

GOVERNMENT OF THE SOVEREIGN DEMOCRATIC REPUBLIC OF FIJI
DECREE NO. 25

ELECTORAL DECREE, 1991

In exercise of the powers vested in me as President of the Sovereign Democratic Republic of Fiji and Commander-in-Chief of the Armed Forces, and acting in accordance with the advice of the Prime Minister and the Cabinet, I hereby make the following Decree:

Short title

1. This Decree may be cited as the Electoral Decree, 1991.

Interpretation

2. In this Decree, unless the context otherwise requires:
 - "candidate" means any person who is nominated as a candidate for election as a member of the House of Representatives;
 - "constituency" means a constituency prescribed by order of the Constituency Boundaries Commission made under sub-section (1) of section 48 of the Constitution;
 - "Commission" means the Electoral Commission;
 - "Council of Rotuma" means the Council of Rotuma established by section 12 of the Rotuma Act (Cap. 122);

- "electoral roll" means a roll of voters referred to in sub-section (2) of section 41 of the Constitution;
- "election" means an election of a member or members of the House of Representatives and includes a general election;
- "Fijian electoral roll" means the electoral roll referred to in paragraph (a) of sub-section (2) of section 41 of the Constitution;
- "general election" means an election which takes place after a dissolution of Parliament and includes the first election after the coming into force of the Constitution;
- "Native Lands Commission" means the Native Lands Commission for the time being appointed under section 4 of the Native Lands Act (Cap. 133);
- "Rotuman electoral roll" means the electoral roll referred to in paragraph (c) of sub-section (2) of section 41 of the Constitution;
- "Supervisor" means the Supervisor of Elections;
- "writ of election" means a writ issued for the election of a member or members of the House of Representatives.

Powers of the Electoral Commission

3. Subject to the provisions of this Decree, the Electoral Commission may make regulations for the purpose of carrying into effect the provisions of the Constitution and this Decree regarding elections and in particular, and without prejudice to the generality of the foregoing, for any of the following matters:

- (a) the registration of voters;
- (b) rolls of voters, registers of voters, habitation indexes and such other documents as the Commission shall from time to time determine;
- (c) the nomination of candidates;
- (d) the holding and conduct of elections;
- (e) election petitions;
- (f) the registration of political parties;
- (g) election funding and financial disclosure by political parties and candidates;
- (h) the prescription of offences in connection with the registration of voters and political parties, the nomination of candidates and the holding and conduct of elections and the prescription of penalties therefor not exceeding \$1000 or one years' imprisonment or both such fine and imprisonment;
- (i) the prescription of offences in connection with habitation indexes, and the prescription of penalties therefor not exceeding \$10,000 or three years' imprisonment or both such fine and imprisonment;
- (j) the prescription of offences in connection with election funding and financial disclosure by political parties and candidates, and the prescription of penalties therefor not exceeding \$10,000 or three years' imprisonment or both such fine and imprisonment;
- (k) the disqualification of persons convicted of offences against this Decree from registration as a voter and from voting at an election;
- (l) forms, and fees and charges.

Residence in Fiji

4.—(1) Subject to the other provisions of this section, no person shall be entitled to apply for registration as a voter on any electoral roll unless he is normally resident in Fiji on the date of his application for registration as a voter.

(2) No person shall be qualified to be registered as a voter on any electoral roll on any date unless he is normally resident in Fiji on that date.

(3) For the avoidance of doubt, on any date on which a writ of election is issued, no person shall be qualified to be:

- (a) registered as a voter for any constituency; or
- (b) nominated as a candidate for any constituency,

unless he is normally resident in Fiji on such date.

(4) For the purposes of this section and subject to the next following subsection, a person shall be presumed to be normally resident in Fiji if, and shall be presumed not to be normally resident in Fiji unless, he has been in continuous residence in Fiji for the period of 24 months immediately preceding the relevant date.

(5) For the purposes of this section, any person who has been resident outside of Fiji for all or part of the period of 24 months immediately preceding the relevant date by reason only of:

- (a) his service of the State either in a civil or military capacity;
- (b) his service in any international organisation of which Fiji is a member;
- (c) duties outside of Fiji assigned to him by his employer who carries on business in Fiji;
- or
- (d) his attendance at any course of instruction or training.

and the spouse of any such person if she resides with that person during such period, shall, if he or she can demonstrate to the satisfaction of the Supervisor that he or she has been resident outside Fiji by reason only of one or more of the afore-mentioned circumstances, be presumed to have been resident in Fiji for such period as he or she was resident outside of Fiji for any such reason or reasons.

(6) For the avoidance of doubt, a person who is a citizen of Fiji but who has permanently left Fiji, and the spouse of such person if she resides with him, shall not, notwithstanding that he is engaged outside Fiji in any of the circumstances specified in the immediately preceding sub-section, be regarded as being normally resident in Fiji.

