

# Kathmandu School of Law Review

ISSN 2091-2110  
Human Rights and Democratisation

Volume 3

Special Issue

May 2013

## FOREWORD BY EDITOR-IN-CHIEF

*Ravi Prakash Vyas*

## FEATURE ARTICLE

### BREAKING THE GENERATION THEORY OF HUMAN RIGHTS

*Prof. Geeta Pathak*

## ARTICLES

### Gender, Culture and Human Rights: The Tensions and Possibilities of Resolving Them

*Tracie Lea Scott*

### Defining and Achieving Freedom from Hunger: A Rights-Based Approach

*Saurav Ghimire*

### Economic, Social and Cultural Rights in the Transition- al Justice Remit

*Shreejana Pokhrel*

### The Sisyphus Trap: The Committee on the Elimination of All Forms of Discrimination against Women on Eliminating Gender Stereotypes in South Asia

*Hasini Rathnamalala*

### Special Procedures of the UN Human Rights Council and Protection and Promotion of the Human Rights: Fact or Myth

*Bineet Kedia*

### Historical Account of Democratization and Constitutional Changes in Fiji

*Ilana Harriet Burness*

### Human Rights and Financial Institutions: Pinning the Responsibility

*Nidhi Modani*

### International Humanitarian Law in India: A Critical Case Study

*Anita Yadav & Amit Yadav*

### The Protection of National Minorities within the Council of Europe: An Analytical Review

*Jabbar Aslan & Khabbat Aslani*

### 'From the Frying Pan into the Fire', IDPS in a State of Emergency: Sri Lankan Context

*Mahesha Jayawardana*

### Rights Protection Regime for Internally Displaced Women and Children: Towards the Formation of A Metaframework

*Rathin Bandyopadhyay & Chandrani Das*

### The Transfer of Asylum Seekers in Australia to Third Countries: A Case Study of Sovereignty versus International Law

*Hugh S. Tuckfield*

## NOTES

### A Critical Analysis of Right to Life and Judicial Intervention in South Asian Countries

*Prakash K.C.*

### Corporate Social Responsibility (CSR): An Accommodating Tool for Business Enterprises to Respect Human Rights

*Amarjibi Ghimire*

## BOOK REVIEWS

### Human Rights Law and the Marginalized Other

*Petra Gimbad*

### International Watercourses Law and A Perspective on Nepal - India Cooperation

*Yubaraj Sangroula*



**Kathmandu School of Law (KSL)**

Dadhikot-9, Bhaktapur, Nepal, Ph: 6634455, 6634663,

Email: [info@ksL.edu.np](mailto:info@ksL.edu.np), [www.ksL.edu.np](http://www.ksL.edu.np)

# Historical Account of Democratisation and Constitutional Changes in Fiji

Ilana Harriet Burness<sup>1</sup>

*Fiji a country of 300 islands, having multi-ethnic communities, has gone through a number of constitutional changes from Colonial to post independence time. This paper vividly explores the constitutional history of the Fiji along with a critical review on emerging issue of the 'Draft constitution' listing the key human rights violation that occurred during the three Coup de Tats and comparing 'consociational' to 'hegemonic' constitutions.*

## Introduction

Fiji was settled about 3,000 years ago by South-Asian seafarers. The 'Fiji island group' consists of 300 islands sitting on the border between Melanesia and Polynesia.<sup>2</sup> Aside from the South Asian first settlers, other settlers to Fiji included missionaries, beachcombers, traders from Europe (traded sandalwood, beech-de-mer, coconut oil and shipping) and those seeking wealth.<sup>3</sup> Fiji's population in 2012 was 858,038.<sup>4</sup> The breakdown of total population by ethnicity, recorded Fijians (iTaukei) totalling 511,838, Indo-Fijians (Indians who arrived in 1879 to work on sugar cane farms) totalling 290, 129 whilst other ethnic groups (Rotuman, European, Part European, Chinese, other Pacific Islanders) totalling 56,071.<sup>5</sup> The percentage of people living below the national poverty line in 2009 was 31%.<sup>6</sup> Indigenous Fijians (*iTaukei*), Indo-Fijians, Part

---

<sup>1</sup> Master of Human Rights and Democratization (University of Sydney and Kathmandu School of Law.

<sup>2</sup> B. Lal, *A time bomb lies buried: Fiji's road to independence, 1960-1970* (Australian National University 2008).

<sup>3</sup> Ibid.

