

**Final Submission to the Yash Ghai Commission**  
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**12 October 2012**

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## *Executive Summary of Recommendations*

1. *This submission wishes it to be recorded that the success or failure of the Yash Ghai Commission depends entirely on the good-will and co-operation of the Bainimarama Regime with the Commission,<sup>1</sup> and in particular, on Commodore Bainimarama who has the total support of the Republic of Fiji Military Forces, the Fiji Police Force, the judiciary, and all other arms of government, and therefore has the ability to put into effect most of the recommendations likely to come from the Commission's work.*
2. *This submission calls on the Yash Ghai Commission to acknowledge that the end product of their exercise will NOT be any "new" Constitution but a "revised 1997 Constitution".*
3. *This submission calls on the Commission to ensure that their Report MUST reaffirm the fundamental human rights such as freedom of expression, freedom of assembly, the right to personal property, the right to go to court with perceived grievances, and all other basic human rights ratified by The UN Convention on Human Rights, even if the current Regime has denied these basic human rights to many Fiji citizens and residents. It should also include the principles of the equality of all races and religions, and inclusivity, which this Regime has strongly espoused.*
4. *This Submission calls on the Commission to inquire from the Regime whether the demands for immunity will also apply to the actions of Justice Anthony Gates when he was Acting Chief Justice following the Military's removal of the former Chief Justice (Fatiaki), and any actions and activities of the Regime's President (Ratu Epeli Nailatikau, both of whom will therefore have a conflict of interest in being required to be part of the "approval process" for the Constitution, according to recent decree 98 and 99.*
5. *This submission calls on the Yash Ghai Commission clarify in its Report (and hence to the Constituent Assembly) that the Regime is requiring, through its decrees, that the immunity to be part of the revised constitution, is to stretch from 2000 to 2014.*
6. *This Submission recommends that it is essential that the Commission, before it makes any recommendation for immunity, recommend processes that will establish the truth concerning:*
  - (a) *the circumstances and the lawfulness of the Bainimarama takeover of government in 2006 and the 2009 purported abrogation of the 1997 Constitution; and*

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<sup>1</sup> This is the Commodore Bainimarama-led military government, hereafter referred to as the "Regime".

- (b) equally important given that the immunity is to stretch back to 2000, to clarify the facts behind the 2000 attempted coup, and the later mutiny against Commodore Bainimarama.<sup>2</sup>*
  - (c) Recommend processes which may effect (b) above before any immunity provisions are discussed by the next elected parliament.*
  - (d) Obtain international legal advice on whether immunity can be granted for serious abuse of basic human rights abuses.*
- 7. This submission recommends that the Yash Ghai Commission, as part of their Draft Report, include the recommendation that one of the first acts of the newly elected Parliament would be to recommend a "Truth, Justice and Reconciliation Commission" whose task would be to elucidate honestly and transparently, the events of 1987, 2000, 2006 and 2009, and all events for which immunity is being sought by the Military Regime.*
- 8. This submission calls on the Yash Ghai Commission to leave it to the next elected Parliament, following the Report of the Truth, Justice and Reconciliation Commission, to make recommendations on the nature and extent of immunity to be granted to those involved in the events between 2000 and 20014, for which immunity is being sought by the Regime.*
- 9. This submission reiterates the recommendation in my earlier electoral reform submission that there be a large number of constituencies from which single candidates are elected to serve all who live in that constituency, and be accountable to them at the next election, and that there be a List element which will have a high probability of ensuring gender balance in parliament.*
- 10. This submission recommends that voting will be by placing ticks or numbers on pieces of ballot paper and not by any electronic voting mechanism which cannot be monitored with any degree of confidence. This submission therefore also recommends that counting of votes must take place physically, in every constituency, so as to ensure transparency and accountability to voters.*
- 11. This submission recommends that the Commission engage in a "voting and vote counting experiment" where by a few hundred "voters" generally representative of Fiji's voting public, go through an actual exercise of voting according to the main systems being recommended and considered by the Commission<sup>3</sup>, the votes be counted by the Elections Office, and the results declared. The objective would be to obtain from the voters, the Elections Office and the political parties, the*

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<sup>2</sup> Some conjectures are made later in this submission based on the publicly available Evans Board of Inquiry Report (which the Commission has in its possession).

<sup>3</sup> Of course, actual political parties and names will not be used in the exercise. But, gender should be identifiable as gender balance in Parliament will be an extremely desirable objective for the revised electoral system.

system that they feel most comfortable with in practice, and will achieve the political objectives of ethnic equality in voting and gender balance in outcomes.

12. *This submission recommends that all the following contentious issues be referred to the first elected parliament to resolve, through select committees of parliament, which must present their reports and recommendations within a year of being established:*
  - (a) *the reform of the GCC.*
  - (b) *the composition of Senate*
  - (c) *the selection or election of the President*
  - (d) *the common name to be used for Fiji citizens*
  - (e) *whether Fiji should be declared to be a "Christian State"*
  - (f) *the nature, extent and coverage of immunity to be granted by Parliament.*
  - (g) *any changes to land legislation*
  - (h) *changes to the Fiji flag*
  - (i) *changes to the national anthem*
  - (j) *changes to citizenship rules*
13. *This submission recommends that if the Commission chooses to make recommendations on these contentious matters listed above, then each of them be the basis of separate Referendum papers on which voters may vote at the next elections. The next elected parliament may then be guided by the results of the referenda, in formulating the specific changes to the Constitution.*
14. *This submission calls on the Commission to state and ensure that Minority views and Reports (if any) will be allowed and published simultaneously with the consensus report.*
15. *This Submission recommends that all matters on which there is disagreement between the Commissioners are to be fully documented and reported to the public for full transparency and accountability to the public.*
16. *This submission calls on the Yash Ghai Commission to insist that the Constituent Assembly must comprise members independently nominated by the major organisations listed in Decree 98.*

17. *This submission calls on the Yash Ghai Commission to call for the removal of this paragraph 3 from Schedule 2, Decree 99.*
18. *This submission calls on the Yash Ghai Commission to insist that all voting in the Constituent Assembly must be by secret ballot and require two-thirds majority.*
19. *This Submission requests the Commission to clarify from the Regime whether the immunity being sought also includes the Regime's Chief Justice and others likely to be involved in the CJ's Tribunal expected currently to vet the Commission's Draft Report.*
20. *This submission recommends that, following agreement by the Constituent Assembly on the electoral reform, and the Draft Constitution, these be widely publicised in English and the vernaculars.*
21. *This submission recommends that elections then be held under the revised electoral system.*
22. *This submission recommends that the newly elected parliament then be asked to approve the Final Constitution, following resolution of as many of the contentious issues as possible, again, with a two thirds majority.*
23. *This Submission recommends that the Commission initiate a "closed session" with the current military hierarchy and retired former senior army officers to*
  - (a) examine their willingness to remove lawfully elected governments in 1987, 2000, 2006 and their refusal to abide by the 2009 Court of Appeal judgement. The objective of this exercise, which may be moderated by a few respected international military authorities<sup>4</sup> and senior citizens, is to guide the Commission's recommendations on how to discourage the "coup culture";*
  - (b) honestly face up to the economic impact of all of Fiji's military coups, as explained in Section 12 of this Submission.*
  - (c) acknowledge that following every coup, there has been significant reallocation and increase of tax-payers' funds to the military, at the expense of all other more important development calls for resources such as health;*
  - (d) acknowledge that in the long-term, there must be a reduction in resources and personnel for the military forces, separation of the income-earning roles from the others, and all done in a gradual manner which does not harm the welfare of the armed forces;*

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<sup>4</sup> Given the bad relations with Australia and NZ, the US Government may be requested to provide this professional military expertise to assist the RFMF.

*(e) acknowledge that the military does not have any role in the maintenance of internal law and order, which much be the sole domain of the Fiji Police Force;*

*(f) set out clearly in RFMF regulations on the proper lawful response of military personnel, should there be approaches from the Commander of the RFMF or RFMF personnel, or civilians, to instigate any kind of illegal actions against the lawful government of the day;*

*(g) that the next elected Parliament form a Select Committee drawn from the current and former officers of the RFMF, outside expert military advisers, and qualified domestic citizens to conduct a thorough review of the RFMF in order to plan its future in a constructive and co-operative manner.*

24. *This Submission recommends that the Commission initiate a "closed session" with the current judiciary hierarchy and retired senior former judges and lawyers to honestly examine their willingness to support illegal governments in 1987, 2000, 2006 and their refusal to abide by the 2009 Court of Appeal judgement. The objective of this exercise, which may be moderated by a few respected international legal authorities, is to guide the Commission's on how to discourage the "coup culture" amongst the judiciary.*

25. *This Submission recommends that the Commission initiate a "closed session" with the political parties and their leaders to honestly examine their willingness to support illegal governments at various points in time, The objective of this exercise, which may be moderated by a few respected independent social leaders is to guide the Commission's on how to discourage the "coup culture" amongst the political parties.*

26. *This Submission recommends that the Commission initiate a "closed session" with the religious organisations to honestly examine their willingness to support illegal governments at various points in time. The objective of this exercise, which may be moderated by a few respected independent social leaders is to*

*(a) guide the Commission's on how to make recommendations that could discourage the "coup culture" amongst the religious organisations..*

*(b) see if there can be consensus on the "Christian State" issue, amongst the religious organisations.*

27. *This Submission recommends that the Commission initiate a "closed session" with all the organisations that represent the business community, to honestly examine their willingness to support illegal governments at various points in time, The objective of this exercise, which may be moderated by a few respected independent social leaders is to guide the Commission's recommendations on how to discourage the "coup culture" in the corporate sector.*

28. *This Submission recommends that the Commission recommend a greater appreciation of entrepreneurs by incorporating their representatives in the upper house of Parliament with appropriate allocation of honours.*
29. *This Submission recommends that the Commission initiate a "closed and totally confidential session" with the leaders of media organisations, to honestly confront what their roles have been in supporting the "coup culture" and to assist the Commission to make the appropriate recommendations.*
30. *This Submission recommends that the Commission initiate a "closed and totally confidential session" with the leaders of tertiary education organisations, to honestly confront what their roles have been in supporting the "coup culture" and to assist the Commission to make the appropriate recommendations for their future policies on the role of academia in opposing the coup culture.*
31. *While it is totally unlikely to have any effect whatsoever on the international agencies, this Submission calls on the Commission to make a clear statement in its Report calling on international agencies (embassies and international organisations) to clearly condemn military coups which remove democratically elected governments, and to impose all available sanctions on illegitimate Regimes.*
32. *This Submission calls on the Commission to clearly state in their Report, that it is not the general population which needs to be taught the importance of good governance and law and order in eliminating the "coup culture" but the military hierarchy, the judiciary, the corporate sector, the religious and social organisations, the media owners, and other elites in society, who have willingly supported and collaborated with coup makers.*
33. *This submission requests that the Commission in their Report, point out to the members of the Constituent Assembly, the lessons to be learnt from the NCBBF, the Charter and Roadmap exercise.*
34. *This submission requests that the Commission in their Report, point out to the members of the Constituent Assembly, their responsibility to not only formulate the draft revised Constitution, but the need for them to be accountable for their roles, and what their actions should be, if their Final Report is in any way modified or not followed by the Regime.*
35. *The submission recommends that the Commission emphasize in their report the terribly damaging impact that all the military coups have had on Fiji's incomes, standards of living, and poverty, and that far from being a "zero sum game", coups have been "lose-lose games for the major ethnic groups.*

36. *The submission recommends the Commission obtain the views of real estate agents on the impact of the 2006 and 2009 coups on property prices and inflows of foreign capital.*
37. *This Submission recommends that the Commission request the Bainimarama Regime to respond to the criticisms made in paragraph 305.*



## 1. Preamble

38. This submission, coming towards the end of the period allocated the public consultations by the Yash Ghai Commission (hereafter referred to as the "Commission") wishes to acknowledge that, contrary to the initial doubts expressed by some members of the public (including myself), the Commission has been energetic, committed and comprehensive in their attempt to fulfil their obligations to the nation, by seeking to hear the views of all who wish to make submissions. Their only constraint has been the time frame allocated to them to complete all their tasks and the lack of co-operation from some quarters.
39. This submission wishes to point out that posterity is a harsh critic of those who have been publicly seen to be leading the coups in the past, not the shadowy advisers and instigators behind the scenes.<sup>5</sup>
40. While not central to this submission, coups will also eventually be judged by their economic impact on the nation and the livelihoods of the ordinary people. Section 12 of this submission points out the harsh realities of the economic impact of the 2006 coup, which goes counter to many of the claims by the Regime spokespersons and Regime supporters.
41. While I expect that the economy will keep recovering over the next two years, the eventual economic outcome by elections in 2014 will not be any great deal better than what Fiji was in 2006, and the period 2006 to 2014 will almost certainly be regarded as one of the worst economic performances amongst the comparable countries in the Pacific. Nevertheless, the substance of this submission does not at all rest on any analysis of Fiji's economic performance under the Bainimarama Regime, although it is hoped that the Regime and its supporters will critically examine the arguments made in Section 12.
42. The success or failure of the work of the Commission in terms of eventual outcomes, will depend on how much support the Bainimarama Regime gives to the independent activities of the Commission and its recommendations.
43. *This submission wishes it to be recorded that the success or failure of the Yash Ghai Commission depends entirely on the good-will and co-operation of the Bainimarama Regime with the Commission,<sup>6</sup> and in particular, on Commodore Bainimarama who has the total support of the Republic of Fiji Military Forces, the Fiji Police Force, the judiciary, and all other arms of government, and therefore has the ability to put into effect most of the recommendations likely to come from the Commission's work.*

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<sup>5</sup> History has not been kind to Sitiveni Rabuka who was seen to have implemented the 1987 coup. Few talk of the shadowy figures behind the coups, who historians know to be supporters of the 1987 coup, including Ministers of the losing Alliance Government, and some who are present in the Bainimarama Government.

<sup>6</sup> This is the Commodore Bainimarama-led military government, hereafter referred to as the "Regime".

