

**SUBMISSION TO THE  
COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
CONCERNING THE REPUBLIC OF  
THE FIJI ISLANDS**

**Endorsed by three Fiji Non-Government Organisations**

**AUGUST 2007**

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## **ACKNOWLEDGEMENTS**

It is noted that in response to a request by the Committee on the Convention on the Elimination of Racial Discrimination (CERD), the Fiji Government submitted its 2005 and 2006 reports together in one document, on 20 June 2006.

The purpose of this submission is to assess, from the civil society point of view, the quality and extent of the efforts made by the Government of Fiji since 2002, in order to comply with its obligations under the CERD Convention. 2002 was the year that the Fiji Government last made its submission to the Committee.

The initial draft report was prepared for the Citizens' Constitutional Forum (CCF) by a consultant, Mr Jagjit Singh, a long-time researcher and lecturer in the area of research methodology, at the University of the South Pacific, Suva, Fiji.

This report, initiated by the Citizens' Constitutional Forum, also received input and endorsement from the Ecumenical Centre for Research, Education and Advocacy (ECREA), and Women's Action for Change (WAC), which are two non-government organisations (NGOs) that work with marginalised groups in Fiji. Further input was sought from all NGOs that are members of the NGO Coalition on Human Rights (NGOCHR) in Fiji. However, further input promised by other NGOs were not received in time to be included in this report. Therefore, this report is endorsed by three NGOs in Fiji, namely: CCF, ECREA and WAC.

The CCF gratefully acknowledges the funding received from the European Union, which enabled them to prepare this report.

## ABBREVIATIONS AND SHORT FORMS

Unless the context indicates otherwise, abbreviations and short forms used in this submission have the following meanings:

ALTA	<i>Agricultural Landlord and Tenant Act (Cap. 270)</i>
AusAID	Australian Agency for International Development
CCF	Citizens' Constitutional Forum Limited
Committee Convention	Committee on the Elimination of Racial Discrimination International Convention on the Elimination of All Forms of Racial Discrimination
ECREA	Ecumenical Centre for Research Education and Advocacy
EED	<i>Evangelischer Entwicklungsdienst e.V.</i>
FHRC	Fiji Human Rights Commission
FLP	Fiji Labour Party
Government	Government of the Republic of the Fiji Islands
NGO	non-government organisation
NLTA	<i>Native Land Trust Act (Cap. 134)</i>
NLTB	Native Land Trust Board
NZAID	New Zealand's International Aid and Development Agency
PRTU Bill Report	Promotion of Reconciliation, Tolerance and Unity Bill 2005 sixteenth and seventeenth periodic reports of the Government of Fiji under the Convention, submitted in one document
RFMF	Republic of Fiji Military Forces
SDL	<i>Soqosoqo Duavata ni Lewenivanua</i>
USP	University of the South Pacific

## EXECUTIVE SUMMARY

This report responds to the concluding remarks of the 2003 Committee, where land were highlighted as major issues. While these were raised as major issues, they cannot be addressed without specific state attention to obligations under international conventions such as CERD, CEDAW, CRC; regional agreements such as the Biketawa Declaration and the Pacific Plan; and the Bill of Rights under Fiji's 1997 Constitution.

### *(1) Land & Squatter problems*

Race has been a critical factor in the Government policy on land ownership and land use in Fiji. The colonial government since its formation in 1874 had ensured that land remains in indigenous ownership. As a result, over 90 per cent of all lands in Fiji are owned communally by the indigenous people. Additionally, to protect the indigenous culture and traditions, the Colonial Government restricted the use of the indigenes on European-owned plantations. The ensuing labour shortage on sugar cane and coconut plantations was resolved with the introduction of indentured labourers (*girmityas*) from India. As a result, most Indo-Fijian farmers (descendents of *girmityas*) remain tenants of indigenous landowners.

The tenancy agreements between the Indo-Fijians and the indigenous landowners are brokered by the Native Landlord Trust Board (NLTB), an institution created by the Colonial Government in 1940. Some twenty years later (1966), security of tenure was provided under Agricultural Landlord and Tenants Act (ALTA). Under ALTA, thirty year leases were granted to Indo Fijians on indigenous owned land. Most of these leases are now expiring with thousands of Indo Fijians facing evictions as a consequence non renewals. Between the period 1997 to 2028, over 13,100 ALTA leases will expire. The State party under an indigenous Prime Minister (Lasenia Qarase) had been preoccupied through *Talanoa* (discussion) sessions in dealing with increases in land rents and in trying to revert the small amount of Freehold and Crown land, back to native titles.

Additionally, the State party (Qarase-led Government) was embarking on new land bills that would have had a devastating effect on Indo-Fijians and other ethnic minority groups in Fiji, such as descendents of Solomon Islanders, Rabi, Kioa, Chinese, Europeans and Part-Europeans and others. These were the so called *Qoliqoli* and Indigenous Tribunal bills. These bills would have placed greater restrictions on non-indigenous people over the ownership and the use of lands and the sea in Fiji. There was a lot of opposition to these bills from civil society, opposition parliamentarians, the private sector, as well as the Republic of Fiji Military Forces (RFMF). The *Qoliqoli* Bill was one of the stated reasons given by the RFMF for their overthrow of the Qarase Government on December 5, 2006. The current State party with Commodore Bainimarama as Interim Prime Minister has in effect nullified the controversial *Qoliqoli* and indigenous tribunal bills that would have created further tensions in already strained race relations in Fiji.

### *(2) Suicide & attempted suicides, affirmative action plans, reconciliation tolerance & unity bills, acts of sacrilege, racially- biased NLTB appointments and communal voting*

Similar to previous governments since independence, the Qarase-led Government did not take any positive action to promote a national identity that could have conceivably united all races. It commenced its term in 2001 with 29 affirmative action plans under the Blueprint document (justified through the Social Justice Chapter of the 1997 Constitution), exclusively designed to benefit indigenous people. It further justified these programs by the argument that majority of disadvantaged people lived in rural areas, most of whom were indigenous people. The reality of the situation however, is that some of the poorest and most needy people in the rural and urban areas are Indo-Fijians and other minority ethnic

groups. In short, the affirmative action programs of the State party were race - rather than needs - based. The 10-yearly national population census due to be undertaken in 2006, was postponed by the then government, which means that programmes could not have been based on current statistical realities.

In 2005, the Qarase-led Government started the process of passing the Promotion of the Reconciliation, Tolerance and Unity bill, which would have had the powers to grant amnesty to perpetrators of the 2000 coup. The Bill's sole purpose appeared to be to compensate and free coup perpetrators, with negligible attention given to the sufferings and losses of the main victims of the coup, majority of whom are Indo-Fijians.

The race-based attacks on non-Christian places of worship has continued unabated despite claims by the State that such attacks were for monies and jewellery kept inside the temples and mosques. This however fails to adequately explain the graffiti and desecration of holy books in these non-Christian places of worship.

The Great Council of Chiefs (GCC) being an indigenous Fijian institution, does not cater for interests of other ethnic groups. Similarly, all members of the Native Lands Trust Board (NLTB) are indigenous Fijians. This dichotomy in leadership has direct implications as these institutions are responsible for the administration of over 90 per cent of all lands in Fiji. There is no representation of the majority of the Indo-Fijian tenants who have been faced with mass-scaled evictions over the past decade.

