



SDL PARTY

Soqosoqo Duavata Ni Lewenivanua

A Peaceful, Stable and Prosperous Fiji

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SUBMISSION TO THE  
CONSTITUTION COMMISSION

13 OCTOBER 2012

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**SUBMISSION TO THE CONSTITUTION COMMISSION 2012  
BY THE SOQOSOQO DUAVATA NI LEWENIVANUA (SDL) PARTY**

**Introduction**

This Submission represents the official views of the SDL Party from its Patron, Ro Teimumu Vuikaba Kepa; its President, Mr Solomon Naivalu; the Party Leader, Mr Laisenia Qarase; and all the officials and members of the Party throughout Fiji and Rotuma. It also includes some of the submissions of the officials and members of the SDL Women's Wing and the SDL Youth Wing.

From the outset, we need to remind some members of the Constitution Commission and members of the audience listening in today, that the SDL Party had won the last two consecutive elections in Fiji in 2001 and 2006 and successfully formed the last two Governments under Hon Laisenia Qarase as Prime Minister with the support of other parties as required under the 1997 Constitution. In those two general elections, the SDL also obtained the majority votes.

In this Submission, we affirm the views that have been submitted by all our members throughout Fiji and Rotuma. In this process, we recognize the importance of the right of all citizens of Fiji to take part in the process of Constitution making if we are to have a Constitution that grows out of our personal experience, our history and our culture; and in short, a Constitution that we own and understand.

We have addressed also in this Submission some of the non-negotiable aspects of the relevant Decree and treat those as guiding principles in cases where we feel strongly that the voices of the people should decide in the light of their history, experience, culture and tradition what should be non-negotiable, and what should be negotiable in a Constitution.

Finally, it is our belief that our creative strength is derived from our diversity. Our ability to forge a durable sense of national unity depends on our ability to recognize the importance of affirming our diversity, in all its expressions. That means, any attempt to steam roll a false sense of unity by denying our diversity in a Constitution will simply not work and has not worked in the past.

In this Submission, the terms that we will use for the four major ethnic groups are in accordance with the provisions of the 1997 Constitution. A Fijian, refers to any person "whose progenitors in the male or female line is or was a native inhabitant of the Fiji Islands (other than Rotuma)"; an Indian, refers to any person "whose progenitors in the male or female line is or was a native inhabitant of the sub-continent of India"; a

Rotuman, is any person “whose progenitors in the male or female line is or was a native inhabitant of Rotuma”, and Others, refer to those persons who do fall into any of the categories above (Section 55: (3), (4), (5) of the 1997 Constitution).

Similarly, Fiji Islander is used as the common name for all citizens of the Fiji Islands.

The terms that are used in this Submission for the titles and names, laws and acts are those also from the 1997 Constitution and its consequent legislations, unless those are specifically referred to as being different.

### **Preamble to the constitutional consultations**

On 9th March, 2012 the head of the Military Regime, Commodore Voreqe J Bainimarama, issued a statement outlining the constitutional consultations process for Fiji. The objective of that exercise is to produce a new Constitution under which the promised general election of 2014 will be held.

The SDL Party has reservations in taking part in the exercise and this should not be construed as lending legitimacy to the process but nevertheless, are taking part in this exercise, for one reason and one reason only. It is the means, as opposed to the many others that are available, that the Military Regime has accepted to facilitate its return to the barracks and return this country to democratic rule. We are all acknowledging this gesture, because we owe it to the people to return this country to a democratic government.

### **Peace, prosperity and multi-racial harmony**

Fiji has been through a period of instability and uncertainty, conflict and divisiveness brought about by political instability. The coups of May 14 and September 25th in 1987, in May 19<sup>th</sup> 2000, and in December 5<sup>th</sup> 2006, have severely eroded public confidence and caused major disruptions to the economy and to the people of Fiji. This has demonstrated the need to restore stability and allow people to live their daily lives in peace, and with a sense of security.

Achieving peace and security in our multi-racial country is a long term commitment that must be vigorously pursued through building understanding as well as through recognising and appreciating the different communities' contribution in nation building. But peace and harmonious multi-racial living in a small country like Fiji can only be achieved in full measure, when the indigenous communities feel that their fundamental interests are protected and that they do not feel “left out” of national development

through affirmative action, to address their concerns. Recognition of the paramountcy of indigenous Fijian and Rotuman interests, and respect for the Vanua and the cultures and traditions of the indigenous Fijians and Rotumans are proclaimed in the Compact provisions of the 1997 Constitution.

The 1997 Constitution also stipulates that affirmative action is required not only for indigenous communities but also for all those who are disadvantaged in some way through its social justice provisions. This includes all groups including women, to have the full protection under the law, as well as the opportunity to be fully involved in the process of development.

The guarantee of fundamental rights and freedom for every citizen of Fiji and their equal protection under the law is also an essential part of our Vision for a “Peaceful and Prosperous Fiji.” A feeling of personal security and group security comes about when people have the confidence that breaches of rights and freedom will be addressed with impartiality and speed.

Respect for the rights of others is a critical component of our freedoms guaranteed under the Constitution. Of particular importance also is the right of every citizen to practice freedom of conscience, religion and belief. These are some of the things we now recognize and take for granted as essential for peaceful co-existence in our multi-cultural society.

### **Forging a new Fiji**

The SDL firmly believes in a new and more vibrant multi-cultural Fiji but there have been inadequate, meaningful and durable multi-ethnic manifestations of national identity. We all need to build a more stable foundation for national unity and tolerance. History has taught us that more often than not, we hardly learn from the past. It is our concern that we are once again treading the path of ignoring past mistakes and not addressing the inherent insecurities of our diverse ethnic communities. With respect to Fijians this relates to their insecurity illustrated by the following:

- the establishment of the Land Bank without proper consultation;
- the removal of their representatives through the Bose Levu Vakaturaga (BLV) in the Native Land Trust Board;
- the imposition of the Surfing Decree with its subsequent effects on qoliqoli rights<sup>1</sup>

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<sup>1</sup> Hoteliers are now using the Surfing Decree to stop all payments once made to traditional qoliqoli owners to access these areas for commercial activities. There is a sense of unfairness and exploitation when foreigners use the qoliqoli areas

- the erosion of their traditions and culture through the media propagation of a globalised mono- culture;
- the dismantling of their indigenous institutions in the pretext of non-discrimination principles;
- their continued marginalisation from economic power with the discontinuation of affirmative action programmes to encourage and develop Fijian businesses;
- the weakening of their political voice, and the assertion of their indigenous rights and issues are now seen as racist and discriminatory by the Regime and their supporters; and
- the proposed declaration of a secular state shows a lack of understanding of the historical significance of the enlightenment that Christianity brought to these islands and the moral decadence that accompanies secularism.

### **Dismantling of indigenous Fijian institutions**

The insecurities of the indigenous Fijians are the direct results of the recent deliberate actions of the current Regime.

In August, 2012 during the 81st Cession of the Convention on the Elimination of Racial Discrimination (CERD) in Geneva, the Representative of the Regime unequivocally confirmed to the CERD Committee, the Regime's contention to dismantle the Indigenous Fijian entrenched institutions established far back during the colonial era to protect Fijian interests.

Under the Principles and Value guidelines imposed by the Decree 58 of 2012, it says;

*".....the Constitution will establish and enforce principles of non-discrimination and it will protect the equality of all people".*

It sounds good and even looks ideal to the innocent and unsuspecting mind. But in reality the provision authorizes the systematic dismantling of indigenous institutions which are already in place. Simply put, it means that there can no longer be indigenous institutions as enshrined under the 1997 Constitution.

The Regime has already put its plan into action through the imposition of:-

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commercially and yet Fijians receive no compensation. The SDL Qoliqoli Bill in accordance with swas designed to resolve this injustice but powerful expatriate hoteliers and foreign investors made concerted efforts to prevent the passage of the Bill. The qoliqoli issue will not go away as shown by the numerous submissions on this to the Commission and must be taken heed of.

- Decree no 31 of 2009 i-Taukei Land Trust Board (amendment) Decree to remove Fijian representation in the Native Land Trust Board that were up to then appointed by the Bose Levu Vakaturaga (BLV);
- Decree no 31 of 2010 that took away the name Fijian from the indigenous population without their consent and left them with the label iTaukei;
- the new amendment to Regulation 11 of the Native Lands Lease and License Act (NLLLA) which came into effect from January 1, 2011.<sup>2</sup>
- Decree no 20 of 2012, iTaukei Affairs Amendment Decree, terminating the role, power and existence of the BLV;

Institutions like the Native Land Trust Board, is already weakened by the separation of ALTA and the establishment of the Land Bank. The Native Lands Commission is more likely to follow.

These institutions were put in place by the colonial powers according to the spirit of the Deed of Cession<sup>3</sup> and on the advice of the then BLV to protect the rights of Fijians. It is now clear that the Regime's intentions are to remove entrenched customary laws and institutions in order to create their own idea of a unified Fiji. This will not work without the prior consultations and approval by the Fijians. History has taught us that what is imposed will never last whatever the good intentions may be.

There are less than 600,000 Fijians the world over. To take away these customary institutions is an attempt to undermine and deny Fijian cultural identity. The very essence of being Fijian in their own land is grounded in their culture, heritage, identity, language, resources, land, traditions and values and contained in their institutions<sup>4</sup>. This

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<sup>2</sup> Regulation 11 of the NLLLA details certain levels of distribution of lease monies; the regulation has been in place for more than 70 years. It demands certain level of payments and sharing of lease monies within Fijian landowning units and members. The chiefs; turaga ni mataqali, turaga ni qali, turaga itaukei and turaga ni yavusa were entitled to bigger shares of monies unlike members of the mataqali. By taking away a larger share from the chiefs entitlement especially done to assist them to carry out their traditional roles, the regulations has effectively disempowered them.

<sup>3</sup> Deed of Cession Document 1874. Refer Annex 1

<sup>4</sup> The three conditions defined by the [ILO#169 Indigenous and Tribal Peoples Convention ,1989](#) apply to the Fijians : a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs and traditions or by special laws and regulations; b) peoples in independent countries who are regarded as indigenous on account of their descent from the population which inherited the country, or a geographical region to which the country belongs ,at the time of conquest or colonization or the establishment of state boundaries and who, irrespective of their legal status ,retain some or all of their own



should not take away the rights of others to live and share this heritage with the indigenous population. It had worked in the past and will continue to work in the future provided these are handled with respect and mutual understanding.

There is nothing racial or discriminatory about upholding your birth right, your right to indigenous land ownership and your right to be identified with a particular race or tribal group. Fijians should not be ashamed to be identified as such. To deny Fijians these rights, is in direct violation of the United Nations Declaration on the Rights of Indigenous People, 2007<sup>5</sup>; particularly the ILO 169 on Indigenous and Tribal Peoples Convention, 1989<sup>6</sup>; which had been ratified by Fiji.

The challenge as contained in the Declaration<sup>7</sup> is the need to balance indigenous rights with the rights of others so that one does not trample over the other but there is no doubt about the Regime's intent to trample over these rights.

The Fijians comprise the majority of the population, approximately 57%<sup>8</sup> and owning more than 87% of the land area, were never consulted on the issues above on their representation on the NLTB, removal of the Fijian name, reduction on the entitlement of chiefs and the termination of the BLV.<sup>9</sup>

The recognition of indigenous rights is not lost when their population becomes a majority as the self-identification criterion of being indigenous or tribal is sufficient for their protection under the provisions of the ILO 169 Indigenous and Tribal Peoples Convention, 1989. Furthermore, the Fijians may be a majority in Fiji just like the indigenous and tribal peoples of Bolivia; they are certainly a minority on the world stage.

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social, economic, cultural and political institutions; c)self-identification as indigenous or tribal shall be regarded as a fundamental criterion for the group to which the provisions of this convention apply.

<sup>5</sup> United Nations Declarations on the Rights of Indigenous People, 2007. **Refer Annex 2.**

<sup>6</sup> ILO 169 on Indigenous and Tribal Peoples Convention, 1989. **Refer Annex 3.**

<sup>7</sup> The final version of the Declaration was adopted on 29 June 2006. The Declaration was then referred to the General Assembly, which voted on the adoption of the proposal on 13 September 2007 during its 61st regular session. The vote was 144 countries in favour, 4 against, and 11 abstaining. <sup>7</sup>The four member states that voted against were Australia, Canada, New Zealand and the United States, all of which have their origins as colonies of the United Kingdom and have large non-indigenous immigrant majorities and small remnant indigenous populations. Since then, all four countries have moved to endorse the declaration. **Refer Annex 4**

<sup>8</sup> 2007 Census: Total Population 827,000, Fijian-473,983 (57.25%), Indian-311,591(37.64%).Others-42,326 (5.11%)

<sup>9</sup> This is in breach of Article 19 of the UN Declaration on the Rights of Indigenous Peoples which states "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them"

Fijians in particular, can be counted as one of the smallest population amongst the indigenous peoples of the world.

An observation of the submissions already presented to the Commission reveals that the predominant issues emanating from Fiji is that of insecurity arising from the trampling of their right to be consulted on issues that affect them. This confirms their high level of dissatisfaction with the treatment they are receiving under the Regime.

### **The global economic agenda**

Unprecedented demand for the world's remaining resources, combined with new technologies to extract previously inaccessible resources in the remotest regions, are putting indigenous peoples under increasing threat from governments and private companies wanting to profit from the resources found on or under their lands.

Indigenous peoples all over the world have either been poorly compensated or forcefully removed from their ancestral lands to make way for mining, forestry, electricity dams, weapons testing, or tourist development. Some examples from the Pacific include: the people of Nasomo in Vatukoula Fiji, Banaba in Kiribati, Nauru, the Kanaks in New Caledonia, Mururoa in Tahiti, Enewetak in the Marshall Islands, and Bikini in Christmas Islands.

Dominant national development paradigms tend to override alternative conceptions of development that may be held by indigenous peoples.<sup>10</sup> Natural resource development that affects these groups should be pursued in accordance with their own cultural understanding of development and in a way that does not erode their cultural or ethnic identity. The rights of indigenous peoples affected in any development, have been strengthened further by Article 19 of the Declaration, 2007 which requires that they are consulted and given their consent before adopting and implementing legislative or administrative measures that may affect them.

Furthermore, it is quite evident that the so called "liberal" interpretations of racial discrimination, human rights and equality, are the new "tools" to weaken indigenous identity. This is at the core of the new global economic agenda. By dismantling Indigenous institutions and identity and thereby disempowering them in the name of non-discrimination, powerful multinational and transnational corporations can get to their much needed resources from governments that are strapped for cash. Their partners

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<sup>10</sup> Fijian society was predicated on the foundation of sustainable development and resources were exploited for every day needs and traditional functions. Surplus was shared with others in the community. No one went hungry in a Fijian village. Land was owned communally by the mataqali (clan) and even those from outside the mataqali can cultivate on the land. This system has sustained them throughout their history. Private ownership and over exploitation for the capitalist market economy was an alien concept.

are compliant governments especially dictatorships, that need much revenue to sustain government coffers and have very loose and opaque accountability procedures. In a notable illustration a prominent country in the region has even changed legislation to suit the investors.<sup>11</sup>

The Land Bank, the bauxite mine in Vanua Levu and the planned copper mine in the Namosi highlands and the mahogany industry<sup>12</sup> show manifestations of indigenous land exploitation without proper and thorough consultation with the landowners.<sup>13</sup> The trend is observable throughout the region, with inadequate and outdated land legislation they are all susceptible to powerful interests.<sup>14</sup>

Multinational hotels have been given access to the qoliqoli reserves by the present Regime which refuses to recognize such qoliqoli reserves in accordance with customs from as far back as the 1880's.<sup>15</sup>

It is now 72 years from the time Fijian chiefs agreed to the request by the government to hand over the control of their land to the Native Land Trust Board. Previously the voice of the indigenous Fijians was heard in the Board through the group's representatives' of the BLV. The Regime is in full control of the NLTB since 2009. And yet, there are numerous commentators who stridently propound that Fijians have nothing to fear about their land and institutions; that all is secure. This must be exposed for the fallacy, that it is!

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<sup>11</sup> "For example, indigenous landowners at the Krumbukari mine site in the Madang Province, Papua New Guinea, have failed in their legal battle to prevent the China Metallurgical Group Corporation (MCC) and Australian-based Highlands Pacific from dumping over 100 million tonnes of waste from the Ramu Nickel Mine close to the shore – a practice banned in both China and Australia. The government issued the mine an environmental permit in 2010 despite objections from national experts." Quoted from "State of the World's Minorities and Indigenous Peoples 2012 Events of 2011 Edited by Beth Walker Minority Rights Group International June 2012 p.14 this was done under the controversial amendment to the Environment Act approved in June 2010. The legislation shelters resource projects from all litigation over the destruction of the environment, labour abuse, or landowner exploitation. Fiji Islands Business August 2010..

<sup>12</sup> Letters by Chairman Mahogany Trust **Refer Annex 5.A and B**

<sup>13</sup> Wadan Narsey The Road to Gold? Namosi. Mine **Refer Annex 6.**

<sup>14</sup> It was over land that independence was won 30 years ago in Vanuatu. Ni -Vanuatu always retain the ownership of their land according to the Constitution. Vexed at witnessing the erosion of their land holdings by sub-dividers, the so-called developers and greedy governments, their first resolution at the National Lands Summit 2006, made it clear that ownership must be determined by custom alone and only by indigenous ni-Vanuatu. And to stop governments realizing on a cut in any dealing, ministerial powers to approve a lease in any alleged dispute must be stopped forthwith.-Quoted from Fiji Island Business, August 2010, p.30.

<sup>15</sup> Following the Meeting of the Council of Chiefs in Mualevu under Sir Arthur Gordon, a request was sent to the Colonial Secretary, Earl Crewe, for the recognition of Fijian traditional qoliqoli rights in relation to their reefs in accordance with Fijian custom just like that of their reserve land. The result of this request was delivered by the next Governor, William Desvouex in April 1881, when he reported to the Meeting of Chiefs at Nailaga, Ba, that ".It is her Majesty's desire that neither you nor your people should be deprived of any rights in those reefs, which you have enjoyed under your own laws and customs."(Desvouex, W., 1886). Note on the Proceedings of the Native Council, held at Nailaga, Ba Province in November, 1881. Suva, Fiji: Government Printer, p.6.

## The history and role of the BLV

From time immemorial, Fijians selected their chiefs on the basis of their ability to look after them and protect them from the ravages of war and natural calamities to enable them to live in peace with other neighboring mataqali (sub-clan), in the Yavusa (Clan). The expansion of the Yavusa led to the creation of Vanua, the largest Social Unit below the level of Matanitu or Confederacy<sup>16</sup> which was the highest political unit that survived at the time of contact with Europeans and the outsiders, during the 18<sup>th</sup> and 19<sup>th</sup> centuries.

The running of these Yavusa, Vanua and Matanitu required alliances, meetings and settlement of disputes including major social intercourses in which the chiefs and their leading traditional advisers took pre-eminent roles.

One such historical meeting recorded by indigenous researchers was the meeting of all the eight Vanua in Fiji where people had settled shortly after their arrival, and the initial settlement of the three waves of migration of our ancestors, some 3500 years ago.<sup>17</sup> This was a national meeting called by Chief Lutunasobasoba at Nakauvadra. At this meeting, he was installed as the paramount Chief of the country and given the title (yacabuli) of Ratu. Other categories of Chiefs and craftsmen, skilled artisans, warriors and tillers of the land were also recognised. At this meeting, the Bete Levu Ni Kalou (the High Priest/or Spiritual Chief) was named; and acknowledged. This title was given to Degei No.2<sup>18</sup>.

This historical meeting affected the lives of indigenous Fijians in their new homeland as it provided the basis for their social organisation, protocol and way of life which has persisted to this day. That meeting stamped the importance of the role of chiefs in the lives of the Fijian people in their new land. The Fijians maintained their system of consultation with relevant chiefs and their people up to the present time.

Since early settlement to the time of ceding Fiji to Her Majesty, Queen Victoria of Great Britain, the chiefs have always had a voice in the governance of this nation. They are a

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<sup>16</sup> Refer to David Routledge (1985) *Matanitu: The Struggle for Power in Early Fiji*, Suva, Fiji: The university of the South Pacific, esp Chapter 1: Land and People.

<sup>17</sup> Kirch (2000). *On the Road of the Winds: An archeological history of the Pacific Islands before European contact*, Berkeley: University of California Press. p 109

<sup>18</sup> Motunitulevu Na-Rai (1925), *Ai Tukutuku Kei Viti: Ko Viti Makawa* Manuscript at the National Archives of Fiji

national unifying factor and have contributed not only to the enhancement of Fijian aspirations but for the aspirations of all the people of this nation.<sup>19</sup>

They have continued to do so and have had their role strengthened in the 1997 Constitution. Like all institutions, it is not perfect and has inherent weaknesses which required changes with time.

The unilateral suspension of the BLV by the head of the Regime therefore was not an isolated incident; it was part and parcel of a bigger agenda to plunder Fijian resources by weakening the apex of Fijian institutions. It is not the first time, this is happening, but unfortunately, it is the first time after independence when we should be in control of our country and our resources and it is being done presumably with the support of the Fijian military. The advice and the action taken represent the worst form of neo-colonialism in action in Fiji.

### **The earlier suspension of the BLV and the consequent land grab:**

The BLV has been disestablished with effect from 2007, a period of some 6 years for no good reasons other than to weaken the Fijian control over their land to facilitate the exploitation of their land through the land decrees as pointed out above.

The first time the BLV (then known as Native Council) was suspended was in 1905-1912 by Governor Everard im Thurn following the approval of the Land Ordinance of 1905 which was drafted by Sir Arthur Gordon following the meeting of Native Council at Mualevu. This recognised the ownership of most lands by Chiefs and mataqali and left little room for the European settlers who were demanding more land for expansion of their plantations and businesses.

It became evident to the European settlers that it was difficult to conduct the necessary transactions because of the cumbersome procedures that had to be followed. The Planters' Association lobbied government that the sale and leasing of land could be better managed if government had complete control.

A petition was sent to the Secretary of State for the Colonies for his approval. The Fijian chiefs were alarmed at this development and wanted assurance from the Governor towards the protection of indigenous interests. In London, Sir Arthur Gordon, then Lord Stanmore was frequently consulted by the Secretary of State on policy matters, especially relating to the far flung colonies.

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<sup>19</sup> Quoted from Ro Temumu Kepa-Roko Tui Dreketi Letter (2012). **Refer Annex 7.**

On 16 July 1907 he spoke strongly in the House of Lords against the sale of lands in Fiji and supported a motion to stop it. This he did, not only as former Governor but also in his capacity as a Fijian landowner, a Turaga i Taukei. In his speech in the House of Lords he said:

*"I am a Fijian land-owner. Her late Majesty was graciously pleased, when I left Fiji, to allow me to accept a gift from the Fijian people of two small islands of no commercial value, but the possession of which was sufficient to give me the title of Turaga i Taukei, a land-owning chief in the country. It is therefore, as one of their representative, that I come before your lordships.....Unless the protection of the state, which hitherto been afforded to them is continued, I see perfectly what the result will be. It will mean the end of the Fijian race"*<sup>20</sup>

In the course of the debate, the Secretary of State for the colonies, Earl Crewe, who was also a member of the House, outlined the evolving attitude of his office as being in line with that of Lord Stanmore, and the House approved the Bill.

In July 1908 the sale of native land was stopped. In his communication with the Governor of Fiji, the Secretary of State for the colonies, Earl Crewe stated that

*"he was inclined to think that the course of events the last 30 years had rendered it impossible for the Government of Fiji to adopt any position other than that the waste lands of Fiji must continue to be regarded as the property of the natives as much as the occupied lands"*<sup>21</sup>

With that experience, over 100 years ago, at the back of our minds, the recent disestablishment of the BLV can only be described as a major blunder which will take Fiji backwards some 30 years in our relationship in this country. And the way the BLV was summarily tossed out without courtesy of consulting the chiefs and their people, in Fijian protocol it represents the worse form of arrogance.

All these concerns are to be taken in the context of the rapid pace of modern life, the pervasiveness of a global culture and economic growth and development based on the insatiable desire for more and more wealth at the expense of the powerless and disadvantaged with its subsequent deleterious effects on the environment and the rapid depletion of natural resources. Fijians are now required to sacrifice more and more of their land, their identity, their institutions, their "lotu" and sacred Christian beliefs, for the new global agenda.

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<sup>20</sup> Parliamentary Debates (House of Lords), 4<sup>th</sup> Series, CLXXVIII, 480.

<sup>21</sup> Peter France(1969) The Charter of the Land: Customs and Colonization in Fiji, Melbourne: Oxford University Press,p. 161

All these have exacerbated Fijian insecurity and powerlessness. Such powerlessness has been exploited through manipulation by others as evidenced by the coups of 1987 and 2000. They need an anchor in the Constitution. Once their concerns are addressed in the supreme law of the land, with the consent of other communities through dialogue, we can dare to hope that we will indeed have a united and vibrant multi-ethnic Fiji.

In our endeavor to script a new Constitution and in consultation with other communities the fears and insecurities of Fijians must be addressed. Past leaders of various communities in Fiji have acknowledged these and have through several amendments to our Constitution have addressed the above concerns.

In deference to the Commission's members experience and in depth knowledge, we feel that a new Constitution cannot be written on a blank slate. It must be written in context. The 1997 Constitution is a compromise amongst the communities of Fiji. It was hailed as one of the best in the world to address multi-ethnic societies and its attendant difficulties. The present Regime expressed their very strong support for the 1997 Constitution in their Charter. It is the last negotiated Constitution and the conditions that prevailed during the process of its review in as far as the freedom of the people and political parties that participated, was significantly freer than what prevails at the moment. It is only logical that it should be used as the base and starting point for a new Constitution.

We acknowledge that there will indeed be compromises, these compromises must be made in a transparent and amicable manner and we are prepared to sit and talk through the difficult issues in consultation and dialogue with other communities and agreement under the appropriate forum. It is our hope that we can once again adopt a Constitution that addresses the concerns and hopes of all. It must be a Constitution by the people for the people. It cannot be imposed. Only then can we move forward as a united nation with a united vision.

### **A flawed constitution making process**

On Saturday 25th August 2012 the Head of the Constitution Commission was quoted as follows:

*"When we started with the exercise, I was a little concerned about whether the people would stay away because of fear, so we made our statement with the Prime Minister and the Attorney General and we said very carefully that this process will not work unless people are free and frank and able to speak their minds and to give us ideas",*  
(Fiji Times, 25 August 2012.)

We certainly have reservations about the process. From the beginning the process has been fundamentally flawed. Firstly, members of the Constitution Commission were appointed by the without any consultation with key stakeholders. There are serious reservations about the independence of certain members of the Commission who are perceived by the people to be too close to the current Regime.

Secondly, the restrictive environment in which the constitutional process is taking place will not encourage free and open discussions on the subject. Draconian decrees that suspend and violate human rights especially the right to freedom of expression, assembly and association, remain in force as instruments of fear and intimidation. The local media is still operating under constraints that undermine its freedom to disseminate news fairly and in a balanced manner without fear of repercussions from the Regime.

A civic education programme on the Constitution has been completed but key stakeholders, such as, political parties, trade unions and other important civil society organizations have been excluded from participating in this exercise.

Furthermore, while NGOs and other selected civil society organizations are allowed to hold as many meetings as desired under a one-off application for permit, political parties and trade unions have to seek separate permits for any meeting. Political leaders and party activists are still being closely monitored and harassed by the security forces.

We re-iterate, no meaningful dialogue or consultations can take place in such a restrictive climate. In short the process is not inclusive or participatory and it lacks credibility and legitimacy.

Thirdly, according to the head of the Regime's statement of March 9, 2012 the Constituent Assembly will determine the Constitution. But Decree 58 states explicitly that he will select the members of the Assembly and its Chairperson, there is therefore widespread concern that the Assembly will be stacked to ensure a pre-determined outcome.

We also note with some concern a recent government announcement that chairpersons of provincial councils will, from this year, be appointed by the Minister and not elected by members of the respective councils. There is little doubt, judging from past practice in such matters, that provincial councils will be invited to be members of the Assembly. The appointments to the Assembly is put back to December 2012, just days before the Assembly begins its deliberations. There has not been any consultation on the subject.



The Chairman of Constitution Commission criticized the Reeves Commission for not having many public debates around the country on their recommendations before sending them to Parliament.<sup>22</sup> The present process according to the Decree does not allow for any public debate on the Commission's recommendation before sending them to the Assembly. We are encouraged by the comments of the Chairman of the Commission that at the completion of the draft sample Constitution it will be sent back to the public for review.<sup>23</sup>

## **The electoral system**

The head of the Regime says the subject of a non-race based electoral system is "non-negotiable." We disagree. This is a crucial issue in ensuring racial harmony in the future and must be put to open discussions so that a fully representative system acceptable to all communities can be found.

