Precedence and seniority
19. Appeals to the Supreme Court
20. Supreme Court as final appellate court
21. Advisory jurisdiction of Supreme Court
22. Interpretations
23. Oaths to be taken by each Judge
24. Contempt of court
25. Remuneration et cetera of Judges
26. Removal of a Judge for cause
27. Performance of functions of tribunal
28. Power to amend and revoke instruments, etc.
29. Consultation
30. Repeals
31. Coming into force

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 Judicature Decree 1988.

Establishment of the courts

2.—(1) There shall be for the Republic of Fiji a High Court, a Fiji Court of Appeal, a final appellate court to be known as the Supreme Court of Fiji and such other courts as may be established by law.

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

(3) Every court shall in the exercise of its judicial functions be independent of the Executive or any other authority.

Composition of the High Court

3. The High Court shall consist of a Chief Justice and not more than eight Puisne Judges or such other number as the President may prescribe.

Appointment of Judges of the High Court

4.—(1) The Chief Justice shall be appointed by the President after consultation with the Prime Minister and each other Judge of the High Court shall be appointed by the President after consultation with the Judicial and Legal Services Commission.

(2) A person shall not be qualified to be appointed as a Judge of the High Court unless—

(a) he holds, or has held, high judicial office in Fiji or in any other country as may be prescribed by the President; or

(b) he is qualified to practise as a barrister and solicitor in such a court or a court of equivalent jurisdiction and has been so qualified for not less than five years.

(3) In computing, for the purposes of the preceding subsection, the period during which any person has been qualified to practise as a barrister or solicitor, any period during which he has held judicial office after becoming so qualified shall be included.

Acting appointments

5.—(1) At any time when the office of Chief Justice is vacant or the Chief Justice is absent or is unable to perform the functions of his office due to any other cause, the President shall after consultation with the Prime Minister appoint a Justice of Appeal or a Judge of the High Court to act as Chief Justice.

(2) At any time when the office of a Judge of the High Court is vacant or the Judge is absent or is unable to perform the functions of his office due to any other cause, the President shall after consultation with the Judicial and Legal Services Commission appoint a person qualified for appointment as a Judge of the High Court to act as a Judge.

(3) An appointment made under this section shall continue in force until the holder of such office resumes his functions or in the case of an appointment made under the preceding sub-section, until the appointment is revoked by the President acting in accordance with the advice of the Chief Justice:

Provided that a person whose period of appointment has been revoked may continue to act as such for so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

(4) An appointment made under this section shall not be called in question on the ground that the holder of the office was not able to perform the functions of that office.

Retiring age

6. A Judge of the High Court other than the Chief Justice shall hold office until he attains the age of sixty-five, unless he sooner resigns or is removed from office in accordance with this Decree:

Provided that a person who has attained the retiring age may continue in office so long thereafter as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that retiring age;

Provided further that the retiring age under this section or any other section in this Decree shall not apply to any person who is appointed by the President to be a temporary judge of the High Court and that any appointment made under this proviso, shall not extend beyond a period of two years.

Resignation

7. A Judge appointed under this Decree may resign from that office by writing under his hand addressed to the President, and the resignation shall take effect, and the office shall accordingly become vacant—

(a) at such time or on such date (if any) as may be specified in writing; or

(b) when the writing is received by the President or by such other person as may be authorised by the President to receive it,

whichever is the later.

Powers to hear and determine civil and criminal cases

8.—(1) The High Court 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 law.

(2) The High Court shall have jurisdiction to hear and determine appeals in both civil and criminal matters from courts subordinate to it as may be conferred on it by this Decree or any other law.

Jurisdiction of High Court with respect to existing laws

9.—(1) Without prejudice to the generality of the provisions of this Decree with respect to the jurisdiction of the High Court, any reference in the existing laws to the words: "the Supreme Court" shall be construed as a reference to the High Court established under this Decree.

(2) For the avoidance of doubt the jurisdiction of the High Court shall include the jurisdiction and powers vested in the Supreme Court under the existing laws.

Original jurisdiction of High Court in questions relating to protection of fundamental rights and freedoms of individuals

10.—(1) If any person alleges that any provision in the existing laws or any other law relating to fundamental rights and freedoms has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction, in any application made by any person in pursuance of the preceding subsection or in any other proceedings lawfully brought before the Court, to determine whether any provision relating to his fundamental rights and freedoms has been contravened and to make a declaration accordingly:

Provided that the High Court shall not make a declaration in pursuance of the jurisdiction conferred by this subsection unless it is satisfied that the interests of the persons by whom the application under the preceding subsection is made or, in the case of other proceedings before the Court, a party to those proceedings, are being or are likely to be affected.

(3) Where the High Court makes a declaration in pursuance of the preceding subsection that any provision relating to the fundamental rights and freedoms has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the High Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the High Court under any law for the time being in force in Fiji, as the Court considers appropriate.

(4) The Chief Justice may make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1) of this section).