The GCC nominates the President and 14 of the 32 Senators, as a guarantee of assurance of majority indigenous representation in the Upper House. Citizens of all other ethnic groups, with no representation in the GCC, are therefore excluded from the Presidential nomination process, which ideally should be inclusive of all citizens.

The most disturbing feature of racism in Fiji is the communal voting system inherited from the Colonial Government. The communal voting is the root cause and symbol of the continuing political instability in Fiji, as the division of seats along racial lines perpetuates a similar racist party system. This can be illustrated through the overt racism found in the administration of the 2006 national elections, where most of the polling stations were supervised by civil servants who are predominantly indigenous Fijians, thus raising the question of systemic ethnic bias.

'Hate speeches' harbouring racist comments were frequently aired under Parliamentary Privilege and more recently appeared as blogspots on the Internet. The Qarase Government had condoned the 'hate speeches' in the Parliament. The media, by reproducing racist material, has become a party to the perpetuation of racism in Fiji. The State has been aware of the high suicide and attempted suicide rate amongst Indo-Fijians; these sharply increased in the first three years after the 2000 coup. This has been attributed to feelings of helplessness and hopelessness felt by members of the Indo-Fijian community. It is yet to see how much success has been achieved through the steps taken to prevent suicides and attempted suicides with the formation of the National Committee for the Prevention of Suicides (NCOPS).

The consequences of racial discrimination in Fiji are: marginalisation from the mainstream decision-making processes, resource dispossession and poverty, increased violence such as home invasions and sacrilege. These consequences are manifested in migration, suicides and attempted suicides, increased violence within families and communities, gender-based violence – including violence against women and the girl child, – child abuse, and resentment, distrust, and cynicism within the marginalised groups in society, including Indo-Fijians.



## **1. INTRODUCTION**

### **1.1 About the NGO Coalition on Human Rights**

The NGO Coalition is a co-ordinating network for non-government organisations engaged in different aspects of human rights education, advocacy or project work. Its aim is to raise awareness in the community on human rights and the various human rights instruments. The Citizens' Constitutional Forum Limited (the CCF) is a non-government organisation (NGO) that advocates and educates for constitutional democracy, human rights and multiculturalism in Fiji. CCF believes the people of Fiji need to re-imagine themselves as citizens of a nation, ahead of their ethnic interests and categories, and strive to help them to do so. CCF also believes that organisations such as theirs can help to mobilise civil society and ensure a socially just, accountable and participatory democracy. The hope is that an active civil society will promote a better understanding of the diversity of Fiji's people, foster multiculturalism and strengthen Fiji as a nation.

The CCF is incorporated under the national laws of Fiji as a not-for-profit company limited by guarantee. Our funding is largely provided by international donors such as the European Union, the New Zealand's International Aid and Development Agency (NZAID), the *Evangelischer Entwicklungsdienst e.V.* (EED) or Church Development Service of the German Protestant Churches, Oxfam Community Aid Abroad – Australia, the Commonwealth Secretariat, the Australian Agency for International Development (AusAID) and the Department of State, USA. CCF has also receive funding and other support from local organisations and individuals in Fiji and works in partnership with Conciliation Resources, a London-based NGO with expertise in conflict transformation.

The CCF is not aligned with any political party.

### **1.2 Purpose and Scope of this Submission**

The purpose of this submission is to assess, from the point of view of the NGO Coalition on Human Rights, the quality and extent of the efforts made by the Government of the Republic of the Fiji Islands (referred to hereafter as "the Government" or "the State party") to comply with its obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* (the Convention). This submission focuses on developments since 2002, when the NGO Coalition on Human Rights last made a submission to the Committee on the Elimination of Racial Discrimination (the Committee).

### **1.3 Impact of Events Surrounding 5 December 2006**

Work on the present submission began in 2005, in the expectation that the Government would submit its sixteenth and seventeenth periodic reports under the Convention on or before 10 February 2006, as requested by the Committee. In the event, the Government submitted those reports, in one document (the Report), on 20 June 2006.

On 5 December 2006, before the Government's Report had been considered by the Committee, the Republic of Fiji Military Forces (the RFMF) executed a *coup d'état*, ousting the then Prime Minister and all other Cabinet Ministers from office, and dissolving Parliament. In early January



2007, the President swore in the Commander of the RFMF as Interim Prime Minister, along with 15 civilians as Interim Ministers. The stated objective of the military takeover was to “clean up” alleged corruption in, or condoned by, the pre-coup Government, alleged maladministration under that Government, and allegedly racist policies pursued by that Government. Some have suggested less praiseworthy motives. The Commissioner of Police, for example, who was ousted in the coup, claimed the RFMF Commander had wanted to stop police investigations into the alleged beating to death of rebel soldiers after the mutiny at Queen Elizabeth Barracks on 2 November 2000, in which he may have been personally implicated.

This was the fourth coup that Fiji has experienced in the past 20 years, after two military takeovers in quick succession in 1987 and one civilian-led coup in 2000. As with previous coups, it seems likely that a mixture of motives was present among the various individuals and groups involved in planning and executing the military takeover of December 2006. Certainly, there had been a gradual breakdown in relations between the military commander and the ousted Prime Minister over the preceding six years, and the NGO Coalition on Human Rights believes the causes of the conflict date back to Fiji’s previous coup, on 19 May 2000.

The point that may be of greatest interest to the Committee is that this latest coup differs from the earlier three in that the perpetrators of the 1987 and 2000 coups claimed they were acting to save indigenous Fijians and their land from subjugation to other ethnic groups, and overthrew Governments largely supported by Indo-Fijians, while in 2006 the RFMF Commander claimed to be acting to combat corruption, and overthrew a Government largely supported by the indigenous population. When the Commander used the word “corruption”, he clearly included Government policies that unfairly discriminated, in his view, against non-indigenous people. The 2006 coup is therefore the first one to be purportedly justified, not by indigenous Fijian concerns, but by concern for the interests of other ethnic groups in the country.

At the time of writing, there has not been any indication from the Interim Government as to what action it might take concerning the Report submitted by the deposed Government.

The present submission has been updated, where possible, to reflect the actions and policies of both the pre-coup and post-coup Governments.

#### **1.4 Recent History of Reporting by Fiji Under the Convention**

It is appropriate to begin with an account of the recent history of reporting by Fiji under the Convention.

Prior to 2002, no Government of Fiji had submitted a report under the Convention since 25 October 1982. Given this 20-year lapse by the State party in compliance with its obligations, it was to the credit of the then Government that, in January 2002, an advertisement was placed in one of Fiji’s newspapers expressing its intention to submit a report to the Committee in that year, and inviting members of the public to contribute to the report by making submissions to the Ministry of Foreign Affairs and External Trade. Shortly thereafter, an officer of that Ministry approached the CCF and personally invited it to make such a submission. The CCF decided to do so through the NGO Coalition on Human Rights, which made a lengthy submission to Fiji’s Ministry of Foreign Affairs and External Trade in July 2002. Some members of the coalition also made individual submissions.

In the event, the Government did not complete its report in time for the Committee's sixty-first session, from 5-23 August 2002, so the NGO Coalition on Human Rights and others decided to address their submissions directly to the Committee. The Committee then conducted a preliminary dialogue with representatives of the Government on 8 August 2002, based on the submissions of NGOs and a draft report prepared belatedly by the State party.<sup>1</sup> During that dialogue, the State party undertook to complete its sixth to fifteenth periodic reports in one document and submit them to the Committee in time for its sixty-second session from 3-21 March 2003. The Committee also urged the State party, and the State party expressed an intention, to consult with NGOs in the completion of this document.