There is much that is questionable about the manner in which the electoral process is being implemented. The Regime's Attorney General's office has taken charge of the voter registration process when it should be the responsibility of the Office of the Supervisor of Elections. In the interest of credibility, it is vital that the entire electoral process, including that of voter registration, be completely detached from the current Regime. The provisions relating to the 1997 Constitution on Registration of Voters (Sec 55: (1) and (7) and those of the Electoral Act 1998 and Regulations are not being followed, thereby, rendering the registration of voters under the Regime's Attorney General's office, a breach of the Act.

The registration of voters which is central to an election has been undertaken by the Attorney General but the residential qualification of two years before registration,<sup>24</sup> has been ignored and this can mean if there is no oversight, that there is some understanding that anybody with dual citizenship could fly in from the US, Australia, Canada or wherever, and vote or stand for election. This is going to complicate our elections. This is why our members would like to see the faces of all the people standing for their constituencies and assess their capability and commitment to Fiji before voting for them. This is why we also support a single member constituency as against a multi member one that does not create the same sense of familiarity and commitment to the constituents.

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<sup>22</sup> Cottrell and Ghai "The role of Constitution Building Process in Democratization". Case Study Fiji, 2004, p16).

<sup>23</sup> Quoted from Fiji Times article "Grievance over time" dated October 10,2012 p 6

<sup>24</sup> This was provided for in Section 55 (1) (C) and Section 55(7) of the 1997 Constitution.

The following appointments are essential to oversee the entire electoral process, independent of the political parties:

- Electoral Commission
- Boundaries Commission
- Supervisor of Elections

In the absence of a Constitutional Offices Commission (1997 Constitution), these appointments should be made by the President on the advice of a proposed caretaker government after due consultations with key stakeholders.

We refer also to the planned determination of the Constituent Assembly and the provisions for non – negotiable principles and values (as in Decree No. 58 of 2012) which are highly restrictive and prohibitive. How does the Commission expect the people to be free and open in an atmosphere of intimidation? These are concerns of ordinary citizens that are central to their lives.

### **In support of the 1997 Constitution**

- **The SDL Party proposes that the 1997 Constitution be the base for a new Constitution with amendments, to be agreed with the people of Fiji.**

In the preface to making a new Constitution and the legitimacy and credibility of the process, reference has to be made to the celebrated decision of the Fiji Court of Appeal Judgment of Thursday 9 April 2009,<sup>25</sup> which the Court declared that:

- “1a) The assumption of executive authority and the declaration of a State of Emergency by the First Respondent;*
- b) The dismissal of the 1st Applicant from the office of PM and the appointment of Dr. Jona B Senilagakali as caretaker PM;*
- c) The advice that Parliament be dissolved by Dr.J. B Senilagakali;*
- d) The order by the 1st Respondent that the Parliament be dissolved;*
- e) The appointment on Jan 5 2007 of the 1st Respondent as Interim PM and of other persons as his Ministers by President Uluivuda;*
- f) the purported Ratification and Validation of the Declaration and Decrees of the Fiji Military Government Decree of 16 January 2007, subsequently renamed as a Promulgation of the Interim Government of the Republic of Fiji, by which decree President Uluivuda purported to validate and confirm the dismissal of the 1st Appellant*

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<sup>25</sup> In the case *L. Qarase &Others v JV Bainimarama &Others*, the Fiji Court of Appeal on April 9<sup>th</sup>,2009

*as PM of Fiji, the appointment of Dr JBS as caretaker PM and the dissolution of Parliament were unlawful acts under the Fiji Constitution.”*

Furthermore the Court:

*“2) Declares that in the events that have occurred it would be lawful for the President acting pursuant to section 109 (2) of the Fiji Constitution, or as a matter of necessity, to appoint a caretaker Prime Minister to advise a dissolution of the Parliament and the issuance of writs for election of members of the House of Representatives”.*

Fiji has had three Constitutions since 1970 – the 1970, 1990 and 1997 Constitutions. It is the 1997 Constitution which has been hailed, both in Fiji and abroad, as one of the most comprehensive and practical Constitutions around. The SDL Party believes that there is no need to formulate an entirely new Constitution for Fiji. The 1997 Constitution contains all the essential elements of a good Constitution.

At this juncture, we refer to the article by Maria Laqeta “1997 Way Forward” in the Fiji Sun dated October 10, 2012.

*“Fiji was readmitted to the Commonwealth after it introduced a non-discriminatory constitution. Fiji rejoined as its 54th member following an application from the government for readmission. Fiji’s membership took effect from October. In welcoming Fiji to the Commonwealth after its membership lapsed ten years ago, Secretary General, Chief Emeka Anyaoku said, ‘The Commonwealth responded warmly to the wish of the people of Fiji that their country resumes its membership of the Commonwealth now that a new constitution has been approved which enjoys national consensus and which conforms with the Commonwealth’s Harare Principles’ “*

It is quite clear to all of us that the coup was not about the imperfections of the 1997 Constitution; the reason for the coup was a personal agenda of the head of the Regime.<sup>26</sup> He is just doing all these to give some moral justification to his illegal action. The Charter<sup>27</sup> although unrepresentative, even mentions the need to respect the 1997 Constitution as follows:

*“We the people of Fiji*

- Affirm that our Constitution represents the supreme law of our country, that it provides the framework for the conduct of government and the people...*

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<sup>26</sup> Statement by military officers on the FMF Commander’s reasons for carrying out the coup. **Refer Annex 8.**

<sup>27</sup> The Charter was just a repetition of the SDL Strategic Development 2007-2011 Refer Annex 9

- *We respect, appreciate and celebrate the diversity and the aspirations of our people. We recognize the freedom of our various communities to follow their beliefs as enshrined in our Constitution.*
- *We believe in an executive government answerable to the Parliament, an independent Judiciary, the Security Forces that enforce the law justly and are answerable to the government and Parliament in accordance with our Constitution.”<sup>28</sup>.*

The Party upholds the view that the 1997 Constitution remains the supreme law of Fiji, in spite of the military coup on 5th December, 2006 and the purported abrogation on 10th April, 2009.

This view is supported by a 2001 judgment by Justice Anthony Gates in the case – Koroi vs Commissioner of Inland Revenue – in which Justice Gates said;

*“It is not possible for any man to tear up the Constitution. He has no authority to do so... The Constitution remains in place until amended by Parliament, a body of elected members who collectively represent all of the voters and inhabitants of Fiji. The fundamental law represented in a constitutional document may only be changed in accordance with that Constitution”.*

In the case: L.Qarase & others vs J.V.Bainimarama & others, the Fiji Court of Appeal ruled on 9th April, 2009 that the 1997 Constitution is still in place. In the absence of an authoritative legal declaration that the 1997 Constitution has been abrogated, this submission affirms that it is still in place.

This Submission examines the 1997 Constitution chapter by chapter with proposals for amendments.

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<sup>28</sup> National Council for Building a Better Fiji (2008) *Peoples Charter for Change, Peace and Progress*, pp 2-6

## AMENDMENTS TO THE 1997 CONSTITUTION - RECOMMENDATIONS FOR THE NEW CONSTITUTION

### A) The Preamble

- **The SDL proposes the retention of the preamble to the 1997 Constitution.**

In our view the Preamble to the 1997 Constitution represents what is cherished and valued by the people of this nation. It reflects what is dear to their hearts and forces that shaped Fiji's unique political landscape. It should be retained in its entirety.

The Preamble to the 1997 Constitution addresses succinctly the forces that have shaped these islands: the arrival of the Fijians and Rotumans, the role of their chiefs, the Deed of Cession, the contributions of all communities, our common citizenship, and the recognition of fundamental freedoms and adherence to the rule of law. These are worthwhile declarations and give meaning and context to a new Constitution.

The Preamble also expressed clearly and eloquently the background of this nation as a 'Christian State', although it did not use this particular term. It says:

*"The conversion of the indigenous inhabitants of these islands from heathenism to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands and its contribution along with that of other faiths, to the spiritual life in Fiji".*

The Preamble ends with another Christian and/or spiritual affirmation:

"WITH GOD AS OUR WITNESS, GIVE OURSELVES THIS CONSTITUTION"

### B) Chapter 1

#### Section 1-The State

- **The SDL proposes that the Republic of the Fiji Islands is a sovereign democratic Christian state**

No state is religiously neutral. Neither can they be. However conceived, the state is shaped by humans who are naturally religious in character, and who carry within them their historical, cultural and religious heritage. These accordingly define the parameters of the state. In Fiji's case, this heritage is Christianity. The values and principles derived from the Christian religion over the past 177 years have not only shaped personal piety, but shaped our social, political and economic institutions, and the corresponding methods and requisite behaviours in each of these spheres.

By accepting Christianity, our ancestors accepted that their hitherto pagan (non-Christian, even anti-Christian) state would be Christianised into a Christian state. Through the influence of Christian martyrs and missionaries, and through the good order and institution-building of British colonialism, the Fijians made a willing submission to the Christian principle that the state is always under the sovereign authority of God. Fijians accepted that their state would not be an autonomous instrument that would substitute pagan idolatry for the idolatry of human reason – as underlies many of the ideological apologies that have over the same period of Fiji's existence defended the basis for a non-discriminatory (secular) state. Nor did Fijians propose a state that elevated itself to supremacy above God.

Rather, they understood that Fiji would be a state whose legislature, executive, and judiciary, are committed to establishing national life in all its spheres and varieties according to the values, assumptions, principles, and ethical guidelines that are Christian, Freedom of speech, freedom of conscience, equality before the law, and religious toleration are all foundational to such a Christian state. They are not the inventions of any so-called secular state. Rather they were built up over 1500 years of Christian argument, protest and martyrdom – today we take them for granted.

According to the British Prime Minister David Cameron:

*“Those who oppose this usually make the case for secular neutrality. They argue that by saying we are a Christian country and standing up for Christian values we are somehow doing down other faiths. And that the only way not to offend people is not to pass judgment on their behaviour. I think these arguments are profoundly wrong. And being clear on this is absolutely fundamental to who we are as a people.....what we stand for.....and the kind of society we want to build. First, those who say being a Christian country is doing down other faiths.....simply don't understand that it is easier for people to believe and practise other faiths when Britain has confidence in its Christian identity. Many people tell me it is much easier to be Jewish or Muslim here in Britain than it is in a secular country like France. Why? Because the tolerance that Christianity demands of our society provides greater space for other religious faiths too. And because many of the values of a Christian country are shared by people of all faiths and indeed by people of no faith at all. Second, those who advocate secular neutrality in order to avoid passing judgment on the behaviour of others.....fail to grasp the consequences of that neutrality.....or the role that faith can play in helping people to have a moral code.”<sup>29</sup>*

To honour our heritage; to guarantee our inherited liberties, rights and principles of justice; and to secure our national future under a sovereign God the Constitution should establish Fiji as Christian state.

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<sup>29</sup> British Prime Minister, David Cameron's speech. **Refer Annex 10.**

### C) Section 4 – National Language

- **The SDL proposes that the Fijian language be the national language (lingua franca)<sup>30</sup> of Fiji.**

Chapter 1, Section 4 of the 1997 Constitution provides that the English, Fijian and Hindustani languages have equal status in the State. They will continue to be the official languages of Fiji. Every citizen has the right to use any of the three languages to do business with a government department, an office in a state service or a local authority. Language is central to the culture of an ethnic community and it is important that the language of that community is promoted as a means of communication and preservation of a culture. In Fiji two immigrant languages have equal status with one host language, the Fijian language, thus giving the effect/impression that the host language, if not, the attendant Fijian way of life, is being marginalised<sup>31</sup>

The English language is a very strong international language and there is no reason to believe that this strong position is likely to weaken, even in the long term. India has become a strong force in the global economy, politics and international relations. With over one billion people of Indian origin around the world, the Hindustani language will surely become a strong international language as well.

The intense promotion of Indian language, culture through Indian films and Bollywood is concerning as are the others, TV films, sponsorship in the Media etc. How do we expect the development of our own Fiji Hindi to grow out of this morass? I understand that some of our public institutions are being involved and I would suggest they pay some attention with their public funds and their time to the development of our own Fiji Hindi and Fijian for that matter.

But there are only about 600,000 Fijians in Fiji and around the world. If the Fijian language is not promoted, the future of the language and Fijian culture would be at risk. There are basically several arguments in support of this proposal. First, a national language, particularly if it is the host language, would become a strong unifying factor for a multicultural Fiji. If every Fiji citizen is able to converse and communicate in the Fijian language it is likely that its impact on inter-personal relations, multiracialism, and national cohesion would be far-reaching. This is crucial in our national endeavor to forge a cohesive multi-racial Fiji. Successive governments have recognized this and

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<sup>30</sup> Lingua franca or working language is systematically used in communication between peoples' not sharing a mother tongue.

<sup>31</sup> Taufa Vakatale (2000) Multiculturalism versus Indigenous Cultural Rights: In *Culture, Rights and Indigenous Cultural Rights: Perspectives from the South Pacific*, Wellington, NZ: Huia Publishers, pp 69-81. **Refer Annex 11**

have at various times advocated the learning of the Fijian language in educational institutions and many political commentators have agreed that it has proven to be a strong unifying factor.

Second, the Fijian language as the national language should be the language of our national anthem. And third, the use of the Fijian language as our national language will ensure its promotion and the protection of Fijian culture from extinction.

If this proposal is accepted then it would be important to make it compulsory for all primary and secondary school children to learn and be conversant with the Fijian language. Special provisions should be made, however, for those adult citizens who cannot converse in the Fijian language or who because of age or circumstances cannot learn to speak the language.

The University of Fiji, the Fiji National University and the University of the South Pacific should have courses dedicated to the learning of the Fijian language. It should be a requirement that teacher intake have training in the Fijian language. These would attest to the recognition of the importance of strengthening the Fijian language and its role in nation building and the creation of a national identity.

All these provisions will assist to abate the latent and inherent insecurity amongst Fijians that their culture and way of life including their language is under threat. This would subsequently make them more willing to embrace other cultures and other ways of life, as contributing to a vibrant, multi-cultural Fiji. It is a well known fact nationally that in parts of Fiji (parts of Nadroga, Ba, Vanua Levu etc) where ethnic Indians have learnt to speak the local dialect they have enjoyed a more vibrant, tolerant and multi-cultural relation with their indigenous Fijian neighbors.

They have been known to participate in elaborate presentations of the “sevusevu” and the “qaloqalovi” in fluent local dialect. These examples of engaging in the local ethnic language has not in any way diminished their strong and proud adherence to their own Indian heritage and culture, it has to the contrary, made them more appreciative and more dedicated to its own survival and development. These pockets of cultural appreciation and tolerance are already showing the Fiji that we are all striving for.

- **The SDL proposes that fluency in the Fijian language be a pre-condition for entry into the Fiji Public Service.**

The colonial civil servants for example, were required to learn the Fijian language thoroughly as a condition of employment. These colonial public servants took these



regulations seriously and evidence of their writings, lectures and their addresses show a high level of understanding not only of the language but also of the Fijian way of life. Some such examples are Sir Ian Thomson, Sir Robert Sanders, GK Roth and Philip Albert Snow, Joseph W Sykes among others, as far back as the 1930s and 40s<sup>32</sup>

Recently graduate volunteers coming to Fiji to serve like the American Peace Corps, the Australian Volunteer Abroad and as well as the VSO from the United Kingdom, New Zealand (such as the NZ Scheme of Co-Operation in the 1950's, 60's and 70's) and others were also able to learn the Fijian language with high level of proficiency within one or two years when there was a requirement set for them to speak and understand a local language.

Therefore, Fijian being propounded here as a national language is not an argument for cultural supremacy and being "racist" but for inclusivity and a glue, being the host language, to hold together the rich and diverse cultures of people who have chosen Fiji as their home. It also inculcates a sense of belonging and identity. We can speak freely with our neighbors and it takes away misunderstanding and suspicion. If we can all speak Fijian then we can truly feel nationalistic about our country. English as the present lingua franca will never inculcate the same sense of belonging. It is a foreign language to the islands and to the two dominant cultures.

The added advantage here is that if we all speak Fijian it will solidify its survival and development. No one would like the demise of the language of a unique race of people with their rich cultural heritage and proud history. There is sufficient research to show that language is at the core of cultural identity and cultural preservation. Once a culture loses its language, it loses a central pillar of its cultural ethos. As a Pacific linguist, Dr Melenaita Taumoefolau once said to a Pacific Post Graduate Symposium:<sup>33</sup>

*"Our language is like a container; inside the container is a set of values and beliefs that make us what we are as a people. Our behavior, customs, traditions, our ways of thinking ,our fa'a Samoa, our anga faka Tonga, are all package into this container called language. We lose the container, we lose also the contents. We lose our language; we lose also our distinctive ways that define us to ourselves, and to the world."*

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<sup>32</sup> Sir Ian Thomson delivered his Leadership Lecture in honor of Ratu Sir Penaia Ganilau to the Great Council of Chiefs at the then Trade Winds Convention Centre in 1998 in fluent Fijian language for example. Sir Robert Sanders who was Secretary to the First Independent Cabinet of the Alliance Government of Ratu Sir Kamisese Mara in 1970 was also fluent in the Fijian language.

<sup>33</sup> Melenaita Taumoefolau(2004) ' A place to Stand' In Baba,T et al *Researching Indigenous and Pacific Peoples*, Auckland: Centre for Pacific Studies, University of Auckland, pp 63-67

## D) Section 5 – State Religion

- **The SDL Party proposes that “Christianity” be proclaimed the state religion of Fiji.**

A state religion is a religion officially endorsed by the state. A state with an official religion, while not secular, is not necessarily a theocracy.

A state religion is a government approved religion. It does not mean that the state is under the direct control of any established church. Nor does it mean that the religion is under the control of those enacting or representing the business of the state (whether elected or self-appointed). The state and religion remain separate, but are free to exert a non-coercive influence on each other as befits Christian principles and practices that underlie modern democracies.

A state religion is neither a state-sanctioned nor state-subsidised denomination. It is religion understood in its broadest sense. It is religion as an ethos, a system of values and guiding principles to be confessed and adhered to. In this regard, it is generally accepted that there are five world religions – Hinduism, Judaism, Buddhism, Christianity and Islam. Of these, State religions existed in many countries around the world centuries ago. In some instances they were written into the Constitutions of those countries. In recent times some countries have removed state religions from their Constitutions, as part of the process of separation of powers between state and religion. In other countries the removal of state religion reflects the weakening of a country’s faith in God, our Creator.

There are strong arguments in support of this proposal to establish a state religion. If Fiji adopts a state religion it will not be the first in the world. The following states recognize some form of Christianity as their state or official religion (by denomination):

### Catholic

- Costa Rica
- Liechtenstein
- Malta
- Monaco
- Vatican City (theocracy)

A number of countries, including Andorra, Argentina, Dominican Republic, El Salvador, Italy, Paraguay, Peru, Poland, Portugal and Spain give a special recognition to Catholicism in their Constitution despite not making it the state religion.

### Eastern Orthodox

Jurisdictions which recognize one of the Eastern Orthodox Churches as their state religion are:

- Greece - Church of Greece
- Finland - Finnish Orthodox Church

### Protestantism/Lutherism

Jurisdictions which recognise a Lutheran church as their state religion include:

- Denmark - Church of Denmark
- Iceland - Church of Iceland
- Finland - Evangelical Lutheran Church of Finland
- Sweden - Church of Sweden

### Reformed

Jurisdictions which recognize a Reformed church as their state religion:

- Scotland - Church of Scotland
- Tuvalu - Church of Tuvalu

### Anglican

Jurisdictions that recognize an Anglican church as their state religion:

- England - Church of England
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Why “Christianity” as the state religion? There are several reasons in support of this proposal. First, our High Chiefs who ceded Fiji to Great Britain in 1874 wanted to secure “...the promotion of civilization and Christianity”<sup>34</sup> alongside trade and industry, order and good government for the people of Fiji. Second, “Christianity” was the first religious faith to be introduced, and accepted by Fijians in 1835. And third, more than half of the population of Fiji now is Christians, making Christianity the largest religious faith in the country.

These suggestions do not take away the right of every Fiji citizen to practise their religion and belief as contained in Chapter 4 - Bill of Rights of the 1997 Constitution. The SDL will also be recommending later under the Presidential powers that the President would be the protector of religious freedom in Fiji.

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<sup>34</sup> Refer to RA Derrick (1974) *A History of Fiji* (vol 1), Suva, Fiji : Government Press, Appendix ,pp.i-iii

## **E) Chapter 2 – Compact**

- **The SDL proposes that the Compact**

The compact as a compromise that addresses the concerns of the various communities in Fiji especially that of the rights of all communities are fully respected, the ownership of Fijian land according to Fijian custom, the right to practice religion freely and the right to retain language, culture and traditions, the rights of the Fijian and Rotuman people, include their right to governance through separate administrative systems, affirmative action and social justice programs and the equitable sharing of economic, commercial and political power etc. All these provisions address some of the concerns raised in the Preamble to the Submission.

The writers of the 1997 Constitution realized these concerns and drafted the Compact accordingly. Furthermore the application of the Compact is non-justiciable hence not legally binding except to the extent that they are made the subject of other provisions of the Constitution giving it room for negotiated solutions where there are disagreements. The only exception will be reference to the rights of landlords and tenants under the leases of agriculture (ALTA). We will be recommending in the latter part of this submission that ALTA be removed from the constitution.

The concern is that the non-discrimination principles (non-negotiable) may abolish references contained in the Compact. This can generate negative feelings among communities who fought long and hard through their representatives to include these issues in the 1997 constitution. All that they felt was secure including their institutions could be abolished. We seek the Commission's consideration in aligning the non-discrimination principles with these very real concerns. These provisions must be thoroughly discussed with the all communities.

## **F) Chapter 3 – Citizenship**

- **The SDL Party proposes that dual citizenship in Fiji should not be allowed.**

Chapter 3 of the 1997 Constitution sets out the provisions for citizenship. These provisions have been accepted by previous Governments since the Constitution came into force in 1998. However, the Regime, by Decree, has promulgated provisions to allow dual citizenship under specified conditions.

In support of this proposal, it is submitted that the loyalty of people with dual citizenship will always be questionable. No person can serve two masters, so to speak. Loyalty to one country should be absolute. Loyalty should not be shared between two or more countries.

One of the main reasons for allowing dual citizenship is to encourage people to invest in Fiji. This is a rather weak argument. People invest in other countries for profit, not for the love of those countries. If the investment environment is right and there is good profit to be made then people are likely to invest in that environment. For genuine investors the issue of citizenship is not relevant. In granting dual citizenship there is a risk that people who enjoy this privilege simply want to enjoy the benefits that the two countries can offer.

#### **G) Chapter 4 – Bill of Rights**

- **The SDL recommends that the term “sexual orientation” under Section 38 (2) (a) to be deleted**

Consistent with Christian practice in cultural matters, we hold that the Biblical template for marriage is a divine ordinance of God between a man and a woman like Adam and Eve in the Garden of Eden. Marriage symbolizes Gods union with humanity and it carries with it the divinely-ordained responsibility to love, multiply and foster the human species, through family and parenting. The basis of a nation depends on the strength of the family. It should be nurtured and developed, the propagation of homosexuality and the consequential effects of such a lifestyle on the family unit would be against Christian values and practice.

Consistent with Christian understanding of the fallen condition of human nature, and of Biblical norms to love one another as God loves us, we hold that homosexual, gay, lesbian, same-sex oriented persons and groups are included in the same definitions of human nature that affect heterosexual, straight persons and groups – namely, that we are all sinners (there is none righteous) in need of grace, but that all are correspondingly blessed with the capacity and responsibility to demonstrate our love for each other in ways sanctioned by Jesus Christ himself. Gay persons have a rightful expectation to love and companionship like anyone else, but this does not extend to including a right or demand to avail themselves of the blessing and benefits of Biblical, Christian marriage. That practice, if permitted and adopted by the state, would contravene Biblical order and go against the history of Christian practice.

Furthermore, this particular provision did not come from the recommendations of the members of the Committee; it emerged as a result of the drafting process. "...the legal drafters have managed to sneak in an idea or two of their own. It seems that the inclusion of sexual orientation as a prohibited ground of discrimination comes from the drafters; certainly it is not in the Reeves Report!"<sup>35</sup>

- **The SDL party therefore expects a Constitution which respects marriage and establishes its parameters according to Biblical order, historic Christian practice. Same-sex marriage is not an option.**

#### H) **Chapter 5 – Social Justice**

- **The SDL proposes that the current provisions to remain**

This is an important provision in a Constitution as it addresses the inequalities that exist in societies and the specific targeted programmes to assist them. These programmes are also time bound.

The retention of this provision is once again a concern for us as it may not be in agreement with the non-discrimination principle.

The SDL had already implemented various social justice programmes in implementing the provisions of the Constitution.<sup>36</sup>

#### I) **Chapter 6- The Parliament**

- **The SDL Party proposes that the Parliament should continue to consist of the President, the House of Representatives and the Senate.**
- **It is proposed that the House of Representatives should continue to consist of 71 members. But of the 71 members 25 are to represent different ethnic communities, roughly in proportion to their numbers in the population. At this time, the allocation of the 25 seats could be as follows:**

i.	Fijians (56%)	-	14
ii.	Indians (36%)	-	9
iii.	Others ( <u>8%</u> )	-	<u>2</u>
	<u>(100%)</u>		<u>25</u>

<sup>35</sup> Jill Cottrell and Yash Ghai "The Role of Constitution-Building Process in Democratization. Case Study Fiji, 2004 p.16

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<sup>36</sup> Report on the Implementation of Affirmative Action Programmes -Opportunities for all **Refer Annex 12**

- **Elections of the 46 seats should be based on the principle of “one man, one vote”, in single member constituencies with an appropriate MMP proportional representation system.**
- **The election of the remaining 25 seats could be done from party lists in proportion to the support of the party in a similar MMP proportional representation system.**
- **It is proposed that the Senate should continue to have 32 members, and that the present methods of appointment should remain.**
- **It is also proposed that the provision for compulsory voting (Section 56) for election to the House of Representatives should be removed.**

In support of the above proposals it is submitted that the Constitution of a country should organically evolve over time. The 1997 Constitution has been the supreme law for just over 10 years during which time two coups took place (2000 and 2006). The coups were not due to defects in the Constitution as such but to other reasons. However, many people recognized that some changes would appear to be necessary. In the normal course of events, some changes would be effected in the evolutionary process of our Constitution.

But the coup of 2006 has overtaken the evolutionary process; hence the Constitution-making process is upon us once again.

The movement from communal voting to election under the principle of “one man one vote” has been gradual since independence in 1970. Many people believe that this has been in the best interest of a multi-racial country such as Fiji. The 1997 Constitution prescribes a total of 71 seats in the House of Representatives with 46 communal seats and only 25 “open” seats. The proposal in this submission is to reverse this ratio with 25 communal seats and 46 open seats. This would be consistent with the gradual movement towards the principle of “one man, one vote, one value,” and it supports the single member constituency for the majority of seats. It would encourage people to move away gradually from racial voting.

The MMP system recommended by the SDL here is one that combines constituency voting and party voting and is similar to the one currently used in New Zealand where the voters have two votes: one for the constituency vote and the other for the Party vote.<sup>37</sup> The former determines the vote for the constituency seat and the latter, the proportion and number of seats to be won from the Party list. If the Party wins 58% of the party vote for example, the Party will win 58% of the number of seats being contested from its party list. The names of people in the Party list are to be determined by the Party concerned.

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<sup>37</sup> Case Study: New Zealand Learning to Live with Proportional Representation. (MMP). Refer Annex 13.

This system of voting meets all the requirements with respect to the principle of 'one man, one vote and one value.

There may also be a need to write into the Constitution a provision that would regularly require a review of the system of election every ten years. There is a need to also adjust the percentages according to the changes in population.

### *The Senate*

The SDL Party believes that it is necessary to retain the Senate as part of our Parliament. The Senate, through its membership, connects the BLV directly with the political life and governance of our country. There have been criticisms of the Senate as a burden on taxpayers, particularly with only a review role to play in our Parliament. But it is submitted that the Senate has played an important role in reviewing legislations and in safeguarding the provisions of entrenched legislations. It has had a steadying influence in the political life of our country. It also allows the nomination of suitable and distinguished Fiji citizens to take part in political governance who may be able or who may not wish to participate in the electoral process.

### *Compulsory Voting*

Compulsory voting has not worked in Fiji. Voting on a voluntary basis has been reasonably high compared to many other countries around the world. There have been three general elections under the 1997 Constitution which provides for compulsory voting (Section 56), but no one has been taken to task for not voting.

It should be noted that the proposal regarding the House of Representatives in this submission will require consequential amendments to many sections under this chapter.

## **J) Chapter 7 – Executive Government**

### ***President and Vice-President***

- **The SDL proposes the following:**
- **the nomination of the President is to be done by all communities in Fiji and the President is to be elected by both Houses of Parliament in a joint sitting.**
- **the position of Vice President is to follow similar procedures.**
- **the President/Vice President is to hold the office for a term of five years and is not renewable.**



The office of the President is established under Section 85 of the 1997 Constitution. The President is the Head of State (S.86) and the Commander in Chief (S.87). The office of the Vice-President is established under Section 88.