High Court and subordinate courts

11.—(1) 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 give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(2) Where any question as to the interpretation of any provision of this Decree or any other Decree arises in any subordinate court and the court is of opinion that the question involves a substantial question of law the court shall refer the question to the High Court.

(3) Where any question is referred to the High Court in pursuance of the preceding subsection, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of appeal to the Fiji Court of Appeal or the Supreme Court of Fiji, in accordance with the decision of the Fiji Court of Appeal or the Supreme Court of Fiji, as the case may be.

Appeals to Fiji Court of Appeal and Supreme Court of Fiji

12.—(1) An appeal to the Fiji Court of Appeal shall lie from decisions of the High Court in the following cases, that is to say—

- (a) as of right from final decisions in any civil or criminal proceedings on questions as to the interpretation of this Decree;
- (b) as of right from final decisions given in exercise of the original jurisdiction conferred on the High Court relating to protection of fundamental rights and freedoms of individuals;
- (c) as of right from final decisions given in exercise of jurisdiction conferred on the High Court relating to the protection from deprivation of the individuals's property; and (d) in such other cases as may be prescribed.

(2) In this section the reference to final decisions of the High Court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(3) Subject to special leave of the Supreme Court of Fiji, an appeal shall lie from any decision of the Fiji Court of Appeal made in pursuance of subsection (1) of this section.

Composition of the Fiji Court of Appeal

13.—(1) The Judges of the Court of Appeal shall be—

- (a) the Chief Justice who shall be President of the Court;
- (b) such Justices of Appeal as may be appointed by the President after consultation with the Judicial and Legal Services Commission; and
- (c) Puisne Judges of the High Court.

(2) No person shall be appointed a Justice of Appeal unless he is qualified for appointment as a Judge of the High Court nor shall a person be so appointed after he has attained the age of seventy years.

(3) A Justice of Appeal may be appointed for one or more sessions of the Court or for a term of not less than three years.

Appeals in criminal cases

14.—(1) In any appeal on a conviction entered by the High Court, the Fiji Court of Appeal may allow the appeal against conviction if the Court thinks that—

- (a) the conviction is unsafe or unsatisfactory in all the circumstances of the case; or
- (b) the trial Judge made a wrong decision on any question of law; or
- (c) there was a material irregularity in the course of trial:

Provided that the Court may, notwithstanding that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if they consider no substantial miscarriage of justice has occurred.

(2) The preceding sub-section revokes and replaces sub-section (1) of section 23 of the Court of Appeal Act.

(3) Appeals against sentence shall lie as of right to the Fiji Court of Appeal from the High Court in the exercise of its original jurisdiction and in any other case with leave of the Court of Appeal.

Jurisdiction of the Fiji Court of Appeal with respect to existing laws

15.—(1) Without prejudice to the generality of the provisions of this Decree with respect to the jurisdiction of the Fiji Court of Appeal, any reference in the existing laws to the words: "the Court of Appeal" or "Fiji Court of Appeal" shall be construed as a reference to the Fiji Court of Appeal established under this Decree.

(2) For the avoidance of doubt the jurisdiction of the Fiji Court of Appeal shall include the jurisdiction and powers vested in the Court of Appeal under the existing laws.

Composition of the Supreme Court

16.—(1) The Judges of the Supreme Court shall be—

- (a) the Chief Justice who shall be the President of the Supreme Court;
- (b) such Justices of the Supreme Court as the President may appoint after consultation with the Judicial and Legal Services Commission; and
- (c) the Justices of Appeal.

(2) No person shall be appointed a Justice of the Supreme Court unless he is qualified for appointment as a Judge of the High Court nor shall a person be so appointed after he has attained the age of seventy years.

(3) A Justice of the Supreme Court may be appointed for one or more sessions of the Court or appointed for a term not exceeding three years.

(4) In any sitting of the Supreme Court in pursuance of its appellate, advisory or other jurisdiction the Court shall be composed of not less than three members whose decision shall be by a majority.

Practice and procedure of the Supreme Court

17. The practice and procedure for appeals shall be as provided by this Decree or by or under any law or rules of court as the President of the Court may prescribe.

Precedence and seniority

18.—(1) The judges of the Supreme Court, other than the President, shall, as between themselves, take precedence and have seniority as the President shall from time to time decide.

(2) In the determination of such precedence and seniority due regard shall be had to the date of appointment to, and the nature of any judicial office held, or formerly held, by the judges respectively.

(3) In default of a determination under sub-section (1) judges or retired judges of any superior Court (including the High Court of Fiji) shall take precedence and seniority according to the respective dates of their first appointment as puisne judges in any territory.

(4) In the absence of the President the senior member of the Court present at any proceedings thereof shall be Vice-President and shall preside; such seniority being at all times determined according to the provisions of this section.

