



# Constitutional Matters

Monthly Legal News Bulletin

9 April 2010

## Introduction

The purpose of this periodical newsletter is to improve access to justice and enhance the rule of law by keeping people informed of changes under new Decrees, judicial news and other significant legal developments in Fiji.

For further information on any of the issues covered in this newsletter, please contact CCF at [ccf@connect.com.fj](mailto:ccf@connect.com.fj).

## One Year On from the Qarase Case

Today marks the one year anniversary since the *Qarase v Bainimarama* court decision. And where are we now? One year on, there have been significant changes to the legal and justice system in Fiji.

In 2009, a total of 56 decrees were passed. Of this 56, 23 decrees centralised power, 25 only contained minor amendments, 17 changed access to revenue or resources and 8 included provisions removing avenues of judicial review. There was substantial law reform in the following 3 areas- the regulation of the legal profession, the regulation of the medical profession and changes to the criminal laws (including domestic violence).

Some public consultations have begun for other areas of law reform (including on the Media Decree this week). These consultations must be inclusive and responsive to be effective.

In the meantime, Public Emergency Regulations have continued for a year now and there is no clear indication of when it might be lifted.

FICAC increased its number of prosecutions in 2009, and now has expanded powers under

the Crimes Decree 2009 which is likely to affect its future work.

The judiciary continues to be understaffed compared to its pre-April 2009 levels and an increasing number of Sri Lankan judges are taking up appointments in Fiji.

We can only hope that future changes will include improved recognition and protection of justice and the rule of law and increased public engagement through open, inclusive and responsive dialogue and consultations.

## New Decrees

The following new decrees have been promulgated or published since our last issue:-

- Commerce Act (Amendment) Decree 2010 (No. 15 of 2010);
- Mahogany Industry Development Decree 2010 (No. 16 of 2010);
- Employment Relations (Amendment) Decree 2010 (No. 17 of 2010);
- Limitation of Liability for Prescribed Political Events Decree 2010 (No.18 of 2010).

The *Commerce Act (Amendment) Decree* 2010 (No. 15 of 2010) amends section 3 of the Commerce Act 1998 by inserting a new definition (for ~~Port~~).

The *Mahogany Industry Development Decree* 2010 (No.16 of 2010) provides for the restructuring of the Mahogany Industry in Fiji. The Decree establishes a Mahogany Industry Council which includes the PM as the chairperson, the A-G and three other members. The Council supervises and directs the maintenance and development of the Mahogany Industry in Fiji. These powers formerly rested with current Fiji Hardwood



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Corporation Limited, which is now under the direct control and directive of the Council.

The *Employment Relations (Amendment) Decree 2010* (No. 17 of 2010) amends section 64 of the *Employment Relations Promulgation* (No. 36 of 2007) by deleting public holidays for Ratu Sir Lala Sukuna Day; and Youth day.

The *Limitation of Liability for Prescribed Political Events Decree 2010* (No.18 of 2010) irrevocably grants absolute and unconditional immunity to persons including Ratu Josefa Iloilovatu, Commodore Frank Bainimarama and all officers and members of the Military, the Police Force and Prisons Services, from any civil or any other liability in any court or tribunal from their involvement in the prescribed political events, including the 2000 and 2006 coups.

The Decree limits the states liability in respect of payment of compensation to any person in any proceedings in any court or tribunal in respect of any claim, damage, and injury<sup>1</sup>.

The Decree also removes the option for judicial review of the validity, legality, or actions by any prescribed persons in relation to any prescribed political event.

## **Draft Media Industry (Development) Decree 2010**

On Wednesday 7 April 2010, a copy of the Draft Media Industry (Development) Decree was released at a 1 day consultation in Suva.

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<sup>1</sup> This Decree may affect a recent case, where the Court of Appeal affirmed the decision of the High Court by awarding compensation against the RFMF and the Military Commander for injuries and damages sustained by a person who was assaulted by soldiers.

Section 77 of the draft decree includes identical provisions to the current Public Emergency Regulations which allows government and military censors in newsrooms and the Minister to issue directions about what may or may not be published in an emergency. A breach of this provision can result in a media organisation being shut down.

Under this draft, the media would be prohibited from publishing anything that is against the public interest or order, or national interest, or which offends good taste or decency and creates communal discord.

Penalties for breaching the decree include a fine of up to \$500,000 and imprisonment for 5 years.

Sections 16 and 84 removes the option for judicial review of any decisions by the Media Authority, Tribunal or Minister.

Part 5 gives extensive powers to the Media Authority to enter, search and seize under warrant, and to compel witnesses to give information or produce documents.

The media industry and civil society raised concerns during the consultation process about the lack of protection of freedom of expression and opinion, harsh and excessive penalties, lack of judicial review, lack of independence of the Media Authority and Tribunal, and the impact of foreign ownership restrictions. There has been no indication of what amendments, if any, will be made to the draft decree, or when it might be passed.

*\*Attached is a summary of the Decrees that have been gazetted since April 2009 to date.*