

FIJI MILITARY GOVERNMENT DECREE NO. 17

OMBUDSMAN DECREE 1987

IN exercise of the powers vested in me as the Commander and Head of the Fiji Military Government, I hereby make the following Decree:

1. This Decree may be cited as the Ombudsman Decree 1987.
2. The office of Ombudsman is hereby decreed, such office shall be a public office appointed by the Judicial Advisory Committee.
3. A person shall not be capable of consideration for appointment as Ombudsman if he is at the date of consideration for appointment a duly nominated candidate for the House of Representatives or local council or local government officer.
4. The Ombudsman is hereby prohibited from performing the functions of any other public officer. He shall not without the approval of the Commander and Head of the Fiji Military Government hold any other office of emolument or engage in any occupation for reward outside the duties of his office.
5. The Ombudsman shall vacate his office—
 - (a) on the expiration of four (4) years from the date of his appointment; or
 - (b) if there were or arose any circumstances where he would be liable for disqualification from such office.
6. The provisions with respect to members of the Judicial Advisory Commission and the conduct of disciplinary procedures referred to in the Fiji Judicature Decree 1987 section 10 shall apply *mutatis mutandis* to the office of Ombudsman.
7. The Ombudsman may investigate any action, conduct or matter pertaining thereto taken by or at the direction of any officer or authority to which this Decree applies in the exercise of administrative functions of that officer or authority where—
 - (i) a complaint is made alleging a person or body of persons has suffered injustice in consequence of that action;
 - (ii) upon invitation by any Minister of the Executive Council; or
 - (iii) after due consideration he considers it appropriate to act of his own volition.
- 8.—(1) In performance of his functions the Ombudsman shall not be subject to direction or control by any person or authority.
(2) The proceedings and performance of the Ombudsman together with any decision, recommendation or report shall not be the subject of any form of judicial review or prerogative writ for any reason other than an excess of the exercise of his jurisdiction.
9. The conduct which shall be capable of investigation by the Ombudsman shall include—
 - (a) any action or inaction relating to a matter of administration; and
 - (b) any alleged action or inaction relating to a matter of administration.
10. It shall be the purpose of the establishment of the office of Ombudsman to ensure—
 - (a) that all governmental bodies are responsible to the needs and aspirations of the People of the Republic of Fiji; and
 - (b) to help in the improvement of the work and efficiency of governmental bodies and the elimination of unfairness and discrimination by them in their dealings with the people of Fiji; and
 - (c) to assist in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and
 - (d) to supervise, enforce and maintain adherence to the Code of Ethics Decree 1987 by all persons bound thereby.

The reference to discrimination in section 10(c) above shall not be capable of derogating from or in so far as it provides for review as detracting from the provisions of the Fiji Services Commissions and Public Service (Amendment) Decree No. 10 1987 section 2(d).

11.—(1) The Ombudsman may investigate on complaint any action taken by any officer or authority to which this section of this Decree applies in the exercise of administrative functions of that officer or authority where—

- (a) a complaint in writing is made under this section alleging the person or body has suffered injustice in consequence of this action;
 - (b) he is invited to do so by the President or any member of the Executive Council.
- (2) The officers and/or authorities to whom this section applies are the following:
- (i) any Department of the Republic of the Fiji Military Government;
 - (ii) the Police Force or any member thereof;
 - (iii) the Fiji Prisons Service, Aerodrome Fire Service or any other service maintained and controlled by the Government or any other officer or authority of any such service;
 - (iv) any authority empowered to determine the person with whom any contract or clause of contract is to be entered into by or on behalf of the Government or any such officer or authority;
 - (v) such other officers or authorities as may be prescribed by Decree:
- Provided that it shall not apply in relation to any of the following officers and authorities—
- (a) the Commander and Head of the Fiji Military Government;
 - (b) any Consultative Commission or its staff established for the purpose of drafting and presenting a Constitution for the Republic of Fiji;
 - (c) any other person or authority in so far as that person or authority exercises power to make appointments to offices in the public service, disciplinary control over or power to remove persons holding or acting in such offices, power to grant, withhold or reduce in amount or to suspend pension benefits in respect of similar matters affecting public officers;
 - (d) the Director of Public Prosecutions or any person acting in accordance with his instructions.
- (3) A complaint shall not be made nor shall it be entertained where it emanates from—
- (a) a department or authority of the Fiji Military Government or any authority or body constituted for the purposes of the public service or local government; or
 - (b) any other authority or body whose members are appointed by the Commander and Head or by a Minister of the Executive Council or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where a complainant has died or is unable for any reason to act for himself, the complaint may be made by the personal representative or a member of his family or other suitable individual to represent him. Save as aforesaid a complaint shall not be entertained unless made by the aggrieved person himself.

(5) A complaint shall not be heard, inquired into or in any way embarked upon unless the aggrieved person is a resident of Fiji (or was at the time of his death) or the complaint relates to action taken in relation to him while he was present in Fiji or in respect of rights or obligations which arose or accrued in Fiji.