However, the Government submitted its sixth to fifteenth periodic reports to the Committee on 15 November 2002, without consulting NGOs. The Ministry of Foreign Affairs and External Trade then convened a meeting with members of the NGO Coalition on Human Rights to discuss the reports on 7 February 2003. From the CCF's point of view, this meeting was unproductive as Government representatives did not respond to the concerns raised by representatives of the NGO Coalition. In any case, the meeting was held some months after the Government's reports had been submitted to the Committee, and therefore too late to influence their contents. It is hard to escape the conclusion that this meeting was intended only to enable the State party to represent to the Committee that it had consulted with NGOs before the Committee's sixty-second session.

The concluding observations adopted by the Committee concerning Fiji at its sixty-second session record its appreciation, on the issue of consultation with NGOs, "that human rights non-governmental organizations were consulted in the compilation of the [State party's] report".<sup>2</sup> As just explained, despite the intention expressed to the Committee by the State party in 2002, no such consultation in fact took place. The Committee was therefore misled.

Its concluding observations then go on to record "the assurances that the State party would continue this dialogue in the future",<sup>3</sup> and later in the same document the Committee also recommended that the Government should "consult with organizations of civil society working to combat racial discrimination during the preparation of the next periodic report."<sup>4</sup>

Fiji's sixteenth and seventeenth periodic reports under the Convention were due on 10 February 2006. The CCF wrote to the Minister for Foreign Affairs and External Trade on 9 November 2005, asking whether there would be any consultation on these reports with NGOs. Although the CCF did not receive a reply to that letter, a statement released by the Government on 23 November 2005 indicated that a draft of the Report had been presented to Cabinet and was expected to be submitted to the Committee on schedule.<sup>5</sup> The then Government is again to be commended for seeking to comply with its reporting obligations under the Convention, where successive previous Governments had failed to do so.

In preparing its Report, the State party also held three consultations with NGOs: on 31 January, 21 February and 14 March 2006. This was a dramatic improvement on its attitude and

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<sup>1</sup> A record of this dialogue is provided by the concluding observations adopted by the Committee on 19 August 2002: CERD/A/57/18, paras 471-476.

<sup>2</sup> CERD/C/62/CO/3 (2 June 2003), para 7.

<sup>3</sup> Ibid.

<sup>4</sup> Id, para 30.

<sup>5</sup> "ICERD report for submission in 2006", 23 November 2005, <[www.fiji.gov.fj/publish/page\\_5836.shtml](http://www.fiji.gov.fj/publish/page_5836.shtml)>.

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performance in 2002, and realised the good intentions expressed by the State party's representatives when they met with the Committee in 2002 and 2003. While the Ministry of Foreign Affairs and External Trade declined to release the draft Report for NGOs' to comment on, it did ultimately release significant portions of the draft during the consultations. As in 2003, Government representatives remained largely unresponsive to concerns raised by representatives of the NGOs. However, the NGO Coalition was nonetheless pleased to see the Government institute a practice of public consultation on its Report under the Convention, which we hope will be further developed in the future. We also hope it will be replicated for Fiji's reports under other human rights treaties to which it is a party, such as the *Convention on the Elimination of All Forms of Discrimination against Women* and the *Convention on the Rights of the Child*.

Following the consultations, a statement released by the Government on 25 April 2006 indicated that the final version of the Report had been endorsed by Cabinet<sup>6</sup> and, as mentioned earlier, it was submitted to the Committee on 20 June 2006.

It is relevant to note here that the Committee had also recommended at its sixty-second session that "the State party's reports [should] be made readily available to the public from the time they are submitted to the United Nations and that the observations of the Committee on these reports [should] be similarly publicized."<sup>7</sup> As far as the NGO Coalition on Human Rights is aware, no Government of Fiji to date has ever made any effort to publicise its periodic reports under the Convention or any of the Committee's concluding observations concerning Fiji.

On a more positive note, an Opposition member of Fiji's Parliament, Dr Ganesh Chand, recently compiled several submissions and Government reports to the Committee concerning Fiji, along with the Committee's concluding observations, the Convention itself and related material, for publication in a volume entitled, *Papers on Racial Discrimination*.<sup>8</sup> This work was published in Fiji in 2005, with financial assistance from the Canadian Development Agency. A second volume published the following year compiles relevant national legislation, Government policies and a 2006 report of the Fiji Human Rights Commission on affirmative action.<sup>9</sup>

## **1.5 Issues Addressed in this Submission**

As already stated, the purpose of this submission is to assess, from the CCF's point of view, the quality and extent of the efforts made by the Government of Fiji since 2002 to comply with its obligations under the Convention. In order to make the best use of the limited resources available to us for this task, we have decided to focus on the concerns raised in the concluding observations on Fiji adopted by the Committee at its sixty-second session. Where possible, we have also updated statistical information provided in the submission made by the NGO Coalition on Human Rights to the Committee in 2002. However, we have not tried to revisit the whole range of issues raised in that earlier submission. We hope that it is still available to members of the Committee, should they wish to refer to it for background information.

Accordingly, this submission addresses the following issues:

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<sup>6</sup> "Cabinet endorses Fiji's 16th CERD Report", 25 April 2006, <[www.fiji.gov.fj/publish/page\\_6605.shtml](http://www.fiji.gov.fj/publish/page_6605.shtml)>.

<sup>7</sup> CERD/C/62/CO/3 (2 June 2003), para 32.

<sup>8</sup> The full citation is Chand, Ganesh, editor, (2005) *Papers on Racial Discrimination: Volume 1: The CERD Papers*, Fiji Institute of Applied Studies, Lautoka (Fiji).

<sup>9</sup> Chand, Ganesh, editor, (2006) *Papers on Racial Discrimination in Fiji: Volume 2: Laws, Regulations, Policies*, Fiji Institute of Applied Studies, Lautoka (Fiji).

- Preferential Treatment of Coup Offenders and the Promotion of Reconciliation, Tolerance and Unity Bill 2005
- Failure to Form a Multi-Party Cabinet in Accordance with the Constitution
- Race-Based Affirmative Action
- Unresolved Land Issues and the Growth of Squatter Settlements
- Racialism in the Education Sector
- Disproportionate Emigration of Indo-Fijians
- Suicide Rates
- Government's Failure to Promote a National Identity that Unites Indigenous and Indo-Fijians
- Fiji Human Rights Commission

We had also planned to examine the under-representation of non-indigenous ethnic groups in the public service, the police and the military, but we have not been able to obtain useful statistics on this issue. We understand that the Fiji Public Service Association is preparing a separate submission to address it.

## 2. PREFERENTIAL TREATMENT OF LEADERS OF THE MAY 2000 COUP AND THE PRTU BILL

In the concluding observations adopted at its sixty-second session, the Committee underlined that it had not been provided with “in-depth information relating to the prosecutions of the authors of such acts, or on the adoption of preventive measures for the future”.<sup>10</sup>

It will be remembered that George Speight and other leaders of the attempted coup d'état in Fiji in May 2000 claimed that they were doing it for “the Fijian cause”. This was an emotional appeal to indigenous Fijians’ feelings of insecurity and fears of loss of cultural identity in the globalised modern world. The implication was that the indigenous Fijian community must retain political control of Fiji at all costs, or else be subjugated to other ethnic groups.