44. For the records, this submission is mindful of a fundamental legal dilemma that faces the Yash Ghai Commission in that it is tasked by the Regime to help return Fiji to a lawful democratically elected parliament and government in 2014, when the Regime itself illegally removed a lawfully elected Government.
45. The Commission has the additional burden that two Decrees<sup>7</sup> have been gazetted, Nos. 98 and 99 (also titled No.57 and No. 58 of 2012) which attempt to place numerous restrictions on the work of the Commission, and how their final Report will be processed, modified, and eventually "implemented". These two decrees make quite explicit that the "people's will" may not necessarily be allowed to determine the final product, if the Regime does not agree with aspects of it. Through the decrees, the Regime is also demanding total immunity stretching not from 2006 (when it assumed control of government) but from 2000 to 2014, still two years into the future.
46. Although the Commission does not state to what extent they have or have not accepted the restrictions, this submission takes at face value the Commission's frequent public reassurance, that they will listen to all the submissions being made with a free mind, and attempt to incorporate "what the people want" into their final Report, so that it is a genuine "home grown" document.<sup>8</sup>
47. That may already be problematic given that many submissions are requesting clauses such as declaration of Fiji as a Christian State- a call which the Commission has clearly indicated that they are not in favour of. While this submission agrees with the Commission on this point, I would suggest that it may be safely left to the future elected Parliament to make a final decision on as was done with the 1997 Constitution. A referendum would be an improvement on the processes by which the 1997 Constitution was approved.
48. It is clear that the Commission has been disappointed that most submissions are on "bread and butter issues" which are typical responsibilities of elected governments, not matters for a constitution review to address.
49. The Commission has correctly seen the need to issue public statements calling on submissions to focus on more "weighty" matters for a constitution for Fiji- such as composition and role of the Senate, the Great Council of Chiefs, independence of the judiciary, the appointment of the President, etc. It is clear that relatively few people have bothered to make the "weighty" submissions expected, despite frequent appeals by the Commission and the Regime.
50. Several factors may explain the poor response from the public:

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<sup>7</sup> I shall refer to them by the generic numbers- 98 and 99.

<sup>8</sup> This submission will leave to future historians, any comparison between the "people outreach" and "popular participation" in the Yash Ghai Commission's Constitution review process and that by the Reeves Commission.

- the Fiji public sees no great need for any review of the 1997 Constitution;
  - for many, the constitution review is not at all important in the face of daily bread and butter struggles;
  - opponents of the Regime live in a climate of fear due to the continuing media censorship<sup>9</sup>, and a fear of victimisation;
  - some may feel that their submissions will be futile as the Military Regime will do whatever wish to in any case;
  - for some, the non-response may be peaceful opposition to the Regime;
  - despite the numerous media campaigns, there is a widespread lack of understanding of the importance and role of a constitution in guiding how a society operates, a problem that was clearly faced also by the Reeves Commission;
  - there is a disappointing and astonishing abdication of social responsibility amongst the legal fraternity who may be expected to be the professional experts in this area and, of all the professions, most able to contribute to the Commission's work;<sup>10</sup> and
  - various combinations of all these factors.
51. It seems that the Commission will have to largely depend on their own expertise and commissioned papers, into preparing their Report and a draft Constitution, which latter document will then be considered and modified as necessary, by a Constituent Assembly.
52. It will be an interesting exercise to examine the extent to which the Commission's Report and the Draft Constitution reflects the bulk of the submissions made to it.
53. This submission sets out a bare outline of what ought to be included in the Commission Report, but more importantly, makes suggestions on the processes by which "the people's views" may eventually become the lawful revised Constitution of Fiji on which the current and future generations can build a sustainable future- the emphasis being on the words "lawful" and "sustainable".
54. This submission notes a Machiavellian view taken by some Regime opponents who argue: "let the Commission produce whatever they want, let the Regime do whatever they want with the Commission's Report however unethical or illegal that

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<sup>9</sup> My views are here: <http://narseyonfiji.wordpress.com/2012/07/04/air-of-optimism-but-media-censorship-continues-4-july-2012/>

<sup>10</sup> The legal fraternity earns substantial legal fees whenever constitutional challenges have been mounted in the past, because of grey areas in the constitution.

may be, just get them away from the reins of government and tax-payers' money, get back to an elected parliament, and let future governments and the International Law courts deal with the unlawful acts from their period of governance".

55. This submission disagrees with this Machiavellian view, which, in my opinion, will condemn this country to a continuation of the political instability and yet more "constitution reviews" while passing the difficult problems created by this irresponsible generation (those making decisions from 1987 till now) to the future generations, who do not deserve such callous treatment.
56. This submission argues that the Regime, and especially the Republic of Fiji Military Forces (RFMF) and its hierarchy, must be treated and negotiated with in good faith; fundamental problems honestly and clearly articulated so that our people can understand the origins of today's problems; our leaders be genuinely accountable to our people by admitting and taking responsibility for past mistakes; and making recommendations to the Commission on necessary constitutional revisions which the current and future generations can build upon, without the need for debilitating contortions dealing with constitutional and governance "time-bombs" bestowed them by the current generation.
57. There is consensus amongst law-abiding citizens that we should try to put an end the "coup culture". This submission will argue that it is pointless to point the finger only at the Bainimarama Regime as responsible for Fiji's "coup culture" when it is eminently clear to historians that there is a solid explanatory trail which leads back to the key actors in the 2000 coup (some are the same), and even further back to the 1987 coups and another generation of coup supporters, some now departed.
58. I make this point because many of those who openly, quietly or anonymously (on the blogs) oppose the Bainimarama Regime and its military coups were solid supporters of the 2000 and 1987 coups. While some may believe in democracy, I suspect that the majority of Regime opponents are frustrated at being eliminated from the corridors of power and the removal of "their" political leaders. Nevertheless, this submission will still support the fundamental principle of parliamentary democracy, even if that implies that there will be "transient bed-fellows" with no genuine commitment to democracy.
59. There is a special section towards the end of this submission that addresses the central and all-important problem of eliminating the "coup culture".

## 2 "New" or "revised" 1997 Constitution: it is not semantics

60. The Commission is reported to have stated that their work will lead to a "new" constitution.<sup>11</sup> It is easy to fall into this line of thinking given that Fiji appears to have had several "new" constitutions since political independence: the 1970 Constitution, the 1990 Constitution and the 1997 Constitution.
61. It should be pointed out however that even the 1997 Constitution was brought into being as the 1997 Constitution "Amendment" act. I submit that the end product of the process I set out here will be a "revised 1997 Constitution" and this distinction is not mere semantics, but critical for the legitimacy of the current Commission's work and the legitimacy of the eventual constitutional output.
62. To accept that the end product will be a "new" constitution will be to accept that the 1997 Constitution was lawfully abrogated by President Iloilo in 2009 with the support and at the behest of the Military Regime. I submit that to accept that would be reinforce the continuation of the "coup culture".
63. Professor Yash Ghai and Professor Christina Murray, as constitutional lawyers, will know that there is a substantive legal position regarding the purported abrogation of the 1997 Constitution in 2000 and the removal of the lawfully elected government in 2006. This legal position has a logical bearing on the purported abrogation of the 1997 Constitution in 2009 and the lawfulness of the current Commission's processes and output. Professors Ghai and Professor Murray will have read the three documents referred to below.
64. The first is the last legal and authoritative judgment of the 2009 Court of Appeal (Justices Powell, Lloyd and Douglas) available here:  
<http://www.nswbar.asn.au/circulars/2009/apr09/fiji.pdf>
65. The Appeal Court judges carefully traversed all the previous arguments and judgements on the legality of all governments established since the military coups of 1987, 2000, and 2006. They made the clear judgement that all of the following were unlawful according to the 1997 Constitution:
  - (a) the assumption of executive authority and the declaration of a State of Emergency by Bainimarama
  - (b) the dismissal of Qarase as Prime Minister,
  - (c) the appointment of Senilagakali as caretaker Prime Minister,
  - (d) Bainimarama's order for the dissolution of Parliament,

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<sup>11</sup> While the members of the Commission may derive greater personal credit for giving Fiji a "new" constitution, the far more important consideration ought to be the "lawfulness" of their endeavours.

- (e) Iloilo's appointment of Bainimarama as Prime Minister, and
  - (f) all subsequent decrees by President Iloilo attempting to legalize Bainimarama's actions.
66. The Appeal Court pragmatically recommended that President Ratu Iloilo appoint a caretaker Prime Minister to advise a dissolution of the Parliament and call for fresh elections. Instead, the next day, Ratu Iloilo claimed to "abrogate" the 1997 Constitution, and re-appointed Bainimarama as Prime Minister, whose regime has continued till today.
67. I also refer the Commission to Professor Anne Twomey's "The Fijian coup cases: The Constitution, reserve powers and the doctrine of necessity" available here: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1399803](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1399803).
68. The Commission may also wish to read "Dire Straits: a report on the rule of law in Fiji", an International Bar Association Human Rights Institute Report, March 2009, which documents how a few aggrieved Fiji High Court Judges in 2006, sacrificed constitutionality and the rule of law, on the alter of their personal vendetta against other judges who they thought had acted unfairly against them.
69. These three documents strongly support the view that the 2009 alleged abrogation of the 1997 Constitution by Iloilo and the Bainimarama Regime were equally unlawful under Fiji laws. Implicit but damning proof of that is the Regime saw it necessary to issue Decrees which deny any legal challenge to their purported abrogation of the 1997 Constitution in 2009 as well as the demands for immunity made by Decrees 98 and 99.
70. I draw on the excellent 2001 judgement by Justice Anthony Gates (currently the Military Regime's Chief Justice) in the case *Koroi v Commissioner of Inland Revenue*.<sup>12</sup> (Justice Gate's words are given here in blue italics, with my additional comments in black):
71. *"It is not possible for any man to tear up the Constitution. He has no authority to do so"*.
72. Thus we may conclude that neither Commodore Bainimarama in 2000 nor President Iloilo in 2009, had any powers to abrogate the constitution.
73. *"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 ...*
74. *The fundamental law represented in a Constitutional document may only be changed in accordance with that Constitution."*

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<sup>12</sup> Many of these quotes are referred to in Twomey's excellent paper referred to earlier.

75. *"Usurpers may take over as they have in other jurisdictions, and in some cases rule for many years apparently outside of, or without the Constitution. Eventually the original order has to be revisited, and the Constitution resurfaces ..."*
76. *"For the courts cannot pronounce lawfulness based simply on the will of the majority. Nor can lawfulness be accorded to the tyranny of the mob.... Such tyranny lacks universal morality and the courts will not assist usurpers simply because they are numerous, powerful, or even popular."*
77. The clear implication is that even the Yash Ghai Commission cannot suddenly create a "new" Constitution outside of Parliament, even if approved by some "Constituent Assembly" appointed by the "usurper".
78. Equally, no "popularly approved" Charter can ride roughshod over the 1997 Constitution, and courts will not assist the usurping Military Regime, even if it is "powerful, or even popular" six years later.
79. In an earlier 2000 judgement, Anthony Gates had justifiably admonished fellow judges Tuivaga, Scott and Fateaki:
- "Judges should remember their oaths of judicial office to uphold the Constitution. The presumption is that the Constitution remains unimpugned until pronounced otherwise in court".*
80. Professor Yash Ghai and Professor Murray, and Justice Gates himself, will know that the 1997 Constitution has not been "impugned in Court".
81. Gates also criticized Qarase's 2000 court action to declare the 1997 Constitution abrogated and begin a constitution review process (in 2001):
- "But the rule of law means that the suspended state of affairs and the Constitution return to life after the stepping down of a responsible military power and after the conclusion of its work for the restoration of calm for the nation.*
- There is no constitutional foundation of legality for the interim government or for the Constitutional Review Committee".*
82. While Gates was referring to the Constitution Review Committee set up by Qarase Interim Government, the same could equally be said of the current Bainimarama Regime and the Yash Ghai Commission.
83. This Gates judgment in the 2000 Chandrika Prasad case was supported by a 2001 Court of Appeal (comprising Casey, Barker, Kapi, Ward and Handley JJA).

84. The Commission should also note that for six years, the Bainimarama Regime has been insisting that all future governments must be guided by the People's Charter which was allegedly approved by more than 80 percent. of all people in Fiji over the age of 18 i.e. virtually a referendum). I remind that the first clause of the Charter states clearly "*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*".
85. This commitment was however trashed by the 2009 purported abrogation of the constitution. It may be noted that the Yash Ghai Commission's recently issued pamphlet advertising their work has omitted all reference to the People's Charter!
86. In summary, the 1997 Constitution is still in place, and can only be "revised" following the Yash Ghai Commission's Report, by the processes which I recommend below.
- 87. *This submission calls on the Yash Ghai Commission to acknowledge that the end product of their exercise will NOT be any "new" Constitution but a "revised 1997 Constitution".***
88. Failure to do so will simply reinforce the mentality that every time there is a possibility of some weakness in the Constitution, the call is made "let us have a new constitution, that will solve the problem", by mounting a coup.
89. This submission rejects those aspects of the Regime's most recent decrees (98 and 99) that clearly undermine the democratic processes which are the only means whereby they can be any degree of legitimacy to the final desired output of a genuine "people's constitution".



### 3 What are "non-negotiable" elements for the Draft Report?

90. Section 3 of Decree No. 98 sets out the purpose for the Commission.
91. While (d) 2 states that the draft constitution must have "respect for, and protection and promotion of, human rights", all the fundamental human rights as agreed to by the United Nations declaration on universal human rights are not included.
92. Section 3(e) on "non-negotiable principles and values" strangely omits all reference to several human rights which have been denied to numerous Fiji citizens by the Regime over the last six years, such as freedom of speech, freedom of assembly, the right to personal property, the right to go to court for perceived grievances, and many others.
- 93. *This submission calls on the Commission to ensure that their Report MUST reaffirm the fundamental human rights such as freedom of expression, freedom of assembly, the right to personal property, the right to go to court with perceived grievances, and all other basic human rights ratified by The UN Convention on Human Rights, even if the current Regime has denied these basic human rights to many Fiji citizens and residents. It should also include the principles of the equality of all races and religions, and inclusivity, which this Regime has strongly and correctly espoused.***
94. The Commission might wish to point out in its Report, that indigenous Fijian politicians could learn from the undoubted support given to the Bainimarama Regime by non-indigenous Fiji citizens (Indo-Fijians, kavilagis, and kailomas) who have felt victimized or marginalized or simply not used to their full national potential, by previous governments. In large measure this support has persisted because of the frequent repetition by the Bainimarama Regime that they believe in the equality of all races and religions.<sup>13</sup> The latest example of this may be seen in the Fiji Day speech by the Regime's President where he reiterated this at length.
95. The irony of this phenomenon is that the economic welfare of Indo-Fijians in general has taken quite a battering during the last six years (see Section 12 on poverty), and to this economist, is hardly justified by the proclamation of racial and religious equality.
96. Nevertheless "man does not live by bread alone". The great psychological need for Indo-Fijians and others to feel that "they belong" and that the Fijian leaders say that "they belong", should not be under-estimated in national politics, and leaders like Bavadra in 1987, and in recent years Commodore Bainimarama have derived great benefit from it.