<sup>4</sup> 'Fiji Bureau of Statistics 2012'  
<<http://www.statsfiji.gov.fj/Key%20Stats/Population/1.2%20pop%20by%20ethnicity.pdf>>  
accessed 24 February 2013).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

Europeans (mixed Race people with Indigenous iTaukei genes, also known as *Kailoma*) and other racial groups make up Fiji's multi-ethnic society.<sup>7</sup> Fiji's multi-ethnic communities speak various languages.<sup>8</sup>

The main objectives of this paper are to firstly, present a historical account of Fiji's constitutional history from Colonial to Post Independence time. Secondly, to review the critical and emerging issue of the 'Draft Constitution', listing the key human rights violations that occurred during the three coup d'état and comparing 'consociational' to 'hegemonic' constitutions. finally, it makes recommendations to end the current political impasse.

### **Constitutional History: Political Up and Downs in Fiji**

Due to a clash of power between the new settlers and local Chiefs, including Ratu Seru Cakobau (known as the '*Tui-Viti*' and Head of Fijian Chiefs) as well as continued worry about their sovereignty, Ratu Cakobau and the leading chiefs of Fiji ceded the country to Great Britain on 10 October 1874.<sup>9</sup> Thereafter, Fiji became a British Colony and in 1875, Sir Arthur Hamilton Gordon became Fiji's first Governor. A 'Deed of Cession' was the country's first legal document, which enshrined the interests of Indigenous Fijians and chiefs. The cession document also encapsulated land rights, by proclaiming all land to be under British rule, otherwise known as 'crown land'.<sup>10</sup> Sir Arthur Gordon ensured that Fijian interests were protected. He established separate Fijian administration and successfully transferred 90% of crown land to Fijian ownership.<sup>11</sup> Prior to cession days, land was owned mostly by European planters. Gordon did not allow Indigenous Fijians to work on European plantations for commercial purposes.<sup>12</sup> In 1875, the '*Bose Levu Vakaturaga*' (Great Council of Chiefs) was established by Gordon. This Council of 55 Chiefs ruled over the iTaukei people.

Aside from safeguarding native Fijian interests, Gordon was also in favour of indentured labour.<sup>13</sup> In May 1880, a contract to mill sugar in Fiji, with the Colonial

<sup>7</sup> Indigenous Fijians were once dominated by Indo-Fijians in Fiji; however from 1987 to 2006, the numbers of Indo-Fijians migrating to Australia, Canada, USA and New Zealand has greatly increased due to the four *coup*.

<sup>8</sup> English is spoken by everyone. According to Fiji's Draft Constitution 2012, Chapter 1, article 5, iTaukei and Rotuman are the official indigenous languages. Languages spoken in Fiji are English, iTaukei, Rotuman and Fiji-Hindi.

<sup>9</sup> Lal (n 2) 9.

<sup>10</sup> Ibid 10.

<sup>11</sup> Ibid 11.

<sup>12</sup> See B. Lal, *Politics in Fiji: Studies in contemporary history* (Allen and Urwin Australia 1986).

<sup>13</sup> On 15<sup>th</sup> May 1879, the first indentured labourers from Calcutta, India (463 of them) arrived into Levuka (Capital of Fiji at the time) on board the '*Leonidas*'. The labourers were to work on sugar cane plantations in various parts of Fiji.

Sugar Refinery Company of Australia (CSR) was secured by Thurston.<sup>14</sup> The land for farming of sugarcane was leased to the Indian labourers by Indigenous Fijians, traditional owners of the land. The Indian indentured labours were from Bihar, Uttar Pradesh states, South India and Punjab.<sup>15</sup>

The indentured labour system ended in 1920. A total of 60,000 Indians decided to make Fiji their home after the indentured labour system ended.<sup>16</sup>

Indentured labourers received an adequate education, owing to the *Arya Samaj*.<sup>17</sup> The *Arya Samaj* greatly contributed to Indo-Fijians' political struggle in the 1920s<sup>18</sup>. In 1966, the National Federation Party (NFP) was formed by A.D. Patel. This was the first Indian political party formed and consisted of Indian Indentured laborers.<sup>19</sup>

Fiji became an independent Republic on 10 October 1970.<sup>20</sup> Independence brought an end to the British rule. It welcomed the adoption of Fiji's first Constitution.<sup>21</sup> Prior to Independence, there were divided views about Fiji's autonomy.<sup>22</sup> That is, Indigenous Fijians wanted to remain under British rule, so that Fiji would be protected and not dominated by Indo-Fijian rule, whereas Indo-Fijians preferred independence.<sup>23</sup> In April 1987, a general election was held and won by the NFP and Fiji Labour Party (FLP) coalition. Doctor Timothy Bavadra of the FLP became Prime Minister.<sup>24</sup> Following the Rabuka

---

<sup>14</sup> R Nicole, *Disturbing history: Aspects of resistance in early colonial Fiji, 1874 – 1914* (University of Canterbury 2006) 181.