For national unity and for the President to be more representative of the people it would be important to have a President who has the broad support of the people of Fiji. The main issue is the method through which the President is chosen. It is here suggested that the main communities in Fiji submit their nomination for President as follows:

- The BLV to nominate a Fijian/ Rotuman candidate
- Indian body to nominate an Indian candidate
- Other communities to nominate a candidate

The names of the candidates to be forwarded to Government, which then submits to Parliament and a President to be chosen through votes at a joint sitting of the House.

- *Powers of the President*

- **The SDL proposes that the powers of the President are to be clearly defined in the Constitution and there be no ambiguity in the limits of his powers particularly in the perceived retention of “reserve powers”. The Constitution is to clearly state that the President has no reserve powers except those that are defined in the Constitution.**

The powers of the President have been at the core of legal interpretations in the court cases in regards to the coups particularly the perceived reserve powers of the President. It is crucial that the powers of the President be clearly defined and that he or she acts within these.

There have been instances in the recent past especially prior to and during the coups whereby individuals have had undue and excessive influences on the office of the President. The Constitution is to state clearly the protocol and procedures wherein the President is to receive advice and for him to act in his own deliberate judgment.

- **The SDL proposes that the Constitution to state that there be no undue and unwarranted influence on the office of the President.**
- **The SDL proposes that the Constitution to establish a Council of Advisers<sup>38</sup> to assist the President when he is required to act in his own deliberate judgment.**

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<sup>38</sup> This council would consist of the President and three other members: one nominated by the Prime Minister one by the leader of the opposition and another by the President

Any unwarranted attempts to put pressure on the President's office by whatever means should be regarded as a very serious offence under the Penal Code<sup>39</sup>

- **The SDL proposes that the president is charged with the responsibility of protecting the rights and freedom of individuals and communities with respect to their faiths, beliefs and conscience.**

An additional power to be given to the President is that of a protector of religious rights and freedoms under the Constitution. Because of the differences in religion and beliefs in a multicultural society, the rights to freedom of worship and conscience should be protected by no other than the office of the President.

- *Removal of the President*

As the highest symbolic office of the country, and espousing all the fundamental principles of good governance, the rule of law, transparency, equity, fairness and high moral standards the office of the President, should be protected from persons unworthy of the position. And those found in breach of the law or other offences should be removed from office after appropriate procedures.

**The SDL proposes the following:**

- **The procedure for removing the President will follow the steps mentioned in Section 93, 1997 Constitution, but to replace BLV for Parliament.**
- **The grounds for removal of the President in addition to Section 93 of the 1997 Constitution is to include, treason, and intentional violation of the constitution, misconduct, fraud, dishonesty or corruption involving abuse of powers of the office of the President. The final decision will rest on Parliament.**

- *Cabinet Government*

- **The SDL Party proposes that the multi – Party Cabinet provisions in the 1997 Constitution should be removed.**

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<sup>39</sup> This is to be appropriately recognized in the Fiji Penal Code.

The multi-Party Cabinet is prescribed under Section 99 of the 1997 Constitution. After the General Election in May, 2006 a multi-Party Cabinet was established led by the SDL Party. On the surface it appeared to work between May, up to the military coup on 5<sup>th</sup> December, 2006. The issue of confidentiality of Cabinet papers was a problem. Were the Ministers from the other Parties responsible to their Party Leaders or to the Prime Minister on Cabinet issues? It was difficult to draw the line. Voting in the House of Representatives also became a problem, particularly on sensitive issues such as land, affirmative action and so on.<sup>40</sup>

The principle of “winner takes all” after a General Election should remain in the formation of Government in the sense that the party or coalition of parties announced before the election that has won the most seats and forms a majority has responsibility to form the government’s ministry. The problems that were starting to surface in Cabinet between May and December 2006 would disappear. The accountability of Ministers in Cabinet to the Prime Minister will be clear without any ambiguity. The question as to who the “Opposition” is will not arise. This proposal is not to say that a Multi-Party Cabinet cannot be established. This should be a decision of the Prime Minister in consultation with his party. But such a multi-Party Cabinet will be based on a voluntary basis and with willing partners.

It should be noted that this proposal will require consequential amendments to other sections of the 1997 Constitution.

- *Republic of Fiji Military Forces*

The Republic of Fiji Military Forces (RFMF) is established under Section 112 of the 1997 Constitution. The RFMF has been in existence long before Fiji’s independence in 1970. Its reputation as a professional and efficient force has been acclaimed both in Fiji, and overseas. The RFMF’s distinguished service in the Solomon campaign during the Second World War; its service in the Malayan Campaign; and its outstanding peace – keeping services under the UN peace–keeping missions overseas are good examples of the RFMF’s acclaimed military achievements internationally.

The year 1987 saw a drastic change in the RFMF’s role. The two coups of 1987, the coups of 2000 and 2006 were initiated and executed by the RFMF. The coup of 1987 witnessed for the first time the RFMF’s intervention in the political leadership and governance of Fiji. Unfortunately for Fiji, this intervention again occurred in 2000 and 2006. Many theories and reasons have been put forward as to why the coups occurred.

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<sup>40</sup> “The practical and theoretical difficulties and consequences of power sharing were clearly not thought out and the courts have been unable to offer a solution. As has already been noted the concept was not recommended by Reeves. It appears to be inconsistent with section 6 (g) of the Constitution” -Quoted from “Achieving Democracy in Fiji – A View from the Bench” Justice Michael Scott, Fiji Court of Appeal Sheraton Fiji, 8<sup>th</sup> September 2005.

No doubt, these will be explained in our history books. However, the SDL Party believes that this coup cycle must stop. In this regard, it is important that the role and functions of the RFMF must be established clearly and without ambiguity. There should be provisions in our Constitution and in other laws to effectively deter the RFMF or anyone else from contemplating the illegal removal of future Governments.

- **It is proposed that Section 112 (1) of the 1997 Constitution be amended by removing reference to the 1990 Constitution.**

The RFMF should be subservient to the Government of the day. There should be no room whatsoever for the military to intervene in the political leadership and governance of Fiji.

The four coups since 1987 have had disastrous effects on the country as a whole, not least its economic, social and cultural integrity. There is enough evidence to show that after each coup the Fiji economy slumped; unemployment increased; poverty levels increased; education and health services and standards were badly affected; and public infrastructure were often in dire need of repairs and maintenance. Reference is made to Fiji Times article page 6, dated 10 October 2012 *“What we have generally found out is that members of the public are not satisfied with the services that the government provides them.”* The cumulative effects of all these military interventions have pushed Fiji, in terms of international comparisons, to positions far inferior to other countries with similar resources and characteristics.

- **The SDL proposes appointment of the Commander is to be made by the President on advice of Cabinet.<sup>41</sup>**
- **The SDL proposes that Parliament must review the Fiji Military Forces Act to undertake the following: determine the size of the military as approved by Parliament from time to time; the minimum qualifications requirements of the Commander.<sup>42</sup>**

The military in Fiji has one of the highest ratios of military personnel relative to Fiji’s population.<sup>43</sup> They have consequently also become a very heavy burden to the nation’s

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<sup>41</sup> A change from the advice of the Minister to that advice to be given by Cabinet for the appointment of the Commander of the RFMF

<sup>42</sup> Footnote-Reeves Commission Towards a United Future 1996 pp 413-415

<sup>43</sup> List of Countries by Number of Military and Paramilitary Personnel . Refer Annex 14

budget.<sup>44</sup> The overall cost of keeping the military in its present state is unsustainable for our economy. A cut in numbers will divert much needed financial resources to productive sectors of the economy and to assist programmes for the poor and disadvantaged.

#### **K) Chapter 8 – Bose Levu Vakaturaga (BLV)**

- **The SDL Party proposes that the BLV be established under the Constitution;**
- **The Party also proposes that a BLV Act be passed by Parliament, setting out the role, functions, powers etc of the BLV.**

The BLV is established by Regulations under the Fijian Affairs Act. The BLV is the pinnacle of the Fijian social structure, and yet it does not have a stand-alone legislation for itself. Despite criticisms leveled against it over the years the BLV has continued to provide good leadership for the Fijian people. Also, the BLV has provided wise advice to previous Governments on matters affecting the nation generally and the Fijian people in particular. The BLV has been a unifying factor and a stabilizing influence during periods of uncertainties in Fiji.

The establishment of the BLV under the Constitution will elevate the position of the BLV to its rightful position. This recognition under the Constitution will also reflect broadly the views, attitudes and acceptance of the BLV by different ethnic communities in Fiji. In addition, a stand – alone BLV Act will set out more clearly the role, functions, funding etc of the BLV. The Act will also create the proper legal framework to commit the BLV to more accountability of its work, and to its readiness to initiate and/or embrace changes when they become necessary.

The Act to also stipulate the progression of the BLV towards the following objectives:

- i) To provide financial independence and autonomy in relation to the operation and administration of the Bose Levu Vakaturaga (BLV).*
- ii) To provide funding for the undertaking, promotion and sponsoring programmes on Fijian language, culture and the study of ethno-history, and ethno-geography and epistemology ( Fijian) knowledge and way of knowing).*
- iii) To provide funding to help develop the management, leadership and entrepreneurial skill of the indigenous Fijians and Rotumans*

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<sup>44</sup> Wadan Narsey-2011 Budget Oscars: burdening future generations Refer Annex 14.

*iv) To sponsor research into languages, art and culture of indigenous Fijians and Rotumans and the better understanding and preservation of their heritage*<sup>45</sup>

- **The SDL proposes that monies gathered from the leases delegated to extinct mataqali are not assigned to landowning units (Schedule A and B) be utilized for the establishment of the BLV and to fund all other worthwhile Fijian projects.**

It is imperative that for the independence of the BLV, that its role is clearly defined and that it be apolitical. It should ensure that its resources are geared towards the protection of the cultures and traditions of Fijians. Of importance is to strengthen Fijian participation in business and commerce and to have oversight on indigenous resources and their sustainable use.

## **L) Chapter 9 – Judiciary**

### **Provisions to remain**

- **The Party proposes the provisions for the independence of the judiciary as a vital component in good and transparent governance. This is to ensure the effective administration of justice that is seen as fair and equitable by Fiji Citizens.**

The recent findings of the International Bar Association's Human Rights Institution (IBAHRI) in its recent report on Fiji, titled "*Dire Straits: A Report on the Rule of Law in Fiji*", the Petition of William Roberts Marshall QC, SC, former Resident Justice of Appeal Fiji and the new State Proceedings decree which states the current Regime can openly say whatever they want against any individual or organization, whether it is defamatory or not and absolves the media from any legal action for broadcasting or publishing any comments by them have all revealed a very alarming trend in the interference into the judiciary and equity of all citizens before the law in terms of seeking redress.<sup>46</sup>

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<sup>45</sup> Quoted from the Fijian Trust Funds Act 2004. Refer Annex 16

<sup>46</sup> Refer State Proceedings (Amendment) Decree 2012, which provides that no media organization can be held liable for publication of statements, whether verbal or written, made by the Prime Minister or any Minister of Government, whether in their official or personal capacity. The Decree is consistent with the Parliamentary privilege as was applicable in Fiji and which is applicable in countries throughout the Commonwealth

## **M) Chapter 10 – State Services**

### **Provisions to remain**

## **N) Chapter 11 – Accountability**

The party is of the view that the office of the Ombudsman and the Auditor General has wide ranging powers but in the past has been unable to fully carry out their functions because of lack of manpower and financial resources. With adequate resources and manpower these important posts in a democratic system will be fully functional and elevated to their rightful positions.

## **O) Chapter 12 – Revenue and Expenditure**

### **Provisions to remain**

**To include in Section 184 (1) the following:**

- **Any moneys required to satisfy judgment decision or award against the Government by any court or tribunal<sup>47</sup>**

This will mean that such payments are a direct charge on the Consolidated Fund and do not require approval of Parliament and provides assurance for those to whom payments are to be made.

## **P) Chapter 13 – Group Rights**

- **It is proposed that ALTA be removed as a protected legislation under Chapter 13 – Group Rights, of the 1997 Constitution.**
- **It is further proposed that the native lands be removed from the ambit of ALTA, and that all native lands should be administered under the Native Land Trust Act.**

The Agricultural Landlord and Tenant Act (ALTA) is one of the protected legislation under Chapter 13, Section 185 of the 1997 Constitution. The other legislation protected under this section includes the Fijian Affairs Act, Fijian Development Fund Act, Native Lands Act, Native Land Trust Act, Rotuma Act, Rotuma Lands Act, Banaban Lands Act and Banaban Settlement Act.

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<sup>47</sup> From the Singapore Constitution

The protected legislation under Section 185 (1) (a) to (h) can be amended by both Houses of Parliament if the following conditions are satisfied:

- a) The Bill to amend an Act has been read 3 times in each House and motions for the second and third readings are carried in each House (simple majority);
- b) At the third reading in the Senate the Bill is supported by the votes of at least 9 of the 14 members nominated by the Bose Levu Vakaturaga.

Whereas, a Bill to amend ALTA under Section 185 (2) must satisfy the following conditions:

- a) The Bill has been read 3 times in each House and motions for the second and third readings are carried in each House;
- b) At its third reading the Bill is supported by the votes of at least two – thirds (66%) of the members of each House, and in the case of the Senate by the vote of at least 9 of the 14 members nominated by the BLV.

Clearly, it is more difficult to amend ALTA than any other Act under Section 185 (1) (a) to (h). ALTA is more “protected” than any of these Acts or any other Act in our statute books. The Act establishing Fiji’s Constitution is the only other Act that is more difficult to alter as set out under Section 190 of the 1997 Constitution.

There are two main reasons in support of the proposal to remove ALTA from Section 185 (2) of the 1997 Constitution. First, ALTA is not about “Group Rights”. It is about the rights and obligations of people who own (landlord) and those who lease (tenant) agricultural land, including native agricultural land. ALTA is an unjust legislation because it takes away the function and authority of the Native Land Trust Board with respect to native agricultural land. Sections of the Native Land Trust Act have been removed from NLTA and transferred to ALTA.

By this act the owners of native agricultural land have virtually no say in the administration of their land. Also the NLTB, as trustee for all native land, have their powers over native agricultural land removed and conferred upon ALTA.

Second, ALTA is the most difficult legislation to amend, next only to the 1997 Constitution itself. ALTA has become a ‘political football’. It has been impossible to amend because of political considerations rather than the best interests of landlords and tenants and for Fiji. All native land should be administered by the Native Land Trust Board and no other agency.

The NLTA is the right legislation. Any changes to the relationships between landlord and tenant must be made under NLTA and no other legislation. The inclusion of Native



Agricultural Land (NAL) into NALTA will remove a serious problem area for landowners. It may also provide a real opportunity for the rapid and proper utilization of native land in the best interests of Fiji's national development efforts.

**For those “Group Rights” legislation under Section 185 (1) (a) to (h) of the 1997 Constitution the SDL proposes that the votes required to enable the Bills to pass both Houses of Parliament be as follows:**

- (a) Second and third readings in both Houses pass with simple majority;**
- (b) Third reading is supported by 75% in the lower House of the indigenous Fijians (including Rotumans and Banabans) who voted for the Bill; and**
- (c) In the Senate the third reading is supported by 75% Senators appointed by the BLV.**

This proposal will ensure effective “protection” of the legislation under Section 185 (1) (a) to (h) of the 1997 Constitution.

Customary law and customary rights

- The SDL proposes the retention of Section 186.**

In many Pacific island countries,<sup>48</sup> the custom of indigenous people is expressly recognized as a source of law ranked number three, in the hierarchy of sources of law after the Acts of Parliament and the Constitution which is the supreme law. This is crucially important today in the seven Pacific Islands where Customary Law is recognized in the Statutes and the Courts, as most of the judges are educated and trained in the Western concepts of law but they are required to take indigenous customs and customary law concepts into account when applying derived common law principles.

Fijian customary law was recognized in the 1990 Constitution under Section 100 (3). However, this was not carried over into the 1997 Constitution. Nevertheless, statutes relating to indigenous Fijian fishing rights in accordance with custom were requested by

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<sup>48</sup> Such as the Cook Islands, Kiribati, Marshall Islands, Nauru, Niue, Vanuatu and PNG. These countries all have Customary Law enshrined in their Statutes .

the BLV to the Government in 1982 to be codified into law as required by Section 186(2) of the 1997 Constitution.

Similarly a request for a Land Claims Tribunal Bill, to allow the opportunity of some 500 or so landowning units with petitions in the Ministry of Fijian Affairs who are seeking redress for what they deeply felt were the dishonest alienation of their land through unscrupulous dealings. Unfortunately, these SDL initiatives were strongly opposed by other races and this was used by the Commodore Voreqe Bainimarama as an excuse to gather their support for his removal of the SDL government.

These issues will continue to fester and will not go away so long as we treasure and protect the rights of all our citizens irrespective of whether they are indigenous Fijians or whoever else they are, under the law and the Constitution. It is important as a law abiding country that we resolve these issues under the provisions of the law. Customary Law provides appropriate mechanisms for these types of issues to be resolved as is being done in many progressive democracies where there is significant proportion of indigenous people in the population. These issues are recognized in the UN Declaration of the Rights of Indigenous Peoples (2007)<sup>49</sup>.

- **The SDL proposes that Parliament is to make provisions for the legislations in accordance with Section 186(1) for the operation of customary law and for dispute resolutions in accordance with traditional Fijian processes.**

**Q) Chapter 14 – Emergency Powers  
Provisions to remain**

**R) Chapter 15 – Amendment of Constitution  
Provisions to remain**

**S) Chapter 16 – Commencement, Interpretation and Repeals  
Amend as appropriate**

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<sup>49</sup> The provisions of this UN Declaration of the Rights of Indigenous Peoples are contained in the Appendices of this Submission.

#### 4. NEW PROVISIONS

##### (i) Common name – Fiji Islander

- **The word “Fijian” used for indigenous Fijians only**
- **“Fiji Islander” remains the common name for all Fiji citizens**

The Regime has decreed that all Fiji citizens be called Fijians ***the SDL is not against a common name***. This has been an issue of national importance to build a cohesive Fiji. But this must be done with wider consultations especially with the concurrence of Fijians and of all communities. This imposition by the Regime is unacceptable and objectionable to the Fijian people. It has completely trampled on the right of the indigenous people to be heard on such an important issue. It is common protocol and courtesy to request for a name you want to acquire from one who already has that name. This imposition of a national common identity is not the way to build a harmonious multicultural society for the future.

Contrary to some recent comments the word “Fiji” is a corruption of the word “Viti”<sup>50</sup> by the Tongans who pronounced it “fisi” which was further modified by the early Europeans into “Fiji”. The islands were from then on referred to as Fiji and its inhabitants as Fijians.

As far back as the 19<sup>th</sup> Century the word “Fijian” has been used to identify indigenous Fijians. “Fijian” is used in much legislation, including the 1997 Constitution. In all these laws the word “Fijian” refers to indigenous Fijians. The indigenous peoples of Fiji are well documented in history and in other academic work as Fijians. Their poetry, dances, works of art, tradition and culture are documented as Fijian.

The indigenous Fijian people have molded through sports, active military participation, unique cultural heritage etc a Fijian identity which is recognized the world over. Fijian is also increasingly becoming a highly acclaimed brand in the world market place and this is increasingly being used for art and art forms that depict tapa like products and patterns for clothing and for art and art pieces, music, chants and other indigenous compositions. Other products and commodities like Fiji Water and Pure Fiji and scented

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<sup>50</sup> The word ‘Viti’ from ‘Vitiviti’ and vitia which means to cut or clear the leaves with one’s hand or using a sharp instrument like a sea shell or stone axe when our forefathers first landed in Vuda and journeyed on land along the ridges through to Nakauvadra and over to Verata when they first arrived. Capell also says that Viti is the general name for Fiji in the Western part of Fiji; in the east the Tongan pronunciation of Fiji is used (refer to A.Capell ( 1941, reprinted in 1991) *The Fijian Dictionary*, Suva, Fiji: Fiji Government Printer,pp264-265.

See also Rev Thomas Williams (1858) in *Fiji and the Fijians*, London. Who says both ‘Fiji and Viti are correct; Fiji being the name in the windward[East], and Viti in the leeward [West] parts of the group’(p.1)

coconut oil and other fresh food products are being marketed on the strength of their association with Fiji and the Fijian brand.

In the world of sports especially in rugby sevens and 15's a particular brand of open and running rugby is associated with the Fijians. The military skills, expertise and bravery, of Fijians tested in the jungles of the Solomon Islands and the tropical forests of Malaysia and the sandy and dry deserts of the Middle East has attracted attention world-wide and the demand for soldiers in the United Kingdom, United Nations Peace keeping troops and in private security operations in war torn areas all over the world, Fijians are in high demand. There is therefore an emerging Fijian brand and world identity and this has taken a long time and a lot of work and effort to develop and cultivate. Then there is the multitudinous array of Fijian food and arts and craft. These have been developed and shaped mostly by the indigenous ingenuity of Fijians. The Fijians therefore have some justification to feel aggrieved when others have come in and exploited these for their benefits; and they feel it is their brand and their name. We agree with Mr Baledrokadroka's assertion that..... *"Basically, an involuntary name change, especially involving a whole race, risks permanent generational and emotional resentment by such a race for what is basically, identity theft."*<sup>51</sup>

A race of approximately 600,000 people needs this for cohesion and strength to survive amidst the onslaught of dominant cultures and its attendant propaganda machines. It gives them a sense of pride and security in a world of globalised culture. Just when they were beginning to feel a sense of "Fijian" being and identity on the world stage they were coerced to give it up.

Furthermore the Regime had decreed that the word "iTaukei" be used for indigenous Fijians. Taukei is a prefix meaning "owner of" for instance "taukei ni lori" (owner of a vehicle) or taukei ni sitoa ("owner of a shop"). Indigenous Fijians are now called "owners of", Of what? They have no idea! The indigenous Fijians feel that they have become a "prefix" rather than a substantive entity in their homeland.

Additionally, *"..... there is an issue, however, with "i Taukei" if the intended name to mean what it represents. Taukei-ism has taken on a militant indigenous political meaning since the 1987 coups. The name sharpens instrumentalist views such as generated by the ethno nationalist "Taukei Movement" and will definitely inhibit political moderation. This possible untoward outcome is the exact opposite of the all racial new*

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<sup>51</sup> J Baledrokadroka (2010) Taukei and the new "Fijian"

*“Fijian” civic- nationalism call of the . Unwittingly, the Taukei branding will by default also officially assign all other races in Fiji to perpetual Vulagi (guest) status.”<sup>52</sup>*

The word “i-Taukei” is therefore is no substitute for the word “Fijian”.

The word “Fijian” describes the indigenous Fijian aptly. The word cannot be identified with Fiji citizens from other ethnic communities. The issue of a common name for all Fiji citizens should be resolved through dialogue, consultation, and eventually by consensus. The common name “Fiji Islander” is contained in the Reeves Commission Report. If the common names 'Solomon Islander', 'Cook Islander' and 'New Zealander' can stick, there is no reason why “Fiji Islander” cannot.

The SDL Party is of the view that “Fiji Islander” is a good common name for all Fiji citizens and will require some marketing efforts abroad, especially to our Pacific neighbors.

It is also not clear whether other ethnic communities would like to be called Fijians. It is more likely that the majority of them would prefer that the word “Fijian” be reserved for indigenous Fijians.

You really have to be an indigenous Fijian, speaking their language, living their way of life, dressing the way they dress and relating to others in the way they do to really appreciate the sense of loss in the removal of a name that identifies them with all these. This is borne in a recent survey by the Citizen Constitution Forum (CCF) wherein the majority of respondents stated that they wanted the name Fijian to be reserved for Fijians.

The Regime is virtually saying to all native Fijians to abandon their previous name “Fijian” and take on the new name “i Taukei” whether they like it not, including the negative connotations.

For common names, for different ethnic communities whatever names are adopted there will be a need for publicity. The differentiation into ethnic groups is not racist or discriminatory. These are all essential tools for social justice programmes, special educational assistance or to tackle health problems for which certain ethnic genetic makeup may be susceptible to. There are problems that are particular to an ethnic group, due to circumstances, lifestyles, history or culture whether they are ethnic

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<sup>52</sup> J Baledrokadroka article, opcit, 2010.

Indians, Fijians or Pacific Islanders. These need to be identified to effectively address them.<sup>53</sup>

**(ii) Amnesty not immunity**

- **The SDL Party proposes that immunity should not be granted unilaterally to the coup perpetrators in this and future Constitutions as it would desecrate the sanctity of constitutional documents.**

Immunity from prosecution was granted to those involved in the 1987 coup. Immunity was also granted to some of the perpetrators of the 2000 coup. Immunity is again being sought for those involved in the 2006 coup. Section 8 of the Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012 requires that appropriate provision for immunity be included in the Constitution.

Since 1987 our Constitution has been littered with immunity provisions. It would appear that this cycle of “coup – immunity – coup – immunity” will not stop. Immunity provisions desecrate our supreme law, the Constitution. The illegal overthrow of an elected government is one of the most serious crimes that one can commit. Fiji has experienced four coups during the last forty years. Everyone should know the seriousness of the crime of treason and its consequences.

The coup cycle in Fiji must stop. It cannot stop if immunity is granted each time an illegal overthrow of Government takes place. Those involved in a coup must account for their actions before the law. The principle of “no man is above the law” must be applied equally to everybody. There should be no exception to this principle.

Amnesty on the other hand refers to an act of forgiveness granted by the President “*for the purpose of excusing and erasing from legal memory the illegality of an act or omission committed in association with a political objective during the designated period*”.

In plain language amnesty is a pardon. Amnesty is often used in other countries for offences that are political in nature. This means, they were committed in pursuit of certain political ideals and objectives.

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<sup>53</sup> In New Zealand the Maoris are identified separately and for the Aborigines of Australia there are specific programmes to assist them in terms of health, economic participation or education assistance.

People will hopefully be encouraged to come forward and voluntarily disclose the details of what happened in 2006, and their role in this. In such process, the country will also benefit by hearing from those who took part, and by listening to their explanations for their actions.

However, the Special Commission on the Coups which will determine amnesty will do so only if it is satisfied that all the facts regarding individual participation or involvement are fully documented. The Special Commission on the Coup will prepare a detailed report on its work, with recommendations on how Fiji can avoid coups and outbreaks of civil unrest and makes recommendations for amnesty in accordance with the severity of each case. Amnesty will be granted by His Excellency, the President.

In support of this proposal it is argued that treason is a most serious crime. The crime involves the perpetrators on one side and the victims on the other. Particular individuals are the victims, as well as the entire population of Fiji. The country itself is a victim. It is important that the issue of amnesty be discussed in an independent Forum, so that the interests of the perpetrators, the victims and the country are fully taken into account.

- **The SDL proposes that if amnesty is recommended following investigation by a Special Commission on Coups and amnesty could be offered to those who have met all the conditions. After appropriate investigations by the Special Commission on the Coups, the following would apply when and if amnesty is given:**

**That all military leaders be:**

- i. terminated from their positions and dishonorably discharged from the military including all military personnel taken in the civil service after the coup;**
- ii. stripped of all military awards, medals and honors/decorations;**
- iii. not be allowed to take part in political elections for life;**
- iv. not be allowed to take up any public office for life.**

**Furthermore all plaques or public monuments made in their name be removed.**

All these measures should be pursued vigorously by the incoming government considering that a coup is a treasonous act and is punishable by death or life sentence. The perpetrators should know that they committed a crime on the nation and do not deserve any accolades. They are soldiers under oath to protect the Constitution and

provide security for the ordinary citizens of this country and they violated this honorable duty with arrogance and impunity. If they want amnesty they must accept these conditions.

An alarming feature of the coup are the numbers of Fiji citizens, the so-called functionaries, who supported the coup and gave it the oxygen for longevity - these are often people of high standing in public life, diplomacy, in politics, commerce and in the judiciary. They justify their actions through arguments of national duty in times of crisis or that the objectives of the coup are noble, as in the present case, that it will bring about a more just and equitable society. To the contrary all the coups in Fiji have had disastrous effects on country and the purported gains have been far outweighed by the losses. The coups have in effect entrenched the interests and greed of the perpetrators and the functionaries.

- **The SDL proposes that for those that aided abetted or were in active support of the coup to be:**
  - a) **immediately terminated from their public positions in government or statutory organizations;**
  - b) **not be allowed from taking part in political elections for life;**
  - c) **not be allowed to take up any public office for life.**
- **The SDL proposes that there should be thorough investigation into all alleged cases and appropriate legal measures undertaken.**

There are also people who had gained financially from the coups through dubious means or blatant acts of corruption.

#### National unity and reconciliation

A Department of Government directly under the Prime Minister should be formed and assigned the responsibility of National Unity and Reconciliation which should take a proactive stance on the creation of national unity through the means of national language and the national anthem and the promotion of seminars and studies that facilitate national consensus on vital issues like land, national awards and a sound understanding of the Constitution.

