

STATEMENT ON THE CONSTITUTION OF FIJI

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Statement on Constitution of Fiji by the Australian Section of the International Commission of Jurists and by concerned citizens of Australia.

The "Constitution of the Sovereign Democratic Republic of Fiji" promulgated by decree of the "President" of the "Interim Government" provides a means by which Fiji may be ruled in perpetuity by an oligarchy of Fijian chiefs and their associates. The government will not be answerable to the governed. Racial and geographic divisions and discrimination against citizens of all races are enshrined in the constitution which the majority is powerless to alter.

For most of the 20th Century there has been no significant migration to Fiji. Virtually all present citizens are descendants of families who have lived in Fiji for several generations.

In the 1986 census there were 329,000 Fijians, 348,000 Indians, and 37,000 people of other races. Since the coups in 1987 there has been extensive Indian emigration so that the indigenous Fijians may now outnumber Fijians of Indian origin.

In the constitution a central role is given to the Great Council of Chiefs. This body was originally set up by the British Colonial Government in the last century, when it adopted a policy of ruling the Fijian population through the existing communal system, dominated by the chiefs. Fiji was divided into 14 provinces, each with its own council, which submitted names, usually of local chiefs, to the Government for appointment as Roko Tui (provincial governor), and a separate legal system was set up for Fijians with its own courts and separate taxes. The provincial councils comprised (a) members chosen by traditional Fijian clan units, (b) since Independence some members elected by people of the area who had moved to towns, and (c) a number of chiefs appointed by the Government. The land was (and is) owned communally - 82% of all land in Fiji is held on behalf of the traditional owners in perpetuity. Because of the traditional prerogatives and status claimed by the chiefs, the confirmation of their authority under colonial rule and the respect given to the chiefs in Fijian society, this whole system has been feudal and oligarchic.

The Council of Chiefs, prior to the coups, comprised all elected Fijian members of the lower House of Parliament, 8 chiefs appointed by the Minister for Fijian affairs, 7 other Fijians appointed by him, and representatives of each of the provinces (2 or 3 depending upon size of population). After the coups the members of the House of Representatives were excluded. Since

then there have been no elections for the provincial councils. However, appointments to those councils have been made by the President. The rump Council of Chiefs which met on 9 June 1990 (i.e. with a membership decreed by regulation made by the Minister of Fijian Affairs in the "interim government") determined that in future it will consist of 42 representatives of provincial councils, i.e. 3 each, to be chosen at each council's discretion, 3 nominees of the President; 3 nominees of the Minister, 1 nominee of the Rotuma Council, and 5 ex-officio members, namely the President, the Prime Minister, Major-General Rabuka, the Minister for Fijian Affairs and the Permanent Secretary for Fijian Affairs. Any "representative" capacity of the 42 provincial council representatives is distorted by the fact that the provinces have widely different populations (e.g. at the last census Ba had 55,343, and Rewa 49,841 while Lau had 14,021, Serua 6,877, and Namosi 4,462). It is well known that the regime draws most of its support from the more sparsely populated areas.

Under the Constitution this body:-

- (1) chooses the President;
- (2) chooses 24 of the 34 members of the Senate (the upper house), the remainder being 1 member chosen by the Council of Rotuma (a tiny Polynesian dependency) and nine chosen by the President; and
- (3) must be consulted by the Cabinet on measures to

advance and protect Fijians.

The President has executive authority vested in him (section 82). The executive, by regulation, may alter the constitution of the Council of Chiefs, and it has appointed its supporters to fill the 6 nominated positions.

The President chooses the Prime Minister from the House of Representatives (the lower house) and, on his advice, the other Ministers, who may be chosen from either House of Parliament. A majority of the Cabinet can thus be appointed without ever having been elected by the people. While by section 88(1) the President is required to act in accordance with Cabinet's advice in the exercise of his functions under the constitution and the general law, by section 88(3) his failure to do so may not be questioned in any court. Moreover, by section 83 he is empowered to appoint a minority government. In the elections for the House of Representatives all voting is to be on racial rolls, i.e. one roll for Fijians, one for Indians, and one for other races. Racial divisions are thus institutionalised. Under the 1970 Constitution nearly half the members were elected on a common roll for all races. The "other races" (European, part-Europeans, Chinese, and other Pacific Islanders) are to have 5 seats, (an over-representation) the Indians 27 seats (a serious under-representation) and the Fijians 37 seats (a substantial over-representation). It is clear that the Indians are effectively made second-class citizens. They have a much

smaller voice in the lower house than their numbers would require, and an insignificant, if any, voice in the Senate, and then only as nominees of the Fijian ruling elite.