<sup>15</sup> Ibid 183.

<sup>16</sup> Ibid.

<sup>17</sup> The *Arya Samaj* was started in Bombay in 1875 by Swami Dayanand Saraswati and is a Spiritual body, that is committed to the social and political rights order. The *Arya Samaj* introduced three ideals to Indentured labourers; Education, media and Religion. They established schools between 1910 and 1920, competing with Mission schools. The *Arya Samaj* was the first institution to educate Indentured labourers in the English language and mentor them in politics, that began Fiji's first political parties, consisting of Indentured labourers. Ibid 310-318.

<sup>18</sup> Indo-Fijians were granted suffrage in 1929. A Pandey, *Indians and the Struggle for Power in Fiji* (Organization for Diaspora Initiatives 2010) 60.

<sup>19</sup> Ibid.

<sup>20</sup> Independence was an outcome of the '*Fiji Constitutional Conference*' held in London, April 1970. A. Ali & R. Crocombe, *Fiji: The politics of a plural society* (Institute of Pacific Studies of the University of the South Pacific 1982) 140.

<sup>21</sup> A 'Hegemonic' constitution, based on the Westminster parliamentary system introduced. It contained a 'Bill of Rights' and adopted a parliamentary democracy to suit the multi-ethnic population. Y. Ghai, *Human Rights and Social Development: Toward Democratization and Social Justice* (United Nations Research Institute for Social Development 2001).

<sup>22</sup> Y. Ghai & J. Cottrell, 'A tale of three constitutions: Ethnicity and politics in Fiji' (2007) 5(4) *International Journal of Constitutional Law* 639.

<sup>23</sup> Ibid 639-669.

<sup>24</sup> Following the General Election, on May 19<sup>th</sup> 1987, Fiji's first (bloodless) Military Coup was carried out by Lieutenant - Colonel Sitiveni Rabuka. Rabuka abrogated the 1970 constitution.

coup, a second coup occurred in September.<sup>25</sup> Following the first coup in 1987, the Governor General became President and established an interim government.<sup>26</sup> A new constitution replaced the 1970 one and its introductory text stated 'how the 'events in 1987' were occasioned by a widespread belief that the 1970 Constitution was inadequate to give protection to the interests of indigenous Fijians, their values, traditions, customs, way of life and economic wellbeing.<sup>27</sup> Women rights activists, stood up for democracy and human rights on the anniversary of the 1987 coup.

A second constitution since Independence was drafted in 1990.<sup>28</sup> The son of Indentured Laborers and academic, Dr Anirudh Singh termed the constitution as racist.<sup>29</sup>

Moves towards 'consociationalism' began in 1996 and Parliament approved a terms of reference for a constitution commission. The TOR stated 'The commission shall review the Constitution promoting racial harmony and national unity and the economic and social advancement of all communities and bearing in mind internationally recognised principles and standards of individual and group rights.'<sup>30</sup>

In 1997, the Constitutional Review Commission, otherwise known as the Reeves Commission reviewed the 1990 constitution.<sup>31</sup> The Reeves Commission

Proposed a House of Representatives of seventy members divided into forty-five open seats (without ethnically based restrictions on candidates or voters) and twenty-five reserved seats (twelve for indigenous Fijians and Pacific Islanders, ten for Indo-Fijians, one for

<sup>25</sup> The second coup occurred on 25<sup>th</sup> September 1987 and was to prevent a coalition government, to maintain a majority Fijian domination. S Ratuva, 'The Military Coups in Fiji: Reactive and Transformative Tendencies' (2011) 19(1) Asian Journal of Political Science 98.

<sup>26</sup> B. Lal & P. Larmour, *Electoral systems in divided societies: The Fiji constitution* (Australian National University E Press 2012) 1.

<sup>27</sup> Ibid.