The Government could fund a Commission on the Coups<sup>54</sup> that will undertake a study of the Coups in Fiji from 1987 to 2006. It should then document carefully the reasons for

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<sup>54</sup> A Commission on the Coups has been mooted, is to be headed by an eminent Judge, with a compliment of Members from a former senior military person, a senior academic/ historian researcher, a leading religious leader, senior woman with background on Women's Rights and gender. Secretariat support, might be appropriate for this undertaking.



the coups and the ways that can be taken to address some of the main issues and challenges, including the process of dealing with the victims and the notion of restorative justice and the promotion of forgiveness at community and national levels.

Compensation for victims

- **The SDL proposes that the issue of compensation of victims of the coup should be determined by the Special Commission on the Coups.**

There is appropriate legislation for compensation. All victims must first put in an application to the Commission which explains how they became a victim and how this affected them.

This is important so the Commission can be sure it is dealing with people who were genuine victims.

Compensation to victims is to be paid by the State.

### **(iii) Pension entitlement is a right**

- **The SDL propose that the constitution should establish that pension is a right. Any change should only be for the enhancement of these entitlements. It is the responsibility of government to enact legislations that retirement benefits be protected.**

Unfortunately this has not been followed in the recent case of the FNPF reform which has led to the unhappiness of thousands of Fiji citizens especially the poor and the aged.

No one especially an unelected Government should have the power to reduce pension entitlements. Any change should only be for the enhancement of those entitlements.

### **(iv) Empowerment of Women and Political Participation**

- **The SDL proposes the Constitution to articulate special measures to address the many gaps and structural mechanism that works against improving the status of women, particularly their participation in Parliament.**

The population of Fiji in the 2007 census comprises 46.4% of women, 28% percent of which are Fijian and 18.4% are Indo Fijian. Their numbers are not fairly reflected in the decision making processes in government, commerce and in political arena to address the systemic discrimination prevalent in existing structures and policies.

Fiji is a party to the international instruments and conventions on women and gender development such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The SDL had a Plan of Action in response to the 1995 UN world Conference for Women (Beijing) that called for action in five focal areas: mainstreaming women and gender concerns, women and the law; women in decision making; formal sector employment and livelihood; elimination of all forms of discrimination against women and violence against women and the girl child, women's health and reproductive health and HIV/AIDS. The Millennium Development Goal 3 calls for women's empowerment for which a key indicator is the proportion of seats held by women in National Parliament.

There is only one woman leader among the presidents and prime ministers of the 15 countries at the Pacific Islands Forum this year. The Pacific region, excluding New Zealand and Australia, has the "dubious distinction" of having the lowest number in the world of women in Parliament. Only 3.5 per cent of parliamentarians were women, compared to the global average of 20 per cent.

The PM of Australia has announced at the Forum meeting in the Cook Islands a multi-million dollar 10-year programme to boost the number of women in leadership roles across the Pacific.

There had been progress - three women were elected to Papua New Guinea's Parliament this year - the first time since 1975 there had been more than one.

Samoa's Prime Minister also mooted a 10 per cent quota for women in Samoa's Parliament.

The Constitution of the SDL Party provides for 25% membership of women before any new branch is opened and this is a way of ensuring women are involved from the grass roots level and right up the top of the Party structure.

- **The party proposes a 30% participation of women in Parliament and there should be a target for equity in terms of their percentage of the population. This is to be accommodated through a fair proportion of women from the Party List system of representation**

In 2001 there were five women representing the SDL party in Parliament two were in Cabinet and two were Assistant Ministers. In 2006 there was one Cabinet Minister and three State Ministers. The SDL believes in a proactive approach where we encourage women to participate at the grass roots level and support them upwards to the high echelons of the party. This will enable us to achieve our immediate target of 30% in Parliament and attainment of parity in the long term. Women are to be elected on ability and not quota system.

**(v) Youth empowerment and political participation**

- **The SDL proposes that there be provisions in the Constitution for youth representation in Parliament.**

The issues affecting youths are multi-faceted and need a coordinated approach. Key issues are employment, teenage pregnancy and sexual reproductive health. Under the SDL, youth employment was being addressed by the Youth Employment Policy Framework and the Labour Administration and Productivity Improvement Sub-programme of the IHRDPEP, under the Ministry of Employment and Productivity. The major problem of unwanted teenage pregnancy was being addressed by various awareness programmes and through initiatives on reproductive health undertaken by the Ministry of Health.

Strengthening protective environments for youths at government, community and family levels is a key strategy to address the above concerns.

The youth of Fiji need to go through some common experience which is to consist of two components one involving learning a new skill away from ones academic /career training and another, a voluntary service experience. This program is to be co-ordinated by the Ministry of Youth. But the actual activities are to be done through church/civil society /NGOs/service/business organizations etc for two weeks. This is to be called a National Youth Voluntary Service (NYVS) and it has to be completed by all youths before the age of 20.

This program is to be well planned, and adequately funded and also prestigious for all our youth to take it up. During this period they will be exposed to other activities which are aimed at building up their self-esteem about themselves and as well as develop a sense of responsibility in their role as Fiji's young leaders and good citizens. This will provide a common experience where youths will interact and develop new skills and accept responsibility for each other. This is a way of identifying potential leaders to be encouraged for further training and development in all fields, including politics.

Such representation can be accommodated through a fair proportion of youths from the Party List system of representation

**(vi) The environment and sustainable human development**

The only reference to the environment in the 1997 Constitution are in Section 186 [4] (b) &(c). There is now growing recognition internationally of the importance for a healthy environment and has been reflected in national constitutions of some countries. That recognition in Fiji led to the enactment of the Environmental Management Act in 2005. The purpose of the Environmental Management Act 2005 was to protect natural resources, control and manage development and provide for waste management and pollution control. A statutory body the National Environment Council was established under the Act to ensure compliance, and also ensure that Government commitments made at international and regional fora on environment and development are met. The Council was to report to Parliament annually. Environment Impact Assessments were to be carried out on developments which had significant environmental and resource management impact. Stiff penalties were provided for in the Act.

It is necessary that a provision be made in the Constitution regarding environment to protect resources for sustainable development. The sustainable human development approach recognizes that the development is a process of economic, social and cultural change. The basic choices for any individual are to live long healthy lives to acquire knowledge, and to have access to the resources needed for a decent standard of living. These basic choices encompass principles of good governance, human security and human rights in general. Other choices determine the concepts of equality in sustainable human development that enables people to have equal opportunities, both political and economical, to improve standards.

This would eventuate in the equitable distribution of benefits of developments, the conservations of sound environment and the sustainable utilizations of the limited resources.

- **The SDL recommends that there be provisions in the Constitution to stipulate that everyone has the right:**
  - (a) To an environment that is not harmful to their health and/or well being; and**

- (b) To have the environment protected for the benefit of the present and future generations, through reasonable legislative and other measures that:**
- (i) Prevent pollution and ecological degradation;**
  - (ii) Promote conservation; and**
  - (iii) Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>55</sup>**

## **5. Transitional arrangements and way forward**

While this is not about an amendment to the Constitution or an addition thereof, the SDL feels strongly that there should be a Caretaker Government appointed by the President with effect from April next year 2013 with specific powers to take the country forward till the end of the general elections to the appointment of the new government or for 18months, whichever is the earliest.

This will oversee that the resignation of the current Regime from office and will clear the way for the necessary appointments of officers to deal with elections like the Supervisor for Elections, the appointment of the members of the Constituency Boundaries Commission and members of the Electoral Commission to ensure the general elections is be run smoothly, efficiently and impartially.

The procedures to be followed are clear and well known as detailed in the celebrated decision of the Fiji Court of Appeal in the case L.Qarase & Others vs JV Bainimarama & Others on Thursday, April 9th, 2009 as discussed in detail earlier in this Submission. This would ensure that there would be a smooth transition to the return to democratic Government after so many years in political denial and wilderness. This will also present a challenge to the current Regime to make good their promise to the people of returning Fiji to Constitutional Democracy and the Rule of Law.

- The SDL proposes that a Caretaker Government be appointed on 1<sup>st</sup> April next year 2013 to oversee the smooth transition of Fiji through to the general elections and the appointment of the new Government in 2014.**

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<sup>55</sup> Quoted from Section 24 South African Constitution.

## 6. Concluding remarks:

It is obvious by looking at the submissions around the country from Indigenous Fijians, all seem to be pointing to some of the issues which the SDL has identified; that is the need to strengthen our indigenous base: the security of our land; the strengthening of our indigenous institutions especially the Bose Levu Vakaturaga; the safeguarding of our resources in qoliqoli, mahogany and minerals; the enhancing of the Fijian Language as a national language, and the recognition of our Christian tradition.

We have highlighted in our Submission the sense of insecurity and uncertainty that has become apparent in our Fijian Community. This is an attempt by the current Regime to deliberately target and plunder our land through its Land Bank, dismantle our institutions especially the BLV whose main functions is to protect our land and resources and advise on the maintenance of our language and culture.

It becomes very clear that the strength of the whole will depend upon the strength of the parts. We cannot create a vibrant and strong Fiji by weakening everything that is Fijian. The task before us is to correct this.

Over the last 42 years of our independence we have spent too much time fighting the fires of the coups. We have had no time to consolidate our positive experiences. This is due to the lack of continuity in government and leadership.

The SDL Party firmly believes that all Fiji citizens must understand the constitution, including school children, members of all communities and especially the military. Government must put in place programs to address this.

We hope that the new constitution will be embraced by the people and commit themselves to its sanctity, ideals and principles.

We know you have a difficult task. We have confidence in your abilities to carry out what is required of you. We hope that in doing your work, you will find our Submission providing directions and inspirations in building a Constitution for a peaceful, stable, and prosperous multicultural society.

We wish you well.

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## **7. List of Annexes**

1. Deed of Cession
2. UN Declaration on Rights of Indigenous Peoples 2007 -  
([http://social.un.org/index/IndigenousPeoples/DeclarationontheRightsofIndigenou  
sPeoples.aspx](http://social.un.org/index/IndigenousPeoples/DeclarationontheRightsofIndigenou<br/>sPeoples.aspx))
3. ILO Convention 169 Indigenous Tribal Peoples Convention 1989
4. Write – Up on the Adoption of the UN Declaration on Rights of the Indigenous  
Peoples 2007
5. Letters by the Chairman Mahogany Trust – Mitieli Bulainauca
6. Wardan Narsey August 2001 “The Road to Gold – Namosi”
7. Roko Tui Dreketi’s Letter on Role of BLV
8. Statement by Military Officers on the Coup
9. SDL’s Strategic Development Plan 2007 – 2011 -  
<http://www.sprep.org/att/IRC/eCOPIES/Countries/Fiji/82.pdf>
10. British Prime Minister David Cameron’s Speech Commemorating the King James  
Version 400<sup>th</sup> Anniversary
11. Taufa Vakatale – Multi – Culturalism vs Indigenous Cultural Rights
12. Report on the Implementation of Affirmative Action Programmes 2005 –  
Opportunities for All – ([www.sprep.org/att/IRC/eCOPIES/Countries/Fiji/81.pdf](http://www.sprep.org/att/IRC/eCOPIES/Countries/Fiji/81.pdf))
13. Case Study: New Zealand Learning to Live with Proportional Representation  
([http://aceproject.org/ace-en/topics/es/esy/esy\\_nz](http://aceproject.org/ace-en/topics/es/esy/esy_nz))
14. List of Countries by Number of Military and Paramilitary Personnel
15. Wardan Narsey “2011 Budget Oscars: burdening future generations
16. Fijian Trust Fund Act 2004  
(<http://www.fijianstrustfund.com.fj/english/images/Act.pdf>)

## ANNEX- 1

### THE DEED OF CESSION OF FIJI TO GREAT BRITAIN

10TH OCTOBER, 1874

Note. - One original of the Deed of Cession was retained in Fiji, and until the late thirties of the present century was in the archives of the Colonial Government. It began to show signs of wear, however; and photostat facsimiles - from one of which the following text is taken - were made for local use, the original being placed in safe keeping.

The two interlineations, referred to in the Interpreter's certificate, initialled by him in the margin, and indicated below by asterisks, were as follows: (1) in Sir Hercules Robinson's title, the adjective *honorable*, used for the Order of Saint Michael and Saint George, was altered to *distinguished*; (2) the article *the* was transposed from a position before *bona fide* to that given in the text. The only other alterations were the correction of certain individual letters, and the deletion of the phrase *and the laws*, which had been duplicated in copying.

**Instrument of Cession** of the Islands of Fiji by Thakombau, styled TuiViti and VuniValu, and by the other high Chiefs of the said islands to Her Most gracious Majesty Victoria, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, &c &c:

Whereas divers of the subjects of Her Majesty the Queen of Great Britain and Ireland have from time to time settled in the Fijian group of islands and have acquired property or certain pecuniary interests therein; **And Whereas** the Fijian Chief Thakombau styled TuiViti and VuniValu and the other high native chiefs of the said islands are desirous [sic] of securing the promotion of civilization and Christianity and of increasing trade and industry within the said islands; **And Whereas** it is obviously desirable, in the interests as well of the native as of the white population, that order and good government should be established therein; **And Whereas** the said TuiViti and other high chiefs have conjointly and severally requested Her Majesty the Queen of Great Britain and Ireland aforesaid to undertake the government of the said islands henceforth; **And Whereas** in order to the establishment of British government within the said islands the said TuiViti and other the several high chiefs thereof for themselves and their respective tribes have agreed to cede the possession of and the dominion and sovereignty over the whole of the said islands and over the inhabitants thereof and have requested Her said Majesty to accept such cession,- which cession the said TuiViti and other high chiefs, relying upon the justice and generosity of Her said Majesty, have determined to tender unconditionally,- and which cession on the part of the said TuiViti and other high chiefs is witnessed by their execution of these presents and by the formal surrender of the said territory to Her said Majesty; **And Whereas** His Excellency Sir Hercules George Robert Robinson, Knight Commander of the most distinguished\* order of Saint Michael and Saint George, Governor Commander in Chief and Vice Admiral of The British Colony of New South Wales and its dependencies, and Governor of Norfolk Island, hath been authorised and deputed by Her said Majesty to accept on Her behalf the said Cession:

Now These Presents Witness,



**1. That** the possession of and full sovereignty and dominion over the whole of the group of islands in the South Pacific Ocean known as the Fijis (and lying between the parallels of latitude of fifteen degrees South and twenty two degrees South of the Equator and between the Meridians of longitude of one hundred and seventy seven degrees West and one hundred and seventy five degrees East of the meridian of Greenwich) and over the inhabitants thereof, together with the possession of and sovereignty over the waters adjacent thereto and of and over all ports harbours havens roadsteads rivers estuaries and other waters and all reefs and foreshores within or adjacent thereto, are hereby ceded to and accepted on behalf of Her said Majesty the Queen of Great Britain and Ireland her heirs and successors, to the intent that from this time forth the said islands and the waters reefs and other places as aforesaid lying within or adjacent thereto may be annexed to and be a possession and dependency of the British Crown.

**2. That** the form or constitution of government, the means of the maintenance thereof, and the laws\* and regulations to be administered within the said islands shall be such as Her Majesty shall prescribe and determine.

**3. That**, pending the making by Her Majesty as aforesaid of some more permanent provision for the government of the said islands His Excellency Sir Hercules George Robert Robinson, in pursuance of the powers in him vested and with the consent and at the request of the said TuiViti and other high Chiefs the ceding parties hereto, shall establish such temporary or provisional government as to him may seem meet.

**4. That** the absolute proprietorship of all lands not shown to be now alienated so as to have become bona fide the\* property of Europeans or other foreigners or not now in the actual use or occupation of some Chief or tribe or not actually required for the probable future support and maintenance of some chief or tribe shall be and is hereby declared to be vested in Her said Majesty her heirs and successors.

**5. That** Her Majesty shall have power, whenever it shall be deemed necessary for public purposes, to take any lands upon payment to the proprietor of a reasonable sum by way of compensation for the deprivation thereof.

**6. That** all now existing public buildings houses and offices, all enclosures and other pieces or parcels of land now set apart or being used for public purposes, and all stores fittings and other articles now being used in connection with such purposes are hereby assigned transferred and made over to Her said Majesty.

**7. That** on behalf of Her Majesty His Excellency Sir Hercules George Robert Robinson promises (1.) that the rights and interests of the said TuiViti and other high chiefs the ceding parties hereto shall be recognised so far as is and shall be consistent with British Sovereignty and Colonial form of government, (2.) that all questions of financial liabilities and engagements shall be carefully scrutinized and dealt with upon principles of justice and sound public policy, (3.) that all claims to title to land by whomsoever preferred and all claims to pensions or allowances whether on the part of the said TuiViti and other high chiefs or of persons now holding office under them or any of them shall in due course be fully investigated and equitably adjusted.

**In Witness whereof**, the whole of the contents of this instrument of Cession having been, previously to the execution of the same, interpreted and explained to the ceding parties hereto by David Wilkinson Esquire, the interpreter nominated by the said TuiViti and the other high chiefs and accepted as such interpreter by the said Sir Hercules George Robert Robinson, the respective parties hereto have hereunto set their hands and seals.

**Done at Levuka** this tenth day of October, in the year of Our Lord one thousand eight hundred and seventy four.

		Cakobau R. TuiViti and Vunivalu	(Seal)
		Maafu	(Seal)
Hercules Robinson	(Seal)	TuiCakau	(Seal)
		RatuEveli	(Seal)
		VakawalitabuaTuiBua	(Seal)
		Savenaca	(Seal)
		Esekele	(Seal)
		B. V. TuiDreketi	(Seal)
		Ritova	(Seal)
		Kato-nivere	(Seal)
		RatuKini	(Seal)
		Matanitobua	(Seal)
		Nacagilevu	(Seal)

I hereby certify that, prior to the execution of the above Instrument of Cession - which execution I do hereby attest - I fully and faithfully interpreted and explained to the ceding parties the whole of the contents of the said document, the interlineations appearing on line 33 of page 1 and on line 30 of page 2 having been first made, and that such contents were fully understood and assented to by the said ceding parties. Prior to the execution of the said instrument of Cession I wrote out an interpretation of the same in the Fijian language, which interpretation I read to the TuiViti and other high chiefs the ceding parties, who one and all approved thereof. A copy of such interpretation is hereto annexed marked A. Dated this tenth day of October, A.D. 1874.

D. WILKINSON  
Chief Interpreter

The interpreter named in the foregoing instrument of Cession

## **ANNEX 3**

### **C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)**

Convention concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 Sep 1991) Adoption: Geneva, 76th ILC session (27 Jun 1989) - Status: Up-to-date instrument (Technical Convention).

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 76th Session on 7 June 1989, and

Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and

Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and

Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and

Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and

Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and

Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and

Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organisation of the United Nations, the United Nations Educational, Scientific and Cultural Organisation and the World Health Organisation, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields,

and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

Having decided upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957;

adopts this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

## PART I. GENERAL POLICY

### Article 1

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

### Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

#### Article 3

1. Indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

#### Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

#### Article 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

#### Article 6

1. In applying the provisions of this Convention, governments shall:

(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;

(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;

(c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.

3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

#### Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

#### Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.

2. Preference shall be given to methods of punishment other than confinement in prison.

#### Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

#### Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

## PART II. LAND

### Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

2. The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

### Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.



## Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

## Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.

2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.

3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

## Article 18

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

## Article 19

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

(a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;

(b) the provision of the means required to promote the development of the lands which these peoples already possess.

### PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

#### Article 20

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

(a) admission to employment, including skilled employment, as well as measures for promotion and advancement;

(b) equal remuneration for work of equal value;

(c) medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;

(d) the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

(a) that workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) that workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) that workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) that workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

#### PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

##### Article 21

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

##### Article 22

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

##### Article 23

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and

in their economic self-reliance and development. Governments shall, with the participation of these people and whenever appropriate, ensure that these activities are strengthened and promoted.

2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

## PART V. SOCIAL SECURITY AND HEALTH

### Article 24

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

### Article 25

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.

2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.

3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.

4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

## PART VI. EDUCATION AND MEANS OF COMMUNICATION

### Article 26

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

## Article 27

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

## Article 28

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.

2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.

3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

## Article 29

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples.

## Article 30

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.

2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

#### Article 31

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

#### PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

#### Article 32

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

#### PART VIII. ADMINISTRATION

#### Article 33

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.

2. These programmes shall include:

(a) the planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) the proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

#### PART IX. GENERAL PROVISIONS

#### Article 34

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

## Article 35

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

## PART X. FINAL PROVISIONS

## Article 36

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

## Article 37

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

## Article 38

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

## Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

## Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### Article 44

The English and French versions of the text of this Convention are equally authoritative.



## **ANNEX 4**

### **The Adoption of the Declaration on the Rights of Indigenous Peoples**

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly during its 62nd session at UN Headquarters in New York City on 13 September 2007.

While as a General Assembly Declaration it is not a legally binding instrument under international law, according to a UN press release, it does "represent the dynamic development of international legal norms and it reflects the commitment of the UN's member states to move in certain directions"; the UN describes it as setting "an important standard for the treatment of indigenous peoples that will undoubtedly be a significant tool towards eliminating human rights violations against the planet's 370 million indigenous people and assisting them in combating discrimination and marginalisation."

#### **Purpose**

The Declaration sets out the individual and collective rights of indigenous peoples, as well as their rights to culture, identity, language, employment, health, education and other issues. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations". It "prohibits discrimination against indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development". The goal of the Declaration is to encourage countries to work alongside indigenous peoples to solve global issues, like development, multicultural democracy and decentralization.[3] According to Article 31, there is a major emphasis that the indigenous peoples will be able to protect their cultural heritage and other aspects of their culture and tradition, which is extremely important in preserving their heritage. The elaboration of this Declaration had already recommended by the Vienna Declaration and Programme of Action[4]

#### **Content**

The Declaration is structured as a United Nations resolution, with 23 preambular clauses and 46 articles. Articles 1–40 concern particular individual and collective rights of indigenous peoples; many of them include state obligations to protect or fulfill those rights. Articles 41 and 42 concern the role of the United Nations. Articles

43–45 indicate that the rights in the declaration apply without distinction to indigenous men and women, and that the rights in the Declaration are "the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world," and do not in any way limit greater rights. Article 46 discusses the Declaration's consistency with other internationally agreed goals, and the framework for interpreting the rights declared within it.

#### Negotiation and adoption

The Declaration was over 25 years in the making. The idea originated in 1982 when the UN Economic and Social Council (ECOSOC) set up its Working Group on Indigenous Populations (WGIP), established as a result of a study by Special Rapporteur José R. MartínezCobo on the problem of discrimination faced by indigenous peoples. Tasked with developing human rights standards that would protect indigenous peoples, in 1985 the Working Group began working on drafting the Declaration on the Rights of Indigenous Peoples. The draft was finished in 1993 and was submitted to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, which gave its approval the following year. During this the International Labour Organisation adopted the Indigenous and Tribal Peoples Convention, 1989.

The Draft Declaration was then referred to the Commission on Human Rights, which established another Working Group to examine its terms. Over the following years this Working Group met on 11 occasions to examine and fine-tune the Draft Declaration and its provisions. Progress was slow because of certain states' concerns regarding some key provisions of the Declaration, such as indigenous peoples' right to self-determination and the control over natural resources existing on indigenous peoples' traditional lands. The final version of the Declaration was adopted on 29 June 2006 by the 47-member Human Rights Council (the successor body to the Commission on Human Rights), with 30 member states in favour, 2 against, 12 abstentions, and 3 absentees.

The Declaration was then referred to the General Assembly, which voted on the adoption of the proposal on 13 September 2007 during its 61st regular session. The vote was 144 countries in favour, 4 against, and 11 abstaining. The four member states that voted against were Australia, Canada, New Zealand and the United States, all of which have their origins as colonies of the United Kingdom and have large non-indigenous immigrant majorities and small remnant indigenous populations. Since then, all four countries have moved to endorse the declaration]. The abstaining countries were Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia,

Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine; another 34 member states were absent from the vote.[8] Colombia and Samoa have since endorsed the document.

### ReactionSupport

In contrast to the Declaration's rejection by Australia, Canada, New Zealand and the United States, United Nations officials and other world leaders expressed pleasure at its adoption. Secretary-General Ban Ki-moon described it as a "historic moment when UN Member States and indigenous peoples have reconciled with their painful histories and are resolved to move forward together on the path of human rights, justice and development for all." Louise Arbour, a former justice of the Supreme Court of Canada then serving as the UN's High Commissioner for Human Rights, expressed satisfaction at the hard work and perseverance that had finally "borne fruit in the most comprehensive statement to date of indigenous peoples' rights." Similarly, news of the Declaration's adoption was greeted with jubilation in Africa and, present at the General Assembly session in New York, Bolivian foreign minister David Choquehuanca said that he hoped the member states that had voted against or abstained would reconsider their refusal to support a document he described as being as important as the Universal Declaration of Human Rights. Bolivia has become the first country to approve the U.N. declaration of indigenous rights. Evo Morales, President of Bolivia, stated, "We are the first country to turn this declaration into a law and that is important, brothers and sisters. We recognize and salute the work of our representatives. But if we were to remember the indigenous fight clearly, many of us who are sensitive would end up crying in remembering the discrimination, the scorn."

Stephen Corry, Director of the international indigenous rights organization Survival International, said, "The declaration has been debated for nearly a quarter century. Years which have seen many tribal peoples, such as the Akuntsu and Kanoê in Brazil, decimated and others, such as the Innu in Canada, brought to the edge. Governments that oppose it are shamefully fighting against the human rights of their most vulnerable peoples. Claims they make to support human rights in other areas will be seen as hypocritical."

### Criticism

Prior to the adoption of the Declaration, and throughout the 62nd session of the General Assembly, a number of countries expressed concern about some key issues, such as self-determination, access to lands, territories and resources and the lack of a clear definition of the term indigenous. In addition to those intending to vote against the adoption of the declaration, a group of African countries represented by Namibia who proposed to defer action, to hold further consultations, and to conclude consideration of the declaration by September 2007. Ultimately, after agreeing on

some adjustments to the Draft Declaration, a vast majority of states recognized that these issues could be addressed by each country at the national level.

The four states that voted against continued to express serious reservations about the final text of the Declaration as placed before the General Assembly. As mentioned above, all four opposing countries have since then changed their vote in favour of the Declaration.

## **Australia**

Australia's government opposed the Declaration in the General Assembly vote of 2007, but has since endorsed the declaration. Australia's Mal Brough, Minister for Families, Community Services and Indigenous Affairs, referring to the provision regarding the upholding of indigenous peoples' customary legal systems, said that, "There should only be one law for all Australians and we should not enshrine in law practices that are not acceptable in the modern world."

Marise Payne, Liberal Party Senator for New South Wales, further elaborated on the Australian government's objections to the Declaration in a speech to the Senate as:

Concerns about references to self-determination and their potential to be misconstrued. Ignorance of contemporary realities concerning land and resources. "They seem, to many readers, to require the recognition of Indigenous rights to lands which are now lawfully owned by other citizens, both Indigenous and non-Indigenous, and therefore to have some quite significant potential to impact on the rights of third parties."

Concerns over the extension of Indigenous intellectual property rights under the declaration as unnecessary under current international and Australian law.

The potential abuse of the right under the Declaration for indigenous peoples to unqualified consent on matters affecting them, "which implies to some readers that they may then be able to exercise a right of veto over all matters of state, which would include national laws and other administrative measures."

The exclusivity of indigenous rights over intellectual, real and cultural property, that "does not acknowledge the rights of third parties – in particular, their rights to access Indigenous land and heritage and cultural objects where appropriate under national law." Furthermore, that the Declaration "fails to consider the different types of ownership and use that can be accorded to Indigenous people and the rights of third parties to property in that regard."

Concerns that the Declaration places indigenous customary law in a superior position to national law, and that this may "permit the exercise of practices which

would not be acceptable across the board", such as customary corporal and capital punishments.

In October 1975 former Australian Prime Minister John Howard pledged to hold a referendum on changing the constitution to recognise indigenous Australians if re-elected. **He said that the distinctiveness of people's identity and their rights to preserve their heritage should be acknowledged. On 3 April 2009, the Rudd government formally endorsed the Declaration.**

## **Canada**

The Canadian government said that while it supported the spirit of the declaration, it contained elements that were "fundamentally incompatible with Canada's constitutional framework," which includes both the Charter of Rights and Freedoms and Section 35, which enshrines aboriginal and treaty rights. In particular, the Canadian government had problems with Article 19 (which appears to require governments to secure the consent of indigenous peoples regarding matters of general public policy), and Articles 26 and 28 (which could allow for the re-opening or repudiation of historically settled land claims).[18]

Minister of Indian Affairs and Northern Development Chuck Strahl described the document as "unworkable in a Western democracy under a constitutional government." [19] Strahl elaborated, saying "In Canada, you are balancing individual rights vs. collective rights, and (this) document ... has none of that. By signing on, you default to this document by saying that the only rights in play here are the rights of the First Nations. And, of course, in Canada, that's inconsistent with our constitution." He gave an example: "In Canada ... you negotiate on this ... because (native rights) don't trump all other rights in the country. You need also to consider the people who have sometimes also lived on those lands for two or three hundred years, and have hunted and fished alongside the First Nations."