Commentators have observed, however, that the coup leaders were in fact a motley crew of failed businessmen and defeated politicians with much to gain personally from the overthrow of the multi-racial People’s Coalition Government that had been elected in 1999. The rebel soldiers who helped to execute the coup were allegedly paid handsomely for their work. While some who took part in the coup no doubt truly believed in “the Fijian cause”, its most powerful backers were more probably motivated by opportunism and self-interest. They deliberately exploited the widespread inter-ethnic prejudices and mistrust that exist in Fiji today, in order to manipulate popular opinion and gain support among indigenous Fijians.<sup>11</sup>

By the end of 2005, most of the “front men” of the May 2000 coup had been prosecuted, as had those who were sworn into George Speight’s illegal Government, along with others who committed crimes around the country in support of the coup. The coup’s financiers have not been identified, however, and questions remain over the extent of the conspiracy behind it, and the possible involvement of other indigenous political leaders, as well as Indo-Fijian businessmen.

The Fiji Police Force had stated publicly that it hopes to close its investigations relating to the coup early in 2006.

The investigation and prosecution of coup-related offences between 2000 and the present have been highly controversial throughout. In this submission, the CCF wishes to bring to the Committee’s attention a pattern of preferential treatment of coup leaders by the Government, culminating with its introduction into Parliament on 19 May 2005 of the Promotion of Reconciliation, Tolerance and Unity Bill 2005. This pattern includes several cases in which prominent indigenous Fijians continued to receive public salaries and other benefits of public office after being convicted by the courts for their involvement in the coup, and several cases where coup offenders were released early from prison, often after serving only a fraction of their sentences.

It should be noted at the outset that several individuals widely suspected of being involved in the coup were appointed to high public office (such as diplomatic postings) shortly afterwards, and a number of these have not been prosecuted and remain in office to date. The remainder of this chapter focuses on those who have been tried and convicted, however.

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<sup>10</sup> CERD/C/62/CO/3 (2 June 2003), para 23.

<sup>11</sup> See for example, Robertson, R, and Sutherland, W, (2001) *Government by the Gun: The Unfinished Business of Fiji’s 2000 Coup*, Pluto Press Australia, Sydney.

The CCF believes the preferential treatment of coup leaders is detrimental to inter-ethnic relations in Fiji, and also that it is likely to encourage future coups.

## **2.1 Preferential Treatment: Identifying a Pattern**

Seven of the most blatant cases to date are described below, and then tabulated in Table 2.1.

- On 6 August 2004, five co-accused were convicted for swearing oaths to join George Speight's illegal Government. The swearing-in ceremony had been televised nationally during the hostage crisis. Several of the participants also assumed high public office after the coup. One of these was Ratu Jope Seniloli, who had purportedly been sworn in as the President of Fiji under Speight, and at the time of his trial was serving as Vice-President. The court sentenced Ratu Jope to four years' imprisonment. He remained in office throughout the trial and after his conviction and imprisonment. He continued to receive a public salary and his family continued to reside in Government housing and to drive a Government vehicle reserved for the Vice-President. Ratu Jope was released from prison on 26 November 2004 under a compulsory supervision order. At that time he had served three months in prison – approximately 1/16 of his total sentence. The Minister for Justice, who issued the order for Ratu Jope's release, justified his actions by reference to Ratu Jope's medical condition, but refused to give any details. Ratu Jope then resigned from the office of Vice-President immediately, raising suspicions that a deal had been made. On resignation, he began to receive a public pension. The CCF challenged Ratu Jope's release in the courts. However, the case kept getting delayed, until finally, the case was abandoned because in the course of delay, Ratu Jope had completed serving his sentence outside prison (he served two-thirds of his sentence, one-third normally gets automatically deducted for good behaviour).
- Another of these co-accused was the then Deputy Speaker of the House of Representatives, Ratu Rakuita Vakalalabure. The court sentenced him to six years' imprisonment for swearing an oath to be Speight's Attorney-General. Despite a provision in Fiji's *Constitution (Amendment) Act 1997*<sup>12</sup> that causes members of Parliament to automatically vacate office if they are serving a term of imprisonment of one year or more, Ratu Rakuita continued to be paid a public salary until some time in 2005, when the Speaker of the House finally declared his seat vacant due to failure to attend Parliamentary sittings.
- A third co-accused tried and convicted along with Ratu Jope and Ratu Rakuita was Viliame Savu, who had been sworn in as another of Speight's Cabinet Ministers. Mr Savu received a sentence of 12 months' imprisonment, but was released in January 2005 to carry out community work under an order of extramural punishment.
- On 24 November 2004, Ratu Inoke Takiveikata, a Senator in the Upper House of Fiji's Parliament, was convicted of inciting and aiding in the mutiny at the Queen Elizabeth Barracks in November 2000. The mutineers themselves were soldiers in the Counter Revolutionary Warfare Unit, many of whom had also been implicated in the coup. Ratu Inoke was sentenced to life imprisonment. The CCF's information is that he purported to

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<sup>12</sup> Unless otherwise specified, all references in this submission to the Constitution, constitutional provisions, and so on, are references to the *Constitution (Amendment) Act 1997*.

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remain in office, and continued to receive a public salary, until October 2005, when the President of the Senate declared his seat vacant. As with Ratu Rakuita, this was despite the constitutional provision causing members of Parliament who are imprisoned for a year or more to vacate office automatically.

- Ratu Naiqama Lalabalavu, the then Minister of Lands and Mineral Resources and a member of the House of Representatives (MP), was convicted of unlawful assembly on 4 April 2005, along with Ratu Josefa Dimuri, another Senator. Their offence was leading the takeover of the Labasa army barracks during the coup. Both men were sentenced to eight months' imprisonment, and both were released to extramural punishment after spending just 10 days in prison. Ratu Naiqama resigned from Cabinet shortly after his conviction, but he and Ratu Josefa retained their seats in Parliament. When the two completed their sentences in September 2005, the Prime Minister appointed Ratu Naiqama as Minister for Transport and Civil Aviation.
- On 27 September 2005, a third Senator, Apisai Tora, was convicted with 11 others on unlawful assembly for seizing a military checkpoint at Nadi during the coup. Mr Tora was sentenced to eight months' imprisonment, but released on November 18 under a compulsory supervision order, purportedly for health reasons.

**TABLE 2.1:** Cases of preferential treatment of coup leaders

Name	Offence	Position at Time of Conviction	Term of Imprisonment	Retained Salary after Conviction	Early Release
Ratu Jope Seniloli	illegal oath	Vice-President	4 years	Yes	Yes (after 3 months)
Ratu Rakuita Vakalalabure	illegal oath	MP and Deputy Speaker	6 years	Yes	Still appealing conviction
Viliame Savu	illegal oath	Prisoner	12 months	N/A	Yes (after 5 months)
Ratu Inoke Takiveikata	inciting and aiding mutiny	Senator	Life	Yes	Still appealing conviction
Ratu Naiqama Lalabalavu	unlawful assembly	MP and Minister	8 months	Yes	Yes (after 10 days)
Ratu Josefa Dimuri	unlawful assembly	Senator	8 months	Yes	Yes (after 10 days)
Apisai Tora	unlawful assembly	Senator	8 months	Yes	Yes (after 2 months)

In order to prove incontrovertibly that the above cases involved racial discrimination, it would be necessary to gather evidence of comparable cases where members of other ethnic groups were treated less favourably. The CCF does not have the resources to perform that task. However, we are not aware of any other case, either in Fiji or abroad, where a member of Parliament or other high public office holder has retained the salary or other benefits of office after conviction and imprisonment for an offence. The Government's justification for this treatment, when it has given any, has been that the prisoner in question was appealing against his conviction and was therefore still entitled to the presumption of innocence. This is a basic error of law.

