

Statement of Sir Timoci Uluiburotu Tuivaga Kt, CF, CSM, former Chief Justice of Fiji submitted in accordance with Article 36 of the Rome Statute of the International Criminal Court, and paragraph 7 of the resolution of the Assembly of State parties relating to the procedure for the nomination and election of judges, the prosecutor and deputy prosecutors of the International Criminal Court.

On Article 36, paragraph 3, subparagraph (a)

Sir Timoci is a person of high moral character, impartiality and integrity with a congenial but firm personality. Sir Timoci has in his capacity as Chief Justice attained the highest judicial office in his country. Until his retirement from the bench, he was one of the longest serving Chief Justices in the common law jurisdictions having served for over 22 years from 31 March 1980 to 5 October 1987 and then from 18 January 1988 to 31 July 2002. Sir Timoci has had extensive experience as a judge in both criminal and civil jurisdictions. He was appointed a Puisne Judge of the Supreme Court (**later renamed the High Court**) in May 1972. This is a trial court of unlimited general jurisdiction.

When the Supreme Court was established as the final court of appeal under the *Constitution of the Sovereign Democratic Republic of Fiji 1990* thereby replacing the Privy Council, Sir Timoci as Chief Justice also became concurrently the President of the Court. In the relatively short life of the Supreme Court, Sir Timoci has presided over several cases of jurisprudential and constitutional importance. Sir Timoci has been privileged to have sitting with him on the Supreme Court other distinguished legal luminaries in the region as Lord Cooke of Thorndon (*former President of the New Zealand Court of Appeal and was a judicial member of the House of Lords*), Sir Anthony Mason and Sir Gerald Brennan (*former Chief Justices of Australia*), Justice John Toohey (*formerly of the High Court of Australia*), Sir Thomas Eichelbaum, (*former Chief Justice of New Zealand*), Sir Arnold Amet, Chief Justice of Papua New Guinea and Chief Justice Falefatu Sapolu of Samoa.

During his tenure as a Puisne Judge and Chief Justice, Sir Timoci has been for almost thirty years exercising the criminal and appellate jurisdiction of the High Court. The jurisdiction of this Court is contained in Section 120 of the 1997 Constitution which provides as follows:

Jurisdiction of the High Court

120.-(1) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law and such other original jurisdiction as is conferred on it under this Constitution.

(2) The High Court also has original jurisdiction in any matter arising under this Constitution or involving its interpretation.

(3) The High Court has jurisdiction, subject to the conferral of Parliament of rights of appeal and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgements of subordinate courts.

(4) If any proceedings in a subordinate court any question arises as to the interpretation of this Constitution and the member presiding in the proceedings considers that a substantial question of law is involved, the member presiding in the proceedings considers that a substantial question of law is involved, the member presiding must refer the question to the High Court.

(5) When the High Court gives its decision on a question referred to it under subsection (4), the court in which the question arose must dispose of the case in accordance with:

(a) the decisions; or

(b) if the decision is the subject of appeal to the Court of Appeal or to the Supreme Court - the decision of the Court of Appeal or Supreme Court, as the case may be.

(6) The High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the subordinate court

As President of the Supreme Court, Sir Timoci has according to circumstances exercised on several occasions the jurisdiction of the Court which is contained in Section 122 of the 1977 Constitution. The section states:

Jurisdiction of the Supreme Court

122.(1) The Supreme Court has exclusive jurisdiction, subject to such requirements as the Parliament prescribes, to hear and determine appeals from all final judgements of the Court of Appeal.

(2) An appeal may be brought from a final judgement of the Court of Appeal unless:

- (a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or*
- (b) the Supreme Court gives special leave to appeal.*

(3) In the exercise of this appellate jurisdiction, the Supreme Court has power to review, vary, set aside or affirm decisions or orders of the Court of Appeal and may make such orders (including an order for a new trial and an order for award of costs) as are necessary for the administration of justice.

(4) decisions of the Supreme Court, are subject to subsection (5), binding on the courts of the State.

(5) the Supreme Court may review any judgement pronouncement or order made by it.