The Assembly of First Nations passed a resolution in December 2007 to invite Presidents Hugo Chávez and Evo Morales to Canada to put pressure on the government to sign the Declaration on the Rights of Indigenous Peoples, calling the two heads of state "visionary leaders" and demanding Canada resign its membership on the United Nations Human Rights Council.

On 3 March 2010, in the Speech From the Throne, the Governor General of Canada announced that the government was moving to endorse the declaration. "We are a

country with an Aboriginal heritage. A growing number of states have given qualified recognition to the United Nations Declaration on the Rights of Indigenous Peoples. Our Government will take steps to endorse this aspirational document in a manner fully consistent with Canada's Constitution and laws."

**On 12 November 2010, Canada officially endorsed the declaration.**

### **New Zealand**

New Zealand endorsed the Declaration on the Rights of Indigenous Peoples in April 2010.

In 2007 New Zealand's Minister of Māori Affairs Parekura Horomia described the Declaration as "toothless", and said, "There are four provisions we have problems with, which make the declaration fundamentally incompatible with New Zealand's constitutional and legal arrangements." Article 26 in particular, he said, "appears to require recognition of rights to lands now lawfully owned by other citizens, both indigenous and non-indigenous. This ignores contemporary reality and would be impossible to implement."

In response, Māori Party leader Pita Sharples said it was "shameful to the extreme that New Zealand voted against the outlawing of discrimination against indigenous people; voted against justice, dignity and fundamental freedoms for all."

On 7 July 2009, the New Zealand government announced that it would support the Declaration; this, however, appeared to be a premature announcement by Pita Sharples, the current Minister of Māori Affairs, as the New Zealand government cautiously backtracked on Sharples' July announcement. However, in April 2010 Pita Sharples announced New Zealand's support of the declaration at a speech in New York.

**On 19 April 2010, Sharples announced that New Zealand endorsed the UN declaration.**

### **United States**

Speaking for the United States mission to the UN, spokesman Benjamin Chang said, "What was done today is not clear. The way it stands now is subject to multiple interpretations and doesn't establish a clear universal principle." The U.S. mission also issued a floor document, "Observations of the United States with respect to the Declaration on the Rights of Indigenous Peoples", setting out its objections to the Declaration. Most of these are based on the same points as the three other countries' rejections but, in addition, the United States drew attention to the Declaration's failure to provide a clear definition of exactly whom the term "indigenous peoples" is intended to cover.

**On 16 December 2010, President Obama declared that the United States is going to sign the declaration.** The decision was announced during the second White House Tribal Conference, where he said he is "working hard to live up to" the name that was given to him by the Crow Nation: "One Who Helps People Throughout the Land." Obama has told Native American leaders that he wants to improve the "nation-to-nation" relationship between the United States and the tribes and repair broken promises. Today, there are more than 560 Indian tribes in the United States. Many had representatives at the White House conference and applauded Obama's announcement.

### **United Kingdom**

Speaking on behalf of the United Kingdom government, UK Ambassador and Deputy Permanent Representative to the United Nations, Karen Pierce, "emphasized that the Declaration was non-legally binding and did not propose to have any retroactive application on historical episodes. National minority groups and other ethnic groups within the territory of the United Kingdom and its overseas territories did not fall within the scope of the indigenous peoples to which the Declaration applied."

### **Finland**

Finland signed the International Declaration on the Rights of Indigenous Peoples when it was originally put forward. However the reindeer owners and Forest Administration (Metsähallitus) have a long dispute in the area of the forests. The UN Human Rights Committee ordered the Finnish State to stop logging in some of the disputed areas.

Source: Wikipedia,

## ANNEX 5

12<sup>th</sup> March 2012

Commodore Voreqe Bainimarama,  
Prime Minister Of Fiji & Minister for iTaukei Affairs,  
Government Buildings,  
Suva.

Dear Sir,

Re: **Mahogany Industry – Landowner Participation and Involvement – License – Share-Holding – Empowerment of mahogany Landowners.**

I attach herewith a copy of my letter to Hon SayedKhaiyum Attorney General and Minister for Public Enterprise with regard to the above which is self explanatory for your information and decision Sir, as Chairman Mahogany Industry Council.

We met at your office Sir, in late 2009 with the Draft Decree and proposed Cabinet paper to give FMT/landowners '**Harvesting Right**' and you assured us (FMT Board Sub-Committee) that you would like to see the Mahogany Landowners are '**empowered**' to improve their lot within the Mahogany Industry.

We were grateful to your stand Sir, and hoping that the Cabinet Decision and Decree would confirm our understanding. However the March 2010 Decree *took away the 'Harvesting Right' to FHCL* and FMT and landowners are left with nothing in participation and involvement from manufacturing to marketing.

Without the '*Harvesting Right*' we cannot see where '*empowerment of landowners*' can be practically applied.

Therefore as a consequence Sir, we had written many letters and forwarded to your good-self, and to Hon Sayed Khaiyum as Minister for Public Enterprise, requesting that FMT and landowners be considered as a License Holder for Sub-Licensing. Our view is that without a '*Harvesting Right*' as a '**License Holder**' for all Grades 3 – 5 would suffice. We would issue Sub-Licenses to two (2) or three (3) other processors. All conditions by MIC and FHCL would apply.

Alternatively Sir, we request to be considered as **one of the 4/5 Licensees** with 30,000 cubic meters of Grades 3- 5 logs.

Lastly Sir, we request to be considered owning **at least 15 % shareholding** within the 4/5 Licensees companies. This is to be a condition of all Licenses issued.



Only then Sir, can we practically and effectively ***'empower landowners'*** within the Mahogany Industry.

**Empowerment** to us means – ***'identifying claims or rights, quantifying them and legislating such rights'***.

Identifying our claim and right under the lease conditions (amongst other things) is to ***'participate and involve in all business activities within the Mahogany Industry from silviculture to marketing'***.

Quantifying such claim is to *'hold License for all Grades 3 – 5 and to Sub-License to other Processors'*. Alternatively is to be issued with a License to 30,000 cubic meters of Grades 3 – 5. Lastly a 15% shareholding in each Licensee company.

By legislating would mean that MIC/FHCL is to issue License to FMT/landowners and include as a condition of a License at least 15 % shareholding in each of the Licensee company.

Other empowerment Sir, can come through training, funding, technology transfer, etc. Initially we would like to see that FMT/landowners have access to logs directly from FHCL – that is the first step.

I submit Sir for your favorable consideration and decision please before issue of Licenses are made.

Yours Faithfully,

Mitieli Bulanauca  
Chairman Mahogany Trust

cc. 1. *Hon Sayed Khaiyum, Attorney General & Minister for Public Enterprise, Suvavou Building, Suva*  
2. *Ms Elizabeth Powell, Chairperson Fiji hardwood Corporation Limited, Civic Center, Suva.*

## ANNEX 5 (a)

12<sup>th</sup> March 2012,

Hon Sayed Ahmed Khaiyum,  
Attorney General Minister for Justice and Public Enterprise,  
Suvavou Building,  
Victoria Parade,  
Suva.

Dear Sir,

### Re: Mahogany Industry – Landowner Participation and Involvement – Licensee - Shareholding.

Reference is made to the Mahogany Industry consultations, understanding and letters we have written to you Sir, since the first ever Stakeholders discussion we had at the *JJ's in the Park* from 2007 and onwards.

We agreed all along that the Mahogany Industry needed to be properly structured in order that the industry becomes efficient, FHCL is to be profitable and that landowners to receive increased benefits above having to participate and involve at all levels within the industry itself. Therefore a Decree or legislation is to be made to ensure that these are fulfilled.

Understanding all along was that there is a need for '**competition**' within the industry - as FHCL despite having *monopoly* of the Mahogany Industry had proven it-self inefficient and had become insolvent (almost bankrupt). There was much push from the private sector for a full '*open market*' enterprise but we insisted that the industry while '*open to competition*' for efficiency it '**needs to be controlled**' to ensure sustainability, quality product, value adding at all levels, profitability and direct participation & involvement of landowners.

Sir, we were and still are '**opposed to open market**' status as it would negatively exploit the mahogany resource as it did to the Native Timber Resource.

The First Cabinet Decision and Decree in 2009 - to return all leases and trees to the landowners through NLTB (as we pointed out to you Sir, at our first discussion in the Public Enterprise Conference Room) was not practical legally, and that it would not support the orderly developments and sustainability of the mahogany industry in Fiji.

We categorically and strongly pointed out to you Sir, that apart from the need to make the industry efficient and that FHCL becomes profitable - the '*benefits to landowners need to be increased*' and they are to be '**empowered**' through training and funding, '*business participation and involvement*', in all activities '*from silviculture to marketing*'.

We then further discussed a Draft Decree and another Cabinet Paper of 2009 (again at the Public Enterprise Conference Room) in which FHCL was to be the '*Mahogany Grower*', FMT to be given '*Harvesting Right*' and that only four (4) to five (5) 'Processors or Licensees' are to be allowed to buy logs for processing in value adding to marketing. Apart from some suggestions in writing made known to you Sir, '*we agreed*' in principle to this proposed Draft Decree. Based on this agreement and understanding we had we were ready to register the Mahogany Landowner Company Limited or MLCL, to be the FMT Business Arm - to do business on FMT and the landowners' behalf. We also had our Business Plan processes and systems made and ready as we were encouraged by your offices.

We also agreed with full understanding that '*to ensure full participation and involvement of landowners from silviculture to marketing*' FMT/landowners need to hold shares in these 4 or 5 Processors or Licensees. You personally stated and advised us that this is a matter that we can negotiate separately and individually with the Processors or Licensees. This was further reiterated to you Sir, in early January 2010 at your office at Suvavou House.

However with the Mahogany Industry Development Decree of March 2010 (without further consultation with FMT and landowners) to our surprise Sir, you unilaterally decided to take away from FMT the '*Harvesting Right*' and gave it back to FHCL as it now stands. Harvesting Right would ensure opportunities for landowners for participation and involvement to all activities from silviculture to Marketing. While we have to go by your decision we had voiced our disappointment in your change of mind and unilateral decision Sir.

Since you have taken away the '*Harvesting Right*' in return we had requested you by several letters - to consider FMT/landowners to be 'one of the 4/5 Licensees' under the March 2010 Decree.

FMT on behalf of the landowners had therefore responded to your Expression of Interest advertised in the papers of December 2011 to hold the other License for Grades 3 – 5. At least we expect to be one of the 4/5 Licensees with 30,000 cubic meters of various grades 3 – 5. This way we would be able to participate and involve in a small-way in business activities from '*sawmilling*' through various stages of '*value adding*' to '*marketing*'.

Sir, without FMT becoming the other Licensee or one of the 4/5 Licensees would render us the landowners no platform on which we could benefit and/or learn from all knowledge available within manufacturing to marketing of the mahogany industry. The Mahogany Resource (of which our forefathers had willingly given land to) would not give back to the landowners benefits monetary or otherwise it had been promised and expecting for all these years.

The Mahogany Industry although is said to be of some value Sir, but without participation and involvement from silviculture to marketing of landowners, would render it valueless, and would become meaningless to them. When something or a commodity becomes valueless and meaningless then it is no point supporting, or to stand for, or be part of.

This submission is made to request your good-self to consider **FMT/landowners as one of the Two or Four Licensees**. Our preference is for only two Licensees (SMI & FMT) that is FMT/landowners to hold License for all Grades 3 – 5 and issue **Sub-Licensees** on FHCL's behalf. We will sell majority of the Logs to 2 or 3 other **'Sub-Licensees'**. We have to abide by the Branding Decree of 2011. A smaller proportion initially of up-to 30,000 cubic meters we will manufacture and value-add for exports.

The advantage of giving us License for Sub-Licensing Sir, is that, we (FMT/landowners) will be able to work together with FHCL and Processors and at the same time (FMT on behalf of the Mahogany Industry Council (MIC) is to monitor both of them for keeping quality standards, certification, branding and for sustainability. Sustainability is of paramount importance to the landowners, Sir.

Alternatively you include (as a condition) in your License that each and all of the 4/5 License-Holders is to provide as a gift between 15 - 30% shareholding in their respective company for the FMT/landowners. FMT/landowners would negotiate separately with each company for a proportion as a **'gifted share'**.

### **Recommendations.**

Briefly (in order of preference) these are as follows:

- (i) MIC/FHCL to issue License for Grades 3 – 5 to FMT (on behalf of landowners) and that FMT issue **Sub-Licensees** to 2 or 3 other processors. All other conditions by MIC or FHCL including Branding apply.
- (ii) FMT/landowners to be **one of the 4 or 5 Licensees** with at least 30,000 cubic meters of Grades 3 - 5.
- (iii) Failure to which we request and/or demand at least **15% of gifted share-holding** in each of the Licensees. We request that this become a License condition and that FMT is to negotiate separately with each Licensee.

We least prefer the third option and recommendation Sir, as we may be part and interfering with the other shareholders process of decision making. However if that is what you can offer us Sir, then we will accept and to work with the company shareholders for a **'win-win'** situation.

The landowners cannot see any justice in the process of policy making of the Mahogany Industry, if none of the above is offered to FMT/landowners Sir.

We would be grateful for a meeting Sir, to discuss the above before a decision is made on the issue of Licenses to Grades 3 – 5 thank you.

I humbly submit this for your favorable consideration, decision and reply please.

Yours faithfully,

Mitieli Bulanauca - Chairman.

## **ANNEX 6**

**Thursday, August 25, 2011 *Dr WadanNarsey***

THE ROAD TO GOLD? Namosi Mine.

### **Preparing environmentally for the Namosi Copper Mine: is a desperate regime forging ahead without thought?**

Many wrong doings of this Military Regime can be reversed when an elected, accountable and transparent government returns to Fiji. *But a wrecked environment is not one of them.*

It may not happen. Or the rare event may happen at great cost, as Japan sadly found with the unexpectedly huge tsunami and resulting nuclear disasters.

Plans are under way for a mining company - Namosi Joint Venture (NJV) (made up of Newcrest (Fiji) Ltd, Mitsubishi Materials Corporation and Nittetsu Mining Co. Ltd.) to begin a mining venture based on "open cast mines" in Namosi, known to have large reserves of copper, but also gold.

The Military Regime has started "community consultations" which will allegedly feed into Terms of Reference (ToR) which will be given to the mining company to allegedly "guide what should be done as part of the EIA". Why to the mining company?

How useful are these consultations for determining a Terms of Reference for an EIA? How independent will be the IEA? How thorough will be the EIA? How will the EIA be used? If the results of the EIA are negative enough, will that be end of the project?

Or will this Regime go ahead anyway, with or without environment safeguards, because they are desperate for economic growth and increased government revenues to continue to finance their bloated military budget?

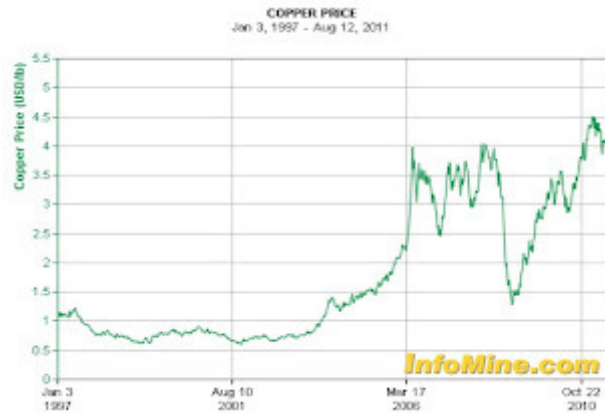
Soon this unelected, unaccountable, non-transparent, illegal Military Regime will be making critical decisions on the mining venture. Why are they?

If wrong decisions are made there may be immense risk posed to the Namosi environment, and the reefs and oceans into which the spill-off from the mine will inevitably flow. Also likely to be affected is the tourism industry on the south west coast of VitiLevu.

All indications are that environmentalists and concerned people face an uphill battle to preserve a valuable part of Fiji's natural environment, for the future generations.

## Why now? Copper and gold price bonanza

A Namosi copper mine has been talked about for more than thirty years. Why this sudden burst of activity now?



This graph (from Infomine.com) explains it all: the price of copper having hovered around US 50 cents between 1997 and 2003, shot up to US\$3.50 in 2006, fell to about \$1.50 around 2008 and has been rising since then.



It is now above \$4 per kg - or eight times higher than 15 years ago. Even if it falls to half this level in the long term, this has the potential to be a very profitable mine.

There are also reasonable quantities of gold associated with the mineral deposits in Namosi, and gold prices have also had a miraculous rise. From being below US\$500 an ounce up till 2003, it has steadily shot up to more than US\$1500 per ounce.

There is every indication that the rise in gold prices will not be reversed. There is increasing political uncertainty in the world, the US dollar has declined as a reserve currency for the rest of the world, stock markets are increasingly fragile after the Global Financial Crisis, and there are other fascinating reasons such as the century old love of China and India for gold, boosted by their recent meteoric rise in global international power. Not only has the Vatukoula Gold Mine become a bonanza, but the gold portion may be the icing on the cake for the Namosi Joint Venture copper mine.

In short, the dramatic rise in copper and gold prices have made the mineral resources in Namibia well worth investing in.

*The huge investment required will be even more profitable if the mining companies do not have to spend too much to ensure environmental safety.*

And a good EIA may require expensive safeguards which would reduce the profits of the mining companies

### **Good EIAs are immensely difficult**

A good Environment Impact Assessment tries to examine all the impacts (environmental, economic, and social) that the mine will have, including the impacts on all the people, the current and future generations and all the natural species, known and unknown.

To do a good EIA even in a developed country is an incredibly difficult exercise full of fundamental disagreements between environmentalists and economists, between environmentalists themselves, and between economists themselves.

Developed countries usually have some understanding of what species there are in the particular environment, from birds to butterflies, to all kinds of species of plants and living organisms, which the average person has no idea of.

But they also have huge vacuums of knowledge and base data about species they know to exist, and knowledge nightmares about species they have yet to discover, but which they know are there, simply because of the past history of discovering new species in such areas.

The difficulties are even more immense in developed country coastal regions, reefs and oceans where there is an absolute dearth of scientific knowledge.

Nevertheless, fool-hardy economists (usually for a nice consultancy fee) take the little bits of knowledge that they do have about the environment they know, and use all kinds of debatable methods to put a monetary value on the likely environmental damage that the prospective mine may cause.

Many of these methods depend on putting market values on costs: such as the value of lost crops, timber, medicines, marine resources, etc. Or they hopefully ask “what would you pay to enjoy this environment benefit?”

Of course, the market value is high if those being asked are rich. But most often, those being asked are too poor to even feed, clothe and educate themselves, as in Namibia. What would they offer to pay for a clean environment?



Economists are also known for quite amorally concluding that for a project to go ahead it only has to have “net positive benefits”- ie benefits are higher than losses: losers don’t have to be actually compensated to have a “an improvement in the economy”. (Bad luck, losers!)

Of course, no EIA can ever estimate the value of the potential costs to future generations who cannot be asked anything at all.

Forget also about the good environment things that exist which scientists know they know next to nothing about. And don’t even think about the potential loss of good things which scientists don’t even know the existence of, but can put a high probability on them existing!

### **EIAs in Fiji even more difficult**

As with most developing countries in the world, Pacific countries like Fiji, PNG, Solomon Islands and Vanuatu, have very little documented scientific knowledge of what exists in our land environments.

There is even less known about what exists in our marine environments, except that for drug companies the world over, the tropical marine resources (including Fiji) have been one of the last frontiers for exciting new drugs and medicines waiting to be discovered and patented.

Just down the Namosi coast is the Great Astrolabe Reef- one of the world’s largest barrier reefs, and one of the world’s best diving locations. It has an incredibly varied topography (including the shallow and deep), goodness knows what marine species, and considered to be ideal for declaration as a marine park and a World Heritage Site.

How many other reefs are there which are not current tourism locations, and which may be affected by the proposed Namosi copper mine? Does the Tourism industry care enough to taken more than a token interest?

### **Who will do the Namosi EIA?**

According to media reports, the EIA study would be conducted by international consultancy firm Golder and Associates, and the Institute of Applied Science from the University of the South Pacific.

The Institute of Applied Studies can be expected to do the best they can. But they will be hampered by the lack of most basic information about what exists in that Namosi environment, and all the areas in the surrounding oceans likely to be affected by leaching chemicals.

Local consultations are not going to be much help or any surprise. They will give a little information about crops, fisheries and bush medicine they are going to lose. (Villages will be busy planting new crops already to maximise their claims- as villagers have done everywhere in Fiji where roads have been built!) .

But local villagers will know very little about the potential biodiversity damage to the environment. Despite all their good intentions and efforts, there is no way that USP's Institute of Applied Studies, will be able to conduct the thorough environmental studies that are needed. Such studies would take years, not the six months or a year that the NJV is currently expecting.

The chosen company, Golder and Associates are known to do EIAs. But their website also makes clear that they do far more than EIAs for the mining companies.

Golder's advertised services include "Surface and underground mine design and production optimisation, including geology, geostatistics, block modelling, grade control, pit slope design and stope design, ground control, backfill design and ventilation; Hydrogeology, geochemistry and water management; Design, planning and implementation of all types of tailings and waste rock management systems; thickened-tailings and paste-tailings deposition and plant design & construction; Preparation and implementation of closure plans that meet the needs of local stakeholders and regulatory agencies."

Clearly, the EIA may be only the beginning of the money making for Golder and Associates, out of the Namosi Joint Venture project.

### **How will the EIA be used?**

An EIA can be used in any number of ways, which I simplify to three:

1. The most genuine and thorough EIA is used to help in the actual decision-making. If it is found that the costs may be so great as to totally outweigh all the other benefits to the country, the difficult decision may have to be made to not approve the mine.
2. If the EIA finds that the benefits will far outweigh the likely costs, AND the costs can be minimised, AND "losers compensated", then the mine may be approved PROVIDED that the mine puts in place the required safety mechanisms.
3. The EIA may be done (whether well or poorly) and be used to just "rubber-stamp" the mine, regardless of whether safety mechanisms are put into place or not, or adequate independent policing mechanisms established.

The NJV Country Manager is reported to have said, the studies "will gather specific environmental and social data along with other information to identify potential impacts on the environment and provide options on how they could be managed".

Has the Military Regime already agreed before the EIA has even been done, that the mine will go ahead, and the EIA will merely provide options on how damage "could be managed"?

You can decide at the end of this article, which is the likely outcome in Fiji today.

### **What's in it for the Military Regime?**

The mining companies will be rubbing their hands with glee because they love unelected Military Regimes, unaccountable to the people.

They know that with the Fiji economy in the doldrums, with the sugar industry collapsing, with no major new investments on the horizon, the Military Regime is over a barrel, desperate to get the economy going.

The Regime will not particularly care for a proper thorough independent EIA which may delay the mine for a few years, and so they will not demand stringent environmental precautions.

The Military Regime may even be pressured to give generous tax breaks to get something going.

The current judiciary may be expected to reinforce the Military Regime's decisions, and their Military Decrees which state that the Regime may not be challenged on anything. So forget about legal injunctions in Fiji.

International courts will also legitimize agreements made even with illegal regimes, as long as they have demonstrated full effective control, with no obvious challenge to their rule. Yes- that's Fiji now. Anonymous bloggers don't count.

Having closely watched events in Fiji for the last five years, the mining companies will also know that they need to please just two key Military Regime persons - I forget their names- to ensure that their mining interests are safeguarded.

### **The collaborating local interests**

The mining companies are well aware of successful strategies used internationally (and in Fiji) by which local interests are pacified and the support of key movers and shakers guaranteed.

The local villagers will be given their rolls of bank-notes to compensate them for their "lost" incomes from crops and environmental resources, and many may be given labouring jobs associated with the mines.

A few key chiefs and local leaders will be appointed in Public Relations or labour management roles.

There will be a few hundred thousand dollars spent on schools, health centers, water tanks, play-grounds, and sports teams.

The local business community (building materials suppliers, the banks, the insurance companies) will be rubbing their hands with glee as they face the prospect of some

improvement in the economy, and their bank balances. They and their families will not be retiring in Fiji's environment.

Key civil servants (and the Military Regime leading lights) will be taken on "all expenses paid" tours (like the recent bond selling road show orchestrated by ANZ) of mining sites throughout the world (not Ok Tedi, of course) where model mining techniques and safeguards may be "demonstrated".

Multinational corporations know quite well that with hundreds of millions of dollars of profits at stake, a few millions spent on social lubricants applied to these key persons, would be money well spent in ensuring their ready co-operation. Fiji abounds with examples of eager politicians and top civil servants willing to engage "privately" with business corporations, international or local.

Expect no civil servant to stick their necks out for the Fiji environment against this ruthless Military Regime, especially as they can expect no protection from the pliant Public Service Commission, if their heads are chopped off.

### **If environment disaster hits?**

Fiji environmentalists well know what has happened to the interests of the local people and the environment in major mining disasters overseas.

Probably the most useful for Fiji to learn from is the massive Ok Tedi Mine disaster in Papua New Guinea, also an "open cast" mine involving extraction of copper and gold.

There the "tailings dam", which was supposed to hold all the poisonous wastes from the mining, collapsed, yet the mine was allowed by officials to continue, despite the known widespread damage to the environment.

The Ok Tedi Mine generated massive profits for the Ok Tedi Mining Limited (BHP Billiton), huge taxation revenues for the PNG Government and the Provincial Government, and the leading political parties and politicians.

Eventually some local communities managed to win large development funds as damages from the Ok Tedi Mining Limited.

Other losing groups are still litigating- but it is an uphill losing battle pitting the limited local resources (the Davids) against the massive (Goliath) multinational corporations able to hire large teams of lawyers, scientists and public relations companies.

If you think it won't happen in Fiji, have a look at the excellent work of DrAtuEmberson Bain which gives the ongoing Fiji example of what happens when local communities and workers came up against a large gold mining company.

Dr Bain has well documented in books, articles and video documentaries, the disastrous impacts on workers and the environment, caused by an irresponsible profit-focused mining company, supported by equally uncaring governments.

### **Conclusion**

Those who care about the Namosi and Fiji environment will have to fight to ensure that a proper independent EIA is carried out; that the right decisions are made as to whether the mine should go ahead at all; that adequate environment safety precautions will be put in place and policed; and that the local economy and people and affected groups get their proper compensation.

This is going to be an uphill battle made more difficult by the continuing media censorship.

The local Namosi communities cannot be expected to safeguard the national interest as their immediate financial and economic benefits are likely to be very large indeed, and will take many of them out of poverty.

But the Namosi and the surrounding environment does not belong to the current generation in Namosi or even the current generation in Fiji.

Remember what Mahatma Gandhi said (oft quoted by Greenpeace)

*“The earth, the air, the land and the water are not an inheritance from our forefathers but on loan from our children. So we have to handover to them at least as it was handed over to us”.*

Environment NGO activists like Greenpeace, will need all the help that the public and our expert environmentalists can give (probably on the quiet).

The mining company (Namosi Joint Venture) will be making a huge investment, which still has inherent mining risks, but which promises massive bonuses (millions) to the executives, if large profits are made for the shareholders.

As the Global Financial Crisis showed, morality and the interests of the general public (or the environment), just do not come into the picture when it comes to corporate decision-making with such large pay-offs.

It is not a matter of labeling them “good” or “evil” corporate executives: that’s just how the corporate capitalist world operates.

But if the current Fiji people fail to protect the environment in such mining projects, they will have failed the future generations, whatever benefits may be enjoyed by the current generation.

### **Need for government accountability**

Ultimately, Fiji people will have to realize that the struggle for the environment (like the struggle for the FNPF pensioners, or for workers and unions' legitimate rights, or for religious groups to have their gatherings) is part of the bigger battle which will not go away:

*An unelected illegal Military Regime has absolutely no right to be making any decisions on the Namosi Copper Mine which will affect generations to come. They should leave all such decisions to elected governments.*

Of course, elected governments have a poor environment record in Fiji as well.

For seventeen years, the Alliance Government was in the pockets of the Emperor Gold Mine, which was even accused of having a role in the 1987 coup which removed the Labour/NFP Government (which unwisely talked about nationalizing the Gold Mine); Rabuka's SVT Government was sympathetic to the Gold Mine; as was the Qarase Government whose control of Senate resulted in the rejection of DrAtu Bain's 2003 motion for an independent inquiry into the Gold Mine.

Our friend, KiniNavuso, leader of the longest strike in history by the Vatukoula gold mine workers, died recently, nationally unappreciated, in life or in death, by successive governments. Our friend, KiniNavuso, leader of the longest strike in history by the Vatukoula gold mine workers, died recently, nationally unappreciated, in life or in death, by successive governments."

It is very important to build up good role models for our people. There aren't too many among the past politicians. Or are there some who the establishment has always put neglected?