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<sup>13</sup> This statement often covers international opinion critics of the Regime: how could anyone disagree with this universal truth".

97. The Military Regime has publicised for months that the revised Constitution will be a "home grown" document representing what the people of Fiji genuinely want. This is commendable. Yet Decree No. 98 demands in Section 7 (which is titled "Functions and powers of the Commission") subsection (4) that the draft Constitution
- (a) must provide immunity for the President, all members of the RFMF, Police, Prisons, and individuals appointed to Cabinet and any State Service, stretching from 5<sup>th</sup> December 2006 to the first sitting of the next Parliament (presumably in 1914 but could even be later).
  - (b) the Draft Constitution must give such immunity as is provided for in the *Limitation of Liability for Prescribed Political Events Decree 2010*, to all persons listed as "prescribed persons" under that decree, and for all events described as "prescribed political events" in that Decree.
  - (c) Decree 98 stipulates that this immunity is not to be challenged by any court, or any future Parliament!
98. Given that parliaments are universally deemed supreme, the paragraph to limit the powers of all future parliaments, suggests an abysmal lack of legal common sense from the Regime's legal advisers and drafters who seem to care little that their decrees make a mockery of the supreme powers of elected parliaments.
99. I wish to emphasize that 97 (b) above refers to all the events in the attempted 2000 coup and mutiny, and events thereafter up to April 2009 and the purported 2009 abrogation of the Constitution.
100. The Commission must ask itself, why would the Bainimarama Regime which took power in 2006, seek immunity for the events of 2000 (attempted coup and the mutiny) and other events between 2000 and 2006?
101. Why would "prescribed political events" include "all dialogue, discussions, correspondence between the Republic of Fiji Military Forces and the Government between September 2001 to December 2006"?
102. Why should immunity be granted for unknown future actions up till 2014?
103. Indeed, why would the Commission accept that part of their "function" and "powers" (as described in the decrees) is to recommend immunity, which the Constituent Assembly would then have to discuss and approve, with neither entities having any knowledge whatsoever of what the immunity is being granted for?
104. It is incongruous that the Yash Ghai Commission pamphlet<sup>14</sup> publicizing their work, includes in their section on "Principles and Values" the sentence "The constitution

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<sup>14</sup> Personal communication from a key staff member in the Commission Secretariat.

must also give legal immunity to the government, members of the security services and civil servants".

105. It would not be desirable for the Commission to recommend a "blanket immunity" of the form that is set out in the two decrees, without knowing exactly what acts or omissions in the past the immunity will be granted for. This must be clarified by the Commission in its discussions with the Regime.
106. It is of course quite impossible for the Commission or the Constituent Assembly or any submission to recommend immunity for unknown acts in the future, up to parliamentary elections in 2014.
107. The Commission should note that Decree 99 requires that their draft constitution be referred to a Tribunal chaired by the Regime's Chief Justice (Anthony Gates) to ensure that the constitution not only follows the principles and values set out in Decree 98, but also subsection 3 of Section 8 which contain the demands for immunity.
- 108. *This Submission calls on the Commission to inquire from the Regime whether the demands for immunity will also apply to the actions of Justice Anthony Gates when he was Acting Chief Justice following the Military's removal of the former Chief Justice (Fatiaki), and any actions and activities of the Regime's President (Ratu Epeli Nailatikau).***
109. If the answer is in the affirmative, then there is a clear conflict of interest in that those required by the Regime's Decree No. 99 to approve the draft constitution and sign the final constitution will themselves be the direct beneficiaries of the immunity. That would make a mockery of the whole process and be akin to those accused of crimes, giving the judgement on themselves that they will not be held accountable for their actions, whatever they may have done.
110. This submission recommends that to have any ethnical validity, immunity provisions, if any, must be approved by the next elected parliament, and not a President and Chief Justice appointed by the current Regime.
- 111. *This submission calls on the Yash Ghai Commission to be transparent with the Fiji public and the Constituent Assembly, and publicly clarify that the Regime is requiring immunity to stretch from 2000 to 2014.***
- 112. *This Submission recommends that it is essential that the Commission, before it makes any recommendation for immunity, recommend processes that will establish the truth concerning:***
  - (a) the circumstances and the lawfulness of the Bainimarama takeover of government in 2006 and the 2009 purported abrogation of the 1997 Constitution; and***

- (b) *equally important given that the immunity is to stretch back to 2000, to clarify the facts behind the 2000 attempted coup, and the later mutiny against Commodore Bainimarama.<sup>15</sup>*
  - (c) *Recommend processes which may effect (b) above before any immunity provisions are discussed by the next elected parliament.*
  - (d) *Obtain international legal advice on whether immunity can be granted for serious abuse of basic human rights abuses.*
113. To refuse to face the facts behind the coups and mutiny of 2000, and the coups of 2006 and 2009, would be to continue to build our constitutions on deliberate national myopia about uncomfortable traumatic events in Fiji's history. Fiji has done this over the 1987 coups, and the aftermath resurfaces over and over again in the subconsciousness of the national psyche. These cancerous events must be exorcised from the conscience of Fiji's leaders once and for all, through an honest confrontation of the truth, however brutal the conclusions, even if many a leader has taken his/her skeletons to the grave or into the ether following cremation.  
[\[http://narseyonfiji.wordpress.com/2012/03/18/fijis-cancerous-conspiracies-of-silence-5-november-2011-on-blogs/.\]](http://narseyonfiji.wordpress.com/2012/03/18/fijis-cancerous-conspiracies-of-silence-5-november-2011-on-blogs/)
114. *This submission recommends that the Yash Ghai Commission, as part of their Draft Report, include the recommendation that one of the first acts of the newly elected Parliament would be to recommend a "Truth, Justice and Reconciliation Commission" whose task would be to elucidate honestly and transparently, the events of 1987, 2000, 2006 and 2009, and all events for which immunity is being sought by the Military Regime.*
115. *This submission calls on the Yash Ghai Commission to leave it to the next elected Parliament, following the Report of the Truth, Justice and Reconciliation Commission, to make recommendations on the nature and extent of immunity to be granted to those involved in the events between 2000 and 20014, for which immunity is being sought by the Regime.*

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<sup>15</sup> Some conjectures are made later in this submission based on the publicly available Evans Board of Inquiry Report (which the Commission has in its possession).

#### 4 Electoral system, voting and counting processes

116. There have been many allegations about the racist nature of the electoral system embedded in the 1997 Constitution. I have previously pointed out the weaknesses of this system, but also clarified my view that the system was not particularly biased against any ethnic group at all. Rather, the system was biased against small parties who were marginalized from Parliament, while large parties were strengthened and made more confrontational.
- [\[https://narseyonfiji.files.wordpress.com/2012/03/coups-and-ethnicity-in-fiji-facts-and-fiction-23-march-jcu1.pdf\]](https://narseyonfiji.files.wordpress.com/2012/03/coups-and-ethnicity-in-fiji-facts-and-fiction-23-march-jcu1.pdf)
117. I have already made known my recommendations to the Commission based on a proportional system which gives equal value to each person's vote, without reference to ethnicity, while ensuring that local constituencies have an identifiable elected person in parliament to refer their local needs to, and whose re-election will depend on their serving their constituencies to the satisfaction of the voters.
118. I have also outlined how the "List" element of my recommended system will have a very high probability of ensuring gender balance in Parliament.
- [\[http://narseyonfiji.wordpress.com/2012/05/31/electoral-reform-submission-to-the-yash-ghai-commission-may-31-2012/\]](http://narseyonfiji.wordpress.com/2012/05/31/electoral-reform-submission-to-the-yash-ghai-commission-may-31-2012/)
119. All that is now needed is for the Constituent Assembly to achieve some degree of consensus on the final outlines, and for elections to be held under the agreed system, whether this, or something similar.
120. The system which other submissions have recommended require a small number of large constituencies numbering four or five, with each electing roughly ten representatives (if there is to be a total of around 50). This will lead to thoroughly complicated ballot papers with literally dozens of names and political party symbols which will thoroughly confuse our hundreds of thousands of illiterate voters.
121. *This submission reiterates the recommendation in my earlier electoral reform submission that there be a large number of constituencies from which single candidates are elected to serve all who live in that constituency, and be accountable to them at the next election. This will not only simplify the ballot paper, but also have the other advantages of having clearly identified local representatives, accountable to all the local voters, regardless of ethnicity or gender of the voters or the candidates, while the List element will ensure a greater probability of gender equality.*
122. *This submission recommends that the Commission engage in an "voting and vote counting experiment" where by a few hundred "voters" generally representative of Fiji's voting public, go through an actual exercise of voting according to the*

*main systems being recommended and considered by the Commission<sup>16</sup>, the votes be counted by the Elections Office, and the results declared. The objective would be to obtain from the voters, the Elections Office and the political parties, the system that they feel most comfortable with in practice, and will achieve the political objectives of ethnic equality in voting and gender balance in outcomes.*

123. As it is critically important to leave a "paper trail" which cannot be tampered with by any agent, this submission makes an additional recommendation on the voting and vote counting process.
124. *This submission recommends that voting will be by placing ticks or numbers on pieces of ballot paper and not by any electronic voting mechanism which cannot be monitored with any degree of confidence. This submission therefore also recommends that counting of votes must take place physically, in every constituency, so as to ensure transparency and accountability to voters.*

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<sup>16</sup> Of course, actual political parties and names will not be used in the exercise. But, gender should be identifiable as gender balance in Parliament will be an extremely desirable objective for the revised electoral system.

## **5 Contentious issues in the Constitution: to be decided by next elected Parliament**

125. Since 2006 there have been fundamental changes brought about by decrees without any referral to elected parliaments in a number of areas. These include
- \* the abolition of the Great Council of Chiefs,
  - \* the declaration that the term "Fijian" should be used to denote all citizens of Fiji
  - \* the appointment of Presidents
  - \* the attempted conferral of wide-ranging immunity for the events since 2000, etc.
126. Strong arguments may be made both for and against these measures and decrees, and I have written on many of these issues earlier, for instance on how the GCC could and should be reformed. It is clearly possible for the Commission to make recommendations on many of the issues listed below.
127. Nevertheless, these are not matters to be decided by military decree or even by some Constituent Assembly appointed by the Regime. It is vital that they be determined with the full deliberations and concurrence of elected representatives of the people, in order that the changes be sustainable. Should the Regime insist on going ahead with these changes, it would be an exercise in futility, since no constitution can stop future parliaments from changing them again.
128. This submission suggests to the Commission that despite the apparent reticence of Fiji 's intellectuals to either publicly state their views through the media, or make in-depth and substantive recommendations to the Commission itself, there is a depth of talent and ability available in the country, which would willingly avail their services to any Select Committee of the next elected Parliament.
129. This submission suggests to the Commission that however tempting it may be to recommend a comprehensive "Constitution" on all the contentious issues, they would be taking on a burden upon themselves which should rightly sit with the citizens of this country, who in the past have appeared all too eager to let foreigners provide them with solutions to their national problems of their own creation. The Commission can and should demand real accountability from the nation's citizens to deliberate and decide on contentious matters on which their future lives will depend.
- 130. *This submission recommends that all the following contentious issues be referred to the first elected parliament to resolve, through select committees of parliament, which must present their reports and recommendations within a year of being established:***

***(a) the reform of the GCC.***

- (b) the composition of Senate*
- (c) the selection or election of the President*
- (d) the common name to be used for Fiji citizens*
- (e) whether Fiji should be declared to be a "Christian State"*
- (f) the nature, extent and coverage of immunity to be granted by Parliament.*
- (g) any changes to land legislation*
- (h) changes to the Fiji flag*
- (i) changes to the national anthem*
- (j) changes to citizenship rules.*

*131. This submission recommends that if the Commission chooses to make recommendations on these contentious matters listed above, then each of them be the basis of separate Referendum papers on which voters may vote at the next elections. The next elected parliament may then be guided by the results of the referenda, in formulating the specific changes to the Constitution.*



## 6 Commission decision-making and Minority Reports

132. In Decree 98, paragraph 5 of Schedule 2 (Code of Conduct for the Commission) stipulates that "A Commissioner is bound by the decisions of the Commission and should not express dissent, publicly or privately, other than in a meeting of the Commission".
133. In most free commissions of enquiry, there are provisions for reports by consensus or majority, and minority reports where members feel strongly enough about issues to disagree with the majority report.
134. All five members of the Commission have been appointed by the Regime. However, while three of the members are thought by Regime opponents to be Regime supporters, the two international experts are not necessarily so, and may have different views on a number of issues.
135. Given that committees usually make decisions by majority, and in the absence of any extra voting power given to the two law professors, then the three non-legal persons could conceivably outvote the two professors on critical issues, with the public no wiser.<sup>17</sup>
136. Conceivably also, any one of the Commissioners may have serious disagreement with the others on some particular issues, and may wish to have his/her disagreement recorded.
137. Paragraph 5 of Schedule 2 of Decree 98 effectively strikes at the heart of the freedom of individual Commissioners to disagree with one another, and to be seen by the public to disagree on important matters, whatever the decision. The Decree therefore implies that the decision-making process of the Commission is deprived of full transparency and accountability to the public of Fiji, for whom the draft constitution is being prepared.
- 138. *This submission calls on the Commission to state and ensure that Minority views and Reports (if any) will be allowed and published simultaneously with the consensus report.***
- 139. *This Submission recommends that all matters on which there is disagreement between the Commissioners are to be fully documented and reported to the public for full transparency and accountability to the public.***

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<sup>17</sup> I have been reassured that by the Commission that any commissioner unhappy with a decision would be free to state reasons publicly, including in the Report. Moreover, decisions on constitutional matters would be reached by consensus, failing which by votes of at least 3 commissioners, one of whom must be an external member.