The worst discrimination, however, occurs in relation to parts of the Fijian population. Of the 37 Fijian seats, 5 are allotted to the towns, and 32 to the provinces. At the 1986 census 33% of Fijians lived in the towns. So two thirds of Fijians get 32 seats, one third only five. In 1987 it was urban Fijians who voted in significant numbers for Dr. Bavadra. In addition, the provincial seats are unevenly distributed, heavily favouring the supporters of the regime particularly in the East and the North. Ba, with a population at the 1986 census of 55,000 is to have 3 seats, but so is Lau, Ratu Mara's home base, with a population of 14,000. Rewa/Naitasiri which returned a Fijian who became a member of Dr. Bavadra's Cabinet is to have 4 seats for a population of 98,000 while Namosi will have 2 for 4,000.

There is still another obstacle facing indigenous Fijians. While all voters by section 49(4) must have two years' residence in the constituency in which they are enrolled, section 49(6) requires Fijian voters to be enrolled or establish that they are eligible to be enrolled in the "Vola Ni Kawa Bula", the register of Fijians in their traditional clan units.

A great many of them are not so enrolled. Not only have one third of the Fijians moved into the towns, but many have moved to other provinces. Many of these Fijians have sought in this way to escape the burdens and restrictions of the communal system under chiefly rule. The "Report of the Fiji Constitution Inquiry and Advisory Committee 1989" (the Manueli report) remarked:

"The Committee notes that a considerable number of Fijians live in rural areas of other Fijian provinces, and, as such, would not fulfil the requirements for registration as urban Fijian voters. They could well be disenfranchised if not catered for in another way. The Committee also notes that a considerable number of Fijians, many of them adults, are not registered in the VKB [Vola ni Kawa Bula]... The complicated and lengthy process to be followed to register these adult Fijians in the VKB could inhibit a sizeable number of Fijians from voting. They will therefore be ineligible to vote as Fijians."

Precisely. The "interim government" consulting only with the Council of Chiefs appointed by them, has ignored the problem raised by its own committee, in order to force Fijians to "re-establish their traditional ties with their own provincial communities" (above). It is clear therefore that significant numbers of Fijians will be unable even to vote despite the claim of the army and the military backed regime that the overthrow of the elected government and subsequent rule by military-backed decree have been undertaken to protect and advance the indigenous Fijians.

The Government is required to maintain a majority in the House

of Representatives but given the way that voting rights and electorates have been arranged, there is no risk of the present regime failing to secure a majority.

All money bills must originate in the Representatives, and for bills originating in the Representatives the Senate only has delaying powers except in the case of bills altering the operative parts of the constitution; for those, such as the composition of the houses, the position and powers of the President, the distribution of seats, any alteration must pass with a vote of two-thirds of the members of both houses, and the two-thirds in the Senate must include the votes of at least 18 of the 24 members appointed by the Council of Chiefs. The same requirement applies to alterations to laws governing the constitution of provincial councils and the Council of Chiefs.

The Manueli Report contended that provided fundamental rights and freedoms (other than equal voting rights) were enacted in the constitution it should function successfully "despite such disproportionate representation." Chapter II of the Constitution sets out these rights and freedoms, but in many cases there are unacceptable qualifications. Freedom of expression may be limited by laws "for the purpose of protecting the reputation, the dignity and esteem of institutions and values of the Fijian people, in particular the Bose Levu Vakaturaga [Great Council of Chiefs] and the traditional Fijian

system and titles". Freedom of movement may be modified by laws restricting movement or residence in Fiji of persons or any class of persons "in the interests of defence, public safety or public order". To alter the provisions of Chapter II a two-thirds majority of both Houses is required, but Chapter II may be set aside by an act invoking special powers against "subversion" passed by simple majorities or by the President declaring a state of emergency. Given recent history in Fiji where guarantees of rights in the 1970 Constitution were set at naught by military coups there can be no confidence in the guarantees of rights offered by Chapter II.

That view must be strengthened by the provision in section 94 for the "Republic of Fiji Military Forces". Section 94(3) reads:-

"It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well being of Fiji and its peoples."

This is a recipe for continued military intervention in the life of the community.

To sum up: This examination of the constitution reveals that it is an elaborate attempt to clothe entrenched rule by a self perpetuating feudal oligarchy with the trappings but not the reality of representative government, denying to a large

majority of the people, particularly a large proportion of indigenous Fijians and the overwhelming majority of Indo-Fijians, an effective and equal voice in the choice of those who should govern them and the laws by which they should be bound.

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