So elected Fiji governments are no guarantee that justice will be done to the environment or to the mine workers.

But at least they may be rejected at the next election, should their failures be bad enough to displease the voters.

I doubt, however, if this Military Regime is going to be dismissed by votes, any time soon. The Fiji public may soon forget what a vote is. Just as they have forgotten what a free media means.



## *Nadudukilagi*

Na Nodra i Tikotiko Vakaturaga na  
Gone Marama Bale na Roko Tui Dreketi  
Lomanikoro, Rewa

Ph: (679) 3684673

P.O. Box 3554, Nausori  
11<sup>th</sup> April, 2012

Commodore Voreqe Bainimarama  
Government Building  
SUVA

I Voreqe

### **Re: THE ABOLISHMENT OF THE GREAT COUNCIL OF CHIEFS**

The Chiefs have, from since early settlement to ceding of Fiji to Her Majesty, Queen Victoria of Great Britain and Ireland have always had a voice in the governance of this nation. Despite the shallow criticisms against the role of traditional Chiefs, they are the stabilizing factor for Fiji and they have helped to control the ethnonationalism and facilitate conciliation in ethnic relations in Fiji.

The recent findings of the ECREA and CCF research in three provinces in Fiji confirm that indigenous people continue to make their decisions through their Chiefs. This is not to imply that Chiefs manipulate this form of respect towards their own ends, but rather suggest that a truly empowered Fiji can only occur if there is a genuine appreciation of our traditional structures, amply harnessed towards enlightening our people.

The obsession to remove racial issues from the governance of this nation is short-sighted and ill-conceived, for ethnicity is a fact of life. Internationally, ethnicity and culture are recognized and valued, for it is only through racial and ethnic diversity that we can realize civic strength. It is when our nation fully appreciates the different ethnic communities and their culture and learn to accept the different cultures and religions, then only, when we will have everlasting peace in Fiji.

Much has already been said about indigenous rights and it is a fallacy that we as the first people have continued to be prioritized. For as much as our people have sacrificed towards the development of our great nation through our benevolence in bequeathing traditional land, waterways and i qoliqoli, little returns can actually be accounted for in the differences made to lives. These were the very real challenges that we Chiefs lived and breathed every time we sat together.

The Great Council of Chiefs has a role to reconcile the rights of indigenous community with the development of an equitable national society. It remains my steadfast belief that we Chiefs have a moral obligation to cultivate the concept of shared interests and values to transcend the differences that exist in the different societies in Fiji today. Only the Great Council of Chiefs has the capacity to help preserve a viable democratic political system for our nation.

The Leaders of our Indian Fijian community have made public pronouncements on the vital role of Chiefs in Fiji; both the Leaders of the National Federation Party, Mr. Jai Ram Reddy and the Leader of the Labour Party, Mr. Mahendra Pal Chaudary have declared their unwavering support to the Chiefs of Fiji re "Chiefs are not only chiefs of indigenous Fijians they are Chiefs for all communities who have made Fiji their home".

The Coalition of Indian parties in their presentation to the Constitution Review Commission in 1995/1996 advocated for a strong position for the Council of Chiefs, understanding the vital role they play and compromising the human rights principles for the sake of "national unity and harmony". They went further to say that "The Bose Levu Vakaturaga has an important role in healing racial wounds. It should be given a special responsibility to encourage the growth of multiracialism and national unity".

I have reflected on your decision to abolish the Great Council of Chiefs and maintain that the unique roles which the Great Council of Chiefs have played in reconciling the cultural differences and bridging social and political cohesion in Fiji, fully warrants their rightful place in the governance of this nation.

Some changes have been made over the years in the format, membership and administration of the GCC.

On the eve of the political takeover of the elected Government of this nation, the Fijian Administration was on the verge of being reformed further. The natural outcome of the reforms would have put in place the "invigoration" of the GCC that would have been made with proper consultations with stakeholders including the Chiefs themselves.

The revolutionary changes that you are making in Fiji cannot be made without the involvement of the Great Council of Chiefs of Fiji. They are the source of peace, stability and unifying factor for the different communities living in Fiji.

As you are well aware of, any calamity between the races in Fiji or even between indigenous Fijians themselves can only be resolved with the involvement of the GCC.

I outline below some of the major decisions undertaken by the Great Council of Chiefs which have contributed to the improvement of the welfare of not only indigenous Fijians of our beloved nation but inclusive of all the people of this nation:

1. Their resolve to cede Fiji to Her Majesty, Queen Victoria on 10<sup>th</sup> October, 1874 and thereby bringing about civilization to our beloved nation.
2. Their decision to establish the Native Land Trust Board and to lease 'native lands' for the use of all communities to develop our nation.
3. Their support for the establishment of the ALTA legislations.
4. The establishment of the Fijian Development Fund Board which has supported the education of many indigenous Fijians as well as the construction of improved houses in rural Fiji.



- 5 The establishment of Queen Victoria School and Adi Cakobau School as training ground for indigenous leaders.
- 6 Their support for the instrument of Independence of colonial Fiji.
- 7 The establishment of Fijian Holdings Limited as the vehicle to allow indigenous Fijians to penetrate into the commercial sector and benefit from their investment earnings.
- 8 The creation of Yasana Holdings Limited to support the role of Fijian Holdings in creating wealth for indigenous Fijians and Rotuman institutions.
- 9 The construction of the Bose Levu Vakaturaga Complex to be an emblem of the unique role of the Chiefs in bringing about civilization in Fiji.
- 10 The creation of the Fijians Trust Fund as a means of supporting matters Fijian including their aspirations.
- 11 The directive to establish Ratu Sukuna Memorial School (1958) at a time when there were only 28,000 indigenous Fijians studying at primary level and 439 at secondary level. The levy of one shilling per Fijian raised the initial sum of 8,135 pounds that established the school.
12. Their support on the establishment of Scholarship Fund for indigenous Fijians.
13. Supported Governments in relaying their policies to indigenous people and their institutions.
14. Their support for the constitutional amendments resulting in the amended 1997 Constitution.

All in all the Chiefs have facilitated the creation of economic and educational democracy for indigenous Fijians and these have provided some comfort in understanding and in bridging the ethnic divide.

The path on which you are taking Fiji can only be meaningful with the involvement of the Great of Council of Chiefs, firmly backed up with the respect for the rule of law.

The destiny of our beloved Fiji lies in involving the Chiefs of Fiji and the Leaders of other races in Fiji.

I will end this communication with a quote from the late paramount Chief of Burebasaga, Ro Lady Litia Lalabalavu Mara upon officiating the opening of the GCC at Viseisei Vuda in November, 2003:

*"..Obviously there have been much changes over the years. We have had to endure trials and tribulations. There have been shortcomings and there have been successes. These changes have affected all aspects of Fijian livelihood....."*

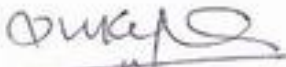
*The challenge that is before us is to create an environment where all the people in our diverse communities can co-exist peacefully and work together to ensure a bright future for our children.*

*I have full confidence that the Great Council of Chiefs will, as it has shown in the past, to rise to the occasion and make decisions for the benefit of all the people of our great and wonderful country Fiji.*

Voreqe, the Great Council of Chiefs and their role in society lives forever in the hearts of the people who have the interest of the welfare and good governance of our nation.

You, together with those who made the decision to abolish the Great Council of Chiefs as well as your advisers have made a serious error of judgment in the governance of our beloved nation of Fiji.

Yours faithfully,



Roko Teimumu Kepa  
ROKO TUI DREKETI

## APPENDIX 8

STATEMENT BY 21683 COLONEL ALFRED TUATOKO, CM, MSD, Grad Dip Mnmgt Studies, Grad Dip Strat Studies, jssc, psc, Fiji Infantry Corps

A 2004 budget briefing by DMR (Capt Teleni) was scheduled for Tuesday 16 December, 2003. Present in this briefing were CLF, DMR, DSC&FD, CO ENGR, CO 3FIR, Maj Balawa, CO FTG, Comdr T Koroi, Maj S Vatu and WO1 Leweni. During the course of the briefing, Comd RFMF rang DMR and advised him to have all members in the briefing await him and also have COL Kadavulevu present.

When Comd RFMF arrived he took over the meeting and advised us of his intent to remove the current Government except for the MFA&ET and the GCC. Commander RFMF also indicated that some NGO's and Diplomatic Corp are behind him. The Comd instructed that we draw up plans for the removal of the Government and to provide a back briefing to him on his return on the 21 December 2003 from his visit to Labasa. LTCOL Pita Driti then said in the conference "...io, vinaka me caka ni sa rui levu na butako". Commander RFMF then rang the Ministry of Home Affairs and asked to speak to the Minister. When he was told that the Minister was not available, he asked for the Parliamentary sitting schedule for 2004. He ended the conference by saying "dou cakava vaka totolo na plan de dou qai kidacala au sa liu sobu i ra."

After the Comd left the meeting we decided that we would not draw up plans for the military takeover as this was a criminal and treasonable act. However the staff of HQ RFMF would draw up an advice for Comd RFMF advising him against his intention to remove the Government.

On Thursday 18 December during Comds scheduled conference he reiterated his intent to remove the Government of the day save HE, the President and that we were to continue to draw up plans for the takeover of government. He added that he did not want anybody sitting on the fence and if anyone does not agree with his intention, is to leave. At the end of this meeting Comd personally interviewed several officers. These officers are Col Kadavulevu, Col Tuatoko, Capt(N) Teleni, LTCOL Raduva and Comdrs Koroi and Natuva.

In my interview with Comd he stated that he would forcefully remove the present government if his term as Comd RFMF was not renewed. I advised him that such an act was illegal and amounted to treason. I advised him that there are legal ways to settle his disagreement with government and that he must follow that legal path. Comd said that doing so would take too much time. He said that removing the government may be legally wrong but was morally correct. He also said that he must remain as Comd because there was no one who could be Comd and pursue the May 2000 prosecutions as he is doing.

I told him that the issue regarding the renewal of his term was a matter between him and government. He should not use the institution as a means of renewing his term. Comd did not accept this and asked where I stood regarding his intention to remove government. I



told him that I could not support him on such an illegal and treasonable act. Comd than directed that I keep out of the planning activities. My interview thus ended.


Following the individual interviews we spoke amongst ourselves and accept for Comdr Natuva whom I did not speak to, we all had advised Comd that his intention was illegal and treasonable and that each of us did not support the Comd in such an activity. Col GK than advised us that we must provide Comd with a written advise in order to convince him not to carry out his intent. The advice should be ready for Comd before 31 Dec. The advice was actually tendered to the Comd in early Jan 04.

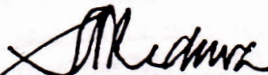
On 19 December 2003 at the WOs&SGTs Mess, in his address to the officers and senior non-commissioned officers, he said that 2004 will be a difficult year and our individual loyalty to him (Commander RFMF) will be put to the test.

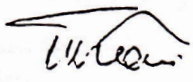
On the afternoon of Monday 12 January, COS HQ RFMF called a meeting of the HQ RFMF staff and advised that he had been relieved of his appointment and told to go leave because of the advice that was tendered to Comd advising him against his intent to remove the government. Comd also advised him that all officers who formed or contributed to the advice are to also go on leave.

Comd RFMF called a conference on Tuesday 13 January 04 and amongst other things advised the conference that we should not be shaken by the ongoing saga over the renewal or otherwise of his term as Comd RFMF. He also advised the conference that he had relieved Col Kadavulevu of the COS HQ RFMF appointment and has nominated LTCOL Baleidrokadroka as COS because he was disappointed with the written advice he received. He also directed that all the officers who formed the advice and all officers at both SHQ and LFC who did not support him on the path he was taking the RFMF, to stick to their principles, take all outstanding leave and when their leave was finished, that they do the honourable thing and resign from the RFMF. He also mentioned that he was only testing us in the interviews and that he would not force anyone to resign.

On Thurs 15 Jan I received a posting order showing amongst other changes that LTCOL J Pickering had assumed my appointment of DSC&FD.

  
A. TUATOKO  
Colonel  
// March 2004

Witness:   
S.V. RADUVA  
Lieutenant Colonel  
// March 2004

  
T. T. KOROI  
Commander (N)  
// March 2004

## ANNEX 10

Friday 16 December 2011

### **Commemorating the King James Version's 400th anniversary:Prime Minister:**

It's great to be here and to have this opportunity to come together today to mark the end of this very special 400th anniversary year for the King James Bible.

I know there are some who will question why I am giving this speech. And if they happen to know that I'm setting out my views today in a former home of the current Archbishop of Canterbury.....and in front of many great theologians and church leaders.....they really will think I have entered the lions' den.

But I am proud to stand here and celebrate the achievements of the King James Bible. Not as some great Christian on a mission to convert the world. But because, as Prime Minister, it is right to recognise the impact of a translation that is, I believe, one of this country's greatest achievements.

The Bible is a book that has not just shaped our country, but shaped the world.

And with 3 Bibles sold or given away every second.....a book that is not just important in understanding our past, but which will continue to have a profound impact in shaping our collective future. In making this speech I claim no religious authority whatsoever. I am a committed – but I have to say vaguely practising – Church of England Christian, who will stand up for the values and principles of my faith.....but who is full of doubts and, like many, constantly grappling with the difficult questions when it comes to some of the big theological issues.

But what I do believe is this.

The King James Bible is as relevant today as at any point in its 400 year history. And none of us should be frightened of recognising this. Why?

Put simply, three reasons.

First, the King James Bible has bequeathed a body of language that permeates every aspect of our culture and heritage.....from everyday phrases to our greatest works of literature, music and art.

We live and breathe the language of the King James Bible, sometimes without even realising it. And it is right that we should acknowledge this – particularly in this anniversary year. Second, just as our language and culture is steeped in the Bible, so too is our politics. From human rights and equality to our constitutional monarchy and parliamentary democracy.....from the role of the church in the first forms of welfare provision, to the many modern day faith-led social action projects.....the Bible has been a spur to action for people of faith throughout history, and it remains so today.

Third, we are a Christian country.

And we should not be afraid to say so.

Let me be clear: I am not in any way saying that to have another faith – or no faith – is somehow wrong. I know and fully respect that many people in this country do not have a religion. And I am also incredibly proud that Britain is home to many different faith communities, who do so much to make our country stronger.

But what I am saying is that the Bible has helped to give Britain a set of values and morals which make Britain what it is today. Values and morals we should actively stand up and defend.

The alternative of moral neutrality should not be an option. You can't fight something with nothing. Because if we don't stand for something, we can't stand against anything. Let me take each of these points in turn.

First, language and culture. Powerful language is incredibly evocative. It crystallises profound, sometimes complex, thoughts and suggests a depth of meaning far beyond the words on the page.....giving us something to share, to cherish, to celebrate.

Part of the glue that can help to bind us together. Along with Shakespeare, the King James Bible is a high point of the English language.....creating arresting phrases that move, challenge and inspire.

One of my favourites is the line "For now we see through a glass, darkly."

It is a brilliant summation of the profound sense that there is more to life, that we are imperfect, that we get things wrong, that we should strive to see beyond our own perspective. The key word is darkly – profoundly loaded, with many shades of meaning. I feel the power is lost in some more literal translations. The New International Version says: "Now we see but a poor reflection as in a mirror" The Good News Bible: "What we see now is like a dim image in a mirror" They feel not just a bit less special but dry and cold, and don't quite have the same magic and meaning.

Like Shakespeare, the King James translation dates from a period when the written word was intended to be read aloud. And this helps to give it a poetic power and sheer resonance that in my view is not matched by any subsequent translation. It has also contributed immensely to the spread of spoken English around the world. Indeed, the language of the King James Bible is very much alive today. I've already mentioned the lions' den.

Just think about some of the other things we all say. Phrases like strength to strength.....how the mighty are fallen... ..the skin of my teeth.....the salt of the earth.... nothing new under the sun.

According to one recent study there are 257 of these phrases and idioms that come from the Bible. These phrases are all around us.....from court cases to TV sitcoms.....and from recipe books to pop music lyrics.

Of course, there is a healthy debate about the extent to which it was the King James version that originated the many phrases in our language today. And it's right to recognise the impact of earlier versions like Tyndale, Wycliffe, Douai-Rheims, the Bishops and Geneva Bibles too.

The King James Bible does exactly that.....setting out with the stated aim of making a good translation better, or out of many good ones, to make "one principal good one"

But what is clear is that the King James version gave the Bible's many expressions a much more widespread public presence. Much of that dissemination has come through our literature, through the great speeches we remember and the art and music we still enjoy today.

From Milton to Morrison.....and Coleridge to Cormac McCarthy.....the Bible supports the plot, context, language and sometimes even the characters in some of our greatest literature.

Tennyson makes over 400 Biblical references in his poems....and makes allusions to 42 different books of the Bible.

The Bible has infused some of the greatest speeches... ...from Martin Luther King's dream that Isaiah's prophecy would be fulfilled and that one day "every valley shall be exalted.....to Abraham Lincoln's Gettysburg address which employed not just Biblical words but cadence and rhythms borrowed from the King James Bible as well.

When Lincoln said that his forefathers "brought forth" a new nation, he was imitating the way in which the Bible announced the birth of Jesus.

The Bible also runs through our art. From Giotto to El Greco.....and Michelangelo to Stanley Spencer.

The paintings in Sandham Memorial Chapel in Berkshire are some of my favourite works of art. Those who died in Salonika rising to heaven is religious art in the modern age and, in my view, as powerful as some of what has come before.

And the Bible runs through our music too. From the great oratorios like J S Bach's Matthew and John Passions and Handel's Messiah.....to the wealth of music written across the ages for mass and evensong in great cathedrals like this one.

The Biblical settings of composers from Tallis to Taverner are regularly celebrated here in this great cathedral.....and will sustain our great British tradition of choral music for generations to come.

It's impossible to do justice in a short speech to the full scale of the cultural impact of the King James Bible. But what is clear is that four hundred years on, this book is still absolutely pivotal to our language and culture.

And that's one very good reason for us all to recognise it today. A second reason is this. Just as our language and culture is steeped in the Bible, so too is our politics.

The Bible runs through our political history in a way that is often not properly recognised. The history and existence of a constitutional monarchy owes much to a Bible in which Kings were anointed and sanctified with the authority of God.....and in which there was a clear emphasis on the respect for Royal Power and the need to maintain political order.

Jesus said: "Render to Caesar the things that are Caesar's, and to God the things that are God's."

And yet at the same time, the Judeo-Christian roots of the Bible also provide the foundations for protest and for the evolution of our freedom and democracy.

The Torah placed the first limits on Royal Power. And the knowledge that God created man in his own image was, if you like, a game changer for the cause of human dignity and equality. In the

ancient world this equity was inconceivable. In Athens for example, full and equal rights were the preserve of adult, free born men.

But when each and every individual is related to a power above all of us.....and when every human being is of equal and infinite importance, created in the very image of God.....we get the irrepressible foundation for equality and human rights.....a foundation that has seen the Bible at the forefront of the emergence of democracy, the abolition of slavery.....and the emancipation of women – even if not every church has always got the point!

Crucially the translation of the Bible into English made all this accessible to many who had previously been unable to comprehend the Latin versions. And this created an unrelenting desire for change.

The Putney debates in the Church of St Mary the Virgin in 1647 saw the first call for One Man, One vote.....and the demand that authority be invested in the House of Commons rather than the King.

Reading the Bible in English gave people equality with each other through God. And this led them to seek equality with each other through government. In a similar way, the Bible provides a defining influence on the formation of the first welfare state.

In Matthew's Gospel, Jesus says that whatever people have done "unto one of the least of these my brethren"..... they have done unto him. Just as in the past it was the influence of the church that enabled hospitals to be built, charities created, the hungry fed, the sick nursed and the poor given shelter.....so today faith based groups are at the heart of modern social action.

Organisations like the Church Urban Fund which has supported over 5,000 faith based projects in England's poorest communities.....including the Near Neighbours Programme which Eric Pickles helped to launch last month.

And St Ethelburga's Centre for Reconciliation and Peace in London's Bishopsgate.....a building once destroyed by an IRA bomb.....but now a centre where people divided by conflict, culture or religion can meet and listen to each other's perspective.

In total, there are almost 30 thousand faith based charities in this country.....not to mention the thousands of people who step forward as individuals, as families, as communities, as organisations and yes, as churches.....and do extraordinary things to help build a bigger, richer, stronger, more prosperous and more generous society.

And when it comes to the great humanitarian crises – like the famine in Horn of Africa – again you can count on faith-based organisations.....like Christian Aid, Tearfund, CAFOD, Jewish Care, Islamic Relief, and Muslim Aid.....to be at the forefront of the action to save lives.

So it's right to recognise the huge contribution our faith communities make to our politics....and to recognise the role of the Bible in inspiring many of their works.

People often say that politicians shouldn't "do God." If by that they mean we shouldn't try to claim a direct line to God for one particular political party.....they could not be more right.

But we shouldn't let our caution about that stand in the way of recognising both what our faith communities bring to our country.....and also just how incredibly important faith is to so many people in Britain.

The Economist may have published the obituary of God in their Millennium issue.



But in the past century, the proportion of people in the world who adhere to the four biggest religions has actually increased from around two-thirds to nearly three quarters.....and is forecast to continue rising. For example, it is now thought there are at least 65 million protestants in China and 12 million Catholics – more Christians than there are members of the communist party.

Official numbers indicate China has about 20 million Muslims – almost as many as in Saudi Arabia – and nearly twice as many as in the whole of the EU.

And by 2050, some people think China could well be both the world's biggest Christian nation and its biggest Muslim one too.

Here in Britain we only have to look at the reaction to the Pope's visit last year.....this year's Royal Wedding.....or of course the festival of Christmas next week, to see that Christianity is alive and well in our country.

The key point is this. Societies do not necessarily become more secular with modernity but rather more plural, with a wider range of beliefs and commitments.

And that brings me to my third point.

The Bible has helped to shape the values which define our country.

Indeed, as Margaret Thatcher once said, "we are a nation whose ideals are founded on the Bible." Responsibility, hard work, charity, compassion, humility, self-sacrifice, love.....pride in working for the common good and honouring the social obligations we have to one another, to our families and our communities.....these are the values we treasure.

Yes, they are Christian values. And we should not be afraid to acknowledge that. But they are also values that speak to us all – to people of every faith and none. And I believe we should all stand up and defend them.

Those who oppose this usually make the case for secular neutrality. They argue that by saying we are a Christian country and standing up for Christian values we are somehow doing down other faiths. And that the only way not to offend people is not to pass judgement on their behaviour. I think these arguments are profoundly wrong.

And being clear on this is absolutely fundamental to who we are as a people.....what we stand for.....and the kind of society we want to build.

First, those who say being a Christian country is doing down other faiths.....simply don't understand that it is easier for people to believe and practise other faiths when Britain has confidence in its Christian identity.

Many people tell me it is much easier to be Jewish or Muslim here in Britain than it is in a secular country like France. Why?

Because the tolerance that Christianity demands of our society provides greater space for other religious faiths too. And because many of the values of a Christian country are shared by people of all faiths and indeed by people of no faith at all.

Second, those who advocate secular neutrality in order to avoid passing judgement on the behaviour of others.....fail to grasp the consequences of that neutrality.....or the role that faith can play in helping people to have a moral code.

Let's be clear.

Faith is neither a necessary nor sufficient condition for morality. There are Christians who don't live by a moral code. And there are atheists and agnostics who do. But for people who do have a faith, their faith can be a helpful prod in the right direction. And whether inspired by faith or not – that direction, that moral code, matters.

Whether you look at the riots last summer.....the financial crash and the expenses scandal.....or the on-going terrorist threat from Islamist extremists around the world.....one thing is clear: moral neutrality or passive tolerance just isn't going to cut it anymore.

Shying away from speaking the truth about behaviour, about morality.....has actually helped to cause some of the social problems that lie at the heart of the lawlessness we saw with the riots.

The absence of any real accountability, or moral code.....allowed some bankers and politicians to behave with scant regard for the rest of society. And when it comes to fighting violent extremism, the almost fearful passive tolerance of religious extremism that has allowed segregated communities to behave in ways that run completely counter to our values..... has not contained that extremism but allowed it to grow and prosper.....in the process blackening the good name of the great religions that these extremists abuse for their own purposes.

Put simply, for too long we have been unwilling to distinguish right from wrong. "Live and let live" has too often become "do what you please".

Bad choices have too often been defended as just different lifestyles. To be confident in saying something is wrong.....is not a sign of weakness, it's a strength.

But we can't fight something with nothing. As I've said if we don't stand for something, we can't stand against anything. One of the biggest lessons of the riots last Summer is that we've got stand up for our values if we are to confront the slow-motion moral collapse that has taken place in parts of our country these past few generations.

The same is true of religious extremism.

As President Obama wrote in the Audacity of Hope: "...in reaction to religious overreach we equate tolerance with secularism, and forfeit the moral language that would help infuse our politics with larger meaning."

Frankly, we need a lot less of the passive tolerance of recent years and a much more active, muscular liberalism. A passively tolerant society says to its citizens, as long as you obey the law we will just leave you alone.

It stands neutral between different values. But I believe a genuinely liberal country does much more; it believes in certain values and actively promotes them.

We need to stand up for these values. To have the confidence to say to people – this is what defines us as a society.....and that to belong here is to believe in these things.

I believe the church – and indeed all our religious leaders and their communities in Britain – have a vital role to play in helping to achieve this. I have never really understood the argument some people make about the church not getting involved in politics.

To me, Christianity, faith, religion, the Church and the Bible are all inherently involved in politics because so many political questions are moral questions.

So I don't think we should be shy or frightened of this. I certainly don't object to the Archbishop of Canterbury expressing his views on politics. Religion has a moral basis and if he doesn't agree with something he's right to say so.

But just as it is legitimate for religious leaders to make political comments, he shouldn't be surprised when I respond. Also it's legitimate for political leaders to say something about religious institutions as they see them affecting our society, not least in the vital areas of equality and tolerance.

I believe the Church of England has a unique opportunity to help shape the future of our communities. But to do so it must keep on the agenda that speaks to the whole country. The future of our country is at a pivotal moment.

The values we draw from the Bible go to the heart of what it means to belong in this country.....and you, as the Church of England, can help ensure that it stays that way.

# APPENDIX 11

## 6. MULTICULTURALISM VS INDIGENOUS CULTURAL RIGHTS

– Taufa Vakatale

The new constitution for Fiji, promulgated on 25th July 1998, has been hailed internationally as a landmark in mutual respect, understanding and compromise. The Human Rights Commission and the compact in the constitution are amongst the most democratic declarations seen anywhere in the world. They recognise equality of all, irrespective of ethnicity, religion, gender, sexual orientation, culture or language. The constitution demands a multiparty government through cabinet and promotes multiculturalism as an instrument of achieving national unity.

I have been an ardent advocate of multiculturalism, but in the last month or so I have been forced to look at the issue of multiculturalism as a strategy for national unity. While I have remained committed to respect for the cultural rights of each group, I have come to believe that, although multiculturalism may be politically correct as a government policy, it will certainly not create national unity. I now believe that multiculturalism marginalises the cultural rights of the indigenous people and can be a cause of concern in years to come. It can even become a destabilising factor.

### Multiculturalism in Fiji

Ethnicity is a real dynamic in any political debate about a multiracial/multicultural country like Fiji. It will always remain a factor, and in

\* Deputy Prime Minister and Minister for Education and Technology, Republic of the Fiji Islands.

times of difficulty we take shelter in our own ethnicity. It is also always easy to use ethnicity to ignite fear, animosity, suspicion and other prejudices that are latent in each and every one of us during times of uncertainty. This is what happened in 1987.

In 1987, after seventeen years of independence, a predominantly Indian government composed of a coalition of parties came to power. Consequently the indigenous Fijians felt threatened and feared for their very survival. Fijians were already numerically in a minority; economically, they held very little power; educationally they were far below the level enjoyed by other races; culturally they saw their own being relegated to equal status with immigrant Western and Asian cultures, through the government's multicultural policy. Thus with the emergence of an Indian-dominated government in 1987, it was understandable that Fijians became anxious for their survival and feared that they stood to lose their very culture and identity now that they had also lost their political power.

This perceived fear – real or imagined – emphasises the need to establish good channels of communication between various groups so that suspicion does not arise. It is not enough to be merely tolerant of the differences we have ethnically and culturally; it is imperative that we respect others' differences and work deliberately and sincerely to resolve those differences and difficulties.

Our social and political fabric, we must appreciate too, are such that they emphasise our separateness. We speak our own languages and do not bother to learn each other's language, except English. Our schools, though they may be multicultural/multiracial in composition, are owned and managed/controlled along racial or religious lines. In the past our teachers have been appointed to schools in accordance with their ethnicity. There are two unions of teachers and historically they were based on racial lines.

I believe strongly that we cannot build a truly cohesive society when people feel that they are not equal – that is when a group feels more deprived or disadvantaged than another group. In such a situation, the different ethnic groups, having unequal status in the environment they share, are going to be in competition with each other, and any contact can inflame latent tensions and degenerate into conflict. It is therefore important that those who are



disadvantaged are empowered to better their standards and be at par with other groups.

