

**REPUBLIC OF THE FIJI
ISLANDS**

**OFFICE OF THE
ATTORNEY GENERAL**

REPORT

**Pacific Islands Law
Officers' Network
2009**

1.0 INTRODUCTION

- 1.1 The Republic of the Fiji Islands has undergone significant changes in the past 12 months and will continue to go through a change process in the coming months. Whilst many of those changes are seen by some as drastic and could have been managed better or even avoided altogether, it is undeniable that they are happening or have happened. Chief amongst the changes in 2009 is the change in Fiji's legal order when the 1997 Constitution was abrogated in the month of April by the former President Ratu Josefa Iloilo.
- 1.2 The abrogation of the Constitution, coupled with the immediate promulgation of a number of key Decrees by the Interim Government, had the effect of terminating the existence of all Constitutional Offices and appointments. The Interim Government, led by Prime Minister Josaia Voreqe Bainimarama, has issued several Decrees to ensure the efficient functioning of the State and to bring effect to its reform program.
- 1.3 Various reforms have been instituted in key sectors, such as the telecommunications industry, legal profession and the civil service. Those reforms have been undertaken in order to streamline the nation's economy and to achieve the Government's vision of a stable, peaceful and prosperous Fiji.

2.0 OFFICE OF THE ATTORNEY GENERAL

- 2.1 An essential characteristic of the Office of the Attorney-General of Fiji that will remain constant is its role of providing essential legal services to the Government.
- 2.2 Under the new legal order, the Attorney General is appointed by the President under the Executive Authority of Fiji Decree 2009. He is the

chief legal advisor to Government and is assisted in that role by the Solicitor-General who is also the Permanent Secretary for Justice.

- 2.3 The Office comprises of various Divisions which administer various functions assigned to the Attorney-General. These include the Attorney-General's Chambers, Fiji Law Reform Commission, Law Revision Commission, Legal Aid Commission, Commission on the Prerogative of Mercy, Copyright Tribunal, Hotel & Guest Houses Licensing Board, Central Liquor Board, Board of Legal Education, and Costs Review Committee.
- 2.4 The Attorney-General's Chambers provide services such as litigation, advocacy, legislative drafting and legal advisory services to the Executive, Government Ministries and Departments and other statutory bodies in all areas of law, save for criminal prosecutions.
- 2.5 There are currently 30 lawyers in Chambers, including the Attorney-General and Solicitor General.
- 2.6 The Chambers is now a centralized service provider with all legal officers who were formerly based at different Government Ministries now operating from our Chambers. This allows for greater efficiency in service delivery and centralization of the legal services provided. This year, 4 new legal officers and 2 senior legal officers were recruited. In addition, a legal officer who has been based at the Ombudsman's Office was transferred to Chambers after the abrogation of the 1997 Constitution.
- 2.7 It is envisaged that further restructuring is likely to take place in the near future that will see the merger of the law revision, law reform, and legislative drafting divisions.

3.0 JUDICIARY

- 3.1 All Judicial appointments and office holders that existed prior to April 2009, such as Judges and the Commissioners of the Judicial Services Commission, ceased to exist when the 1997 Constitution was abrogated on 10 April this year. Following the implementation of the new Legal Order by the President and the promulgation of the Administration of Justice Decree 2009, there have been many new appointments to judicial positions.
- 3.2 There are now 9 Judges of the High Court, including the Chief Justice, 2 Masters of the High Court and 17 Resident Magistrates. Of those judicial appointments, 4 Magistrates and 2 Judges are Sri Lankan nationals.

4.0 FIJI LAW SOCIETY

- 4.1 Under a newly promulgated Legal Practitioners Decree 2009, which replaced the Legal Practitioners Act 1997, the entire structure of the Fiji Law Society was reformed. Whilst it still retained a fused system of Barristers and Solicitors and provided certain functions for the Law Society, it no longer required compulsory membership and removed the regulatory functions to another body. Disciplinary actions and proceedings are now vested in the Chief Registrar of the High Court of Fiji and a newly created office of the Independent Legal Services Commission.
- 4.2 An immediate impact of the Legal Practitioners Decree 2009 was the requirement for each legal practitioner to re-apply for and obtain a new Practising Certificate before August 2009 that will be valid for the rest for the year. Practising Certificates are now issued by the Chief Registrar of the High Court of Fiji.
- 4.3 The Fiji Law Society held its election in September this year where Mr. Dorsami Naidu was re-elected as the President of the Society for a

second term. That election was conducted under the Legal Practitioners Decree 2009.

5.0 LAW REFORM

5.1 Other significant areas of reform in the legal sector are summarised below.

5.2 Crimes Decree 2009

Under the Crimes Decree 2009, the sentencing laws have been changed, prostitution services have been criminalized, offences of trafficking in persons and children, and offences in international and domestic trafficking have also been created.

The offences of people smuggling and using false travel or identity documents are also captured by the Decree.

The Decree also creates offences and provides penalties for computer-related criminal activities or cyber crime.

5.3 Domestic Violence Decree 2009

This Decree effectively addresses domestic violence in Fiji, an area which previously lacked a defined law. It establishes a framework that ensures the immediate and adequate protection of women and vulnerable citizens from violence within their homes.

5.4 Sentencing and Penalties Decree 2009

The Sentencing and Penalties Decree is intended to reform the processes of imposing penalties under the Laws of Fiji and provide a comprehensive framework for sentencing of persons for criminal

offences. It sets out sentencing guidelines for the Courts in dealing with habitual offenders, dismissals, discharges and adjournments. It also allows the Court to involve traditional and community leaders in the sentencing process.

5.5 **Criminal Procedure Decree 2009**

This Decree will replace the Criminal Procedure Code, Cap.21 when it comes into force in 2010. It essentially updates the provisions of the CPC and brings them into line with modern practices and standards.

6.0 **FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC)**

6.1 The Fiji Independent Commission Against Corruption was established in 2007 and is empowered to prosecute offences under the Fiji Independent Commission Against Corruption Promulgation and also under the Prevention of Bribery Promulgation.

6.2 As at 10 December this year, FICAC has received close to 9000 complaints since its inception in 2007. Out of that total number, 79 persons accused of corruption have been prosecuted while 400 have been charged.

6.3 FICAC has to date had 9 convictions in court, 8 of which were convictions this year.

7.0 **CONSTITUTIONAL CASES**

7.1 The main constitutional case decided this year that also led to the chain of events from 10 April 2009 was ***Laisenia Qarase v Bainimarama & 5 Others*** (Civil Appeal No. ABU0077 of 2008). That was a Court of Appeal decision delivered on 9 April in favour of the Appellant, Mr. Qarase. It was an appeal against the decision of the High Court

(delivered on 9 October 2008) which had ruled that the President's decision to make and promulgate legislation in the interest of peace, order and good government in the intervening period prior to a new parliament, was valid and lawful.

- 7.2 The Court of Appeal held that the assumption of executive authority by Josaia Bainimarama and the declaration of a State of Emergency, the ratification and validation of Decrees, amongst other things, were unlawful acts under the Constitution. In its ruling, the Court had set out a number of options to be considered by the President and the Government in order to rectify the situation that has been declared illegal.

8.0 CONCLUSION

The new legal order has brought about many challenges as well as opportunities for the professional officers of the AG's Chambers. Whilst the case load has reduced substantially since the abrogation of the 1997 Constitution, the demand for experienced legislative drafters and the formulation of legal policy framework has increased. The opportunity for employment at our office was presented this year and resulted in the recruitment of 5 legal practitioners. Given the legal reforms taking place in Fiji at the moment, the increase in legal professional staff is certainly timely and much needed.

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