The anecdotal information available to us from prisoners and ex-prisoners in Fiji also suggests that the Prisons Department tends to be slow in processing applications for early release, and that it is usually only granted towards the end of the prison term. The CCF has been informed of a number of cases where prisoners have been denied early release despite medical conditions that were potentially life-threatening, and in one case of a prisoner who died in custody despite having sought early release on health and compassionate grounds. The seven cases described above exhibit a pattern that is in stark contrast to these anecdotes.

## **2.2 Promotion of Reconciliation, Tolerance and Unity Bill 2005**

The Government introduced the Promotion of Reconciliation, Tolerance and Unity Bill 2005 (the Bill) into Parliament on the fifth anniversary of the May 2000 coup. Copies of the Bill can be downloaded from the website of the Parliament of Fiji.<sup>13</sup> A summary of the main provisions of the Bill is included as Appendix A to this submission. The complete Bill was referred to a Parliamentary committee in June 2005 for public consultation after widespread protests from civil society and legal bodies. CCF and many other organisations and individuals made submissions. The committee reported back to the Lower House in Fiji's Parliament in November 2005. The bill was quietly shelved in February 2006, in the lead-up to the May 2006 elections, but the re-elected SDL government brought it back.

<sup>13</sup> <[www.parliament.gov.fj/parliament/legislative/bills.aspx?billID=247&viewtype=full&billnav=bill](http://www.parliament.gov.fj/parliament/legislative/bills.aspx?billID=247&viewtype=full&billnav=bill)>.



Essentially, the Bill proposed to establish for Fiji a commission modelled on the South African Truth and Reconciliation Commission, with powers to grant compensation to victims and amnesties to perpetrators of crimes committed in connection with the coup.

The introduction of the Bill provoked a public uproar. The army, the police, the Director of Public Prosecutions, the Fiji Law Society, the Fiji Institute of Accountants, and many others (including the CCF) all expressed their opposition to it. The focus of opponents' discontent is the proposal to grant amnesties to individuals who committed crimes in connection with the coup.

The Government argues that amnesties are necessary in order to put the coup behind us and unite the country. It portrays amnesties as a form of State-sponsored forgiveness, and an essential stage in the journey to national reconciliation. Opponents of the Bill argue that amnesties are unconstitutional and will undermine the rule of law, including the independence of the judiciary, police and prosecutors. They maintain that forgiveness is a personal matter for the victims of crime, not the State, and that Fiji needs rigorous justice, and not selective impunity, in order to discourage future coups.

For the purposes of the Convention, what the CCF believes is most relevant is that, in practice, the crimes for which amnesties could be granted under the Bill would be only those committed by indigenous Fijians in support of the coup. The proposed distribution of amnesties would therefore be racially discriminatory. The fact is that the May 2000 coup in Fiji, unlike the apartheid-era conflict in South Africa, was a profoundly one-sided affair. There are no known cases where Indo-Fijian or other non-indigenous Fijian perpetrators committed politically-motivated crimes in connection with the coup.<sup>14</sup> The following passage from the CCF's submission to the Parliamentary committee that conducted public consultations on the Bill may help to put this issue in context:<sup>15</sup>

"Much has been made by the Government of supposed parallels between its proposed Reconciliation and Unity Commission and the Truth and Reconciliation Commission in South Africa. But the fact of the matter is that the social, historical, political and legal context of South Africa in the early 1990s bears no comparison at all to the situation in which Fiji has found itself since the 2000 coup.

South Africa was emerging from decades of white minority rule, when the indigenous African majority was denied the vote. *By contrast, Fiji has been a democracy for most of the 35 years since it gained independence from the United Kingdom. Political parties and coalitions dominated by indigenous Fijians have consistently governed throughout that time.*

The apartheid era was characterised by gross inequality and widespread violence and civil unrest. Human rights abuses were committed both by the government and opposition groups. *With the conspicuous exception of the coups in 1987 and 2000, Fiji has enjoyed relative calm and peace in the post-independence era. The coups were led by disaffected indigenous Fijians.*

The interim Constitution adopted by the South African Government in 1993 called for Parliament to enact a law that would allow amnesties to be granted, and reparations provided, for crimes

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<sup>14</sup> In fact, the CCF is not aware of any politically-motivated, violent crime committed by a non-indigenous perpetrator in all of Fiji's post-independence history.

<sup>15</sup> The entire submission, entitled "Submission to the Sector Standing Committee on Justice, Law and Order Regarding the Promotion of Reconciliation, Tolerance and Unity Bill 2005" (June 2005), is available on the CCF's website at <<http://www.ccf.org.fj/conference.php>>.

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associated with political objectives that were committed under apartheid. *Fiji's current Constitution was purportedly abrogated during the May 2000 coup. It certainly did not make any provision for amnesties or reparations for crimes committed in connection with the coup.*

What is it then that Fiji has in common with South Africa? Certainly, both countries have problems associated with race relations. But beyond that superficial likeness, the nature and extent of their problems differ widely. Their circumstances could hardly be more different.

The fact that South Africa's 1993 Constitution specifically contemplated the granting of amnesties indicates that this had been agreed between the National Party, led by then State President De Klerk, and Mandela's African National Congress – being the two major political parties of the day. The *Promotion of National Reconciliation and Unity Act 1995*, which established the Truth and Reconciliation Commission, was passed by an overwhelming majority in the new South African Parliament. It was the ANC Government, representing victims of apartheid, that introduced the Act.

In Fiji, by contrast, the only political party that might have some claim to represent victims of the May 2000 coup, the Fiji Labour Party, has boycotted Parliamentary debate on the present Bill and its consideration by this Committee! The SDL and CAMV coalition cannot claim to represent victims of the 2000 coup. It was the coup that brought them to power. It must be remembered that the Fiji Labour Party would be in government today if it were not for the coup. In this sense, members of the current Government were the main beneficiaries of the coup. In fact, they are arguably the only people who benefited from it at all.

**What does this mean for the comparison with South Africa? It means that there simply is no comparison.”** (emphasis in original)

The CCF believes that the Promotion of Reconciliation, Tolerance and Unity Bill 2005 is a logical extension of the Government's preferential treatment of convicted coup leaders to date. If the Bill is passed (setting aside the possibility of a constitutional challenge), it will enable these leaders to apply for amnesties and thereby become entitled to immediate release and erasure of their convictions. More importantly, however, it would be likely to result in the abandonment by police and prosecutors of all outstanding coup investigations and prosecutions, because they would have no secure legal basis on which to proceed. In theory, only those willing to make a full disclosure to the proposed Reconciliation and Unity Commission could be granted amnesties. However, in practice, the prospect that suspects might seek amnesties at any time would make investigations and prosecutions unworkable. This means that backers of the coup who have not yet been convicted may never have to face justice. The CCF understands this has been the experience of police and prosecutors in South Africa.

### **2.3 STATE PARTY'S RATIONALE FOR RECONCILIATION, TOLERANCE AND UNITY BILL (RTU Bill)**

While 2.2 provides some in-depth information of court cases of the perpetrators of the 2000 coup, this section provides some insights into the State party's rationale for the RTU Bill.