## 7 Membership of the Constituent Assembly

140. Section 9 of Decree 99 issued by the Regime states that the Constituent Assembly and its Chairman shall all be appointed by the Regime's Prime Minister, supposedly to represent a wide range of social and political organisations.
141. The only two specific institutions listed in those eligible to be in the Constituent Assembly in Section 9 (2) are "Government" and the "Republic of Fiji Military Forces". No other organisation is specifically named and there is no provision for any of the organisations to nominate their own representatives.
142. This represents a fundamental denial of the principle of true democracy where the people are allowed to nominate their own representatives through their social and political organisations.
- 143. *This submission calls on the Commission to insist that the Constituent Assembly must comprise members independently nominated by the major organisations listed in Decree 98.***

## 8 Procedures of the Constituent Assembly

144. Decree 99 sets out procedures for the Assembly decision making.
145. Schedule 2 (Code of Conduct for Constituent Assembly Members) paragraph 3, states that "A member is bound by the decisions of the Assembly and should not express dissent, publicly or privately, other than in a meeting of the Assembly. This clause strikes at the heart of the basic human rights to freedom of expression.
- 146. *This submission calls on the Yash Ghai Commission to call for the removal of this paragraph 3 from Schedule 2, Decree 99.***
147. Section 15 (4) (c) states that voting "shall not be by secret ballot" and that votes of all individual members may be recorded if the Presiding Officer "thinks fit". This clause is totally unacceptable given the climate of fear that that has existed in Fiji over the last few years, as exemplified by the continuing prevalence of self-imposed media censorship despite the hollow pleas by the Ministry of Information for the media to be more critical.
- 148. *This submission calls on the Yash Ghai Commission to insist that all voting in the Constituent Assembly must be by secret ballot and require two-thirds majority.***

## **9 The Constituent Assembly must decide the final Draft Constitution, to be approved by the first elected Parliament**

149. According to 8(e) of Decree 99, the Constituent Assembly, shall, after debating the Draft Constitution as well as the Report of the Ghai Commission, and the views of the people expressed on the Draft Constitution, "adopt the Draft Constitution".
150. But the Decrees effectively take away the ultimate authority from the Constituent Assembly. It states that after the Draft Constitution has been adopted by the Constituent Assembly, it shall be sent to the President, who shall pass it on the current Chief Justice, who shall pass it on his own 5 person Tribunal. If this Tribunal does not approve any portion of the Draft Constitution, the President shall refer it back to the Constituent Assembly, who "shall, within seven days, make the necessary amendments in accordance with the report of the Tribunal and shall present the draft Constitution to the President for assent". There would then be a public "ceremony" at which the President shall "display" the new Constitution to the persons present and to the nation by means of television and other media.<sup>18</sup>
151. If this process were to be followed, then it is clear that the "people's will" will not necessarily be the supreme authority over the constitution but "other agents" whose legitimacy in the process has been compromised by the requirements of immunity.
152. The immunity being sought by Decrees 98 and 99 includes the Regime's President. It is important to ask who might be the others.
- 153. *This Submission requests the Commission to clarify from the Regime whether the immunity being sought also includes the Regime's Chief Justice and others likely to be involved in the CJ's Tribunal expected currently to vet the Commission's Draft Report.***
154. If that is so (as it seems) then those for whom immunity is being sought for their acts between 2000 and 2014, can hardly be asked to put their "stamp of approval" on the final constitution which is expected to grant them immunity.
155. We would not be doing our future generations any service by bequeathing them a constitution with such an obvious ethnical and procedural flaw.
156. Given the quotes from Justice Anthony Gates in Section 2 of this submission, it seems common sense that only a democratically elected parliament ought to approve a people's constitution (whether new or amended).

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<sup>18</sup> It is indicative of the real lack of any authority that the Regime's President is reduced to the role of a "Post Office" for passing the draft Constitution this way and that, until he eventually becomes the rubber stamp for the Chief Justice's Tribunal. This is a considerable turnaround from the 2006 military coup when the President had allegedly authorised the removal of the Qarase government and the setting up of the NCBBF etc., while the 2009 purported abrogation was announced by President Iloilo.

157. It also seems common sense that those receiving the immunity from an elected parliament<sup>19</sup> would feel far more secure than if they received it from a President (and indirectly the Chief Justice) who are both the beneficiaries of the immunity.<sup>20</sup>
- 158. *This submission recommends that, following agreement by the Constituent Assembly on the electoral reform, and the Draft Constitution, these be widely publicised in English and the vernaculars.***
- 159. *This submission recommends that elections then be held under the revised electoral system.***
160. It is obvious that parties may be elected to parliament for any variety of reasons, little to do with the contentious issues on which the Constituent Assembly could reach no consensus. These matters may therefore be left completely to be decided as "referendum" issues or recommended to the next Parliament as urgent issues to be addressed by Parliamentary Select Committees.
- 161. *This submission recommends that all contentious issues on which the Constituent Assembly could not reach consensus, including the immunity provisions, be placed on separate "referendum" ballot papers, with two thirds majority being required for approval by the next elected parliament.***
- 162. *This submission recommends that the newly elected parliament set up Select Committees on all critical issues which are all far too complex to be sorted out by the Commission in the time available.***
- 163. *This submission recommends that the newly elected parliament then be asked to approve the Final Constitution, following resolution of as many of the contentious issues as possible, again, with a two thirds majority.***

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<sup>19</sup> As Rabuka did.

<sup>20</sup> One wonders at the legal acumen of the drafters of these two decrees.

## 10 How eliminate the "Coup Culture": who is responsible?

164. The Regime has often stated that one of their objectives in the 2006 coup was to remove the "coup culture". They have never clarified their views on who exactly they see as responsible for the coup culture.
165. Decree No.98, Section 4 (c) (iii) specifically requires the Yash Ghai Commission to "learn from the past". It is therefore incumbent on the Commission that they attempt to clarify and articulate who exactly were or are the agents responsible for the mounting, support and "social legitimation"<sup>21</sup> of various coups, so that there is now a phenomenon recognized as Fiji's "coup culture". These are the groups (and key individuals) who must be targeted by the Commission and its recommendations on how the coup culture may be eliminated.
166. I outline here my personal identification of the Fiji elites who have been largely responsible for the "coup culture" and who need to be appealed to, if the coup culture is to be eliminated.
167. The known facts surrounding the coups in 1987, 2000, 2006 and 2009, indicate that none of them would have succeeded to the extent they did without the active participation and support of the senior and powerful elites in our society: the RFMF and its senior military officers, key members of the judiciary, major political parties, the religious leaders, the leading lights of the business community, senior professional people of all ethnicity and gender including the universities, and even the tacit acceptance and legitimation by the donor community, the embassies and international organisations.
168. The Commission needs to highlight that while no individual has admitted full responsibility and been held accountable, all have demanded immunity for their actions: effectively stating to the world that they themselves will not be held accountable for their actions, all the while pontificating (through documents such as the Charter etc.) that future governments and people must be held accountable.
169. I submit that inserting specific into the constitutions specific anti-coup phrases or penalties such as mandatory death penalty or life imprisonment, will be an exercise in futility. Such provisions against treason, have always been there in Fiji's laws, yet the country has routinely got into the habit of granting immunity for treason, with the number of crimes and perpetrators, and the period over which the immunity is to be granted, growing with each successive coup, as is occurring currently.
170. The dismaying lack of accountability and transparency may be seen in the current Military Regime demanding through their various decrees, total immunity for all actions between 2000 and 2014, including the unlawful expenditure of hundreds of millions of tax-payers funds without any Auditor General's Reports being released,

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<sup>21</sup> By "social legitimation" here, I mean the social acknowledgement of illegal regimes. I see this differently from "legal legitimacy" which is for the legitimate courts to decide.

the denial of basic human rights of its citizens and other acts which would be normally considered to be prosecutable crimes in a civilized society. Simultaneously, they have jailed a former lawfully elected Prime Minister, for alleged financial misdeeds twenty years ago, amounting to a few thousand dollars.

### **The over-riding role of the military in the "coup culture"**

171. The Republic of Fiji Military Forces have internationally and regionally been seen as an extremely professional group of soldiers, extremely disciplined in the field, courageous in action, and to be relied upon at times of national emergency. Evidence of these qualities is the international demand for their services as peace-keepers or as members of the regular army of Britain.<sup>22</sup>
172. Evidence of the RFMF's internal discipline is their total cohesion in falling behind Commodore Bainimarama in his attempt to govern Fiji with the RFMF playing a much stronger "developmental" role than ever envisaged of it historically. What has also been clear is the commitment, energy and drive of quite a few talented RFMF officers who have been appointed to senior civil service positions, even if their technical experience may not have matched their positions.<sup>23</sup>
173. Having over the years personally given a number of lectures on economics and development issues to the Officer Training courses at Vatuwaqa, and on the electoral system to RFMF officers in early 2006, I have come into contact with many senior military officers whose personal and professional integrity I have great respect for.<sup>24</sup>
174. Nevertheless, despite these positive attributes of the RFMF, the most fundamental contributor to Fiji's "coup culture" is that the military commander of the day, former army commanders, and the most senior army officers have been the initiators and/or collaborators of every single coup. It is not surprising therefore that in every coup, there has been total support by the rank and file of the RFMF.
175. The second fundamental fact is that no coup would have been "successful"<sup>25</sup> without the active support of key politicians and political parties, the judiciary, the religious

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<sup>22</sup> While there have been a few lapses of discipline leading to human rights abuses at the height of the coups in 1987 and 2006, they are the exception rather than the rule. The real danger of continued military dictatorships without any accountability to the public is that human rights abuses can become the rule, rather than the exception.

<sup>23</sup> What has been clear is that quite a few have performed better than some of the civil servants they replaced, and would have been seen as successful had the economy grown at healthy rates.

<sup>24</sup> Many are Old Boys of my secondary school, Marist Brothers High School, leading to the false conclusion by many that the 2006 coup was a "Marist coup" just as many incorrectly referred to the other coups as "QVS coups".

<sup>25</sup> By "successful" I mean the ability to continue to control all the processes of government and full public participation, like any other lawful elected government, without any effective opposition from the public or their organisations.

organisations, and private sector elites, many changing with the coups, but some to be seen supporting and benefiting from every coup.

176. My tentative identification of those responsible for Fiji's coup culture is presented here, not necessarily in the order of importance or causality, as a first step to addressing the coup culture. Some of these ideas have been presented in a previous article ("Fiji's cancerous conspiracies of silence").
177. Many of my conjectures are presented as questions that the Commission ought to ask the key players linked to the 1987, 2000, 2006 and 2009 coups.<sup>26</sup>

#### The 1987 coups:

178. While all focus has been on Sitiveni Rabuka for carrying out the 1987 coup and committing treason against the lawfully elected Bavadra Government, it would not have succeeded without the full support of the vast majority of the RFMF officers and rank and file.
179. It is also historically clear that the entire Fijian elite hierarchy- the high chiefs (including the former Prime Minister and former Governor General, and all the chiefs in the Great Council of Chiefs), and the Methodist Church, were fully in support of the 1987 coup, with the avowed objective of reasserting indigenous Fijian control over government. Few of the key players have ever publicly acknowledged their personal role or guilt,<sup>27</sup> few have been publicly identified, and fewer have apologized to the nation.<sup>28</sup>

#### The 2000 coup

180. The fact that the Commission is required to ensure that full amnesty is granted for events beginning in 2000, makes it imperative that the Commission has a clear idea of what events and for whom the immunity is being required.
181. While the 2000 coup has been popularly referred to as the "Speight coup", the evidence indicates that it was initiated by CRW soldiers led by a former officer (Ligairi, brought out of retirement by Commodore Bainimarama) with support from the military hierarchy, and all the major Fijian political parties in existence then, including the SVT and other Fijian parties, and the Methodist Church. It would appear from public statements, that the hierarchy in the SDL Party which was formed in 2001 (and which was essentially the SVT followers regrouped around new leaders), were also strongly in support of the 2000 coup, and the abrogation of the 1997 Constitution. Again the stated objectives of all were the support of indigenous Fijian political paramountcy.

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<sup>26</sup> Or at least those that are still alive.

<sup>27</sup> Some are even serving in the current Bainimarama Regime.

<sup>28</sup> Two known exceptions are Mr Rabuka and Ratu Meli Vesikila. The coconut wireless names a large number of prominent persons.

182. While there has been no public inquiry, the evidence given to the RFMF's own Evans Board of Inquiry Report<sup>29</sup> freely available on the Internet<sup>30</sup>, raises a number of unsettling questions that the Commission must investigate and clarify, if the Commission is to make recommendations that will have any hope at all of discouraging Fiji's "coup culture".
183. It is pointed out that while the thirty questions which the Evans BOI were tasked to answer were extremely comprehensive, many important ones which attempted to identify who were responsible for the 2000 coup, were simply not answered at all, although it was clear that many of the witnesses knew the names of coup supporters and civilian collaborators.
184. The Evans BOI Report also makes clear that the few senior officers of the RFMF who appeared before the Board were quite reluctant to reveal what they knew, even though their positions would suggest that they would have known the answers to all of the Evans BOI questions.
185. The evidence to the Evans BOI suggest the following questions which the Commission could usefully seek clarification on:<sup>31</sup>
- (a) The personal role of Commodore Bainimarama: why did he bring out of retirement an ex-SAS soldier (Major Ligairi) who reported only to him, and who clearly gave the orders for the CRW soldiers to take over Parliament? While Bainimarama was told by senior officers the exact date of the coup two weeks prior, why did he choose to go off to Norway? Why did the Evans BOI report that they were "unable to interview" Bainimarama in order to ascertain whether he had supported the coup? Why did Commodore Bainimarama state on 1 July 2000 that Fijian interests and aspirations would be given priority in the appointment of the Interim Government (of Qarase), one of whose first tasks would be a review of the Constitution? Why was Commodore Bainimarama the only RFMF senior officer who did not appear before the Evans Board of Inquiry?
  - (b) Why did the BOI Report conclude that the CRW Unit had the initial understanding that the "army was supporting the takeover by the logistic and administrative support given". Which senior army officers authorized the arms and ammunition and rations to keep going into the Parliament to the CRW soldiers; which senior officers authorized the continuation of the salaries of the CRW soldiers in Parliament? Why is it that after the CRW soldiers took

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<sup>29</sup> The Board comprised Lt.Col.JN Evans, Major Aziz Mohammed, Maj. T. Gucake, and WOI H Macomber. They were tasked with inquiring into the CRW Unit's illegal takeover of Parliament on the 19 May 2000 and the holding of hostages between 19 May 2000 and 13 July 2000.