<sup>28</sup> The 'hegemonic' constitution did not address multi-racialism. The text segregated all other racial groups, including the Indo-Fijians, e.g. the preamble of the constitution clearly protects Indigenous Fijian interest, especially. Regarding the land issue and Great Council of Chiefs.

<sup>29</sup> Anirudh Singh was kidnapped and tortured by the Military in October 1990.

<sup>30</sup> Lal (n 26) 2.

<sup>31</sup> A new constitution was drafted by the Reeves Commission (Constitutional Review Commission), headed by Sir Paul Reeves, former Governor General of New Zealand. Other members were Tomasi Vakatora, an Indigenous Fijian businessman and Professor Brij Lal, an Indo Fijian Historian and Professor at Australian National University, Canberra. The main goal of the Commission was to design an electoral system to foster multi-ethnic cooperation and a multi-ethnic government. The Reeves Commission recommended having open seats instead of communal seats, to do away with the racial segregation of party politics, which existed in the previous constitutions. Lal (n 26).

Rotumans and two for general voters), thus reversing the proportion between the two types of seats in the 1970 constitution.<sup>32</sup>

The 1997 constitution was welcomed by the international community, the Great Council of Chiefs and the 1999 Chaudhry Government (Mahendra Chaudhry, leader of the FLP became Fiji's first Indo-Fijian Prime Minister on 19 May 1999).<sup>33</sup> Sadly, Chaudhry's leadership was not to be continued. His government Ministers were ousted in Fiji's third Coup (Civilian coup) exactly a year later. Failed businessman, George Speight and six other gunmen, stormed parliament house, took the cabinet Ministers hostage for fifty-six days and tore up the 1997 Constitution. According to Brij Lal:

Speight was the front man for an assortment of institutions and individuals aggrieved by the People's Coalition government: defeated politicians seeking revenge, those who had amassed enormous wealth during the Rabuka years in the 1980s, the unemployed and the unemployable, the human casualties of globalization.<sup>34</sup>

On 27 May 2000, the President Ratu Sir Kamisese Mara (a prominent Fijian Chief from Lau Islands) sacked Chaudhry and his Ministers, declaring the government illegal.<sup>35</sup>

The 2000 Military coup was one of intra-ethnic divisions, amongst the Indigenous Fijians.<sup>36</sup> The 2000 Coup perpetrators, including George Speight were sentenced to imprisonment on Nukulau Island, located off the mainland

---

<sup>32</sup> Ghai (n.22) 254.

<sup>33</sup> Chaudhry formed an alliance with the two Indigenous Fijian parties; the Fijian Association Party (FAP, whose leader was Indigenous Fijian woman, Adi Kuini Speed and wife of the former Dr Timoci Bavadra) and Party of National Unity (PANU). Chaudhry's government enforced very progressive reforms, such as the establishment of legislative reforms, setting up of the Fiji Human Rights (FHRC) and Education Commissions, as well as corruption enquiries.

<sup>34</sup> Ghai (n 22) 664.

<sup>35</sup> Ratu Mara, Fiji's Prominent Chief from Lau Island in Fiji was forcefully sent back to Lau by the Military Forces of Fiji, who took over Executive control of the Nation. Therefore, he was no longer President of Fiji and his dismissal from Politics reflected an end to Chiefly political influence since Colonial times. Ratu Mara was very influential amongst Fijian people, he had International standing and since his departure, there have been no other Indigenous leaders of such Charisma and influence. B. Lal, *Madness in May: George Speight and the unmaking of modern* (Australian National University E Press 2012) 176.

<sup>36</sup> Brij Lal argues that the 1987 Coup led by Rabuka, a commoner and Colonel in the Military, was to protect the Fijian institutions set up since British Rule. The 1987 coup was to protect Indigenous interests; Indigenous versus Indo-Fijians. On the other hand, the 2000 Coup led by George Speight, was about rivalries between Fijians, rather than race. According to Brij Lal, 'Even George Speight himself admitted that 'the race issue between Fijians and Indians is just one piece of the jigsaw puzzle that has many pieces' (interview, Fiji Sun 10 June 2000). Ibid 178.

of Viti Levu.<sup>37</sup> George Speight was sentenced to life imprisonment and has since been transferred to Naboro Prison, located in Fiji's Capital, Suva.