Since attaining its independence in 1970, Fiji like many other countries has been in a state of transition. With some countries the transition has been violent and dramatic while in others the changes have been more measured and orderly. In the case of Fiji the transition has not been altogether smooth-sailing by any means having itself experienced two military coups d'etat in 1987 (*14 May and 25 September*) when the democratically elected government of then Prime

Minister Dr. Timoci Bavadra was ousted. More recently on 19 May 2000, there was further destabilisation of the country when the democratically elected government of Prime Minister Mahendra Chaudry was overthrown but this time by civilian insurgency with the assistance of a few disgruntled, dissident soldiers of the Fiji Military Forces. Sir Timoci was Chief Justice during these traumatic periods in the history of Fiji. Sir Timoci believes the role he played during both constitutional crises helped to some extent in the return of the country to normalcy.

Sir Timoci has written and delivered two Conference papers touching broadly on the judiciary's experiences during those turbulent times. The first Conference Paper is titled: "*The Judicial System in Fiji - Looking Back Past 10 Years or so.*", delivered at the Fiji Law Society Convention in September 1998 and the other is titled: "*Independence of Judges and the Judiciary during Political and Constitutional Upheavals*" delivered at the 14th South Pacific Judicial Conference at Noumea, in September 2001.

On Article 36, paragraph 3, subparagraph (b) (i)

Sir Timoci has established vast competence in criminal law and procedure which is the result of many years of conducting criminal trials as a Judge with years of prior experience as Prosecutor and Advocate in criminal proceedings.

From July 1958 to July 1961, Sir Timoci served as a magistrate in the Native Court System under the Fijian Administration rising subsequently to the senior position of Supervising Native Magistrate. In the then prevailing British colonial set up, Fiji had a dual court system running concurrently and constituting the National Court and the Native Court. The jurisdiction of the Native Court only applied to indigenous people of the country whereas the jurisdiction of the National Court extended to everyone without exception. The Native Court was conducted in the vernacular (*Fijian language*) and dealt with criminal and civil matters under the Fijian Regulations.

After graduating as a Barrister - at - Law from Gray's Inn, London in 1964, Sir Timoci joined the Attorney General's Chambers in 1965 as Crown Counsel.

As Crown Counsel his functions were *inter alia* to prosecute crimes and advise on police criminal investigations. Sir Timoci undertook a six month attachment on criminal prosecutions with the New South Wales Attorney- General's Department in Sydney, Australia. At the end of the attachment, Sir Timoci was admitted as a Barrister-at-Law in the Supreme Court of New South Wales, Australia. In 1970, Sir Timoci was a participant with other government lawyers from the Commonwealth in an International Law and Legal Drafting Course in London, England. Upon his return to Fiji after six months, Sir Timoci was appointed to act as Director of Public Prosecutions and in which capacity he had overall charge in the prosecution of serious indictable offences. These offences included homicide, rape and fraud.

As already noted, Sir Timoci was appointed a Puisne Judge in 1972. He acted for a period as Chief Justice of Fiji in 1974 and was appointed substantively as Chief Justice in March 1980. Although as head of the judiciary, Sir Timoci carried a heavy administrative work schedule, he continued throughout to sit on

criminal trials and appeals. In this work a good grasp of criminal evidence, procedure and practice was essential. Some of the trials involved the interpretation of human rights laws under the Bill of Rights contained in the 1997 Constitution. Human rights laws now figure more frequently in criminal trials. They are utilised to impugn evidence of alleged confessional statements and to seek rejection of prejudicial materials on grounds of general unfairness in the conduct of police investigations.

Sir Timoci has acted as Governor General in his capacity as Chief Justice from time to time between 1983 and 1986 pursuant to Section 28 of the 1970 Constitution.

On Article 36, paragraph 3 sub paragraph (c)

Sir Timoci fulfills the language requirements in respect of one of the two working languages of the Court namely **English** in which he is proficient. He is also proficient in his own mother tongue which is the Fijian language.

On Article 36, paragraph 4

The Government of Fiji has selected the procedure set out in Article 36(4) (a) (i) which states: "*By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question;*"

On Article 36, paragraph 5

Sir Timoci is being nominated for inclusion on List A for the purposes of the provisions of the Rome Statute.

Sir Timoci is a Fiji Island National. Fiji is also a member of the South Pacific Commission, the Pacific island Forum, the Commonwealth, and the United Nations.

His gender is male.