<sup>30</sup> It is an extremely long report, but may be downloaded from the website TruthforFiji maintained by former army officer Ratu Tevita Mara (initial supporter of the 2006 coup but later to fall out with Commodore Bainimarama). Ratu Epli Ganilau and Ratu Epli Nailatikau (key members of the Bainimarama Regime at one time or another) are both brothers-in-law of Ratu Tevita Mara.

<sup>31</sup> The Board interviewed 112 witnesses both military, police and civilian, as well as assistance given by Hansard Reporters, Fiji Law Society, and Government Printing. The Board noted that many witnesses were reluctant to give evidence, citing the excuse of "code of conduct" of their CRW Unit, while some had already made inconsistent statements to police on criminal charges.



hostages in Parliament, their leader Ligairi had gone to the RFMF HQ and told senior officers<sup>32</sup> that he was going to support his "boys" in parliament and for them to make sure that the Police did not do anything, yet these officers let Ligairi go back to Parliament? Who were all the senior RFMF officers who had lunches and dinners with civilians where the coup was discussed, weeks and even months before the event? Why was prominent RFMF spokesman Lt Col Tarakanikini in phone contact with the CRW soldiers early on the morning of the coup?

- (c) Who were the many Fijian politicians (from the SVT and FAP and other Fijian parties, and later from the SDL) and high chiefs, including two specifically named in the Evans Report<sup>33</sup> who knew about the 2000 coup two weeks before (and some, many months before), including those who became or attempted to become Ministers in the Speight Government? Who were all the religious leaders amongst the Methodist Church who were in support of the 2000 coup?
- (d) Who were the real coup leaders who failed to materialise, leaving George Speight to rise to the occasion?
- (e) Did Commodore Bainimarama only begin to oppose the coup when Speight's group named Colonel Vatu as the new Commander of RFMF and Tarakinikini as Chief of Staff?
- (f) Why did Commodore Bainimarama (with several other key individuals) ask his Commander in Chief and President (Ratu Sir Kamisese Mara) to "step aside"?
- (g) Why did Commodore Bainimarama claim in 2000 to have abrogated the Constitution and taken "Executive Authority"? Why did he file an affidavit in the Chandrika Prasad case that he had abrogated the 1997 Constitution (only to be judged otherwise by Justice Anthony Gates)? Did Bainimarama attempt even in 2000 to become Prime Minister?
- (h) Why was the lawfully elected Chaudhry Government not returned to power following the ending of the hostage crisis by the RFMF?
- (i) Why has there never been a public inquiry into the 2000 mutiny, the most devastating internal event to occur in the history of the RFMF, which resulted in the deaths of three innocent soldiers, and five CRW soldiers who were later taken into custody alive?

### The 2006 coup

186. There is no disputing that Bainimarama openly implemented the 2006 coup, with the full support of his senior officers and rank of file, with the exception of the few

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<sup>32</sup> Some are named in the Report: Col. Vatu, Col Tuatoko, and Lt. Col Saubulinayau.

<sup>33</sup> The weapons were stored in the Fijian Association Office, Ratu Tuatikau (brother of Ratu Epeli Nailatikau) was heard discussing matters with George Speight two weeks before, and meetings were held at the home of Ratu Apenisa Cakobau.

he forced to leave the army between 2002 and 2006 for refusing to support his coup plans and swear personal allegiance to him. Also prominent in the support of the coup were at least two former army commanders<sup>34</sup>, who directly benefited from the coup, one still continuing as President signing the numerous military decrees taking away citizens' fundamental human rights.

187. While Bainimarama has claimed that his main coup objective was to stamp out wide-spread corruption of the Qarase Government, there may have been other important factors such as the charges he faced stemming from the 2000 coup and mutiny, as well as the events leading to Qarase's failed attempt to replace him as Commander between 2002 and 2006? Does the latter explain why "political events" to be granted immunity according to Decree 99 includes the correspondence and discussions between government and RFMF between 2000 and 2006?
188. Contrary to Bainimarama's post 2006 coup claim that no military officer would benefit from his coup, the reality has been the opposite with large numbers of senior army officers appointed to senior civil service positions with major improvements in salary and conditions, and resulting benefits cascading down to all the levels.
189. Indeed, the militarisation of the civil service following the 2006 coup, and the vast relative improvements in the salaries of defence personnel, is the most extreme that has happened of all the coups. Apart from a few individual officers who resigned their commissions or were asked to resign, the bulk of the officer corps of the RFMF have uncritically followed their Commander into treason, and without whom none of these coups would have lasted.
190. There have also been numerous and large financial and non-financial benefits to Commodore Bainimarama personally, and to members of his own immediate and extended family, much of which would have been considered unethical had they been implemented by any elected Prime Minister.
191. The RFMF clearly have a solid reputation for peacekeeping and other duties internationally and they earn substantial revenues for the Fiji economy. They are clearly valued by the UN, NATO and US, who have urgent need for Fijian soldiers.
192. That international role for the RFMF must however be subservient to their role domestically. For this they are responsible to the Fiji state, the elected Government of the day, and to the tax-payers who fund their salaries and expect protection against external threats.<sup>35</sup>
193. It may be noted that historically the RFMF has been a universally revered institution amongst the indigenous Fijian community from whom 95 percent of their

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<sup>34</sup> The former commanders are Ratu Epeli Nailatikau (President under the Regime) and Ratu Epeli Ganilau (an early Minister in the Regime later displaced). It is not clear what was the attitude of Col. Paul Manueli who appears to have been an adviser to the Regime immediately after the 2006 coup.

<sup>35</sup> Internal threats are the responsibility of the Fiji Police Force, not the RFMF.

recruitment takes place. The RFMF hierarchy would need to honestly admit that at this point in time, the indigenous community could not be more divided in their attitude towards the military.

194. Assessed on their domestic role, any honest independent assessment would be that the RFMF has badly tarnished its reputation through all the coups of 1987, 2000, 2006 and total support of Bainimarama following and despite the 2009 Court of Appeal judgement.
195. Virtually all RFMF commanders, senior military officers, and the rank and file, have ignored their oaths to the State and the elected Governments of Fiji, and followed their Commanders into treason, in the coups of 1987, 2000, 2006 and 2009.
196. Following every coup, the RFMF have for protracted periods of time, also taken on roles which are the responsibility of the police. While the justification has often been made that this was due to the urgency of the matter or the ineffectiveness of the Fiji Police Force, the solution to these concerns must surely be to address the root causes. It could contrarily be argued that the military assumption of domestic "policing" responsibilities (such as the capture of escaped prisoners) also has the indirect effect or expectation of justifying the increases in resource allocation to the military, by feeding on social fears and sense of insecurity due to prisoners escaping.
197. This submission believes that only the military hierarchy (current and former) have the ability to stop the "coup culture"- not the police, not the judiciary, not civil society (business, social or religious organisations), or any futile clauses in the constitution recommending the death penalty for treason.
- 198. *This Submission recommends that the Commission initiate a "closed session" with the current military hierarchy and retired former senior army officers to***
  - (a) honestly examine their willingness to treasonously remove lawfully elected governments in 1987, 2000, 2006 and their refusal to abide by the 2009 Court of Appeal judgement. The objective of this exercise, which may be moderated by a few respected international military authorities<sup>36</sup> and senior citizens, is to guide the Commission's recommendations on how to discourage the "coup culture";***
  - (b) honestly face up to the economic impact of all the military coups, as explained in Section 12 of this Submission.***
  - (c) acknowledge that following every coup, there has been significant reallocation and increase of tax-payers' funds to the military, at the expense of all other more important development calls for resources such as health;***

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<sup>36</sup> Given the bad relations with Australia and NZ, the US Government may be requested to provide this professional military expertise to assist the RFMF.

*(d) acknowledge that in the long-term, there must be a reduction in resources and personnel for the military forces, separation of the income-earning roles from the others, and all done in a gradual manner which does not harm the welfare of the armed forces;*

*(e) acknowledge that the military does not have any role in the maintenance of internal law and order, which much be the sole domain of the Fiji Police Force;*

*(f) set out clearly in RFMF regulations on the proper lawful response of military personnel, should there be approaches to them EITHER from their Commander, OR from civilians, to instigate any kind of illegal actions against the lawful government of the day;*

*(g) that the next elected Parliament form a Select Committee drawn from the current and former officers of the RFMF, outside expert military advisers, and qualified domestic citizens to conduct a thorough review of the RFMF in order to plan its future in a constructive and co-operative manner.*

### **The Role of the Judiciary**

199. The Regime's Decree 98 states that there must be an independent judiciary, and that the constitution must protect and promote human rights. One of the basic human rights is the right to personal property. It is deeply regrettable therefore that the Regime has passed Decrees which not only prevent citizens from taking their just grievances to court, but also require the courts to deregister cases that are already being heard by the courts.  
[\[http://narseyonfiji.wordpress.com/2012/03/18/fnpf-transition-decree-last-nail-in-the-fnpf-coffin-2011-blog/\]](http://narseyonfiji.wordpress.com/2012/03/18/fnpf-transition-decree-last-nail-in-the-fnpf-coffin-2011-blog/)
200. It is regrettable that the Military Regime's judiciary has not made any statement on this interference by the Government in the judiciary's affairs and the denial of every pensioner's right to go to court with their perceived grievances. Neither has there been any reference in public lecturing to lawyers being admitted to the Bar, or to the Law Society, on the fundamental denial by the Regime of the basic human right to go to court with grievances.
201. It is also clear that in 2006, there was a powerful section of the judiciary (led by High Court judges Nazhat Shameem and Anthony Gates) who implemented a "judicial coup" in order to facilitate Bainimarama's removal of the Qarase Government.<sup>37</sup>

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<sup>37</sup> It is a tragedy that these two talented individuals with so much to be proud of in their pre-2006 professional performances, should have ended up in enmeshing themselves in personal judicial politics and activities in aid of a coup, which have added little to their hitherto illustrious careers, and probably done the opposite.

202. It is also clear to lay persons, that the origins of this judicial coup lay in unacceptable decisions and actions by their judicial colleagues between 2000 and 2006. While there may be justification for their unhappiness with the former Chief Justice and his sympathizers, "two wrongs do not make a right".
203. Also giving flimsy justification for the 2006 coup was Dr Shaista Shameem appointed by the Regime as Human Rights Commissioner (an inappropriately named position in this case as she ignored all human rights abuses taking place after the 2006 coup). She ironically found herself on the other side of the fence in the pensioners' case against FNPF and the Regime.<sup>38</sup>
204. There is little doubt that good constitutions and good governance require a complete separation of the powers of the judiciary, the executive and the legislature. These separating lines have been blurred following every coup, and are still considerably blurred.
205. This current blurring and indeed, conflict of interest between the current judiciary and the legislature who may be held responsible for the constitution, the highest set of laws for the country (including the provision of immunity) is clearly implicit in the Decrees 98 and 99, as discussed earlier.
206. It is critical that the judiciary "puts its house in order" so that it may serve the nation with a clear conscience in the future, however much they may compromised themselves in past coups. This is a necessary condition if there is to be a "fresh start" for our nation, based on the revised constitution.
207. It may be noted that there are a few members<sup>39</sup> of the Bar who have attempted to provide lawful and public guidance to their colleagues and the judiciary on constitutional matters. That has not been matched by ordinary members of the very much divided Fiji Law Society.
208. *This Submission recommends that the Commission initiate a "closed session" with the current judiciary hierarchy and retired senior former judges and lawyers to honestly examine their willingness to support illegal governments in 1987, 2000, 2006 and their refusal to abide by the 2009 Court of Appeal judgement. The objective of this exercise, which may be moderated by a few respected international legal authorities, is to guide the Commission's on how to discourage the "coup culture" amongst the judiciary.*

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<sup>38</sup> It is ironic that this economist prepared the economic and legal case for the pensioners, part of Shameem/Burness case which was eventually thrown out of court by the Regime's FNPF Decrees. How the Shameem/Burness case became inextricably tied up with broader human rights cases in Fiji and doomed it to failure, may be read here: <http://narseyonfiji.wordpress.com/2012/03/18/why-the-burnessshameem-case-is-not-likely-to-be-heard-fiji-pensioners-23-february-2012/>

<sup>39</sup> Amongst them I would mention Joni Madraiwiwi, Graham Leung, Tupou Draunidalo and Richard Naidu.

### **The political parties**

209. There is little doubt that many stalwarts of the Alliance Party which lost the elections in 1987 were strongly in support of the 1987 coup.
210. There is little doubt that the stalwarts of the SVT<sup>40</sup> which lost the 1999 election, and other major Fijian parties, were strongly in support of the 2000 coup.
211. A strong case can be made that the Bainimarama Regime succeeded for the first year because of critical support from the Fiji Labour Party and its stalwarts. This also encouraged many important Indo-Fijians and others to join the Regime's initiatives. While many of the FLP who joined the Bainimarama Regime, were to fall out of favour within a few years, some now appear to be fervent opponents of the Regime.
212. By 2009, all the major political parties<sup>41</sup> in Fiji have supported one coup or another and none "can cast the first stone"- an excellent pre-condition for national reconciliation.<sup>42</sup>
213. *This Submission recommends that the Commission initiate a "closed session" with the political parties and their leaders to honestly examine their willingness to support illegal governments at various points in time, The objective of this exercise, which may be moderated by a few respected independent social leaders is to guide the Commission's on how to discourage the "coup culture" amongst the political parties.*

### **The religious organisations**

214. It has been abundantly clear that the 1987 and 2000 coups received the full support of the Methodist Church. Few of their leaders have ever recanted of their roles.
215. In 2006, the Bainimarama Regime also obtained the active support of Catholic, Hindu and Muslim religious organisations many of whose leaders and clerics justified their support by reference to ethnic equality and broad development objectives.
216. Some of whose religious leaders personally benefited from the coup: one obtained profitable printing contracts for his company, while another was appointed as a High

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<sup>40</sup> It is extraordinary that Ministers in the SVT government, also received influential appointments from the Qarase Government, and some even in the current Bainimarama Regime.

<sup>41</sup> The exception has been the National Federation Party which by 2006 had become a very minor force.