Fiji is no stranger to cultural pluralism. The history and development of this country is the story of successive immigration and interaction of different ethnic groups today. How they adapted their way of life to the Fijian context has been and will continue to be one of the determining forces in establishing a Fiji Island identity. Adapting to a Fiji way of life and its pressures, however, has not meant a loss of identity. Rather it has meant a drawing on and sharing of experiences rather than sharing of values. Fijians are now enjoying roti, curry and chopsuey, for example, whilst our Indo-Fiji Islanders and Sino-Fiji Islanders enjoy yaqona, palusami and dalo. However, multiculturalism as a concept of life has prevented any real integration, and genuine interaction remains minimal.

In spite of time, in spite of change, in spite of social pressures, and even in spite of the coups, different ethnic groups have retained their religion, their language, their house design, their songs and dances, their dress and eating habits. In short, they still retain their cultures. So any discussion on the future of the Fiji Islanders' society cannot be conducted realistically without involving the different ethnic groups living in the Fiji Islands whose cultures have survived the test of time. By participating in a system that would enhance and promote multicultural understanding we may be practising the basis of the democratic ideal, but perhaps not really creating a national identity.

I believe that multiculturalism, if it is to mean anything in a deeply personal sense, must be founded on confidence in one's own individual identity. Out of this can grow respect for others and a willingness to share ideas, attitudes and assumptions. True multiculturalism therefore will only be founded on tolerance, understanding and respect of each other's differences with a willingness to share and draw on others' experiences, ideas and values. In practice, multiculturalism tends to mean that we are asked to accept our diversity and our multiple loyalties as assets and not as constraints, but our diversity in fact maintains our separateness and fails to create a sense of unity and cohesion.

The rapid adoption of the term 'multiculturalism' has occurred internationally out of the increasing concern about the limitations

of existing policies to address inter-ethnic relations. Certainly we cannot formulate policies on such a concept without clearly understanding its meaning. Christine Inglis, the director of the Multi-Cultural Research Centre at the University of Sydney, when referring to the ideological normative usage of the term, states that:

Multi-Culturalism emphasises that acknowledging the existence of ethnic diversity and ensuring the rights of individuals to retain their culture should go hand in hand with enjoying full access to participation in and adherence to constitutional principles and commonly shared values prevailing in the society.

Unesco defines the usage of multiculturalism to refer to the affirmation given to the culture of ethnic groups and their empowerment to participate fully in national life or to bring minorities into the mainstream culture, especially in education.

The recognition of the different ethnic groups in Fiji to contribute to the social, economic and political growth of the country, and the empowerment of the different ethnic groups, are fully enshrined in the new constitution. What we actually need is to build on past experiences by putting in place policies which will enhance and promote greater understanding, tolerance, acceptance and respect for one another, while, at the same time, being aware of the forces which could have an impact on the patterns of ethnic diversity and ethnic relationship.

Speaking at the opening of Parliament in March 1994, on the issue of multiculturalism, the president of Fiji, His Excellency Ratu Sir Kamisese Mara, reiterated the government's commitment to promoting harmonious relations between the different ethnic groups in society:

The Government places high value on the rich cultural heritage of the various communities that make up our society. Through the Ministry of Education and Technology, the Government will be sponsoring more cross-cultural programmes and activities that will contribute to greater appreciation and understanding of each other's cultural identity, customs and traditions.



Of course, the Ministry of Education is not the only vehicle by which multicultural understanding could be practised, fostered and taught. Its special mention indicates the important role education plays in enhancing the building of multiculturalism amongst our young. As young people live and learn together, the process of relating to and understanding one's fellow citizens as common human beings becomes easier, stronger and more durable.

The new constitution has given us the opportunity to build a model society that all human beings long for. It has been tailor-made to meet the unique needs of the Fiji Islands with its multi-ethnic and multicultural society.

Education has the most vital role to play in transforming our society and preparing for the next century. Recent political developments and their impact – the emergence of global shared values as a result of the rapid development of communications and access to media, the free movements of goods and peoples, the development of transnational corporations, the increase in tourism, the development of inter-governmental and quasi-supranational institutions and the downturn in the economy – have forced us to conduct a systematic review of our education in Fiji.

With multiculturalism and cross-cultural understanding becoming a political ideal it has become necessary that the languages, cultures, folk traditions, histories and knowledge of students should form the central part of the educational process.

### Equality and Non-Discrimination

The adoption of multiculturalism as a government policy embodies the perception that the Fiji Islands are home to many distinct cultures and must be promoted equally and without discrimination. Hence, the indigenous Fijian culture is seen to be no more and no less important than any of the immigrant cultures of the Indians, Chinese or Europeans.

However, these immigrant cultures (Indian, Chinese, Muslim, Hindu, Sikh, etc.) are found everywhere else in the world. There are large continents where these are the only culture. Any diminution of them in Fiji will not in any way endanger the continuation of the

culture. Fijian culture, however, can find expression only in Fiji, amongst about 400,000 people in the whole world. Thus the arithmetic of multiculturalism makes it discriminatory: by not focusing specifically on the one indigenous culture, but putting the emphasis across several cultures, multiculturalism disproportionately discriminates against the Fijian culture in its representation on the world tapestry. Thus for the sake of equality and non-discrimination, the culture of the host population is discriminated against.

Western democracy based on 'one man one vote' has not yet been practised in national politics but has been implemented in municipal governments. It has always resulted in Indian-dominated councils, given the concentration of Indian settlements in urban centres. In the city of Suva and elsewhere, attempts have been made to change the names of streets and landmarks to those of prominent Indian businessmen. Is this a sign of things to come in a truly multicultural and democratic Fiji? The loss of Fijian identity?

Fiji is small and the Fijians few in number. The only place where they can promote their culture and their nationhood is in Fiji. Fijians lack the economic clout to make an impact; their lack of educational achievements is annually highlighted in the media; a feeling of backwardness and inferiority is reflected and projected by the academic and commercial success of others. Hence the manifold discriminatory impacts of being a small number of people and a small culture in a big world all contribute to diminish the role of Fijian culture. Equality in principle becomes discrimination in practice.

### Multiculturalism and Racism

The proponents of multiculturalism are often seen to be enlightened, educated and liberal people who accept other cultures. In reality however, they often advance a subtle form of racism which is not prepared to assimilate and adapt. They too often see their own cultures as superior to that of the host. 'Multiculturalism' means in fact that the immigrant community does not want its future generations to grow up using Fijian as their first language and their identifying with the Fijian culture. It can be claimed therefore that multiculturalism conceals a condescending view of the inferiority of Fijian culture.



Integration through intermarriage, for instance, has made little impact. A mixing of the immigrant blood with Fijian may affect the integrity of the 'pure' stock of the immigrant, but the dilution or impact on the indigenous is even greater proportionately. At the moment Fijians, like other Pacific islanders, are still visually distinct.

### The Role of the Media

Modelling agencies, advertising outlets, and tourist brochures heavily feature mixed-race girls or Fijian girls with long hair, subtly suggesting to the young and immature that characteristic Fijian features are just not good enough. Of course globalisation has also had a dramatic effect on personal attitudes and values.

The media in Fiji, far from being equitable, manifests discrimination. In August 1998, I was concerned with what the media was doing in marginalising the indigenous language and Fijian features, so I wrote to the TV stations:

In the last few weeks I have been making a number of speeches on Multi-Culturalism and National Unity, and I have focused on what the new Constitution has directed us to do 'Towards a United Future'.

I have thus become very sensitive to the discriminatory practices, deliberate or otherwise, and to the blatant marginalisation of the Fijian culture in the media in Fiji. It is understandable that the TV station will feature many imported English and Hindi programmes resulting in the Fijian culture being disadvantaged from the outset. However, what is of real concern to me as Minister for Education and in my Ministry's effort to treat each of the cultures equally, is that the problem is compounded by the absence of advertisements which reflect Fijian culture. The advertisements heavily feature mixed-race and Indian faces, speaking English or Hindi, seeming to suggest that the characteristic Fijian features are just not good enough.

There are many local Hindi advertisements in addition to the Hindi advertisements of Sky Hindi programmes and if you were watching from outside Fiji you would never know this was being televised from the Fiji Islands. There is only one half-hour programme per week in Fijian and virtually no Fijian language advertisements.

Article 4 (1) of the Constitution stipulates that English, Fijian and Hindi languages have equal status. In my view therefore English will be the predominant language because of its international usage, but Fijian and Hindi should have equal exposure especially on television, otherwise in their own country the language of the Fijians and their presence, is barely discernible on these most modern, pervasive and influential of media.

I realise of course that advertisements are given to you by the sponsors, but I thought you might be in a position to influence them to be more proactive in the production of advertisements which will help to reflect an image of equality of the different ethnic and cultural groups rather than promote the marginalisation of one very important culture of this island nation. Why is it also necessary to spend so much of the screening time of the Free to Air Channel advertising in Hindi, programmes on the Hindi Channel?

With my sincere hope that we can work together to promote the true spirit of the new Constitution.

In response I received a very nice letter from Fiji TV. Of course the real reason is that in the economies of scale and consumer buying power, the potential of using Fijian language and advertisements as a tool for sale is minimal. Fiji TV has made some very positive steps in rectifying the situation since I raised the issue with them.

The print media in Fiji displays an even more anti-Fijian agenda. The principal newspaper is foreign-owned and, while it boasts itself as the bastion of democracy and human rights, it nonetheless denigrates all Fijian institutions and Fijian initiatives, and openly mocks Fijian rituals and values. The Fijian land ownership system is often portrayed as an obstacle to development and Fijians are told that they must make it easier for immigrant entrepreneurs to use their land. The print media consistently publicises the devastating effects on the 'poor' Indian farmers of the expiry of their leases on Fijian lands, but is oblivious of the needs of the Fijian landowners, many of whom have no piece of land to till for their own subsistence. The print media tells the Fijian people that aspects of their communal culture are incompatible with individual initiative and economic



advancement, and that their traditional, hierarchical, chiefly leadership system is antiquated and contravenes or violates egalitarian, democratic sensibilities.

The immigrant culture is often portrayed as more amenable to economic progress and development. Even educated and progressive Fijians have been so indoctrinated that they have become apologetic about their own culture. They see 'everything Fijian as wrong, everything immigrant, right!'

### Alternatives to Multiculturalism

In Australia, New Zealand and North America, the indigenous populations have been eliminated or reduced to relic levels so that there is little or no conflict because the indigenous people have no political power and special recognition given to them to satisfy the conscience of the immigrant culture. In Uganda, under Idi Amin, the forced emigration of the Indian population left the indigenous culture with the political as well as the economic power. Both cases illustrate that democracy is much simpler to effect when the majority is either indigenous or immigrant.

Fiji is a racially split society. Culture and race are coincident and the values and interests of the two major cultures are significantly different, so that politically individuals see their interests protected by voting for their race, and national unity is threatened.

During the colonial era, the two major races were kept apart by the British who considered their own culture as superior to either. I believe that if the immigrant Indians were allowed to adopt the language and learn the customs and culture of the indigenous people – in other words, to assimilate into the host population – then this would go a long way to achieving national unity. If your values are the same, then it does not matter who represents you in government. The understanding here is that when one chooses to become an immigrant, one voluntarily relinquishes (home) I believe that in so doing it is one's duty not to renounce one's culture or religion but to fit in, and do what is necessary to accommodate oneself to local practice and belief.

### Cultural Adaptation and Assimilation

The multi-ethnic and multicultural nature of Fiji has been seen by most people, particularly politicians and academics, as a blessing and a source of strength, with its rich diversity of cultures, traditions, religions and language. Yet the concept of multiculturalism encourages each cultural group to be *tolerant* of each culture, but at the same time to exist on a parallel basis. In the schools, the university, the workplaces, the streets, in social gatherings, everywhere, one observes uni-racial groups of Indians, Fijians, Europeans, and so on. Voluntary interaction between groups is minimal, and in three to four generations the immigrants have not really absorbed anything Fijian. Multiculturalism has encouraged the retention of the values, culture and language of the respective motherlands, and while it has enriched the multicultural tapestry of Fiji, it will not really contribute to political stability and national unity because it has perpetuated the concept that race, culture and values are coincident.

In many rural areas, where the Indian population is small and dispersed, there has been a lot of interaction between Fijians and Indians, and Fijian is commonly spoken by the Indians. Sadly this is not the case in areas where there are large Indian populations.

Fiji's new constitution emphasises that people have rights to freedom of religion and retention of language, culture and traditions. Although this is a laudable democratic concept internationally, it has failed to appreciate that given the arithmetic of multiculturalism, it invites the slow but inevitable erosion of Fijian culture. It further emphasises the patronising attitudes (developed under colonialism) that the European community has the 'right' to demand and expect in their adopted home 'proper British standards', that the Indian and other immigrant communities have the 'right' to create in these islands a home away from home almost as though it was empty.

The promotion of the 'cultural rights' of immigrant groups and the recognition of such 'rights' to exist alongside the cultural rights of the host culture denies the rights of the indigenous inhabitants' desire for their islands to remain visibly and unmistakably Fijian. It also justifies the neglect by the immigrant communities of a duty to fit in.



# Annex 13

## New Zealand: Learning to Live with Proportional Representation

New Zealand used to be regarded as a prime example of a country with an FPTP electoral system. However, after two referendums in the early 1990s, New Zealand adopted a mixed member proportional (MMP) voting system in a unicameral Parliament with 120 members. Until the end of 2004, three general elections had been held using the new system.

Why did New Zealand change its electoral system? What led the country to do something that was extremely unusual for any long-established democracy, especially one with an Anglo-Saxon heritage?

For a start, the FPTP system produced highly distorted results in 1978 and 1981. On both occasions the National Party retained office with an absolute majority of the seats in the House of Representatives despite winning fewer votes throughout the country as a whole than the opposition Labour Party. In addition, both elections saw the country's then third party, Social Credit, win a sizeable share of the votes for very little return (16 per cent of the votes in 1978 and 21 per cent in 1981 won it only one seat and two seats, respectively, in a Parliament that then had 92 seats). The disquiet engendered by these results led the Labour government elected in mid-1984 to establish a Royal Commission on the Electoral System. Its 1986 report, *Towards a Better Democracy*, recommended the adoption of a voting system similar to Germany's. The commission argued strongly that, on the basis of the ten criteria it had established for judging voting systems, MMP was 'to be preferred to all other systems'.

Neither of New Zealand's major parties favoured the proposal and the matter might have died had the National Party's 1990 election manifesto not promised a referendum on the topic. In an initial referendum, held in 1992, nearly 85 per cent of voters opted 'for a change to the voting system'; 14 months later, the new electoral system was adopted after a second referendum in which 54 per cent favoured MMP (while 46 per cent voted to retain FPTP).

As in Germany, in parliamentary elections in New Zealand the electors have two votes—one for a political party (called the party vote in New Zealand) in a nationwide constituency, and one for a candidate in a single-member district. Whereas representatives for single-member districts (called electorates in New Zealand) are elected by FPTP, the overall share of the seats in Parliament allocated to political parties stems directly from and is in proportion to the number of party votes they receive. If a party wins 25 per cent of the party votes, it will be entitled to (roughly) a quarter of all the seats in the 120-member Parliament, that is, about 30 seats. If a party that is entitled to a total of 30 seats has already won 23 electorate seats, then it will be given another seven seats drawn from the rank-ordered candidates on its party list who have not already been elected in a single-member district. Likewise, if a party entitled to 30 seats has won only 11 single-member district seats, then it will acquire another 19 MPs from its party list.

There are two thresholds for MMP in New Zealand. To win a share of the seats in Parliament based on the party votes, a party must either win at least 5 per cent of all the party votes cast in a general election or win at least one single-member district seat. In the 1996 general election, five parties crossed the 5 per cent threshold and one won a single-member district seat but did not clear the 5 per cent threshold. Three years later, five parties again cleared the 5 per cent threshold. Two other parties failed to do so but won single-member district seats, which qualified one of them for an additional four seats in Parliament (it had won 4.3 per cent of the party votes cast in the election). In the 2002 general election, six parties cleared the 5 per cent party vote hurdle, and a seventh party won a single-member district seat that enabled it to bring one other person into Parliament from the party's list.

These figures point to one major change caused by the introduction of MMP. Established, at least in part, to ensure 'fairness between political parties', the new voting system has seen the index of disproportionality plummet from an average of 11 per cent for the 17 FPTP elections held between 1946 and 1993, to an average of 3 per cent for the first three MMP elections. Every FPTP election in New Zealand from 1935 until 1993 saw one of the country's two larger parties—Labour or National—gain an absolute majority in the House of Representatives. One consequence of MMP has been that, in the three elections to date, no single party has won more than half the seats in Parliament. In 1996, the largest party won 44 out of the 120 seats; in 1999 the largest party won 49 seats; and in 2002 the largest party won 52 seats.

Not surprisingly, then, New Zealand has changed from being a country accustomed to single-party majority governments to being a country governed by coalitions. After the first MMP election, two parties formed a coalition government that commanded a small majority (61 out of 120 seats) in Parliament. Since that coalition disintegrated in August 1998, New Zealand has had minority coalition governments that have had to rely on either formal or informal supporting arrangements (negotiated with other parties or, on occasion, with individual MPs) to ensure that their legislative programmes have been able to win majorities in Parliament. One of the other criteria used by the Royal Commission on the Electoral System was 'effective government'. The commission noted that electoral systems should 'allow governments ... to meet their responsibilities. Governments should have the ability to act decisively when that is appropriate'. In this regard it should be stressed that MMP governments in New Zealand have had little trouble governing: all have had their budgets passed without any real difficulty, and none has faced the likelihood of defeat in a parliamentary vote of no confidence. At the same time, New Zealand parliaments have fulfilled another of the royal commission's criteria by also becoming more effective. Governments can no longer rely on (indeed, they seldom have) majorities on parliamentary committees, and there is a far greater degree of consultation—of give and take—between government and opposition parties in MMP parliaments.

The Royal Commission on the Electoral System also envisaged that under MMP the Parliament would represent the Maori (New Zealand's indigenous Polynesian minority) and other special-interest groups such as women, Asians and Pacific Islanders more effectively. This has happened. In the last FPTP Parliament, Maori accounted for 7 per cent of the MPs. They now constitute 16 per cent of the members of the legislature. The proportion of female MPs has risen from 21 per cent in 1993 to an average of 29 per cent in the first three MMP parliaments. During

the period 1993–2002, the proportion of Pacific Island MPs went up from 1 per cent to 3 per cent, and the number of Asian MPs rose from 0 to 2 per cent.

Discarding a long-established voting system is never an easy process politically, nor is it likely to appeal to entrenched interests or to most incumbent politicians. Leading electoral systems scholars have warned that major electoral reforms should not be undertaken lightly. Nevertheless, there is growing evidence that the parliamentarians of New Zealand and the public alike are learning to live with (if not necessarily love) proportional representation. The reforms adopted in New Zealand in the early 1990s and instituted in 1996 seem likely to last for a considerable time.


















## Annex 14
































### List of countries by number of military and paramilitary personnel




































#### **Fiji's military personnel ratio to population is higher than that of New Zealand, Australia and the United Kingdom**



































From Wikipedia,































This is a **list of countries by number of military and paramilitary personnel**. It includes any government-sponsored soldiers used to further the domestic and foreign policies of their respective government. The term "country" is used in the sense of state which exercises sovereignty or has limited recognition. These numbers are approximations as military forces around the world are constantly changing in size. Many of the 178 countries listed here, especially those with the highest number of total soldiers, such as the two Koreas and Vietnam, include a large number of paramilitaries, civilians and policemen in their reserve personnel. Some countries, such as Italy and Japan, have only volunteers in their armed forces; while others, such as Iceland and Panama, have no national armies, but only a paramilitary force. This is an incomplete list, which may never be able to satisfy particular standards for completeness. You can help by expanding it with reliably sourced entries.

<u>Flag</u>	<u>State</u>	<b>Active Military</b>	<b>Reserve Military</b>	<b>Paramilitary</b>	<b>Total</b>	<b>Total per 1000 capita</b>	<b>Active per 1000 capita</b>
	Afghanistan <sup>[1]</sup>	164,000	0	0	164,000	5.8	5.8
	Albania <sup>[2]</sup>	14,295	0	500	14,795	4.1	3.9
	Algeria <sup>[3]</sup>	147,000	150,000	187,200	484,200	14.2	4.3
	Angola <sup>[4]</sup>	107,000	0	10,000	117,000	9.1	8.4
	Antigua and Barbuda <sup>[5]</sup>	170	75	0	245	2.9	2
	Argentina <sup>[6]</sup>	73,100	0	31,240	104,340	2.6	1.8
	Armenia <sup>[7]</sup>	46,684	210,000	4,748	261,432	88.1	15.7
	<b>Australia<sup>[8][9]</sup></b>	<b>57,500</b>	<b>25,000</b>	<b>0</b>	<b>82,500</b>	<b>3.9</b>	<b>2.7</b>
	Austria <sup>[10]</sup>	27,300	195,000	9,400	231,700	28.2	3.3
	Azerbaijan <sup>[11]</sup>	66,940	300,000	15,000	381,940	46.4	8.1
	Bahamas <sup>[12]</sup>	860	0	0	860	2.8	2.8
	Bahrain <sup>[13]</sup>	8,200	0	11,260	19,460	26.7	11.3
	Bangladesh <sup>[14]</sup>	157,053	0	63,900	220,953	1.4	1
	Barbados <sup>[12]</sup>	610	430	0	1,040	3.7	2.1
	Belarus <sup>[15]</sup>	72,940	289,500	110,000	472,440	49	7.6
	Belgium <sup>[16]</sup>	38,452	2,040	0	40,492	3.9	3.7
	Belize <sup>[17]</sup>	1,050	700	0	1,750	5.7	3.4






























<u>Flag</u>	<u>State</u>	<b>Active Military</b>	<b>Reserve Military</b>	<b>Paramilitary</b>	<b>Total</b>	<b>Total per 1000 capita</b>	<b>Active per 1000 capita</b>
	Benin <sup>[18]</sup>	4,750	0	2,500	7,250	0.8	0.5
	Bhutan <sup>[19][20][note a]</sup>	5,445	0	555	6,000	8.5	7.7
	Bolivia <sup>[21]</sup>	46,100	0	37,100	83,200	8.5	4.7
	Bosnia and Herzegovina <sup>[22]</sup>	11,099	0	0	11,099	2.4	2.4
	Botswana <sup>[23]</sup>	9,000	0	1,500	10,500	5.3	4.5
	Brazil <sup>[24][note b]</sup>	327,710	1,340,000	0	1,667,710	8.4	1.6
	Brunei <sup>[25]</sup>	7,000	700	2,250	9,950	25.6	18
	Bulgaria <sup>[26]</sup>	34,975	302,500	34,000	371,475	51.6	4.9
	Burkina Faso <sup>[27]</sup>	11,200	0	250	11,450	0.7	0.7
	Burundi <sup>[28]</sup>	20,000	0	31,050	51,050	5.4	2.1
	Cambodia <sup>[29]</sup>	124,300	0	67,000	191,300	13.2	8.6
	Cameroon <sup>[30]</sup>	14,100	0	9,000	23,100	1.2	0.7
	Canada <sup>[31]</sup>	68,250	55,150	4,554	127,954	3.8	2 <sup>[32]</sup>
	Cape Verde <sup>[33]</sup>	1,200	0	0	1,200	2.8	2.8
	Central African Republic <sup>[34]</sup>	2,150	0	1,000	3,150	0.7	0.5
	Chad <sup>[35]</sup>	25,350	0	9,500	34,850	3.4	2.5
	Chile <sup>[36]</sup>	60,560	40,000	41,500	142,060	8.6	3.6
	People's Republic of China <sup>[37]</sup>	2,285,000	800,000	1,500,000	4,585,000	3.4	1.7 <sup>[38][39]</sup>
	Colombia <sup>[40]</sup>	285,220	61,900	144,097	491,217	11.2	6.5
	Costa Rica <sup>[41]</sup>	0	0	9,800	9,800	2.3	0
	Croatia <sup>[42]</sup>	18,600	21,000	3,000	42,600	9.5	4.1
	Cuba <sup>[43][note c]</sup>	49,000	1,159,000	26,500	1,234,500	107.8	4.3
	Cyprus <sup>[44]</sup>	10,050	50,000	750	60,800	56	9.3
	Czech Republic <sup>[45]</sup>	17,932	0	10,988	28,920	2.8	1.8
	Côte d'Ivoire <sup>[46]</sup>	17,050	10,000	1,500	28,550	1.4	0.8
	Democratic Republic of the Congo <sup>[47]</sup>	151,251	0	1,400	152,651	2.2	2.2
	Denmark <sup>[48]</sup>	26,585	53,507	0	80,092	14.6	4.8
	Djibouti <sup>[49]</sup>	12,000	2,000	2,450	16,450	17.8	13
	Dominican Republic <sup>[50]</sup>	49,910	0	15,000	64,910	6.7	5.2
	Ecuador <sup>[51]</sup>	57,983	118,000	400	176,383	12.1	4
	Egypt <sup>[52]</sup>	468,500	479,000	397,000	1,344,500	17	5.9

<u>Flag</u>	<u>State</u>	<b>Active Military</b>	<b>Reserve Military</b>	<b>Paramilitary</b>	<b>Total</b>	<b>Total per 1000 capita</b>	<b>Active per 1000 capita</b>
	El Salvador <sup>[53]</sup>	15,500	9,900	17,000	42,400	5.9	2.2
	Equatorial Guinea <sup>[54]</sup>	1,320	0	2,000	3,320	5.2	2.1
	Eritrea <sup>[55]</sup>	201,750	120,000	0	321,750	57	35.7
	Estonia <sup>[56]</sup>	4,750	25,000	10,766	40,516	31.2	3.7
	Ethiopia <sup>[57]</sup>	138,000	0	0	138,000	1.6	1.6
	<b>Fiji<sup>[58]</sup></b>	<b>3,500</b>	<b>6,000</b>	<b>0</b>	<b>9,500</b>	<b>10.1</b>	<b>3.7</b>
	Finland <sup>[59][note d]</sup>	22,600	361,500	7,550	391,650	74.6	4.3
	France <sup>[60][note e]</sup>	352,771	70,300	46,390	469,461	7.3	5.5
	Gabon <sup>[61]</sup>	4,700	0	2,000	6,700	4.4	3.1
	Gambia <sup>[62]</sup>	800	0	0	800	0.4	0.4
	Georgia <sup>[63]</sup>	21,150	0	11,700	32,850	7.5	4.8
	Germany <sup>[64]</sup>	250,613	200,812	0	451,425	5.5	3
	Ghana <sup>[65]</sup>	15,500	0	0	15,500	0.6	0.6
	Greece <sup>[66][67]</sup>	177,600	280,000	4,000	461,600	43	16.5
	Guatemala <sup>[68]</sup>	15,212	63,863	18,536	97,611	7.4	1.1
	Guinea <sup>[69]</sup>	12,300	0	7,000	19,300	1.9	1.2
	Guinea-Bissau <sup>[70]</sup>	4,450	0	2,000	6,450	4.2	2.9
	Guyana <sup>[71]</sup>	1,100	670	1,500	3,270	4.3	1.5
	Haiti <sup>[72]</sup>	0	0	2,000	2,000	0.2	0
	Honduras <sup>[73]</sup>	12,000	60,000	8,000	80,000	10.2	1.5
	Hungary <sup>[74]</sup>	29,450	44,000	12,000	85,450	8.6	3
	Iceland <sup>[75]</sup>	0	0	130	130	0.4	0
	India <sup>[76][note f]</sup>	1,325,000	2,142,821	1,300,586	4,768,407	3.9	1.1
	Indonesia <sup>[77]</sup>	302,000	400,000	280,000	982,000	4.1	1.3
	Iran <sup>[78][79][note g]</sup>	523,000	1,800,000	1,510,000	3,833,000	57.7	7.9
	Iraq <sup>[80]</sup>	191,957	0	386,312	578,269	20	6.6
	Ireland <sup>[81]</sup>	10,460	14,875	0	25,335	5.5	2.3
	Israel <sup>[82]</sup>	176,500	565,000	8,050	749,550	103.6	24.4
	Italy <sup>[83][note h]</sup>	293,202	41,867	142,933	478,002	8.2	5
	Jamaica <sup>[84]</sup>	2,830	953	0	3,783	1.3	1
	Japan <sup>[85]</sup>	230,300	41,800	12,250	284,350	2.2	1.8
	Jordan <sup>[86]</sup>	100,500	65,000	10,000	175,500	28	16
	Kazakhstan <sup>[87]</sup>	49,000	0	31,500	80,500	5.2	3.2
	Kenya <sup>[88]</sup>	24,120	0	5,000	29,120	0.7	0.6
	Kosovo <sup>[89][90][91]</sup>	2,800	800	0	3,600	2.1	1.6

