

Schedule to the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990

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CONSTITUTION OF THE SOVEREIGN DEMOCRATIC: 1990 REPUBLIC OF FIJI

WHEREAS on 10 October 1874, Cakobau, styled Tui Viti and Vuniva1u, and other High Chiefs by the solemn agreement known as the Deed of Cession, ceded Fiji to Her Most Gracious Majesty Queen Victoria;

AND WHEREAS in November 1879, by the Deed of Rotuma Cession, the Chiefs of Rotuma similarly ceded Rotuma to Her Most Gracious Majesty Queen Victoria;

AND WHEREAS by Order in Council made the 20th day of September 1970 Her Majesty Queen Elizabeth II on the advice of the Privy Council 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 those events were occasioned by a widespread belief that the 1970 Constitution was inadequate to give protection to the interests of the indigenous Fijians, their values, traditions, customs, way of life and economic well-being;

AND WHEREAS the people of Fiji have expressed the desire to have a new Constitution for the advancement of their beliefs, rights and freedoms and accept that it is desirous that the 1970 Constitution be replaced so that the will of the people may be truly set forth and their hopes, aspirations and goals be achieved and thereby enshrined;

AND WHEREAS they re-confirm that Fiji is a democratic society in which all peoples may to the full extent of their capacity play some part in the institutions of the national life and thereby develop and maintain due deference and respect for each other and the rule of law;

AND WHEREAS they affirm and respect that Christianity has played and continues to play a prominent role in the lives of the indigenous Fijians and the enduring contribution it has had, but also accepting the rights of other religious groups to practise their own religion;

AND WHEREAS they re-affirm that the indigenous people of Fiji are endowed with their lands and other resources and the right to govern themselves for their advancement and welfare;

AND WHEREAS they re-assert their recognition that all peoples of Fiji in respecting the rights of others to live in harmony are entitled to due deference to their customs and traditional way of life;

AND WHEREAS they reiterate their recognition that people and institutions remain free only when and for so long as freedom is founded upon respect for the spiritual and moral values of each other and a mutual observance of the rule of law;

NOW THEREFORE to achieve those ends the following provisions shall take effect as the Constitution of Fiji:

AND WHEREAS they affirm and respect that Christianity has played and continues to play a prominent role in the lives of the indigenous Fijians and the enduring contribution it has had, but also accepting the rights of other religious groups to practise their own religion;

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NOW THEREFORE to achieve those ends the following provisions shall take effect as the Constitution of Fiji:

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CHAPTER 1
THE STATE AND THE CONSTITUTION
The State

1. Fiji shall be a Sovereign Democratic Republic.

Constitution is supreme law

2. This Constitution is the supreme law of Fiji and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

Bose Levu Vakaturaga

3. This Constitution recognises the Bose Levu Vakaturaga

CHAPTER II
PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE
INDIVIDUAL

Fundamental rights and freedoms of the individual

4. Whereas every person in Fiji is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, sex, place of origin, political opinions, colour, religion or creed, but subject to respect, for the rights and freedoms of others and for the public interest to each and all of the following, namely

(a) life, liberty, security of the person and the protection of the law;

(b) freedom of conscience, of expression and of assembly and association; and

(c) protection for the privacy of his home and other property and from deprivation of property without compensation, the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

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CHAPTER III
FIJIAN AND ROTUMAN INTERESTS
Protection and Enhancement of Fijian and Rotuman Interests

21.(1) Notwithstanding anything contained in Chapter II of this Constitution Parliament shall, with the object of promoting and safeguarding the economic, social, educational, cultural, traditional and other interests of the Fijian and Rotuman people, enact laws for those objects and shall direct the Government to adopt any programme or activity for the attainment of the said objects and the Government shall duly comply with such directions.

(2) In carrying out any direction given under subsection (1) of this section, the Government through the Cabinet may

(a) give directions to any department of Government, Commission or authority for the reservation of such proportions as it may deem reasonable of scholarships, training privileges or other special facilities provided by Government;

(b) when any permit or licence for the operation of any trade or business is required by law, give such direction as may be required for the purpose of assisting Fijians and Rotumans to venture into business; and

(c) may give directions to any department of Government, Commission or authority for the purpose of the attainment of any of the objects specified under subsection

(1) of this section; and the department or the Commission or the authority to which any direction under paragraph (a), (b) or (c) of this subsection is given shall comply with such directions.