<sup>42</sup> I point out that I was a founding member of the Fiji Labour Party in 1985 though left in 1986. I was also a National Federation Member elected unopposed into Parliament between 1996 and 1999 (following an invitation from the Leader of the Opposition). Following my loss in the 1999 elections (as did all my other 26 NFP colleagues), I have withdrawn from all political activities and remain the independent economist I was, even while in Parliament (to the dismay of some of my NFP colleagues). I also continue my electoral education work, recognizing its importance to the nation.

Commissioner overseas. Prominent university administrators, and a wide range of professional civil servants (most of whom were aspirants to higher positions) also joined the Bainimarama Regime.

217. It is a pity that religious organisations have failed to extend their hands of friendship when their sister organisations are unfairly treated by the government of the day.<sup>43</sup>  
[<http://narseyonfiji.wordpress.com/2012/03/18/ending-the-cycles-of-religious-intolerance-pacific-scoop-aut-3-september-2011/>]
218. *This Submission recommends that the Commission initiate a "closed session" with all the religious organisations to honestly examine their willingness to support illegal governments at various points in time. The objective of this exercise, which may be moderated by a few respected independent social leaders is to*
- (a) guide the Commission's on how to make recommendations that could discourage the "coup culture" amongst the religious organisations..*
- (b) see if there can be consensus on the "Christian State" issue, amongst the religious organisations.*

### **The business community**

219. In the three years following the 2006 takeover, it also became clear that Bainimarama had the active support of powerful business tycoons, one of whom was influential enough to ask at least two economists to become Bainimarama's Minister of Finance, while many others called narrow sectional meetings with the Military Council to offer their fervent support to the coup. Large business houses continue to have close relationships with the Regime, which the frustrated Father Kevin Barr has referred to as "crony capitalism".
220. There is little doubt that the large business houses also played supportive roles to the Interim Government set up by the 1987 coup, and would have equally supported any long-serving Interim Government after the 2000 coup.
221. It is not helped that many of the leading business families have residence abroad, and show little social commitment to Fiji, which becomes only a location to make profits which are eventually repatriated abroad.
222. It also does not help that while the country affords great respect to chiefs and religious leaders, there is no comparable respect given to entrepreneurs who are ultimately responsible for the livelihoods of thousands of employees and their families.

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<sup>43</sup> There have been organisations like Women's Crisis Centre, Fiji Women's Rights Movement and Sangam, which have been principled supporters of the rule of law in Fiji. Some (like the Citizens Constitutional Forum) unfortunately compromised themselves in 2006, while returning to more principled stances today.

223. *This Submission recommends that the Commission initiate a "closed session" with all the organisations that represent the business community, to honestly examine their willingness to support illegal governments at various points in time, The objective of this exercise, which may be moderated by a few respected independent social leaders is to guide the Commission's recommendations on how to discourage the "coup culture" in the corporate sector.*
224. *This Submission recommends that the Commission recommends a greater appreciation of entrepreneurs by incorporating their representatives in the upper house of Parliament with appropriate allocation of honours.*

### **The media**

225. In the absence of a freely elected Parliament with "Opposition" parties able to hold the Government of the day to account, it is even more urgent that the media be free to fulfil a critical role holding to account those who govern the country in determine the lives of people in a myriad of way, not the least of which includes full powers of taxing and spending, administering justice, and managing the resources of the country.
226. The media was not allowed to do this for several years, with Regime censors in every newsrooms. It is still not allowed to do so freely, six years on from the 2006 coup.
227. While the censors have been removed, there is still a general climate of fear amongst journalists who have been forced into the more invidious self-censorship. [<http://narseyonfiji.wordpress.com/2012/07/04/what-the-fiji-sun-refused-to-publish-dodgy-australians-and-kiwis-abroad-16-june-2012/>]
228. The Regime has managed to get the total support of one print media which prints all the Regime propaganda and attacks on Regime critics, while denying the critics "right of reply".
229. This particular print media owner's foreign financial officer has also been appointed to head a wide range of government and statutory boards, representing many clear conflicts of interest, with his employer also engaged in valuable financial transactions with the Regime).
230. The Regime also obtained the total support of one government owned national radio and television broadcaster, whose CEO was replaced by the brother of the Regime's Attorney General and subsequently received massive government supported loans and business amounting to unfair subsidies.



231. The only other national television station has been intimidated through a variety of ways (including the granting of short-term licenses), into also practising draconian self-censorship.<sup>44</sup>
232. Far from ensuring "balanced media coverage" of all issues of public interest, what exists currently is a media which is dominated by the presence and propaganda emanating from the Regime and, in particular, two all-powerful individuals, effectively brainwashing large sections of the uncritical public, and denying comparable space to their political opponents.
233. There is a general censorship of any critical discussions on vital issues affecting the country and tax-payers.
234. The media also exercises censorship on all critical views by particular targeted individuals.<sup>45</sup>
235. It is regrettable that the Regime practices intimidation on citizens who are merely exercising their rights of free speech in a responsible and constructive manner.<sup>46</sup>
236. It is unfortunate that Professor Subramani, the person entrusted to oversee the issue regarding media freedom and responsibility, has been totally dormant despite the many ongoing debates and concerns expressed regarding the ongoing media censorship, "self-imposed" or otherwise.<sup>47</sup> It is extremely sad that journalists are discouraged from playing their full roles in society, with not an ounce of support from this individual holding this position of responsibility and authority.
237. It is ironic that it is the Regime's spokesperson<sup>48</sup>, who has had to plaintively appeal to the media not to "use the excuse of self-censorship".
238. It is also sad that some journalist educators in the region choose to totally ignore the draconian media censorship in Fiji (the elephant in the room) while focusing completely on discussions on the developmental role of media, which is important of courses, but not a question of "either/or". Responsible media needs to fulfil both roles.

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<sup>44</sup> While television reporters have been keen to run programs on recent nationally important findings from household surveys by the Fiji Bureau of Statistics (which this economist authored), they have not been able to receive approval from their management.

<sup>45</sup> This economist has not been able to get many of his views published in the print media.

<sup>46</sup> This economist, upon his return from Australia, was read "precautionary" charges on "sedition" (arising out of his articles defending pensioners' rights), questioned very politely for three hours at CID HQ, his home searched (for files on FNPF!), a computer taken away (still not returned yet), and all the records from his mobile phone down-loaded. Sources indicate that the charges originated from the highest levels in the Regime, and that he has also been placed on the "Watch List" (effectively discouraging him from travelling). This file will presumably be kept "open" in order to intimidate the critic into silence.

<sup>47</sup> From Professor Subramani's writings it is clear that he also feels deeply the violence that was instigated against Indo-Fijians during the coups of 1987 and 2000.

<sup>48</sup> The Permanent Secretary for Information (Ms Sharon Smith-Johns).

- 239. *This Submission recommends that the Commission initiate a "closed and totally confidential session" with the leaders of media organisations, to honestly confront what their roles have been in supporting the "coup culture" and to assist the Commission to make the appropriate recommendations, on how to oppose it.***

### **Academia**

240. It is usually the case internationally that higher education institutions (universities and other tertiary institutions) are usually at the forefront of leading public debate on governance and other issues thrown up by military coups.
241. While some academics have done so, few tertiary institution administrators have done so. Public education by the expert academics or university administrators in this area has been virtually non-existent. One prominent institution unfortunately refused to defend the basic human right of academics to freedom of speech<sup>49</sup> and indeed put pressure on the academic to depart from his place of employment, which he served for more than thirty five years.
- 242. *This Submission recommends that the Commission initiate a "closed and totally confidential session" with the leaders of tertiary education organisations, to honestly confront what their roles have been in supporting the "coup culture" and to assist the Commission to make the appropriate recommendations for their future policies on the role of academia in opposing the coup culture.***

### **International agencies**

243. The Commission should note that many embassies gave complete recognition to the Bainimarama Regime, not just after the 2006 coup (when the illegality of the Regime was still subject to court decisions) but after the 2009 Court of Appeal judgement when its illegality was established in Fiji Law. Similar practice prevailed of course in 1987.
244. For some of these countries,<sup>50</sup> issues of law and order and democracy are of little importance, given their strategic national interests in the Pacific in terms of resources or geo-politics. Countries like China have often, quite unfairly, not been included in other regional and super-power discussions with Pacific leaders in the Pacific, despite their significant presence and development contribution.<sup>51</sup> Fiji also seems to have benefited quite significantly with the allocation of large Chinese loans for infrastructure projects such roads and hydros,<sup>52</sup> while the jury is still out

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<sup>49</sup> I make no statement about "academic freedom" as that is differently defined throughout the world.

<sup>50</sup> China and India have remained quite engaged with the Regime.

<sup>51</sup> I raised this issue at a 2011 meeting of Pacific leaders in Honolulu, organized by the PIDP. It may be read here <http://narseyonfiji.wordpress.com/2012/04/02/political-instability-and-poor-pacific-economic-performance-the-need-for-dialogue-spaces-presentation-to-state-of-the-pacific-dialogue-organised-by-pidp-east-west-centre-honolulu/>

<sup>52</sup> While it is unclear under what conditions the loans have been made to Fiji, China has a history of writing off loans to developing countries.

on the impact of loans from India for the sugar industry. They have readily and usefully filled a vacuum as other traditional donors do not generally fund large infrastructure projects, and probably do not have the financial capacity to do so.

245. While this recognition by embassies is to be expected given the geopolitics and competition between the super powers, it is not expected from international organisations such as UN, which lecture to the world, the importance of "good governance" and "rule of law". The UN would not impose sanctions on RFMF soldiers serving in the UN peace-keeping missions internationally despite their support of good governance and law and order. They also quickly acknowledged the Regime illegal appointees as legitimate.
246. Since 1987, many international and local organisations and donor groups have run courses on ethics, good governance, leadership, transparency, and accountability. It is an anomaly, however, that most of these initiatives have been aimed at the young people and civil servants, none of whom have ever been in positions of power, or even vaguely influential for the success or failure of military coups.
247. Some embassies gave qualified criticisms of the 2006 coup, but stopped short of imposing any real sanctions. It would appear that more important for some of them<sup>53</sup> than "rule of law" and "democracy" in Fiji were the role of Fijian soldiers and the RFMF in their armies and initiatives in Iraq, Afghanistan and the Middle East.
- 248. While it is totally unlikely to have any effect whatsoever on the international agencies, this Submission calls on the Commission to make a clear statement in its Report calling on international agencies (embassies and international organisations) to clearly condemn military coups which remove democratically elected governments, and to impose all available sanctions on illegitimate Regimes.***
- 249. This Submission calls on the Commission to clearly state in their Report, that it is not the general population which needs to be taught the importance of good governance and law and order in eliminating the "coup culture" but the elites: the military hierarchy, the judiciary, the corporate sector, the religious and social organisations, the media owners, and other elites in society, who have willingly supported and collaborated with coup makers.***

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<sup>53</sup> This would seem to be the case for United States and United Kingdom.

## **11 Need for accountability in practice and not just in the constitution**

250. The Commission is currently engaged in an exercise to draft a constitution following consultations with the Fiji public, that is expected to be the foundation for Fiji's political and economic future, embodying principles of good governance and accountability- all commendable objective objectives. The Commission is reminded that the Regime was engaged in a similar exercise immediately following the 2006 coup, in the formulation of the People's Charter for Change and Progress, also supposed to provide a "Road-map" for Fiji, and it is important that the Commission and the Constituent Assembly do not repeat the mistakes of the NCBBF.
251. In the NCBBF exercise, the Regime, with the assistance of paid consultant John Samy, drafted the People's Charter which was finally approved by the National Council for Building a Better Fiji (NCBBF), co-chaired by Commodore Bainimarama and Archbishop Petero Mataka.
252. The NCBBF had a wide membership comprising religious leaders (Hindu, Catholic and Muslim), leading politicians, corporate leaders, academics and NGO leaders. It was also a body supposed to represent the national interest, similar to the Constituent Assembly that is to be set to consider the Yash Ghai Report.
253. There was a national signing exercise through which some 90% of those over 21 in Fiji allegedly signed and approved the Charter- virtually a referendum.
254. The principles of the Charter include perfectly acceptable principles of good governance, transparency, and accountability. Since the Charter's formulation, the Bainimarama regime has preached, both nationally and internationally, that all Fiji governments must be guided by the principles and pillars enunciated in the Charter (and the associated Roadmap)- all extremely sound and desirable.<sup>54</sup>
255. The unfortunate reality however has been that many fundamental tenets of the Charter have not been practised by the Bainimarama Regime which has now governed Fiji for the last six years. By 2014, the Bainimarama Regime will have governed for eight years- or two terms of most normal governments without a shred of any of the accountability it preaches through the Charter or through any of Decrees supposedly guiding the construction of the revised Constitution.
256. It is deeply regrettable that the leading lights of the Charter (namely Commodore Bainimarama, John Samy and Archbishop Mataka) have personally failed in being accountable to the Fiji public, despite their claims that they believed in the Charter principles and values.

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<sup>54</sup> One may question whether the Charter was in any way doing significantly more than the 1997 Constitution.