12. Conduct which shall be capable of investigation by the Ombudsman shall be without limiting the generality of such conduct inclusive of the following—

- (a) if it is contrary to law; or
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
- (d) based wholly or partly on a mistake of law or of fact; or
- (e) conduct for which reasons should be given but were not.

13. The Ombudsman shall not enquire into the justifiability of a policy of the Fiji Military Government or into the exercise of a rule-making power by a local government body.

14.—(1) The Ombudsman shall not enquire into a decision of the Court of Appeal or Supreme Court of the Republic of Fiji.

(2) Where the aggrieved person has or had a right of appeal, reference or review to or before a tribunal constituted by or under any decree or existing law in Fiji he shall not conduct an investigation in respect of the complaint.

(3) The aggrieved person shall not be allowed to have a complaint entertained by the Ombudsman where he has a remedy by way of proceedings in any court of law unless—

(a) the Ombudsman is satisfied that the aggrieved person's right or remedy will in the particular circumstances be not able to be availed of by that person. Nothing in this subsection shall preclude the Ombudsman from taking proceedings with a view to conducting an inquiry in respect of matters referred to in the provisions of the Fundamental Freedom Decree 1987 as amended.

(4) Where it appears to the Ombudsman after he has embarked upon a preliminary enquiry in relation to any matter to be investigated that to him—

(a) the complaint is frivolous or vexatious;

(b) the subject matter of the complaint is trivial;

(c) the person aggrieved has no sufficient interest in the subject matter of the complaint; or

(d) that the making of the complaint has without reasonable cause, been delayed for more than three months.

(5) No investigation shall be conducted by the Ombudsman where he is in receipt of a notice by the Commander and Head of the Fiji Military Government that the investigation of the matter would not be in the interests of the security of the Republic of Fiji.

15.—(1) The conduct of an investigation by the Ombudsman shall ensure that the principal officer of any department or authority concerned, and any other person alleged to have taken or the authorised action in question, an opportunity to comment on any allegation made to the Ombudsman in respect thereof.

(2) The Ombudsman shall ensure that the text complaint is given to the person, department head or authority concerned as referred to in subsection (1).

(3) Every investigation shall be conducted in camera subject to any decree or existing law.

(4) The Ombudsman shall have power to obtain information from such persons and in such manner and make such enquiries, as he thinks fit and shall allow any person to be represented by a barrister and solicitor in the investigation.

16.—(1) The Ombudsman is empowered for the purposes of conducting an investigation under section 15 to require any Minister, officer or member of any department or authority concerned or any person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) The Ombudsman shall have for the purposes of this section the same powers of the Supreme 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.

(3) No obligation to maintain secrecy or any other restriction upon disclosure of information obtained by or furnished to persons in the public service imposed by any existing law or decree in force in Fiji or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the Fiji Military Government shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed in legal proceedings.

(4) No person shall be required or authorised by virtue of this action to furnish any information or answer any question or produce any document relating to proceedings of the Executive Council or any committee thereof. For the purposes of this subsection a certificate issued by the Secretary to the Executive Council with the approval of the Commander and Head thereby certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations, or internal security, and where such a notice is given nothing in this section it shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information of a class so specified.

(6) The compulsion to give evidence referred to in subsection (3) shall not be to the extent where that person could properly and lawfully refuse to testify or produce such document in proceedings before the Supreme Court.

17. Where the Ombudsman is satisfied the conduct under investigation infringes the provisions of section 12 and he is of the opinion that the conduct discloses—

- (a) that the matter should be given further consideration;
- (b) that the omission should be rectified;
- (c) that the decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;
- (e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) that reasons should have been given for the decision: or
- (g) that any other steps should be taken.

the Ombudsman shall report his opinion, and his reasons therefor, to the principal officer of any department or authority concerned and may make such recommendations as he thinks fit and send a copy of his report and recommendations to the Commander and Head and to any Minister concerned.

18.—(1) The Ombudsman in the discharge of his functions shall not be subject to the control or direction of any other person or authority.

(2) The performance of the Ombudsman's functions shall be in accordance with his own discretion subject to the provisions of section 8(2).

19. The Executive Council shall be empowered to delegate to an appropriate authority to make provision for the following matters as appear necessary or expedient to the performance of the Ombudsman's functions:

- (a) manner in which complaints are to be transmitted;
- (b) payment of fees and expenses incurred in the investigation of complaints;
- (c) procedure to be observed by the Ombudsman in the performance of his functions;
- (d) powers, privileges and functions of the Ombudsman and his staff in the course of negotiations and communications touching on and concerning investigations undertaken.

Dated this 27th day of October 1987.

COLONEL SITIVENI LIGAMAMADA RABUKA, O.B.E. (Mil.)
Commander and Head of the Fiji Military Government