*CERD: Concluding observations*

One of the concluding observations of the CERD Report<sup>16</sup> was that the Committee was deeply concerned about the damage to race relations caused by the 1987 and 2000 coups d'etat in Fiji. It was noted that the Committee encourages the State party to address perceptions that continues to politicize culture, identity and ethnicity in order to maintain Fijian hegemony.

The State party was of the view that political events of 1987 and 2000 were occasioned by a widespread belief among the indigenous Fijians that the 1970 and 1997 Constitution were inadequate to protect and preserve their rights and interests, their values, traditions, customs, way of life and economic wellbeing. Thus the RTU Bill was aimed at providing amnesty to a number of convicted Government Ministers, their supporters and those yet to be charged for the insurrection of May 2000. As a result, the Bill was a gross violation of the human rights of the victims of the coup.

The State party had not provided any serious rationale for introducing the reconciliation, tolerance and unity bill (RTU). Therefore any purported claims that it would improve race relations are far from true. The title of the 'Reconciliation, Tolerance and Unity Bill' is in itself misleading.

Like the Qoliqoli and the Native Lands Tribunal, RTU bill was racist in nature and was only withdrawn with the 2006 coup. However for records, it is worth noting that if anything, the State party had no intention of promoting a national identity with its land-related and RTU bills. Reactions of the concerned organizations to the RTU Bill are reported below.

Sanjay Ramesh in the Pacific Islands Report has provided an excellent critique of the Bill. The preamble of the Bill pre-empts the legal definition of political crimes. It states that the political events of 1987 and 2000 were occasioned by a widespread belief among the indigenous Fijians that 1970 and the 1997 constitutions were inadequate in protecting and preserving indigenous rights. Such a definition pre-empts to a certain extent the legal definition of political crimes. Thus the racial attacks on Indo-Fijians in rural areas of Dawasamu, Muaniweni, Korovou, Tailevu and parts of Northern Vanua Levu could be described as political because the hostage takers created a perception that the Chaudhry Government had 'failed indigenous Fijians.'<sup>17</sup>

It was further explained that a serious problem with the RTU Bill was the definition of victim. Victim was defined as a person who suffered harm as a result of a politically motivated crime. But in the application for relief section of the Bill, reparation was only payable to victims when amnesty was granted to a perpetrator. The State party was to use taxpayer's money to fund compensation and reparation under Section 20 of the Bill. This meant that the perpetrators of politically motivated crime could easily shift the burden of compensation and reparation to the state. This would in fact encourage politically motivated racial crimes in future.

Both the Fiji Labour Party and Fiji Military Forces expressed concern at the discretionary powers vested in Reconciliation and Unity Commission which would have been appointed by the Prime Minister in consultation with the Leader of Opposition. The problem with this consultative process (given Fiji's recent history) is that the State party could easily evade

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<sup>16</sup> Concluding observations of CERD-United Nations Report, 2003

<sup>17</sup> O'Brien, M.2002. Recommendations to Commonwealth Ministerial Action Group on the Politics and Human Rights Situation in the Fiji Islands. Commonwealth Human Rights Initiative. New Delhi, India. [http://www.thecommonwealth.org/dynamics/press\\_office](http://www.thecommonwealth.org/dynamics/press_office)

consultations with the Leader of Opposition as it did over the selection of the Multiparty cabinet. The overall effect would have been that the Bill would further divide the diverse communities in Fiji.

Additionally, it was noted that the politically appointed Unity Commission could define restorative justice within the context of indigenous Fijian customary practices. This in effect could undermine the promotion of reconciliation because the crimes even though politically motivated (or inspired) were largely racial in nature and the victims were mostly Indo-Fijians. In short, the procedural framework for setting up the Commission was thus unfair and did not take into account the ethnic division and racial intolerance prevalent in Fiji.

The outgoing United States Ambassador to Fiji, David Lyons<sup>18</sup>, commented that the RTU Bill aimed at providing amnesty to a number of convicted Government Ministers, their supporters and those yet to be charged for the insurrection of May 2000. As a result, the Bill is a gross violation of the human rights of the victims of the coup

Commandore Frank Bainimarama observed that the Reconciliation and Unity Bill (RTU) would create further instability in the country. He observed that RFMF must stop the passing of the bill or get rid of the government if the bill is passed. The Royal Fiji Military Forces (RFMF) accused Prime Minister Qarase (of the State party) and Attorney General Bale of playing the race card deliberately for political reasons. RFMF believed that the chiefs had forgotten wise decisions and had also forgotten the rest of the multi-racial society within which we live.<sup>19</sup>

The CCF also opposed the RTU Bill for three main reasons:

- That the State party (Qarase Government) was being highly irresponsible in stating that it was okay to violently overthrow a democratically-elected (Chaudhry government) for an indigenous nationalist cause.
- Further, CCF was against the amnesty proposal because it would undermine the rule of law. It would undermine the hard work of Fiji's police, prosecutors and courts over the past four years in bringing the perpetrators of the coup to justice. It would damage the credibility of all those institutions and weaken their independence in the future. Besides being anti-democratic, the message of the amnesty proposal is also profoundly disrespectful of the rule of law. It suggests that the law does not apply equally to everyone and that it is sometimes okay to break the law. This is totally unacceptable and, again, highly irresponsible.
- CCF was also of the view that the Bill would not promote national reconciliation. In fact, it has already become a cause of division and dissent. The secrecy surrounding how it was drafted and the haste with which it was being rushed through Parliament contradicted the Government's claims that the Bill was an instrument of reconciliation. In addition, the Bill misrepresented traditional Fijian practices of restorative justice, and was completely one-sided.

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18 Ramesh, S, 2006 RECONCILIATION BILL AN INSULT TO VICTIMS OF FIJI COUP, Pacific Islands Development Program/East-West Center, University of Hawaii, Honolulu

19 Ramesh, S, 2006 "Military versus Government in Fiji," Pacific Media Watch  
<http://www.scoop.co.nz/stories/W00602/s00062.htm>

It has nothing to offer the victims of the coup. It does not provide them with any incentive to forgive. RTU bill does not require the perpetrators to express contrition or apologise.

#### Concluding Remarks

Healthy race relations are important for the good of all peoples in a multiracial country. In order to promote unity it is important that laws and policies are non-discriminatory. The Reconciliation, Tolerance and Unity Bill was designed to free and compensate the perpetrators of the 2000 coup and as such was unfair to the victims of the coup, most of whom were Indo-Fijians.

#### **2.4 Conclusions on Preferential Treatment**

Taken together, the preferential treatment of convicted coup leaders to date and the Bill constitute a concerted effort by the Government to excuse the backers of the coup from the ordinary legal consequences of their actions. This effort is racially discriminatory, in that its benefits are overwhelmingly enjoyed by indigenous Fijians and not the members of other ethnic groups. Of course, not all indigenous Fijians stand to benefit, but primarily a small group of wealthy and well-connected elites.

It is important to bear in mind that Fiji's Government from 2001 to 2006 was a coalition of former members of the interim civilian government installed by the military after the coup in 2000, who formed the Soqosoqo ni Duavata ni Lewenivanua (SDL) party, and the indigenous supremacist and pro-coup Conservative Alliance Matanitu Vanua (CAMV) party. Between them these two parties won a majority of seats in the 2001 national elections. In fact, George Speight successfully ran for election as a CAMV candidate while he was awaiting trial for treason. He was only prevented from assuming his seat because the Prisons Department refused to release him for the swearing-in ceremony. It should therefore be clear that the current SDL (2001-2006) Government had very close ties to the coup leaders – and, as described above, several Government members of Parliament, including Cabinet Ministers, had been convicted for their involvement in the coup. Essentially, then, the Government's effort to protect backers of the coup was an effort to look after its own. The CCF believes this is corrupt and offensive to the rule of law.