(3) In the exercise of its functions under this section, the Cabinet shall act in consultation with the Bose Levu Vakaturaga, or the Council of Rotuma, as the circumstances may require.

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CHAPTER IV **CITIZENSHIP**

Persons who are citizens on 6 October, 1987

22. Any person who was a citizen of Fiji on 6 October 1987 shall remain a citizen of Fiji on the commencement of this Constitution.

Manner in which Fiji citizenship may be acquired

23. Citizenship of Fiji may be acquired by -

- (a) birth;
- (b) descent;
- (c) naturalisation; or
- (d) registration.

Persons born in Fiji after 6 October, 1987

24. Every person born in Fiji after 6 October, 1987 shall become a citizen of Fiji at the date of his birth if at the time of his birth his father or mother is a citizen of Fiji.

Persons born outside Fiji after 6 October 1987

25. A person born outside Fiji after 6 October 1987 shall become a citizen of Fiji at the date of his birth if at that date his father is a citizen of Fiji.

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CHAPTER V **THE PRESIDENT**

Establishment of office of President

31. There shall be a President and Commander-in-Chief of Fiji who shall be appointed by the Bose Levu Vakaturaga and who shall hold office for a period of five years.

The President's Council

32.-(1) There shall be a President's Council to be convened at the invitation of the President to advise him on any matters of national importance.

(2) The Council shall be composed of the President as Chairman and such members, being citizens of Fiji, that the President may appoint in, his own deliberate judgement.

Acting President

33.-(1) For the purpose of appointing an Acting President, the Bose Levu Vakaturaga shall from time to time after a resolution to that effect designate two persons, in order of priority, who are persons qualified and eligible to perform the functions of the office of the President whenever the holder of that office is for any reason unable to perform the functions of his office.

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CHAPTER VI
PARLIAMENT

PART 1
COMPOSITION OF PARLIAMENT
Establishment of Parliament

39. There shall be a Parliament for Fiji which shall consist of a President, a House of Representatives and a Senate.

PART 2
THE HOUSE OF REPRESENTATIVES
Members of the House of Representatives

40. The House of Representatives shall consist of persons elected in accordance with the provisions of this Constitution and, subject thereto, in such manner as may be prescribed.

Number and method of election of members

41. (1) There shall be seventy members of the House of Representatives, and they shall be elected to represent constituencies.

(2) For the purpose of electing the members of the House, voters shall be registered on one of four separate rolls, that is to say -

- (a) a roll of voters who are Fijians;
- (b) a roll of voters who are Indians;
- (c) a roll of voters who are Rotumans; and
- (d) a roll of voters who are neither Fijians, Indians nor Rotumans.

(3) Thirty-seven members of the House shall be elected from among persons who are registered on the roll of voters who are Fijians.

(4) Twenty-seven members of the House shall be elected from among persons who are registered on the roll of voters who are Indians.

(5) One member of the House shall be elected from amongst persons who are registered on the roll of voters who are Rotumans.

(6) Five members of the House shall be elected from among persons who are registered on the roll of voters who are neither Fijians, Indians nor Rotumans.

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CHAPTER VII
THE EXECUTIVE
Executive Authority of Fiji

82. (1) The executive authority of Fiji is vested in the President and exercisable by him or by the Cabinet or any Minister authorised by Cabinet.

(2) Nothing in this section shall preclude persons or authorities other than the President from exercising functions as may be conferred upon them by any law.

Ministers

83.-(1) There shall be a Prime Minister, an Attorney-General, a Minister responsible for defence and security and such other offices of Minister of the Government as may be established by the President, acting in accordance with the advice of the Prime Minister.

(2) The President, acting in his own deliberate judgement, shall appoint as Prime Minister the Fijian member of the House of Representatives who appears to him best able to command majority of support of the members of that House:

Provided that if occasion arises for making an appointment between a dissolution of Parliament and the next following general election of members of the House of Representatives the persons who were members of that House immediately before the dissolution shall be regarded for the purposes of this subsection as continuing to be members thereof.

(3) The Attorney-General and Minister other than the Prime Minister shall be appointed by the President acting in accordance with the advice of the Prime Minister from either House:

Provided that -

(a) a person shall not be qualified as Attorney-general unless he is entitled to practice as a barrister and solicitor in Fiji;

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CHAPTER VIII
THE JUDICATURE

PART I
THE APPLICATION OF LAWS

Customary laws and decision of the Native Lands Commission

100. (1) Parliament shall make provision for the application of laws, including customary laws.