Following the 2006 general elections, on 5 December 2006, the fourth Coup (second Military coup), headed by Commander of the Fiji Military Forces, Commodore Voreqe (Frank) Bainimarama occurred.<sup>38</sup> Bainimarama ousted the Prime Minister, Laisenia Qarase and became the Interim Prime Minister in January 2007. This coup was the beginning of 'militarisation' within the civil service.<sup>39</sup>

Bainimarama's coup was about multi-ethnicity, e.g. since being in power, a common name has been granted.<sup>40</sup> Bainimarama called the Coup a 'Clean Up Campaign' to prevent further inter-ethnic conflict and end the coup culture in Fiji. A 'People's Charter for Change, Peace and Progress' (known as 'The Charter') was drawn up and this was the foundational reform for good governance and democracy for the country.<sup>41</sup>

With regards to the 1997 constitution which existed prior to 2009, Bainimarama reaffirmed the military's undying commitment to the Constitution and the rule of law.<sup>42</sup> Bainimarama, after taking office, promised that elections would be held sometime after 2006, as per the 1997 Constitution.

Australia and New Zealand, Fiji's closest 'developed country' neighbours, strongly condemned the 2006 coup, with the Foreign Minister for Australia, Alexander Downer stating, that the Military should be in the barracks, not engaging in politics.<sup>43</sup> New Zealand also stopped a seasonal worker scheme for

<sup>37</sup> (BBC news article about imprisonment of the eleven Coup perpetrators) <<http://www.accessmylibrary.com/article-1G1-85314256/fiji-speight-accomplices-serve.html>> accessed 10 February 2013).

<sup>38</sup> The paradoxes and contradictions of the 2006 coup outdo anything in Fiji's modern history. This was not a coup of Fijian nationalists against a predominantly Fiji-Indian-supported coalition that had just emerged victorious at the polls, as in 1987 and 2000. It was a coup against a strongly indigenous Fijian-backed government that had been elected, with over 80 per cent of the ethnic Fijian vote, only seven months earlier" (in Fraenkel, J. and S. Firth (2009). J. S. Firth & B. V. *The enigmas of Fiji's good governance coup. The 2006 military takeover in Fiji: a coup to end all coups?* (Australian National University) 4-6.

<sup>39</sup> Military personnel were employed in the police, prisons, immigration, fisheries and justice.

<sup>40</sup> A citizen is now referred to as 'Fijian' and Indigenous Fijians are known as 'iTaukei'. Furthermore, the former Colonial racial classification of ethnic groups in Fiji has ended. Arrival cards at customs in Fiji's International airport, Nadi International Airport has done away with the term 'race'. All Fiji born citizens are Fijians and Indigenous peoples are Fijians.

<sup>41</sup> The Charter was designed by a 'National Council for Building a Better Fiji' (NCBBF). NCBBF was formed in April 2007 and consisted of Civil Society and Fiji citizens, interested to return Fiji to democracy. However, NCBBF did not last long due to funding issues. However, to date the Charter still exists and is Fiji's 'interim governance and human rights document'.

<sup>42</sup> Ghai (n 22) 665.

<sup>43</sup> Both countries applied travel bans to relatives of the Military forces and civil servants nominated by the Regime.

Fijians, who would have been granted temporary work visas in New Zealand.<sup>44</sup> This scheme would no doubt have been good for Fiji's economy, in terms of remittances and economic growth. In retaliation against New Zealand, the government expelled the New High Commissioner, Michael Green in June 2007, and Bainimarama cited the Geneva Convention during his expulsion.<sup>45</sup>

To assist Fiji's 'return to democracy', Pacific leaders from neighbouring South Pacific nations established a 'Pacific Islands Forum-Fiji Joint Working Group on the Situation in Fiji'. The role of this Forum was to make an assessment of Fiji's path to elections and if it could be held within the timeframe, specified by an 'Eminent Persons Group' (EPG).<sup>46</sup>

The Bainimarama government also had its own 'roadmap to democracy'. It was called, 'Roadmap for the return to Parliamentary Democracy'. The roadmap stated that Fiji would only hold elections in 2010, after the economy was stabilized and electoral boundaries established, after a census.<sup>47</sup>

Since 2006, Non-Governmental Organizations (NGOs), working for good governance and human rights continuously condemn the coups and announce for 'a return to democracy'. NGOs have been involved in drafting various 'pseudo-democratic policies' to move Fiji forward. For example, the National Council for Building a Better Fiji (NCBBF), headed by John Samy, an expatriate, wrote the Charter.<sup>48</sup>

NGO activists and citizens were targeted by the Military Regime or deported from Fiji, for freedom of expression against the illegal government. There have been significant human rights abuses since the 2000 coup.<sup>49</sup> Citizens have

---

<sup>44</sup> B LaL, *This process of political readjustment: The aftermath of the 2006 Fiji Coup*. (Australian National University 2009) 84.