(7) Subject to any conditions that may be prescribed by the Commission in relation to objections, the onus of proving that any person is normally resident in Fiji within the meaning of this section shall lie on such person.

(8) For the purposes of this section, "relevant date" means the date prior to which, for the purposes of this section, a period of continuous residence is required to be calculated and includes a date of application for registration as a voter, a date on which a writ of election is issued, or any other date, as the context may require.

Residence in constituency

5.—(1) No person shall be qualified to be registered as a voter for any constituency unless he has resided in that constituency for an aggregate period equal to or exceeding 24 months during his lifetime.

(2) Subject to subsection (1) of this section, no person shall be entitled to be registered as a voter for any constituency unless he is ordinarily resident in such constituency on the date of application to be registered as a voter for such constituency (in this section referred to as "the relevant date").

(3) For the purposes of sub-section (2) of this section:

(a) a person shall be deemed to be ordinarily residence in a constituency if:

- (i) he has resided in that constituency for an aggregate period equal to or exceeding 24 months during his lifetime; and
- (ii) he has been continuously resident in such constituency for the period of 6 months immediately preceding the relevant date;

(b) a person who has not been resident for such period in the constituency in which he resides on the relevant date shall be deemed to be ordinarily resident in the constituency in which:

- (i) he has resided for an aggregate period equal to or exceeding 24 months during his lifetime; and
- (ii) he was last continuously resident for a period equal to or exceeding 6 months;

(c) a person who, though resident outside Fiji, is presumed under section 4 of this Decree to be normally resident in Fiji shall, for the period during which he is presumed to be normally resident in Fiji, be deemed to be ordinarily resident in the constituency in which:

- (i) he has resided for an aggregate period equal to or exceeding 24 months during his lifetime; and
- (ii) he was last continuously resident for a period equal to or exceeding 6 months;

(d) a person who has not at anytime during his lifetime been continuously resident in any constituency for a period equal to or exceeding 6 months shall be deemed to be ordinarily resident in the constituency in which:

- (i) he has resided for an aggregate period equal to or exceeding 24 months during his lifetime; and
- (ii) he has resided for the longest period; and

(e) a Fijian who, on the relevant date, is resident in Rotuma shall be deemed to be ordinarily resident in the constituency on the Fijian electoral roll in which he has resided for an aggregate period equal to or exceeding 24 months during his lifetime, and:

- (i) in which he was last continuously resident for a period equal to or exceeding 6 months; or
- (ii) if he has not at anytime during his lifetime been continuously resident in any constituency for a period equal to or exceeding 6 months—in which he has resided for the longest period.

(4) Subject to any conditions that may be prescribed by the Commission in respect of objections, the onus of proving that an applicant for registration is ordinarily resident in a particular constituency within the meaning of this section shall lie on such applicant.

Rules for ascertaining place of residence

6.—(1) Subject to the other provisions of this Decree, the place where a person resides at any material time or during any material period shall be determined for the purposes of this Decree by reference to the facts of the case.

(2) Subject to the other provisions of this Decree, a person resides at the place where that person chooses to make his home by reason of family or personal relations, or for other domestic or personal reasons.

(3) Where the property on which a person's home is located is divided between 2 or more constituencies, that person shall:

(a) if his dwelling is located wholly within one of those constituencies, be deemed to reside in that constituency; or

(b) in any other case, be deemed to reside in the constituency in which is located:

(i) the front door or other main entrance of his dwelling; or

(ii) where his dwelling is an apartment, the front door or other main entrance of the building in which the apartment is situated.

(4) A person who is detained in any penal institution, hospital or other place by virtue of any written law shall not, by reason only of that detention, be treated for the purposes of this Decree as residing there.

(5) The place where, for the purposes of this Decree, a person resides shall not change by reason only of the fact that the person:

(a) is temporarily absent from that place;

(b) is absent from that place for any period because of his service or that of his spouse as a member of Parliament;

(c) is temporarily absent from that place because of his occupation or employment or that of his spouse; or

(d) is temporarily absent from that place for any period because he or his spouse, is a student.

even if such absence involves occasional or regular residence at another place or other places.

(6) A person shall not be deemed to be resident in any place on the ground only that he owns or is in possession of a dwelling house there.

(7) A person whose home is on any ship, boat, or vessel:

(a) which is permanently located in any harbour shall be deemed to reside in the constituency in which the wharf or landing place or the main wharf or landing place in the harbour is situated;

(b) which is not permanently located in any harbour, shall be deemed to reside in the constituency in which he was last resident.

Registration as Fijian

7.—(1) Subject to the provisions of this section, a declaration by any applicant for registration as a voter on the Fijian electoral roll that he is registered or eligible to be registered in Vola ni Kawa Bula, if made in the form and witnessed in such manner as the Commission may from time to time prescribe by regulations, shall, in the absence of evidence to the contrary, be accepted as correct, and if such applicant appears otherwise qualified to be registered as a voter, he may be registered on the Fijian electoral roll.