257. The first clause of the Charter stated that the Bainimarama Government believed in the supremacy of the 1997 Constitution which would be further strengthened during their governance. Yet the day after the 2009 Court of Appeal judgement (which went against them), Commodore Bainimarama purportedly abrogated the 1997 Constitution through President Iloilo and decreed that no challenge could be mounted in court to their abrogation- patently unlawful.
258. It is a totally unacceptable breach of the principle of unaccountability that none of those who took part in the NCBBF exercise (including staunch supporters such as Mataka, Samy, Barr, Arms and many other members of the NCBBF),
- (a) have ever offered a public apology for the fraud they effectively committed on the nation by getting a national guiding document such as the Charter approved, whose central foundation (the 1997 Constitution) was subsequently and purportedly abrogated by Commodore Bainimarama in 2009.
  - (b) they have made no public statement on the refusal of the Bainimarama Regime to release all Auditor General Reports since 2006, nor any of the reports on the inquiries into the FNPF disasters; nor on the many cases of gross mismanagement of hundreds of millions of tax-payers' funds.
  - (c) they have made no public criticism of the continuing abuse of basic human rights by the Regime such as media censorship and loss of freedom for expression, Public Emergency Decrees and the loss of freedoms of assembly, the right to go to court for perceived grievances, the seizure of private property of pensioners, the abrogation of lawful contracts, and many other abuses, which fundamentally contradict many of the "Pillars of the Charter".
259. These leading lights supporting the Regime have simply gone away quietly, and left their fraudulent results on an undeserving public.
260. It is also a serious breach of the principle of accountability, that some key politicians and unionists who supported the 2006 coup<sup>55</sup>, have belatedly resuscitated themselves as Regime opponents, for whatever reason, little concerned with concern for democracy and law and order, and also offer no explanation or apology for the wrong they did the nation when they joined the Regime in December 2006.
- 261. *This submission requests that the Commission in their Report, point out to the members of the Constituent Assembly, the lessons to be learnt from the NCBBF, the Charter and Roadmap exercise.***

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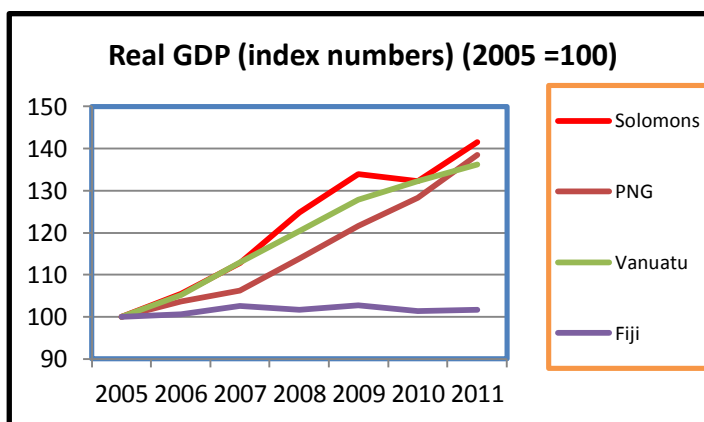
<sup>55</sup> These include FLP Leader Chaudhry, Felix Anthony, and others.

**262. *This submission requests that the Commission in their Report, point out to the members of the Constituent Assembly, their responsibility to not only formulate the draft revised Constitution, but the need for them to be accountable for their roles, and what their actions should be, if their Draft Report is in any way modified or not followed by the Regime (as is a real possibility).***

## 12 The economic impact of the Bainimarama Regime<sup>56</sup>

263. This section may be thought somewhat superfluous to this submission, as even if there had been wonderful economic growth and improvements in standards of living for Fiji people since 2006, it would not have changed the analysis and conclusions in the previous sections.
264. The sad reality has been however, that while 1987 coup was followed by reasonable economic growth, the strengthening of some industries, and some improvements in economic welfare, few such positive results have been visible since the 2006 coup. Academics might wish to explain why the 2006 and 2009 coups have not been followed rapidly by the kind of economic recovery that was seen after 1987 and 2000.
265. It is noted here, however, that the Yash Ghai Commission has advertised that their draft constitution must encourage governments to "help end poverty and inequality". The sad reality for Fiji however, is that six years of total dictatorial rule by the Bainimarama Regime, has resulted in worsening poverty and worsening inequality, some directly attributable to policies by this Regime itself, which can be expected to have these results.

266. First, it is useful to compare Fiji with other Melanesian countries who also felt the effects of the Global Financial Crisis.<sup>57</sup> The graph to the right compares Fiji with Vanuatu, Solomon Islands and PNG, whose real GDP in 2011, were more than 30% above that of 2005. Fiji was just barely 2% above the 2005 levels.



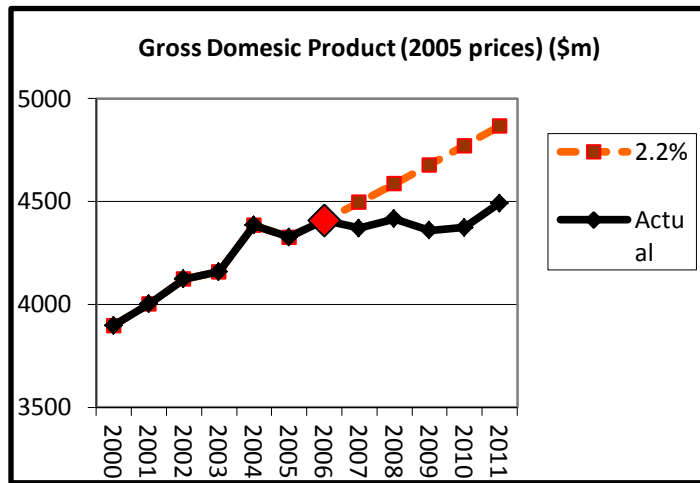
267. The most fundamental picture of the impact of the 2006 coup may be had by comparing what would have been the growth of Fiji's Gross Domestic Product in real terms, had the 2006 and 2009 coups not taken place. A simple and conservative average growth rate of 2.2% would have given the red line, while the actual is the black line based on recently released figures from the Fiji Bureau of Statistics.
268. By 2001, the gap with the trend line was more than \$300 million annually in 2005 prices or roughly \$470 million in 2011 prices. Put alternatively, given that

<sup>56</sup> This economist is available to make special presentations on any aspects of the economy which the Commission may be interested in.

<sup>57</sup> All graphs and data presented in this section are based on World Bank data, except for Fiji GDP, which is based on data from the Fiji Bureau of Statistics.

Government revenues and expenditure have historically been about 25% of GDP, then the foregone government revenue and expenditure is currently about \$125 millions annually.

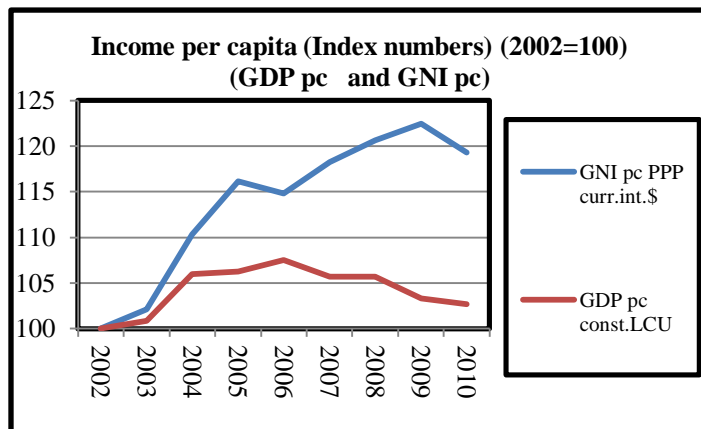
269. The cumulative gap in 2011 prices by 2011 was more than \$1,700 millions: this is a rough estimate of what Fiji has very conservatively lost because of the 2006 coup. Government revenues and expenditures have



and expenditures have cumulatively lost about \$400 millions, which could have been available for education, health, infrastructure, public debt repayments etc.

270. It cannot be emphasized enough that while members of the public most often focus on the physical violence of military coups, there is a hidden violence being done on people's lives, because of the massive national economic damage that is done. Reduced GDP leads to reduced Government revenues and expenditure, which leads to reduced allocations for education (the children of the poor suffer the most), reduced allocations for social welfare, reduced allocations for health (shortages of doctors, nurses, medicines etc), and simply reduced standards of living.

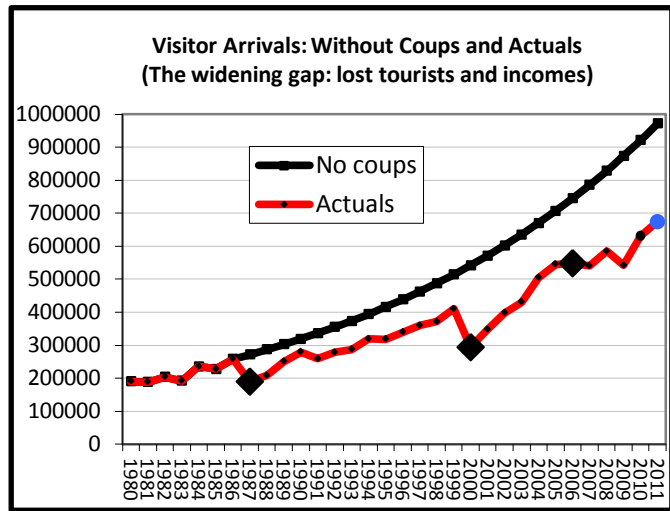
271. The graph opposite shows what has happened to GDP per capita (the lower red line) since 2002 and the more positive GNI pc. (the blue line). The domestic economy on a per capita basis has been in decline since 2006.



272. The only saving grace for Fiji has been the massive remittance incomes which have amounted to more than \$300 millions annually, or twice the earnings from the sugar industry. Gross National Income adjusts GDP for net earnings from abroad. This is represented by the blue line (GNI per capita). Some of this remittances are due to military personnel (RFMF) serving internationally, but most is due to nurses, health care workers, and remittances from migrants to their families back in Fiji (with Indo-Fijians and Fijians contributing equally in 2008-09).

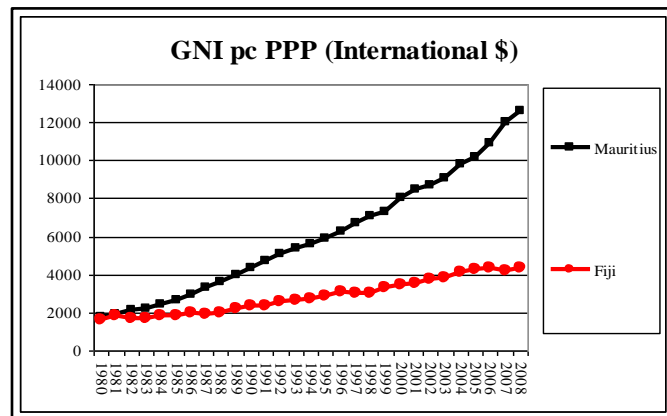


273. One can see most clearly the long-term impact of the coups on the Fiji economy by examining visitor arrivals<sup>58</sup> over the long term in the tourism industry, which is popularly believed to be resilient to coups. The extent of damage suggests that the losses there have been colossal. The black line gives the trend from 1970 to 1986. The red line gives the actuals to 2011. What is clear is that after every coup (the black diamonds), tourism arrivals recover, but there is a gap with the old trend line. With every coup, the gap has grown larger. By 2011, had there been no coups, there would already have been around a million arrivals instead of the current 675 thousand.



274. What is also not evident from this graph is that actual tourism receipts are lower than indicated by these graphs of actuals because following every coup, fares and accommodation costs of have had to be discounted to attract back the lost tourists.

275. There is one more comparison I would draw to the attention of the Commission, that is instructive about the long term impact of Fiji's coups on our standard of living. Mauritius is a small island nation, multi-ethnic, and dependent on sugar and tourism, very much like Fiji. In 1980 it had roughly the same Gross National Income per capita as Fiji. By 2008, it had more than four times the level that Fiji had. A large part of the difference (though not all) may be attributed to Fiji's political instability and military coups.



276. It is sad lesson to try to imagine what Fiji's average standard of living and poverty would be like, if incomes of all households were three to four times what they are today, and if the Fiji Government's budget (revenues and expenditure) was three to four times what it is today. That, very crudely, is the price we have paid because the voters have elected politicians who have been unable to co-operate in the interests of all in Fiji.

<sup>58</sup> Actual tourists are some 75% of total visitor arrivals.

## **Employment, incomes and poverty**

277. The two most important indicators of well-being are employment and income figures. The latest figures may be obtained from the Fiji Bureau of Statistics whose 2010-11 Employment and Unemployment Survey data are still being finalised, although preliminary estimates may be requested by the Commission from the FBS.
278. The available data on employment indicates that while the total number of economically active persons has increased between 2006 and 2011 by around 20%, the number of wage earners has changed little or may have even declined. This is to be expected given that there has been very little economic growth between the two years. Salary earners may have increased slightly in the public sector, because of increased spending by government and statutory organisations.
279. The data on incomes would suggest that real incomes of the unorganized sector may have decreased by up to 30% given that there has been virtually no increase in nominal wages while inflation as measured by the CPI has been around 36%. Given that food prices have risen in the same period by 48% and the poor generally spend more of their income on food, their cost of living between December 2006 and July 2012 has risen by probably above 40%. It is therefore a conservative estimate to suggest that the most vulnerable workers in Fiji (who are usually covered by Wages Councils) have seen a reduction in their real incomes by more than 30%.
280. It is pretty axiomatic that rates of poverty have increased since 2008-09 when the last HIES was conducted. The aggregate incidence of poverty in 2008-09 was 31% (18% in urban areas and 43% in rural areas). In both areas, the incidence of poverty is likely to have increased significantly, because of economic stagnation in urban areas and continuing economic decline in rural areas.
281. The military coups of 2006 and 2009 may be held partly responsible for the overall decline. The decline in rural sugar areas is largely due to the continued decline in the sugar industry, with a major cause being the withholding of \$300 millions of EU aid originally allocated for industry reform, because of the Regime's refusal to hold elections in 2009, but also the reduction in canefarmer margins because of reducing EU prices, and rising costs of cultivation, pesticides, fertilizers, harvesting and transport. Many of the cane farmers also have reduced their commitment to cane farming because of greater financial security through grown-up children.
282. Other areas of rural decline, may be attributed to the inability of successive governments (not just the Bainimarama Regime) to establish appropriate marketing mechanisms for rural crops, with the result that farmers have been demoralised by a cycle of gluts and depressed prices and have reduced production of a large array of crops. Other factors have been lack of agricultural extension support and widespread theft of crops.

283. In urban areas, poverty has increased because the Regime has for five years been giving in to powerful employer lobby groups, who have managed to get postponements of Wages Councils Orders, with not a single employer showing accounts to either the former Wages Council Chairman (Father Kevin Barr) or the Labour Minister. Father Barr has since resigned.
284. Another aspect where the Regime's policy has directly had a detrimental impact is income distribution. In difficult times, while one might expect a government to ensure that the better off take a relatively higher share of the burden of generating revenues for government, the Bainimarama Regime has done the opposite. In the 2012 Budget, the Regime reduce corporate tax AND taxes at the higher levels, from around 30% to around 20%, immediately handing over some \$30 millions extra to each group.
285. Simultaneously for the same year, the employers' associations were fighting tooth and nail to deny Father Barr's Wages Council increases, which might have cost them around five to ten millions.
286. There is little doubt that income distribution has worsened significantly under the Regime's stewardship, in large measure due to their own policy measures.
287. It is no surprise that the corporate sector in Fiji has been delighted with the Bainimarama Regime as there has been no government since independence, which has served the employers and corporate sector so well in taxation laws.
288. It is no surprise that the corporate sector have made no public calls on the Bainimarama Regime to be accountable to the public with the Auditor General's Reports, or to remove all media censorship and the draconian labour laws.
289. While existing investors have been well-served by the Regime, overall however, the increase in poverty must be attributed to the failure of the economy to grow, which is ultimately due to the lack of new private sector investment. Total investment as a proportion of GDP has needed to be around 25%; in reality it has hovered between 12% and 18%, and the latter high figure is due entirely to increasing public sector investment.
290. In large measure the failure of investment may be attributed entirely to the lack of investor confidence in political stability, caused by the military coups of 2006 and 2009, and associated decrees which have broken the sanctity of contracts. These have not only hurt groups such as pensioners (whose pensions were reduced from 15% to 9%, but whose case already before the courts, was thrown out by decree. There have also been cases, such as at the Nadi Airport, where existing leases of tenants have been arbitrarily cancelled, while property of tourism investors at Momi and Natadola have been appropriated by the Regime, with a banning of any recourse to courts. Such actions seriously undermine investor confidence.