### **3. FAILURE TO FORM A MULTI-PARTY CABINET IN ACCORDANCE WITH THE CONSTITUTION**

The concluding observations adopted by the Committee at its sixty-second session included the statement that:<sup>20</sup>

“The Committee is deeply concerned that section 99 of the 1997 Constitution, which ensures power-sharing between ethnic communities through the creation of a multiparty Cabinet, is not currently being implemented. The Committee welcomes, however, the assurances given by the State party that it will comply with the Supreme Court ruling to be issued later this year on this matter.”

Appendix B to this submission sets out the full text of section 99. Essentially, the section calls for executive power to be shared between the governing political party or coalition and other major parties in Parliament. This is achieved by requiring the Prime Minister to invite all parties holding at least 10% of the total membership of the House of Representatives (8 or more seats, if all 71 seats are occupied) to be represented in the Cabinet. The overall size of Cabinet is left to the Prime Minister, but parties accepting the invitation to be represented must be offered Cabinet seats in proportion to their numbers in the House. The Prime Minister may also invite minor parties that do not fulfil the 10% requirement (such as a coalition partner) to be represented in his or her Cabinet, but if this is done then the representatives of those parties are deemed to be representatives of the Prime Minister’s party for the purpose of calculating the number of Cabinet seats that must be offered to parties that fulfil the 10% requirement.

As the Committee noted in 2003, the purpose of section 99 is to give all major political parties the opportunity to share executive authority. It is supposed to ensure that both indigenous and Indo-Fijians are represented in Cabinet, and to encourage political cooperation between them.

However, section 99 did not lead to the formation of a multi-party Cabinet after the national elections of 1999, and it has not done so in the term of the current Government. The underlying reason for this is that political parties have been unwilling to compromise in negotiations over the composition of Cabinet. In 1999, for example, the Soqosoqo ni Vakavulewa ni Taukei (SVT) party held more than 10% of seats in the House of Representatives, but its purported acceptance of Mahendra Chaudhry’s invitation to join his Cabinet was so laden down with conditions that the Supreme Court of Fiji later characterised it as a “declining” of the offer.<sup>21</sup>

As described in the submission made by the NGO Coalition on Human Rights to the Committee in 2002, there has been a succession of court cases concerning the interpretation and application of section 99. The CCF believes that this reflects the preference of current political leaders to litigate rather than negotiate.

Appendix C to this submission provides a time-line of litigation on the multi-party Cabinet issue from 1999 to date. Essentially, from the time of his appointment as Prime Minister in 2001, up until November 2004, Laisenia Qarase was in continuous breach of section 99:

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<sup>20</sup> CERD/C/62/CO/3 (2 June 2003), para 14.

<sup>21</sup> *President of the Republic of Fiji Islands v Kubuabola* (Supreme Court of Fiji, Tuivaga P, Lord Cooke, Mason, Brennan and Toohey JJ, 3 September 1999, Miscellaneous Case No. 1 of 1999), at p 22 of the joint judgment.

- In September 2001, Mr Qarase advised the President to appoint a Cabinet that excluded the Fiji Labour Party (the FLP), despite the fact that the FLP held more than 10% of seats in the House of Representatives and had accepted Mr Qarase's invitation to join his Cabinet.
- In February 2002, the Court of Appeal ruled that Mr Qarase's exclusion of the FLP from his Cabinet placed him in breach of section 99.
- In July 2003, the Supreme Court confirmed the Court of Appeal's ruling.
- Subsequent negotiations between Mr Qarase and the FLP broke down over the number of Cabinet seats to which the FLP was entitled. In July 2004, the Supreme Court explained the formula for determining how many Cabinet seats must be given to the FLP.
- Negotiations then broke down over which FLP members Mr Qarase would invite into his Cabinet, which portfolios they would be allocated and the overall size of the proposed Cabinet. In November 2004, the FLP announced that it had rejected Mr Qarase's latest offer and would contest the next national elections from the opposition benches.

The CCF believes that Mr Qarase and the leader of the FLP, Mahendra Chaudhry, must share the blame for the failure to form a multi-party Cabinet in the 2001 – April 2006 term of the SDL government. Mr Qarase acted illegally and unreasonably in excluding the FLP from his Cabinet. He took the view throughout that section 99 was unworkable. This exemplified his Government's overall lack of commitment to Fiji's current Constitution.

Mr Chaudhry, for his part, has pursued the issue of a multi-party Cabinet tirelessly through the courts, but when Cabinet seats were offered to the FLP in 2003 and 2004, he chose not to accept them, on the ground that the offers were inadequate. Certainly, this ground of objection was available. However, another option might have been to accept one of the offers, send FLP members into Cabinet, and continue to negotiate and/or litigate over the numbers, the names and the portfolios at the same time.

The CCF of course does not equate Mr Chaudhry's conduct over the multi-party Cabinet issue with that of Mr Qarase. The Government clearly bears the primary responsibility and blame. However, we do not ignore the fact that the FLP chose to "grandstand" on the issue at critical junctures rather than give a multi-party Cabinet a chance.

Given its troubled history, a growing number of commentators have been arguing that section 99 of the Constitution is a failure and should be amended. Some suggest that "forced" coalitions cannot work, and that the composition of Cabinet is not an appropriate matter for decision by the courts. This appears to reflect the Government's position. However, the CCF believes it is important to remember that the proposal to introduce multi-party Cabinet provided a critical point of agreement in negotiations over the text of the 1997 Constitution during its passage through Parliament. The CCF also believes that, despite weaknesses in its drafting, section 99 still holds out the hope of a new departure from the confrontational, racialised politics that has characterised all of Fiji's post-independence Parliaments. With only two brief exceptions in 1987 and 1999-2000, the Government benches have consistently been dominated by indigenous Fijians, and the Opposition by Indo-Fijians. Changing this dynamic, by whatever means, is vital to the country's future peace and prosperity.

## Manifestation of Discrimination: Elections, May 2006

### *CERD: Concluding observations*

There were no concluding observations of elements of racism in the general elections of May 2006. However section 18 of the CERD concluding observation expressed concern about the under-representation of Indo-Fijians and other ethnic minorities in the police, the army and other public services in general and recommends that special programmes be adopted to ensure appropriate representation of all ethnic communities in these services.