(2) In exercising its powers under the preceding subsection, Parliament shall have particular regard to the customs, traditions, usages, values and aspirations of the Fijian people.

(3) Until such time as an Act of Parliament otherwise provides, Fijian customary law shall have effect as part of the laws of Fiji:

Provided that this subsection shall not apply in respect of any custom, tradition, usage or values that is, and to the extent that it is, inconsistent with a provision of this Constitution or a statute, or repugnant to the general principles of humanity.

(4) For the purpose of this Constitution the opinion or decision of the Native Lands Commission on

(a) matters relating to and concerning Fijian customs, traditions and usages or the existence, extent, or application of customary laws; and

(b) disputes as to the headship of any division or sub-division of the Fijian people having the customary right to occupy and use any native lands, shall be final and conclusive and shall not be challenged in a court of law.

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CHAPTER IX
SERVICE COMMISSIONS AND THE PUBLIC SERVICE
Judicial and Legal Services Commission

123. (1) There shall be a Judicial and Legal Services Commission which shall consist of -

- (a) the Chief Justice, who shall be Chairman;
- (b) the Chairman of the Public Service Commission; and
- (c) two other members referred to as "the appointed by the consultation with the Commission. (in this section appointed member") President after Chairman of the

(2) A person shall not be qualified to be appointed as the appointed member unless he is qualified to be a judge of the High Court.

(3) A person shall not be qualified to be appointed as the appointed member if he is, or has at any time during the three years immediately preceding his appointment been -

- (a) a member of the House of Representatives or the Senate or an elected member of any local authority; or
- (b) a public officer (other than a Justice of Appeal) or a local government officer.

(4) The appointed member shall not, within the period of three years commencing with the day on which he last held or acted in the office of appointed member be eligible for appointment to or to act in any public office.

(5) Subject to of this Constitution, vacate his office the provisions of section 130 the appointed member shall

- (a) at the expiration of three years from the date of his appointment; or

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CHAPTER X
THE OMBUDSMAN
Office of Ombudsman

134. (1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the President, acting on the advice of the Prime Minister and in consultation with the Leader of the Opposition and such other persons, if any, as appear to the President, acting in his own deliberate judgement, to be leaders of parties in the House of Representatives.

(3) A person shall not be qualified to be appointed as Ombudsman if he is a member of the House of Representatives, a member of the Senate, a member of any local authority, a candidate for election as a member of the House of Representatives or a local authority nominated as such with his consent or a local government officer.

(4) The Ombudsman shall not perform the functions of any other public office, and shall not, without the approval of the Prime Minister in each particular case, hold any other office of emolument other than the office of Ombudsman or engage in any occupation for reward outside the duties of his office.

(5) Subject to the provisions of the next following subsection, the Ombudsman shall vacate his office -

(a) at the expiration of four years from the date of his appointment; or

(b) if any circumstances arise that, if he were not the holder of that office, would cause him to be disqualified for appointment as such.

(6) The provisions of subsections (1) to (6) of section 130 of this Constitution shall apply to the office of Ombudsman as they apply to the office of appointed member of the Judicial and Legal Services Commission; and, except as provided in subsection (2) of that section, the functions of the President under those subsections shall be exercised by him in relation to the Ombudsman in his own deliberate judgement.

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CHAPTER XI
FINANCE
Consolidated Fund

141. All revenues or other moneys raised or received for the purposes of the Government (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 law be 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.

Withdrawals from Consolidated Fund or other public funds

142. (1) No moneys shall be withdrawn from the Consolidated Fund except -

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Fiji; or

(b) where the issue of those moneys has been authorised by an Appropriation Act, by a supplementary estimate approved by resolution of the House of Representatives or in such manner and subject to such conditions as may be prescribed in pursuance of section 144 of this Constitution.

(2) 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 law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

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CHAPTER XII
MISCELLANEOUS
Interpretation

149.(1) In this Constitution, unless the context otherwise requires -

"Bose Levu Vakaturaga" means the Great Council of Chiefs established under Section 3 of the Fijian Affairs Act;

"disciplinary law" means a law regulating the discipline of any disciplined Force;

"disciplined Force" means -

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

"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;

"financial year" means the period of twelve months ending on 31st December in any year or such other day as may be prescribed by Parliament;

"the Gazette" means the Fiji Gazette or the 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 Fiji;

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CHAPTER XIII

SPECIAL POWERS AGAINST SUBVERSION AND EMERGENCY POWERS

Special Acts of Parliament 162

(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside Fiji -

(a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property;

(b) to excite disaffection against the President or the Government;

(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence;

(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or

(e) which is prejudicial to the security of Fiji, any provision of that law designed to stop or prevent that action shall be valid notwithstanding that it is inconsistent with any of the provisions of Chapter II, or would, apart from this section, be outside the legislative power of Parliament.