291. It should be pointed out that one cause of political instability has been the tendency of race-based political parties, when in power, to focus primarily on their own ethnic group as in need of "affirmative action". The two major parties have been reluctant to accept the objective assessment of poverty in Fiji which clearly shows that the two major ethnic groups are equally poor and assisting the poor on the basis of need alone, would distribute poverty alleviation resources roughly in proportion to their population numbers. Numerous of my publications have attempted to show that, the latest being my poverty report based on the 2008-09 HIES.
292. It also has been a futile exercise pointing out to many political leaders that if the economy grows well because of political stability, then the cake available to government expands enough to satisfy everyone's affirmative action policies, even if ethnically based. If however, the cake does not grow, or shrink as has often been the case, then no one's affirmative action policy can be funded from tax payers' funds.
- 293. *The submission recommends that the Commission emphasize in their report the terribly damaging impact that military coups have had on Fiji's incomes, standards of living, and poverty, and that far from being a "zero sum game", coups have been "lose-lose games for both the major ethnic groups.***
294. Currently, it may be noted that there is a slight upward trend in buildings approvals, with the very real prospect of normalcy returning with elections in 2014. Investment is picking up slowly, but full recovery is largely predicated on elections being held and a government, accountable to parliament, being put in place.
295. One area rarely discussed publicly is that there has been a significant real decline in property prices between 2006 and 2011, while the pre-2006 coup trend was a very strong positive one. One major impact of this is the reduction of foreign capital inflows into the country.
- 296. *The submission recommends the Commission obtain the views of real estate agents on the impact of the 2006 and 2009 coups on property prices and inflows of foreign capital.***
297. It may be pointed out that there has also been an extremely large increase in public debt, with debt repayments rising to record percentages of total government revenue. This public debt will have to be paid by the future generations. It is unfortunate, however, that part of the problem of lack of accountability of this Regime is a total refusal to report to the public on the amount of foreign loans that have been incurred by this Regime on tax-payers' behalf, the interest costs, and the repayment terms.
- 298. *This submission recommends that the Commission obtain from Planning Office the statistics on the last ten years' of debt repayments (capital and interest) in absolute amounts and in relation to government revenue, and in relation to GDP, project also five years into the future.***

299. There is little doubt that a large number of capital projects such as roads, hydroelectricity scheme, bridges, water supplies, schools and health centres etc. have been built between the period 2000 and 2006. These projects will have a positive long term impact on economic growth and may justify some of the increases in public debt that have occurred in this period.
300. However, in the absence of auditor general's reports on Government Expenditure, it is unclear to the public the extent to which the public debt is due to the lack of fiscal discipline by the Bainimarama Regime and over-expenditure on recurrent items such as salaries of some government staff and not others.
- 301. *This submission recommends that the Commission obtain from the Ministry of Finance the budgetary increases in salaries of defence staff as opposed to the public service in general, and the private sector.***
302. The Commission should also note that the Regime wishes critics to acknowledge the positive measures that they have taken. It should be pointed out however, that such measures have been taken by all governments since independence, and the Bainimarama Regime is not the "first" as they have often claimed.
303. It should also be pointed out that Commodore Bainimarama conducted his coup on the grounds (strongly backed by the Fiji Labour Party) that the 2006 election was rigged by the SDL (no evidence has been produced to support that); that he would eliminate corruption (no great evidence as been produced on that); that he would be inclusive of all races in his government's initiatives (there has been no evidence to suggest that the Regime has improved ethnic balance in either the higher echelons of the Civil Service, the police or the defence forces).
304. Indeed, Bainimarama's frequent statement that he wishes to protect the minority Indo-Fijian interests is somewhat hollow given that Indo-Fijians in general have not benefited from the Bainimarama Regime's six years of government: the continued depression of the sugar industry (on which the majority of rural Indo-Fijians depend), the increased poverty amongst casual wage earners (amongst whom Indo-Fijians are relatively a higher proportion), and the general malaise that has affected the large numbers of small business enterprises throughout Fiji (largely Indo-Fijian).
- What the public sees is that the Bainimarama Regime has simply continued "government business as usual".
305. The Commission may wish to obtain views from the Regime, the private sector, NGOs and academia, on a number of areas on which there is no public data available, but which clearly have a bearing on the Regime's negative impact on the economy through the subversion of good governance practices. These include, in no particular order:

\* the enforced retirement at the age of 55 depriving the Civil Service of experience professions such as teachers, engineers, administrators etc.<sup>59</sup>

\* arbitrary sacking of many civil servants without natural justice

\* the appointment of military officers in key senior positions where they do not have the technical expertise, and who have not been able to make the transition from being professional military officers unquestioningly obeying the Commander, to being civil servants who do have the responsibility to raise professional alternatives to instructions from superiors;

\* the apparent lack of independence of the Public Service Commission which seems to be effectively the rubber stamp of the Regime decision-makers.

\* the totally unwise financial decisions such as inordinately expensive loans in foreign currency, made by Government upon advice by private banking interests  
[<http://narseyonfiji.wordpress.com/2012/03/18/the-bond-issue-when-failure-is-called-success-while-they-dig-our-hole-deeper-2011blogs/>]

\* the appointment of foreign nationals to the most important boards of government and statutory organisations (often as Chair), such as FPNP and FRCA; many individuals appointed to multiple boards with clear conflict of interest; and many private sector individuals having a conflict of interest between their normal place of employment and contracts entered into between their employer and government.<sup>60</sup>  
[<http://narseyonfiji.wordpress.com/2012/03/28/fnpf-bakes-pie-in-the-skypacific-scoop-oct-27-2011/>]

\* the apparent bypassing of environment and other planning laws for select investors, with the responsible authorities remaining totally silent and accountable to the public despite numerous public queries and protests;

\* the quite improper holding of large numbers of ministerial positions by Commodore Bainimarama (including that of Prime Minister and Finance Minister) and the Regime's Attorney General. Amounting to more than ten normal ministerial positions<sup>61</sup>, the consequences are likely to have been paralysis of decision-making, over-dependence on some civil servants (many of whom are now military personnel whose qualifications would not match the positions held); and moreover, given that Commodore Bainimarama's experience and qualifications are largely military, then the origin of most media statements from the Regime, indicates that the decision-

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<sup>59</sup> This retirement age was not applied to Commodore Bainimarama and some of his immediate family members.

<sup>60</sup> This is most obvious in the board membership of a Sri Lankan national, and his employer's business deals with government, as well his employer's ownership of a totally pro-Regime print media; with financially unwise decisions then being made at the Regime's request

<sup>61</sup> A cynical view might be that if this situation meant no disadvantages for the Fiji Government, then the Constitution might wish to make the recommendation that there be no more than about 8 ministers and any one ought to be allowed to hold six or ten ministerial positions.

making in many of his ministries has focused largely on the Regime's Attorney General, whose PR skills are obvious to the public, but not matched by technical experience or knowledge in the fields expounded upon.

\* the financially disastrous and totally improper decision by Commodore Bainimarama to hold on to his position of the Commander of RFMF, which itself engaged in massive over-expenditure of tax-payers' funds (both on salary and non-salary items), while also holding the position of Finance Minister, who approved the increases in expenditure.

\* the complete lack of accountability of tax-payers' funds with no Auditor General's Reports being made available to the public since 2006.<sup>62</sup>  
[<http://narseyonfiji.wordpress.com/2012/03/18/budget-2010-the-great-cover-up-various-blogs-2009/>]

\* the inability or disinclination of the Commerce Commission to control predatory pricing by large monopolies such as telecommunications giants like Vodaphone, while focusing their energies on relatively unproductive and unimportant areas such as hardware and pharmacies where there already exists some degree of competition.  
[<http://narseyonfiji.wordpress.com/2012/03/18/commerce-commission-helping-or-harming-the-poor-professor-wadan-narsey/>]

\* the dictatorial changes in education policy (such as the abolishing of national examinations, arbitrary limits to education fees, selective application of zoning regulations) which have been imposed on schools without discussion, with many having potentially disastrous results on Fiji's education system which has been one of the best in the Pacific, and is now seriously at risk.  
[<http://narseyonfiji.wordpress.com/2012/03/19/national-examinations-you-dont-know-what-you-have-got-till-it-is-gone-the-fiji-times-27-february-2010/>]

**306. *This Submission recommends that the Commission request the Bainimarama Regime to respond to each of the criticisms made in paragraph 305 above.***

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<sup>62</sup> Quite outrageously, the Regime's Audit Committee (chaired by the Yash Ghai Commission Member Mrs Vakatale) has for six years focused on financial irregularities prior to the 2006 coup.

## **Concluding Remarks**

307. This submission places the burden of defending law and order and democracy on the elites of our society, who have generally failed Fiji with every coup in the past.
308. It tries to make clear what the costs of that failure has been to our society.
309. It might seem that this submission does not offer too many "solutions" to many of the pressing problems facing Fiji today, either economically (such as the land issues), politically, or socially (such as a common name for all Fiji citizens).
310. This approach is deliberate as I believe that it should not be the responsibility of the Yash Ghai Commission to lay down solutions in some explicit way in the revised Constitution, but to outline processes by which our people themselves through their elected representatives, can reach the solutions using a collective approach drawing on the depth of talents available in Fiji, solutions which can be ultimately verified by referenda of all voters in Fiji, or by two thirds majority of the elected representatives in Parliament.
311. Only thus can the Constitution be genuinely sustainable and the responsibility of defending it be placed fairly and squarely in the future on our people themselves, not on external agents.
312. This Submission appeals to Commodore Bainimarama and his Regime, and to all the Regime advisers, to do what is "right for Fiji" at this critical point in our history. The future of Fiji rests squarely on their shoulders.

**Other of my writings on the coups of 1987, 2000, 2006 and 2009 may be accessed and downloaded from this website:**

<http://narseyonfiji.wordpress.com/>

**Some relevant articles may be found here:**

[What would Mahatma Gandhi stand for in Fiji today. Speech on Gandhi Day at MGM High School.](#)

["Violence against escaped prisoners": what the Fiji Times won't print; and the Fiji Sun does after editing.](#)

[Poverty in Fiji: Changes 2002-03 to 2008-09 and Policy Implications: Final Report.](#) Fiji Bureau of Statistics, 2012.



["Making rich Fijians richer": contextual statement for Defense Counsel for Mr Qarase.](#)

[Air of optimism, but media censorship continues.](#) 4 July 2012

[What the Fiji Sun refused to publish: Dodgy Australians and Kiwis abroad.](#)

[Allegations of Electoral Fraud, and desirable targets for voter registration and voter turnout. Submission 3 to Yash Ghai Commission. Revised 12 June](#)

[General submission to the Yash Ghai Commission. May 31 2012](#)

[Electoral Reform submission to the Yash Ghai Commission. May 31 2012.](#)

[An Electoral Reform Proposal to the Ghai Commission. May 23, 2012.](#)

["Ghai's dilemma: to be more than a tape recorder".](#)

["Massive electoral disproportionality in Queensland, but no coups". Pacific Media Centre. 7 April 2012.](#)

[Testing Yash Ghai's alternative to cynical](#) (27 March 2012)

[Bainimarama's coup and ethnicity in Fiji- separating facts from fiction 23 March Seminar at James Cook University.](#) 25 March 2012.

["Why the Burness/Shameem case will not be heard".](#) *Fiji Pensioners*. 23 February 2012.

["FNPF Transition Decree: last nail in FNPF coffin".](#) *Fiji Pensioners* and *Coupfourpointfive* 3 Dec 2011.

["Military Regime trashes pensioners' contracts".](#) *Coupfourpointfive* 26 Nov 2011.

["FNPF Draft Decree: Regime taking total control".](#) *Coupfourpointfive* 30 Nov 2011. and *Fiji Pensioners*, 2 Dec 2011

["Why good people support evil: applying Philip Zimbardo to Fiji".](#) *Intelligentsiya*. 15 Nov 2011.

["Fiji's cancerous conspiracies of silence".](#) *Intelligentsiya*. Nov 5 2011.

["FNPF bakes pie-in-the-sky"](#) *Pacific Scoop*, AUT. 27 October 2011.

["Ending the cycles of religious intolerance"](#) *Pacific Scoop*, AUT. 3 September 2011

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[“The moral gutting of Fiji and coming economic collapse”](#) (various blogs)

[“Budget 2010: the great cover-up”](#). (blogs)

[“Fiji’s far-reaching population revolution”](#) (blogs)

[“The military government’s media censorship and its own People’s Charter”](#). (various blogs 2010)

[“Media censorship and a deeper darkness during Diwali”](#) (*Pacific Scoop*, 12 December 2010).

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[“The moral gutting of Fiji and coming economic collapse”](#) 13 July 2009 (blogs)

[“A shameful police state”](#) 22 July 2009 (blogs)

[“Does the military really want electoral reform?”](#) (blogs)

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[“The grim truth behind economic growth rates”](#) *The Fiji Times*, 13 September 2008

[“Not Charter, not growth rates, but the law”](#) *The Fiji Times*, August 19 2008.

[Cost coups: no catching up in GDP](#) yet again. *The Fiji Times*, 7 December 2007

[The Charter: charting us into uncharted waters](#)[*The Fiji Times*, 13 November 2007]

[A Proposal to Commodore Frank Bainimarama](#) (by Dr Wadan Narsey) (7 October 2007)

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