<sup>45</sup> Ibid 85.

<sup>46</sup> EPG consisted of four members from Vanuatu, Samoa, Papua New Guinea and Australia.

<sup>47</sup> Note that the Fiji Islands Bureau of Statistics (FBOS) held a census in 2007. (FBOS) <<http://www.statsfiji.gov.fj>> accessed 1 May 2013.

<sup>48</sup> The NCBBF's 'People's Charter for Change, Peace and Progress' was written and supported by the NGOs; Women's Action for Change, Fem Link Pacific, Ecumenical Centre for Education, Research and Advocacy and Citizen's Constitutional Forum. The Charter process was to move Fiji forward towards democracy. However, the Charter team disbanded in April 2008, due to funding issues. Additionally, the Head John Samy, was getting paid a salary of 12,000 for ten months of contracted work, an exorbitant salary in Fiji dollar terms. Professor Wadan Narsey condemned the Charter process and stated that the process was a waste of taxpayers' money. According to a Fiji Times 2008 article by Narsey, 92% of more than 400,000 Fiji citizens approved the Charter. (Fijitimes) <<http://www.fijitimes.com/story.aspx?id=109641>> accessed 10 February 2013.

<sup>49</sup> The list of human rights abuses is very long. For instance, in November 2000, *The Chandrika Prasad case ruling*. Mr Prasad was the victim of human rights abuse in his community of *Muaniweni*. Due to the significance of the violations, he and his family were transferred to New Zealand. Mr Prasad took his case to the High Court and Court of Appeal, whereby the 1997



never protested in the streets against the coup perpetrators in the past. Serious questions need to be raised:

- a) Why is it that ordinary Citizens of Fiji, do not protest against the illegal regimes? What motivates communities in Nepal to protest and stand up for their human rights, as compared to Fijian citizens remaining passive?
- b) Is it part of the culture? Fiji is known for its 'Culture of Silence'.

Yash Ghai discusses the power sharing arrangement for societies in transition from conflict to peace.<sup>50</sup> Ghai is a constitutional expert, who discusses the consociational versus hegemonic constitution types.<sup>51</sup> Fiji's previous constitutions were hegemonic (1990 and 1970). However, the 1997 constitution moved towards multiculturalism and is consociational.<sup>52</sup> Critics have argued about the accountability of consociational governments, which are rarely democratic, as leaders agree on consociational arrangements amongst themselves in private.<sup>53</sup>

Ghai argues that there are benefits to consociational democracies.<sup>54</sup> The benefits of consociationalism include inclusiveness, proportionality, self-government, participation and social justice (power sharing in the executive).

---

constitution was restored. This is one of the few international human rights cases, that restored a constitution, after it was abrogated. (*SCOOP News*)

<<http://www.scoop.co.nz/stories/WO0011/S00126.htm> and <http://fijipensioners.com/>> accessed 23 February 2013; December 2006 – Fiji Women's Rights Movement Executive Director, Virisila Buadromo, along with her husband were taken up to the Fiji Military Forces camp, beaten across their faces, told to lick the boots of the soldiers detaining them and threatened the lives of their family and friends. In March 2008, Buadromo won the 'International Woman of Courage Award'. The award is the idea of former Secretary of State in the US, Condoleezza Rice; award recognizing the women around the world with exceptional courage, in fighting for women's rights and advancement. In November 2009, Academic, Dr Brij Lal was arrested and taken from his home in Suva to Military camp, locked up for the night. He had commented on the expulsion of the Australian and New Zealand diplomats' expulsion from Fiji. Dr Lal was spat at and ordered to leave Fiji within 24 hours;

<sup>50</sup> The issue of 'power sharing' is encouraged by the international community – for the government and rebels to work together. Otherwise, the suppression of ideals will surface in some way, giving rise to conflict. Y Ghai, Ethnic identity, participation and social justice: A constitution for new Nepal' (2011) 18 International Journal on Minority and Group Rights, 309-334.

<sup>51</sup> Ibid.

<sup>52</sup> Ghai states, Fiji has been cited by several authors as a successful consociational state but, at least until the ill-fated 1999 constitution, it was best characterised as an ethnically dominant state. Ibid 1.