(2) Any person who is registered as a voter on any electoral roll may, in such manner and at such time as the Commission may by regulations prescribe, object to the registration of any person on any electoral roll on the ground that such person is or is not registered or is or is not eligible to be registered in the Vola ni Kawa Bula.

(3) An objection lodged under this section shall be referred to the Native Lands Commission which shall, if the person in respect of whom the objection has been lodged is registered on the Vola ni Kawa Bula, confirm that he is so registered or, if such person is not registered on the Vola ni Kawa Bula, determine whether or not he is eligible to be so registered.

(4) Where as a result of a confirmation or determination by the Native Lands Commission under this section, a person is not qualified to be registered on an electoral roll, his name shall, if it appears on that electoral roll, be forthwith removed.

(5) A reference made under this section shall be in accordance with regulations made by the Commission.

(6) Nothing in this section shall:

- (a) prevent the Supervisor from referring, on his motion, the name of any person to the Native Lands Commission for confirmation or determination whether such person is or is not registered or is or is not eligible to be registered on the Vola ni Kawa Bula; or
- (b) require a reference to be made to Native Lands Commission more than once in respect of the same person.

(7) Subject to any conditions that may be prescribed by the Commission in respect of objections, the onus of proving that any person, in respect of whom a reference to the Native Lands Commission has been made under this section, is or is not registered or is or is not eligible to be registered on the Vola ni Kawa Bula shall be on such person, and he shall provide to the Native Lands Commission such evidence thereof as the Native Lands Commission shall require or as may be prescribed by the Electoral Commission.

(8) Nothing in this section shall prohibit the Native Lands Commission, where a reference has been made to it under this section, from consulting or receiving evidence in respect of that reference from any other person or source:

Provided that before any confirmation or determination is made under this section, the person, in respect of whom any reference is made under this section, is notified of the nature of any such consultation and of any such evidence received, and is accorded an opportunity to provide an answer thereto.

(9) For the purposes of this section, references to "an electoral roll" shall include references to any provisional copy of an electoral roll published pursuant to regulations made by the Commission.

Registration as Rotuman

8.—(1) Subject to the provisions of this section, the declaration by any applicant for registration as a voter on the Rotuman electoral roll that he is of Rotuman descent, if made in the form and witnessed in such manner as the Commission may from time to time prescribe by regulations, shall, in the absence of evidence to the contrary, be accepted as correct, and if such applicant appears otherwise qualified to be registered as a voter, he may be registered on the Rotuman electoral roll.

(2) Any person who is registered as a voter on any electoral roll may, in such manner and at such time as the Commission may by regulations prescribe, object to the registration of any person on any electoral roll on the ground that such person is or is not of Rotuman descent.

(3) An objection made under this section shall be referred to the Council of Rotuma which shall determine whether or not the person in respect of whom the objection has been made is of Rotuman descent and if he is of such descent it shall confirm that he is such, or if he is not of Rotuman descent it shall advise accordingly.

(4) Where, as a result of a confirmation or determination by the Council of Rotuma under this section, a person is not qualified to be registered on an electoral roll, his name shall, if it appears on that electoral roll, be forthwith removed.

(5) A reference under this section shall be in accordance with regulations made by the Commission.

(6) Nothing in this section shall:

- (a) prevent the Supervisor from referring, on his own motion, the name of any person to the Council of Rotuma for determination by the Council whether such person is or is not of Rotuman descent; or
- (b) require a reference to be made to Council of Rotuma more than once in respect of the same person.

(7) Subject to any conditions that may be prescribed by the Commission in respect of objections, the onus of proving that any person in respect of whom a reference to the Council of Rotuma is made under this section is or is not of Rotuman descent shall be on such person, and he shall provide to the Council of Rotuma such evidence thereof as the Council of Rotuma shall require or as may be prescribed by the Commission.

(8) Nothing in this section shall prohibit the Council of Rotuma, where a reference has been made to it under this section, from consulting or receiving evidence in respect of that reference from any other person or source:

Provided that before any confirmation or determination is made under this section, the person, in respect of whom any reference is made under this section, is notified of the nature of any such consultation and any such evidence received, and is accorded an opportunity to provide an answer thereto.

(9) For the purposes of this section, references to an "electoral roll" shall include references to any provisional copy of an electoral roll published pursuant to regulations made by the Commission.

(10) For the purposes of this Decree, a person shall be regarded as being of Rotuman descent if, and shall not be so regarded unless, he is of Rotuman descent through his male progenitors or female progenitors or both his male progenitors and female progenitors.

Electoral Act repealed

9. The Electoral Act (Cap. 4) is hereby repealed.

Made this 10th day of July 1991.

PENAIA K. GANILAU
President of the Sovereign Democratic
Republic of Fiji and Commander-in-Chief
of the Armed Forces