Appeals to the Supreme Court

19.—(1) An appeal shall lie from decisions of the Fiji Court of Appeal to the Supreme Court in the following cases, that is to say—

- (a) from final decisions in any appeal to the Fiji Court of Appeal on any constitutional questions;
- (b) from final decisions in any civil proceedings where the matter in dispute is of the value of 20,000 dollars or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of 20,000 dollars or upwards; and
- (c) in such other cases as may be prescribed by law.

(2) An appeal shall lie from decisions of the Fiji Court of Appeal to the Supreme Court with the leave of that court in the following cases, that is to say—

- (a) from decisions in any civil proceedings where in the opinion of the court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Supreme Court; and
- (b) in such other cases as may be prescribed by law.

(3) Nothing in this section shall affect the right of the Supreme Court to grant special leave to appeal from the decision of any court in any civil or criminal matter.

Supreme Court as final appellate court

20.—(1) Exclusive jurisdiction is vested in the Supreme Court to determine finally any appeal from a final decision or order of the Fiji Court of Appeal and in any such determination the Supreme Court shall have power to review, modify, reverse or affirm such decision or orders and make such other order (including an order for a new trial or award of costs) as the Court may consider necessary in the interests of justice.

(2) Any decision of the Supreme Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts in Fiji.

(3) The Supreme Court shall have power, subject to this Decree and rules of Court to review any judgment pronounced or any order made by it.

Advisory jurisdiction of Supreme Court

21. The President may in the public interest refer to the Supreme Court for its opinion any question as to the effect of any provision of this Decree and any other Decree which has arisen or appears likely to arise, and the Supreme Court shall pronounce in open court its opinion on any question so referred to it.

Interpretations

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

“Judge” means a Judge of the High Court, a Justice of Appeal and a Justice of the Supreme Court.

“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;

“high judicial office” means the office of judge of a Court having unlimited jurisdiction in civil and criminal matters or a Court having jurisdiction in appeals from any such Court;

“Fiji” means the territories which immediately before 10th October 1970 constituted the colony of Fiji and includes any other territories declared by Parliament to form part of Fiji;

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

“oath” includes affirmation;

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

“Parliament” means the Parliament established by the 1970 Constitution;

“prescribed” means prescribed in a law;

“subordinate Court” means any Court of law established for Fiji other than High Court, or Fiji Court of Appeal or Supreme Court of Fiji or a Court established by a disciplinary law.

(2) Save as otherwise provided in this Decree, the Interpretation Act 1889 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.

Oaths to be taken by each Judge

23. No Judge shall enter upon the duties of his office until he has taken and subscribed the oath of allegiance and such oath of his office as is prescribed by the schedule to this Decree:

Provided that no person shall be required to take either such oath if he shall have taken such oath within Fiji on any previous occasion.

Contempt of court

24. The superior courts shall have power to punish persons for contempt in accordance with the law.

Remuneration et cetera of Judges

25. The salary remuneration and other terms and conditions of a Judge shall not be altered to his disadvantage after his appointment.

Removal of a Judge for cause

26.—(1) A Judge may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(2) A Judge shall be removed from office by the President in pursuance of the next following subsection.

(3) If the President considers that the question of removing a Judge from office for inability as aforesaid or misbehaviour ought to be investigated, then—

- (a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the President from among persons who hold or have held high judicial office in Fiji or in any other country as may be prescribed by the President;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the President and advise the President whether that Judge should be removed from office; and
- (c) if the tribunal so advises, the President shall remove the Judge from office.

(4) If the question of removing a Judge from office has been referred to a tribunal under the preceding subsection, the President may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises the President that the Judge ought not to be removed from office.

Performance of functions of tribunal

27.—(1) Any tribunal established by the preceding section may make provisions for regulating and facilitating the performance of its functions.

(2) In exercise of its functions, the tribunal shall not be subject to the direction or control of any other person or authority except where otherwise provided by this Decree.

(3) In addition to the functions conferred upon it by the preceding section, the tribunal shall have such powers and other functions (if any) as may be prescribed.

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

(5) The tribunal shall have the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

Power to amend and revoke instruments, etc.

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

Consultation

29. 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.

Repeals

30. Insofar as they are inconsistent with this Decree, the following Decrees of the Fiji Military Government are hereby repealed:

- Fiji Judicature Decree 1987;
- Fiji Judicature (Amendment) Decree 1987;
- Fiji Judicature Amendment (No.2) Decree 1987 (No.16).

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

Dated this 13th day of January, 1988.

PENAIA K. GANILAU
President and Commander-in-Chief

SCHEDULE

OATHS AND AFFIRMATION

1. 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]

Judicial Oath or Affirmation

I,, do swear [or solemnly affirm] that I will well and truly serve the People and Republic of Fiji in the office of Chief Justice/Judge of the High Court/Justice of Appeal/Justice of the Supreme Court of Fiji, and I will conscientiously, impartially and to the best of my knowledge, judgment and ability discharge the functions of my office and do right to all manner of people after the laws and usages of Fiji without fear or favour, affection or ill will.

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