<sup>53</sup> Consociational arrangements are often based on a high degree of collective rights and forms of self-governance based on traditional authority. These power structures can disadvantage specific groups like women and persons belonging to lower castes (as demonstrated by discrimination against aboriginal women in Canadian reserves or Muslim women in India. Y. Ghai & G Galli, *Constitution building processes and democratization* (International Institute for Democracy and Electoral Assistance 2006) 1.

<sup>54</sup> Ibid 3.

In July 2012, a ‘Constitution Commission’ (CC) was established via Decree 64/2012 ‘Fiji Constitutional Process (Constitution Commission) (Amendment) Decree 2012’.<sup>55</sup> Over 7,000 submissions (oral and written) were made to the CC; post, electronically and hand delivered. Women’s organizations, faith groups, villages, political parties and academics submitted their views. Funding for the CC came from Australia, NZ, British and US Embassies and European Union. The CC prepared a draft constitution (known as the Ghai Constitution), that will be reviewed by a Constitutional Assembly (CA) of which members are to be appointed by Bainimarama.<sup>56</sup>

According to the Constitution Commission’s ‘Draft Constitution: Explanatory Report’ (2012), submissions received were about critical and emerging issues such as recent pension cuts, the land issue amongst the Indigenous Fijians, doing away with communal voting, concerns of increasing poverty and unemployment concerns for the ‘coup culture’ and if the new constitution will rid Fiji of the ‘coup culture’. A few groups requested that Fiji become a ‘Christian State’, though most Christians did not agree.<sup>57</sup> Article 18 of the Universal Declaration of Human Rights (UDHR) states that everyone is entitled to practise their religion (Freedom of Religion).

The draft constitution, formulated by the CC was to be Fiji’s over-riding law. A constitution can be used in courts by the ordinary citizens to protect their basic human rights. The draft constitution is 198 pages.<sup>58</sup> The new constitution will have followed pretty much the same content as the 1997 constitution. However, in the

<sup>55</sup> Members of the Commission were Yash Ghai: (Former Constitutional Advisor in Nepal), Christina Murray, Penelope Moore, Satendra Nandan, Taufu Vakatale and Executive Secretary, Keshwa Reddy. The Commission was tasked under Decree no.57/2012 to design a new constitution for Fiji. A constitution’s role is to: Affirm common values and identities; Prescribe rules to determine membership of the community; Promise physical and emotional security by state monopolization; Agree on ways in which and the institutions through which state power is to be exercised; Provide for the participation of citizens in affairs of the state, esp. through free and fair elections; Protect rights; Establish rules for peaceful transition of governments; Ensure predictability of state action and security of private transactions through the legal system; Establish procedures for dispute settlement; Provide clear and consensual procedures for change of these fundamental arrangements. Ibid 8.

<sup>56</sup> The CA will have a diversity of representatives from trade unions, NGOs, political parties, pensioners, etc. According to Australia Network News, the Military will write the new constitution via the Attorney General’s office, which is not good democratic practice and goes against the principles of good governance and accountability. ‘Fiji Getting a New Constitution’, *ABCNews* (7 February 2013) <<http://www.abc.net.au/news/2013-02-07/fiji-getting-a-new-constitution/4507518>> accessed 10 February 2013.

<sup>57</sup> Commission, *Draft constitution: The explanatory report: The Constitution Commission. C. Commission. Suva, Constitution Commission* (2012) 124. The draft constitution separates Religion and the State. Chapter 1, Article 6 (3): ‘Religion belief is personal. Therefore, religion and the State are separate...’

<sup>58</sup> The constitution is divided into eighteen chapters and contains articles. The Constitution is an important document and needs to be understood by all citizens, from the village person to political leaders.

new constitution, there is a new system of local government (doing away with racial lines) and a National People's Assembly<sup>59</sup>.

There are other changes to the Constitution.<sup>60</sup> The Draft Constitution does not address the issue of compulsory voting. A 'Special Independent Commission' presented its recommendations on a new constitution to the President, Ratu Epeli Nailatikau, two days before Christmas in 2012.

Currently, the situation is that the CA has yet to be elected and there is no constitution.<sup>61</sup> Foreign Minister in Australia, Bob Carr has urged Fiji's return to Democracy via elections in 2014, which Bainimarama has stated will happen.<sup>62</sup>

## Conclusion

In summary, the events since 1987 till the present political impasse require much introspection. Fiji must cultivate patience to find a system of 'democracy', which suits the multiethnic composition of its society. It must decide what constitutional and democratic path to tread. Which part of the spectrum from majoritarianism to consociational constitutional types, is the best

<sup>59</sup> Chp 6, arts 68-72.