<u>Flag</u>	<u>State</u>	<b>Active Military</b>	<b>Reserve Military</b>	<b>Paramilitary</b>	<b>Total</b>	<b>Total per 1000 capita</b>	<b>Active per 1000 capita</b>
	Kuwait <sup>[92]</sup>	15,500	23,700	7,100	46,300	17.2	5.8
	Kyrgyzstan <sup>[93]</sup>	10,900	0	9,500	20,400	3.8	2
	Laos <sup>[94]</sup>	29,100	0	100,000	129,100	18.9	4.3
	Latvia <sup>[95][note i]</sup>	5,745	10,866	0	16,611	7.4	2.6
	Lebanon <sup>[96]</sup>	59,100	232,635	20,000	311,735	77.6	14.7
	Lesotho <sup>[97]</sup>	2,000	0	0	2,000	0.9	0.9
	Liberia <sup>[98]</sup>	2,400	0	0	2,400	0.7	0.7
	Libya <sup>[99][note j]</sup>	76,000	40,000	0	116,000	18.3	12
	Lithuania <sup>[100]</sup>	8,850	6,700	14,600	30,150	8.5	2.5
	Luxembourg <sup>[101]</sup>	900	0	612	1,512	3.1	1.8
	Madagascar <sup>[102]</sup>	13,500	0	8,100	21,600	1	0.7
	Malawi <sup>[103]</sup>	5,300	0	1,500	6,800	0.5	0.4
	Malaysia <sup>[104][note k]</sup>	109,000	296,300	24,600	429,900	16.7	4.2
	Mali <sup>[105]</sup>	7,350	0	7,800	15,150	1.1	0.5
	Malta <sup>[106]</sup>	1,954	167	0	2,121	5.2	4.8
	Mauritania <sup>[107]</sup>	15,870	0	5,000	20,870	6.7	5.1
	Mauritius <sup>[108]</sup>	0	0	2,000	2,000	1.6	0
	Mexico <sup>[109]</sup>	267,506	39,899	36,500	343,905	3.1	2.4
	Moldova <sup>[110]</sup>	5,998	66,000	2,379	74,377	17.2	1.4
	Monaco <sup>[111][112][113]</sup>	0	0	255	255	7.2	0
	Mongolia <sup>[114]</sup>	10,000	137,000	7,200	154,200	50.7	3.3
	Montenegro <sup>[115]</sup>	3,127	0	10,100	13,227	19.7	4.7
	Morocco <sup>[116]</sup>	195,800	150,000	50,000	395,800	12.7	6.3
	Mozambique <sup>[117]</sup>	11,200	0	0	11,200	0.5	0.5
	Myanmar <sup>[118]</sup>	406,000	0	107,250	513,250	10.7	8.4
	Namibia <sup>[119]</sup>	9,200	0	6,000	15,200	7.2	4.4
	Nepal <sup>[120]</sup>	95,753	0	62,000	157,753	5.5	3.4
	Netherlands <sup>[121]</sup>	61,302	3,339	3,000	67,641	4	3.7
	<b>New Zealand<sup>[122]</sup></b>	<b>9,702</b>	<b>2,249</b>	<b>0</b>	<b>11,951</b>	<b>2.8</b>	<b>2.3</b>
	Nicaragua <sup>[123]</sup>	12,000	0	0	12,000	2	2
	Niger <sup>[124]</sup>	5,300	0	5,400	10,700	0.7	0.3
	Nigeria <sup>[125]</sup>	80,000	0	82,000	162,000	1.1	0.5
	North Korea <sup>[126][note l]</sup>	1,106,000	8,200,000	189,000	9,495,000	418.9	48.8
	Norway <sup>[127]</sup>	24,025	45,250	0	69,275	14.9	5.2

<u>Flag</u>	<u>State</u>	<b>Active Military</b>	<b>Reserve Military</b>	<b>Paramilitary</b>	<b>Total</b>	<b>Total per 1000 capita</b>	<b>Active per 1000 capita</b>
	Oman <sup>[128]</sup>	42,600	0	4,400	47,000	13.8	12.5
	Pakistan <sup>[129][130]</sup>	617,000	513,000	304,000	1,434,000	8.2	3.5
	Palestine <sup>[131][note m]</sup>	0	0	56,000	56,000	14	0
	Panama <sup>[132]</sup>	0	0	12,000	12,000	3.6	0
	Papua New Guinea <sup>[133]</sup>	3,100	0	0	3,100	0.5	0.5
	Paraguay <sup>[134]</sup>	10,650	164,500	14,800	189,950	27.2	1.5
	Peru <sup>[135][note n]</sup>	114,000	195,000	77,000	386,000	13.1	3.9
	Philippines <sup>[136][note o]</sup>	120,000	171,000	40,500	331,500	3.4	1.2
	Poland <sup>[137][138][139]</sup>	99,778	10,000	28,100	137,878	3.6	2.6
	Portugal <sup>[140]</sup>	43,330	210,900	47,700	301,930	28.2	4
	Qatar <sup>[141]</sup>	11,800	0	0	11,800	13.4	13.4
	Republic of Macedonia <sup>[142]</sup>	8,000	4,850	0	12,850	6.2	3.9
	Republic of the Congo <sup>[143]</sup>	10,000	0	2,000	12,000	3	2.5
	Romania <sup>[144]</sup>	73,350	45,000	79,900	198,250	8.9	3.3
	Russian Federation <sup>[145][note p]</sup>	1,027,000	754,000	449,000	2,230,000	15.9	7.3
	Rwanda <sup>[146]</sup>	33,000	0	2,000	35,000	3.3	3.1
	Saint Kitts and Nevis <sup>[147][note q]</sup>	70	130	119	319	6.2	1.4
	Saudi Arabia <sup>[148]</sup>	233,500	0	15,500	249,000	8.7	8.1
	Senegal <sup>[149]</sup>	13,620	0	5,000	18,620	1.4	1
	Serbia <sup>[150][151]</sup>	40,000	50,171	0	90,171	12.2	5.4
	Seychelles <sup>[152]</sup>	200	0	450	650	7.4	2.3
	Sierra Leone <sup>[153]</sup>	10,500	0	0	10,500	2	2
	Singapore <sup>[154][note r]</sup>	72,500	356,500	93,800	522,800	112.2	15.6
	Slovakia <sup>[155]</sup>	16,531	0	0	16,531	3	3
	Slovenia <sup>[156]</sup>	7,200	3,800	4,500	15,500	7.7	3.6
	Somalia <sup>[157]</sup>	7,000	0	0	7,000	0.7	0.7
	South Africa <sup>[158]</sup>	62,082	15,071	12,382	89,535	1.8	1.3
	Republic of Korea <sup>[159][note s]</sup>	687,000	8,000,000	4,500	8,691,500	173.6	13.7
	Spain <sup>[160]</sup>	128,013	319,000	80,210	527,223	13	3.2
	Sri Lanka <sup>[161][note t]</sup>	160,900	35,900	62,200	259,000	12.1	7.5



<u>Flag</u>	<u>State</u>	<b>Active Military</b>	<b>Reserve Military</b>	<b>Paramilitary</b>	<b>Total</b>	<b>Total per 1000 capita</b>	<b>Active per 1000 capita</b>
	Sudan <sup>[161][note u]</sup>	109,300	85,000	17,500	211,800	5.2	2.7
	Suriname <sup>[162]</sup>	1,840	0	0	1,840	3.8	3.8
	Swaziland <sup>[163][164][165][note v]</sup>	3,000	0	644	3,644	3.1	2.5
	Sweden <sup>[166][note w]</sup>	13,050	242,000	800	255,850	28.2	1.4
	Switzerland <sup>[167]</sup>	22,059	174,071	80,000	276,130	36.3	2.9
	Syria <sup>[168]</sup>	325,000	314,000	108,000	747,000	34.3	14.9
	Republic of China <sup>[169]</sup>	290,000	1,657,000	17,000	1,964,000	85.5	12.6
	Tajikistan <sup>[170]</sup>	8,800	0	7,500	16,300	2.2	1.2
	Tanzania <sup>[171]</sup>	27,000	80,000	1,400	108,400	2.6	0.7
	Thailand <sup>[172][note x]</sup>	305,860	245,000	113,700	664,560	10.1	4.6
	Timor Leste <sup>[173]</sup>	1,332	0	0	1,332	1.3	1.3
	Togo <sup>[174]</sup>	8,550	0	750	9,300	1.5	1.4
	Trinidad and Tobago <sup>[175]</sup>	4,063	0	0	4,063	3.3	3.3
	Tunisia <sup>[176]</sup>	35,800	0	12,000	47,800	4.6	3.4
	Turkey <sup>[177][178][179]</sup>	666,576	378,700	152,200	1,197,476	15.6	8.7
	Turkmenistan <sup>[180]</sup>	22,000	0	0	22,000	4.5	4.5
	Uganda <sup>[181]</sup>	45,000	0	1,800	46,800	1.4	1.4
	Ukraine <sup>[182]</sup>	129,925	1,000,000	84,900	1,214,825	26.6	2.8
	United Arab Emirates <sup>[183]</sup>	51,000	0	0	51,000	10.6	10.6
	<b>United Kingdom<sup>[184][185][186]</sup></b>	<b>197,780</b>	<b>212,400</b>	<b>0</b>	<b>410,180</b>	<b>6.7</b>	<b>3.2</b>
	United States of America <sup>[187][188]</sup>	1,458,219	1,458,500	11,035	2,927,754	9.3	4.7
	Uruguay <sup>[189]</sup>	24,621	0	920	25,541	7.3	7
	Uzbekistan <sup>[190]</sup>	67,000	0	20,000	87,000	3.2	2.4
	Vanuatu <sup>[191]</sup>	0	0	300	300	1.3	0
	Venezuela <sup>[192]</sup>	115,000	8,000	0	123,000	4.6	4.3
	Vietnam <sup>[193][note y]</sup>	455,000	5,000,000	40,000	5,495,000	62	5.1
	Yemen <sup>[194]</sup>	66,700	0	71,200	137,900	6	2.9
	Zambia <sup>[195]</sup>	15,100	3,000	1,400	19,500	1.6	1.3
	Zimbabwe <sup>[196]</sup>	29,000	0	21,800	50,800	4.5	2.5

## ANNEX 15

### The 2011 Budget Oscars: burdening future generations

**Professor WadanNarsey**

Another year, another illegal Acting Minister of Finance presenting Budget Estimates for 2011 stating “As approved by the Fiji Government”.

Without a Parliament, this is now the only reporting exercise to the Fiji taxpayers, who will fork out \$1746 millions to fund Bainimarama’s plans for 2011.

As always, the media and taxpayers only think about the little bits taken from them in taxes, and the little bits given here and there in benefits, and strange reversals in economic policies such as protectionism.

They can rarely look at the long-term Big Picture that Annual Budgets add up to (and it does not help that articles like this can never get past the censors in local media).

Unfortunately also, regardless of the alleged principles of accountability preached by the Charter, this Military Government will not release the Auditor General’s Reports on how our tax money was spent in the past, or those Reports explaining why \$300 millions more of our tax money will be pumped into propping up the Fiji Sugar Corporation; or the Reports on the hundreds of millions lost at Natadola and Momi due to this Military Government’s actions.

Not that any one from the business community and the accounting and auditing firms would be asking such pesky questions of this Military Government.

Neither would they be asking the Acting Finance Minister (MrAiyazKhaiyum) to explain why his extravagant claims about the macro objectives of the Bainimarama Government, is totally contradicted by the numbers given in his own 2011 Budget Supplement.

If the 2011 Budget Supplement numbers are correct, then the following will be the Record Card for the Bainimarama Government over the last four years.

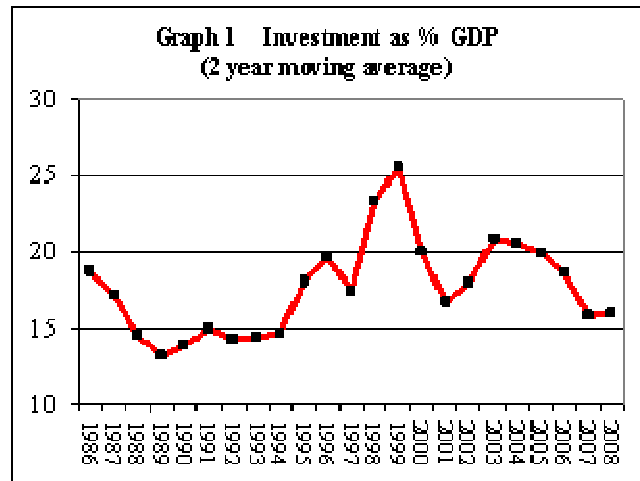
#### **The Bainimarama Record Card**

Judge this Military Government by its own key macro-economic targets, stated clearly in their 2011 Budget Supplement (paragraph 3.3, page 18):

- \* Raising investment levels to 25 percent of GDP. **(FAIL)**
- \* Growing the economy by 5 percent annually; **(FAIL)**

- \* Reducing the rate of poverty to a negligible level; **(FAIL)**
- \* Reducing fiscal deficits; **(FAIL) (opposite being done)**
- \* Reducing Government debt; **(FAIL) (opposite being done)**
- \* Maintaining inflation at around 2-3 percent on average; **(FAIL) (inevitably)**
- \* Maintaining foreign exchange reserves at 4-5 months of import cover; **(C grade)**

Despite having complete control of Fiji for the last four years, the Bainimarama Government has utterly failed to achieve any of their own first six targets. They are not likely to achieve them either over the next four years. For some targets, they are blatantly and dangerously doing the opposite.

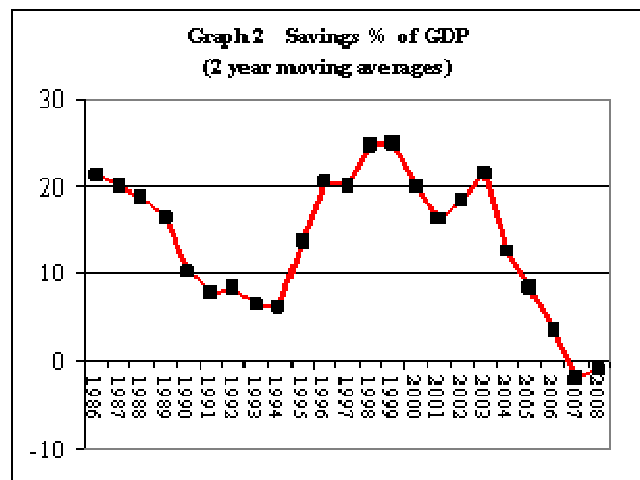


### Investment as % of GDP

Look at the Graph. Investment had risen briefly to 25% in 1999, but the 2000 coup by soldiers reversed that trend, with another dive taking place after 2006. In 2010 it is almost certainly 15% or less.

All the indicators (building permits approved, savings ratios, etc) indicate that this ratio will not rise given that investor confidence is at an all-time low.

Most people hardly ever see the statistics behind the Graph 2 on the right – National Savings as % of GDP (estimated by the World Bank, but not by Fiji). National Savings is roughly National Income minus Consumption – Net Outflows.



One can see the decline setting in after 1987, then again after 2000. For the first time in

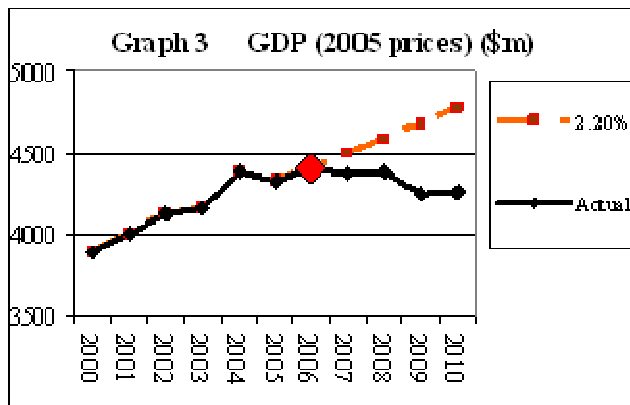
the history of Fiji, this ratio became negative over 2007 and 2008, probably because of capital flight by locals, foreigners and potential investors, over fear of impending devaluation. Graph 1 in fact follows the trends shown by Graph 2.

Such capital flights (by foreigners and locals alike) and loss of investor confidence are encouraged by military decrees appropriating assets, military decrees preventing aggrieved persons from taking their cases to court, expulsion of CEOs of large corporations, deportation of newspaper editors, and imposition of draconian media censorship. In such a climate you are unlikely to see investment rise to 25% of GDP.

It is to be expected that that large corporations will try to avoid taxes by whatever means available (including transfer pricing), while waging strong PR campaigns to win public sympathy. But the solution for illegal activities must surely be through legal redress. The solution for more equitable tax payments from a vitally important export company, is surely negotiation in good faith. Not expulsion of CEOs or large, sudden and discriminatory increases in resource taxes.

### Negative economic growth

The 2011 Budget documents confirm what most of us have been fearing- that the growth rate for 2010 is going to be (now estimated to be 0.1%) far below the optimistic rates being projected by the Reserve Bank.



Graph 3 shows clearly what has happened since 2006 when Bainimarama took over. The top straight line represents what a modest 2.2% growth would have given us between 2006 and 2010. The black line is what the Bainimarama Government has actually achieved for us: the GDP in 2010 was even lower than in 2006.

The ever-widening gap represents a loss in national income of over \$1,250 millions in real 2005 terms (and more in current dollars), with a corresponding loss of potential government revenue and expenditure of more than \$300 million.

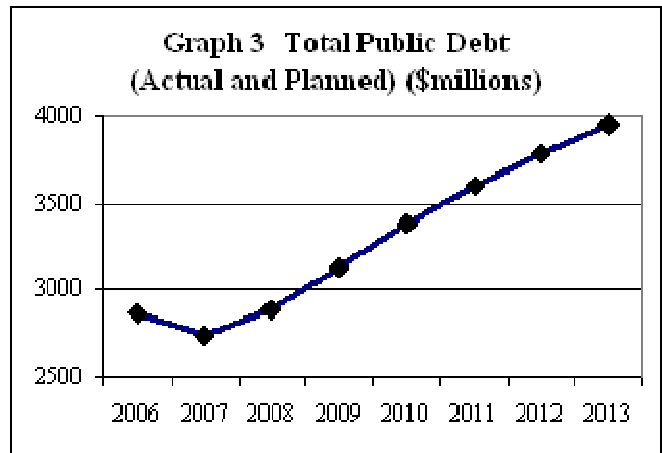
Having lost the tax-payers these huge amounts, the Bainimarama Government pats itself on the back (with the jovial support of business tycoons) for \$10 millions given out for food vouchers and \$12 millions for bus fare subsidies.

Let us not talk about the impact on poverty, or Father Kevin Barr's long-postponed Wages Councils Orders following underhand pressures by employers.

## Fiscal Deficits and Public Debt: Lies?

Possibly the biggest and most damaging con-trick that this Military Government is pulling on Fiji's tax-payers is the continuing claim that it is planning to reduce Fiscal Deficits and the Public Debt.

On the contrary, the numbers in the 2011 Budget Supplement show that fiscal deficits have remained large (ie this Military Government keeps spending more than it receives in revenue). Consequently, the Public Debt has risen from 2006 to 2010 by a massive \$515 million.



Worse still, the Budget Supplement numbers clearly show (Table 3.1, page 19) that this Military Government is planning to further increase the public debt between 2010 and 2013 by another \$576 million. That is, by 2013, they will have increased the Public Debt by more than a billion dollars (see Graph 3).

This is a billion dollars that this illegal and irresponsible Military Government wants to pass on to the future generation, to pay for their mistakes of today.

We remember that the Qarase Government also expanded the Public Debt between 2000 and 2006 by more than a billion dollars- some on infrastructure, but the rest to cover their Agricultural Scam, the over-generous vote-buying Public Service salary increases just before the 2006 elections, and also the military over-expenditure (more on this below).

But their saving grace was that the economy was still growing. Under Bainimarama, the economy is not growing.

Another worry for many of us is that the Military Government will even further raid the Fiji National Provident Fund, who is their captive banker and milking cow, with the Board and CEO totally under their control. Should the Fiji economy not grow and Government not repay its loans, the FNPF will become further insolvent.

Taxpayers of Fiji: note that for next year, the Budget Supplement states that you will be paying \$789 million for Debt Service- this is a half of all Government Revenue.

It is no wonder that Education and Health cannot be given the increases that their Ministries need and deserve (however much their Ministers smile on TV and say they will manage).

Put another way, by 2013, each household in Fiji will effectively be struggling to pay for its \$20,000 share of the Public Debt, planned by this Military Government.

So what is the Bainimarama Government's increase in Public Debt due to?

### **Monstrous Military Over-expenditure**

It is confirmed now that a large chunk of the increase (\$300 million) is going to pay for the Fiji Sugar Corporation losses and "mill refit" fiasco by Bainimarama's appointees.

But the most important increases in Public Debt are due to the continuing massive inflation and illegal over-expenditure of the military budget.

With the convenient excuse of an attempted coup (by its own soldiers), the Fiji Military Forces has been illegally over-spending the budget approved by parliament every year since 2000- in millions: 19m, 8m, 20m, 32m, 14m, 24m, 50m (in 2007), 8m, 28m, and 24m (in 2010).

Roughly, between 2000 and 2010, the Military has illegally over-spent by some \$225 million—this is as much as the cost of the National Bank of Fiji disaster. All added to Fiji's Public Debt, to be paid for by the future generations.

But the real change in military expenditure has been worse than that. Before 2000, the military expenditure was only around \$50 million. It was only following the attempted military coup in 2000 that the Qarase Government increased the military's budget by another ten to twenty million- to contain the problems of the military's own making. Hah. Qarase never thought those same guns would be turned on him.

So compared to the pre-2000 military budget of around \$50 million, the inflation of military spending between 2000 and 2010 has cost the Fiji tax-payers roughly an extra \$450 million. All added to the Public Debt.

If the current trend continues till 2014 (and the 2011 Budget indicates that it will), the Military will have taken another extra \$250 millions from the tax-payers and added it to the Public Debt. Or some \$700 millions over and above their normal pre-2000 allocations, between 2000 and 2014.

Add or subtract a few tens of millions here and there, or allow for price changes, the picture will not change.

***This \$700 million more for unproductive armed soldiers in uniforms periodically conducting coups, means \$700 million less for education, health, social welfare, poverty alleviation, and rural development- not to mention the massive damage done to the economy.***

Given this massive ongoing misallocation of tax-payers' money, who cares about a few million peanuts of tax-payers' money that this Bainimarama Government is throwing at Food Vouchers and children's bus fare subsidies in the 2011 Budget?

### **Who will pay?**

Most of the Public Debt is being passed on to your children.

But there is also the large increase in VAT from 12.5% to 15%., expected to raise \$80 millions. We all know the VAT to be a regressive tax, whose burden falls more heavily on the low and middle income people who usually spend a higher proportion of their incomes.

Which is why even Father Barr, a once avid supporter of the Bainimarama Government is now complaining about the increase in VAT, as he also complains about the failure of the Military Government to implement his Wages Councils.

This illegal Military Government is also planning to sell off public assets like FEA, to try to stop the Fiscal Deficits exploding further.

Just as the SVT Government's then Minister of Finance Jim Ah Koy disastrously did with the creation and sale of ATH shares in 1998, this Military Government will also thereby convert a public monopoly into a private monopoly, which will rip off even more, the helpless consumers, despite the best efforts of the bumbling Commerce Commission.

### **The IMF Excuse**

How odd that this Military Government chooses to justify their VAT increase and sale of public assets by referring to IMF Mission advice. This Military Government will also use the IMF excuse when they start sacking more public sector employees (in addition to all those over 55 laid off recently).

But the Military Government ignores that they could not fulfill the complete set of IMF requirements for a Standby Arrangement.

We in Fiji should also understand that the experience of the developing world is that the unaccountable, non-transparent, ever-changing IMF missionaries couldn't give tuppence for the lives of the ordinary people they trifle with.

There is no public indication that the IMF recommended that Fiji's military expenditure must be significantly reduced to pre-2006 levels if the Fiscal Deficits and Public Debt are to be reduced to sustainable levels; nor that any burden of adjustment should be shared by the upper income

brackets as well through the income tax, and not just through a VAT increase which will hurt the poorest more.

The IMF's key concerns have always been about facilitating and strengthening the private sector, if necessary by privatising and downsizing public corporations. For the amoral IMF missionaries, a dictatorial Military Government provides a grand opportunity to bring about changes not easily possible through elected accountable governments.

We should remember also that an "IMF Mission to Fiji" is a "not to be missed opportunity" for a bloated 8-person team to have a lovely few days in a tropical paradise, away from freezing Washington or far more unpleasant African banana republics which usually receive IMF attention.

### **Inflation and Cost of Living**

This Military Government's claim that they will contain inflation, is equally hollow. Fiji's inflation is largely imported, totally beyond the control of the Government or the Commerce Commission.

Indeed, the recent Reserve Bank devaluation of the Fiji dollar boosted inflation beyond the alleged 3% target, while the planned 20% increase in VAT will add even more.

The cost of living for everyone will go up, regardless of the sporadic and generally futile Commerce Commission price controls on a limited number of items (not sold by a certain tycoon).

Father Barr's poorest workers are certainly not going to get timely Cost of Living adjustments through the Wages Council.

And the FNPF and other savings of the ordinary people will keep going down the drain, continuously eroded by the inflation, while unable to grow because of the continuing economic stagnation and lack of employment creation.

So taxpayers and coup collaborators need to honestly ask themselves: who have really profited from the 2000 and 2006 military coups?

### **Benefits for the Military**

It is ironic that there is such hatred on the blog sites directed against AiyazKhaiyum who is strangely accused of implementing some kind of Taliban "Sunset Clause" on the Fijian race, and of manipulating a pliant Bainimarama. This frequently racist blogging took another turn with Khaiyum's presentation of the budget, on behalf of an absent sick Bainimarama.



Of course, Khaiyum invites such criticism with his egotistical “in-your-face” daily prominence in the media, his obvious enjoyment of power and authority over so many powerful ministries, and the steady stream of salusalus and adulation from the pliant business community (as long as their business interests are served, who cares if the rest of the country goes down the drain?).

But let us face it: Khaiyum (like Parmesh Chand and JonhnSamy) is merely in the service of Bainimarama and the Fiji Military Council, very smoothly and suavely doing their dirty work. Indeed his performance on TV is a “revelation of sorts” even to those of us who shared a cell with him protesting the Rabukacoups more than twenty years ago.

Of course, Khaiyum and his coup collaborating cobbers from NZ may be enjoying considerable financial benefits themselves, as others have in the past, and gone today.

But, in dollar terms, the biggest ongoing 2000 and 2006 coup beneficiaries of tax-payers funds, have been Bainimarama and his senior military officers, some of the former FMF Commanders, and the military rank and file, who have followed Bainimarama blindly into treason against a lawfully elected Government.

Note that 99 per cent of the bigger FMF beneficiaries are indigenous Fijians, who I suspect are quietly chuckling around their grog-bowl that Khaiyum (and other prominent Indo-Fijians) are egotistically taking the limelight, and the flak from the bloggers.

I suspect that when the tide turns, the Bainimarama camp and the numerous quiet indigenous Fijian coup collaborators, will blame the Indians for “misleading and manipulating Bainimarama and the Military Council”; present a tabua or two; perform a matanigasau or two; and the vanua will come together again, all forgiven.

Who knows where the Indo-Fijian, the Part-European and European coup collaborators will then go to. Someone can ask them.

### **Epilogue for 2011 Budget Oscars**

It is their personal tragedy, that all these officers and soldiers of the Fiji Military Forces, aided by the current and former Army Commanders, have now wrecked their own reputations, professionalism and marketability in the world of peace-keeping and security provision.

But the greater ongoing tragedy for Fiji, so clearly shown by this 2011 Budget, is that this Military Government and the coup collaborators are imposing a massive Public Debt burden that Fiji’s future generations will struggle to pay, undermining their standards of living for more than a decade.

Look at what is happening today to Greece, Ireland and Portugal, where Public Debt ran out of control, aided by the Global Financial Crisis.

Khaiyum may deserve an Oscar for his acting ability in presenting in the 2011 Budget, mouthing the Bainimarama Government's Roadmap and macro objectives, fully understanding that none of them are being met, or are even likely to be met, while blatantly lying about reducing Fiscal Deficits and the Public Debt.

But supporting Oscars should also go to Fiji's business community- the tycoons, the partners and principals of the accounting firms, and the numerous collaborating Flotsam and Jetsam from abroad, for merrily playing along and even praising this dangerous 2011 Budget (the images on Fiji One are revealing).

Unfortunately, the economic and social disaster that this Military Government is visiting on Fiji through the 2011 Budget is not in the "make-believe" world of Hollywood Oscars, also seen so often on our TV screens.

Fiji's young workers and children will learn that harsh message one day, when the Public Debt chickens come home to roost.

Is there anyone in the Fiji Civil Service who can explain all this to the Bainimarama Government before further damage is done?