(2) A law containing such recital as is mentioned in subsection (1), shall if not sooner repealed, cease to have effect if a resolution is passed by Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this section.

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CHAPTER XIV IMMUNITY PROVISIONS

Immunity of Members of the Republic of Fiji Military Forces (including the Naval Division), the Police Force and the Fiji Prison Services and others

164.-(1) The leader of the military coup d'etat which took place in Fiji on fourteenth of May, 1987 and on twenty-fifth of September, 1987 shall be immune from criminal and civil responsibility in respect of the commission of any offence under the penal code or the breach of any law of Fiji and in respect of any damage or injury to property or person resulting either directly or indirectly from the two military coup d'etat and no court shall entertain any action or make any decision or order, or grant any remedy or relief in any proceedings instituted against him in relation thereto

(2) All members of the Republic of Fiji Military Forces (including Naval Division), the Fiji Police Force and the Prisons Services who during the two military coup d'etat referred to in subsection (1) of this section and up to the fifth of December, 1987, had shown allegiance to the coup leader and obediently carried order and instructions of the Fiji Military Government established by the coup leader, shall be immune from criminal and civil responsibility in respect of the commission of any offence under penal code or the breach of any law of Fiji and in respect of any damage or injury to property or person resulting either directly or indirectly from the two military coup d'etat and no court shall entertain any action or make any decision or order, or grant any remedy or relief in any proceedings instituted against any member aforesaid in relation thereto

(3) Any person who during the two military coup d'etat referred to in subsection (1) of this section and up to the fifth of December, 1987, acted under the direction of a member of the Republic of Fiji Military Forces (including the Naval Division), the Fiji Police Force and the Fiji Prison Services

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CHAPTER XV

TRANSITIONAL PROVISIONS

Existing Officers

165. (1) Every person who immediately before the commencement of this Constitution, holds or acts in a public office shall continue to hold or act in the like office as if he had been appointed thereto in accordance with the provisions of this Constitution.

(2) Nothing in subsection (1) of this section shall affect the qualifications or disqualification's prescribed by this Constitution or any other law for appointment of persons to any public office.

Succession to Property

166. (1) Subject to this section, all property which before the commencement of this Constitution was vested in Her Majesty in right of the Government of Fiji or in the Fiji Military Government shall vest in the State.

(2) All land in Fiji which before the commencement of this Constitution was vested in Her Majesty in right of the Government of Fiji or in the Fiji Military Government shall vest in the State.

(3) Any property which before the commencement of this Constitution was liable to escheat to Her Majesty in right of the Government Fiji or in the Fiji Military Government shall be liable to escheat to the State.

Rights, liabilities and Obligations

167. (1) All rights, liabilities and obligations of Her Majesty in right of the Government of Fiji or of the Fiji Military Government shall after the commencement of this Constitution be rights, liabilities and obligations of the State.

(2) In this section, rights, liabilities and obligations include prerogative rights and rights, liabilities and obligations arising from contract or otherwise, other than rights to which section 166 applies.

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SCHEDULE 1
OATHS AND AFFIRMATIONS
OATH OR AFFIRMATION OF ALLEGIANCE

I, _____ do swear [solemnly, sincerely and truly declare and 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.]

OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF PRESIDENT

I, _____ do swear [or solemnly affirm] that I will well and truly the people and the Republic of Fiji, in the office of President. So help me God. [To be omitted in affirmation.]

**OATH OR AFFIRMATION FOR THE DUE EXECUTION OF THE OFFICE OF PRIME MINISTER,
ATTORNEY-GENERAL, OR OTHER MINISTER OR ASSISTANT MINISTER**

I, _____ being appointed Minister/Attorney-General/Minister/Assistant Minister, I do swear [or solemnly affirm] that I will to the best of my judgement, at all times when so required, freely give my counsel and advice to the President (or any other person for the time being lawfully performing the functions of that office) for the good management of the public affairs of Fiji, and I do further swear [or solemnly affirm] that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular Minister and that I will not, except with the authority of the Cabinet and to such extent as may be regard for the good management of the affairs of Fiji, directly or indirectly reveal the business or proceedings of the

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