<sup>60</sup> The court will uphold the Constitution; people will have access to the courts if they feel their rights have been violated, as per the clauses in the Constitution: Parliament is under one house and consists of 71 members; no Senate. Allocation of more seats to Women and Minority groups; More efficient system of accountability of public funds; Proportional voting without ethnic seats; one person one vote system; Voting age reduced from 21 to 18 years old; Under Schedule 1 (article 9), dual citizenship is allowed; Re-instatement of the '*Bose Levu Vakaturaga*' (Great Council of Chiefs) under Chapter 4, article 56; Cultural rights recognized in article 47; cultural groups to enjoy other cultures and are free to join cultural organizations. The three languages of *iTaukei* (*Fijian*), *Hindi and English* given equal status under article 5 (2) and *iTaukei* (*Fijian*) and *Rotuman* acknowledged as the Indigenous languages of Fiji, which must be protected and promoted by the State; Regulation of military courts; dealing with matters relating to the Military (article 126 (3) does not give power to the Military court to deal with Military accused of human rights violations, e.g. enforced disappearances and torture; Set up of a 'National Security Council' to review national security (members are Parliamentarians); Chapter 1, article 2 (3) (b) (i) addresses immunity; Chapter 1, article 5 states that *iTaukei* and *Rotuman* are the official indigenous languages of Fiji; Chapter 3, articles 18 – 52 sets out the 'Bills of Rights'; Chapter 13, article 144 (4) sets out the establishment of the Fiji Human Rights Commission and Chapter 3, article 52 states the functions of the FHRC; Chapter 8, article 79 states the 'proportional representation system' of one voter having one vote; Schedule 6, section 14 (2) states that any Military person who is in public office under the constitution, is deemed to have resigned from the RFMF. Sub-section 3, however pardons the current PM, who is the Commander of the RFMF.

<sup>61</sup> The Regime passed another decree, 'Political Parties (Registration, Conduct, Funding and Disclosures) Decree in January 2013, weeks after the Ghai Draft Constitution was dismissed. The decree greatly restricts political participation, as any party registering, has to have 5000 members from all four Divisions of Fiji; 2000 in Central, 250 in Eastern, 1750 in Western and 1000 in Northern divisions, and bans trade unionists from joining a political party. The decree violates Article 21 of the Universal Declaration of Human Rights (UDHR).

<sup>62</sup> Bob Carr has reiterated Australia's support for Fiji's return to Democracy in 2014. He met with Fijian Foreign Affairs Minister, Inoke Kubuabola in Australia recently. 'Carr Reiterates Commitment to Fiji' <<http://www.tawakilagi.com/2013/01/14/carr-reiterates-commitment-to-fiji%E2%80%99s-return-to-democracy/>> accessed 10 February 2013.

fit for the nation? The new constitution must be owned by all Fijians. It should incorporate universal principles of human rights and the text must ensure that all ethnic group rights are recognized. The International NGOs (INGOs), local NGOs and civil society must educate citizens on their human rights. The INGOs and donor governments need to remind the Interim government of its international obligations, including the fact that Fiji is a member of the United Nations. Fiji has ratified the UDHR and translated the text into the local language. INGOs such as the United Nations, European Union and Foreign Embassies, must take a strong stand against the illegal Regime and demand that Bainimarama return to the Barracks. The ‘boomerang effect’ by local NGOs via TANs (Transnational Advocacy Networks) must be applied.<sup>63</sup> Finally, Fijian citizens must protest on the streets and demand for ‘accountability’, ‘good governance’ and ‘transparency’ of the current constitution making process and for the Ghai constitution to be reinstated.

\*\*\*\*\*

---

<sup>63</sup> ‘It is no accident that so many advocacy networks address claims about rights in their campaigns. Governments are the primary “guarantors” of rights, but also their primary violators. When a government violates or refuses to recognize rights, individuals and domestic groups often have no recourse within domestic political or judicial arenas. They may seek international connections finally to express their concerns and even to protect their lives’ (this is known as the Boomerang Effect). Keck & Sikkink, *Activists beyond Borders: Advocacy networks in International Politics* (Cornell University Press 1998) 12.