The credibility (or the lack of it) of any democratic state is in the manner in which elections are held. There are obviously many ways in which a State party could manipulate the electoral process to win an election. With respect to Fiji's last general elections (held in May 2006) questions are now being raised whether the elections were free and fair. Similar questions were raised during the 2001 general elections but there was no evidence to support the credibility of that claim. However a point to note is that most supervisors at the polling booths were indigenous Fijians. Additionally, the ballot boxes were transported and kept in the custody of district officers, most of who were indigenous Fijians.<sup>22</sup>

### *2001 General elections and aftermath*

The 2001 general elections were generally regarded as free and fair. The United Nations Fijian Electoral Observation Mission (UNFEOM) felt that the election results reflected the will of the people of Fiji. Some concerns however were expressed by civil society groups about the events leading up to the elections. In particular, the selective voter education that was provided by the State party favored the indigenous voters.<sup>23</sup>

The Commonwealth Observer Group, headed by Sir Henry Forde QC MP, reported however that the general election had not been perfect in every respect, but the Group was of the view that the election commanded the confidence of the people of Fiji. The Observer Group went further to say that conditions 'did exist for a free expression of will by the electors and that generally the results of the elections reflected the wishes of the people.'<sup>24</sup>

While there was no evidence of fraud during the 2001 elections, ethnic and racial prejudice began to surface in the formation of the cabinet. The State party refused to follow the Constitution with respect to the formation of the Multiparty Cabinet. The leader of the State party (Prime Minister: Lasenia Qarase) refused to follow Section 99(5) of the 1997 Constitution which requires the Prime Minister to invite every political party that secures ten percent or more seats in Parliament to join the cabinet. The aim of this provision is to ensure that all parties, irrespective of ethnic background, work together for the common good of the country.

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<sup>22</sup> Concluding observations of CERD-United Nations Report, 2003

<sup>23</sup> O'Brien, M.2002. Recommendations to Common Wealth Ministerial Action Group on the Politics and Human Rights Situation in the Fiji Islands. Common wealth Human Rights Initiative. New Delhi, India. [http://www.thecommonwealth.org/dynamics/press\\_office](http://www.thecommonwealth.org/dynamics/press_office)

<sup>24</sup> 29 30 O'Brien, M.2002. Recommendations to Common Wealth Ministerial Action Group on the Politics and Human Rights Situation in the Fiji Islands. Common wealth Human Rights Initiative. New Delhi, India. [http://www.thecommonwealth.org/dynamics/press\\_office](http://www.thecommonwealth.org/dynamics/press_office)



In the 2001 elections, the State party (SDL) won 31 seats in the 71-seat parliament while the Fiji Labour Party (FLP) won 27 seats. As no party won a clear majority, the government had to be formed by entering into a coalition with other parties.<sup>25</sup>

However, on being sworn in as Prime Minister, the leader of the State party (Lasenia Qarase) refused to allow Mahendra Chaudhry as leader of the Labour Party to join his cabinet. The leader of State party was of the view that the Multiparty Cabinet provisions of the Constitution were 'unworkable.' Chaudhry expressed his concerns saying that a government which does not have a representative in the Cabinet from the second largest party in Parliament, was consigning 44 percent of the population (namely the Indo-Fijian community) to permanent opposition.

Qarase's failure to adhere to the 1997 Constitution resulted in Chaudhry commencing legal proceedings seeking a declaration that the government had been formed illegally. The Fiji Court of Appeal which heard the case declared (15 February 2002) that the cabinet of Prime Minister Qarase had been formed illegally as it did not include representatives from the Fiji Labour Party (FLP). In accordance with this court ruling, the State party was required to invite the FLP to join his cabinet. The State party however continued to deny FLP parliamentarians a place in the Cabinet until after the May 2006 elections.<sup>26</sup>

These actions of the Prime Minister were of grave concern to human rights workers. Even before the 2001 Parliament had sat, the leader of the State party was willing to disregard the 1997 Constitution and the rule of law when it did not suit their nationalist aspirations to further consolidate and reinforce indigenous paramountcy. These actions of the State party in reserving political power or positions to particular ethnic groups were considered a direct violation of international law.<sup>27</sup>

Failure to honour the power sharing provisions of the Constitution meant that the State party did not meet its obligations under the *Harare Declaration*. There was also a feeling in some quarters that because of the actions of the State party, Fiji should remain suspended from the councils of the Commonwealth until a constitutionally appropriate government is formed. This, however, did not take place.

## **2006 General elections (Refer to table1 for results)**

It was reported that as Fiji headed towards elections in May 2006, the SDL absorbed the nationalist CAMV and went to polls with an agenda to divide Indo-Fijians along religious lines. A large number of SDL's Indo-Fijian candidates were Muslims while FLP candidates were predominantly Hindus. It was noted that such religion-based electioneering backfired when SDL failed to win a single Indo-Fijian communal seat.

Some politicians have alleged that there have been irregularities in voter registrations prior to the elections. United Peoples Party leader Mick Beddoes alleged in September 2005 that

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<sup>25</sup> O'Brien, M.2002. Recommendations to Common Wealth Ministerial Action Group on the Politics and Human Rights Situation in the Fiji Islands. Common wealth Human Rights Initiative. New Delhi, India. [http://www.thecommonwealth.org/dynamics/press\\_office](http://www.thecommonwealth.org/dynamics/press_office)

persons of multiracial ancestry were being encouraged by electoral officials to register on the indigenous communal roll, rather than the General Electors roll. While the Constitution empowers persons of multiple ethnic origins to decide for themselves which roll to choose, Beddoes claimed that officials were providing prospective voters with registration forms only for the indigenous and Indo-Fijian rolls, not the General Electors' one.

The Fiji Human Rights Commission (FHRC) was of the view, that the Elections Observer Groups reports were unreliable, because they were based on limited assessment of the actual voting process. The majority of the Observer Groups arrived shortly before elections and left shortly after. FHRC noted that in future, if Fiji is to employ the services of Elections Observer Groups, their methods of work should be reviewed as a matter of policy.

The 2006 General Election Audit Workshop held by CCF on Saturday 17<sup>th</sup> June 2006, concluded, that observers simply do not have enough official information to make final conclusions. There is no adequate information available on the disbursement of funds and information on registered voters is not readily available to observers.<sup>28</sup> A lot of inconsistency was reported in the workshop, mainly cited as due to validity of votes being determined by consensus in the Polling Team. There was a recognition of the high percentage of invalid votes which could have affected the outcome of the votes. There was a lot of reports of voters claiming they were registered on the wrong roll, or that they had registered but their names were not on the roll – many of these complaints were anecdotal and many were official. There were reports that the enumerators were mainly indigenous Fijians and therefore, this could have contributed to the high number of wrongful registration of Indo-Fijian, part-European and other ethnic group voters. However, there is no concrete evidence to prove that people were deliberately not registered or wrongfully registered, in order to disenfranchise them or to deny votes to a particular ethnic group. Although reports have claimed otherwise, CCF believes these claims have yet to be proven beyond reasonable doubt.

### *Concluding Remarks*

While in the general election of 2001, there was no concrete evidence of fraud, the State party (the Coalition *Soqosoqo Duavata Lewenivanua* (SDL) and the Conservative Alliance Matanivanua (CAMV)) continued to deny Indo-Fijians their constitutional right to be represented in the Cabinet. In the May 2006 general election [refer to appendix 3] out of the total 71 seats, the State party won 36 seats while the Fiji Labor Party (FLP) won 31 seats with the remaining 4 seats shared between the Independents and the United Peoples Party (UPP). This time around, the State party (after a series of court cases), was compelled to include other parties (with over 10% seats) in the Multiparty Cabinet lineup. Unfortunately, however, the Multiparty Cabinet arrangement following the 2006 elections was disrupted with the December 5, 2006 coup d'etat. Perhaps this time around the coup was a 'blessing in disguise' because the Qarase Government may have used the Multiparty Cabinet to achieve two-thirds majority to pass its three controversial racist bills: Qoliqoli, Indigenous Claims Tribunal and the Reconciliation, Tolerance and Unity Bill (RTU). These bills would have further marginalized minority groups especially the Indo-Fijians and Europeans. In the case of Fiji in particular, unless and until the Constitution is revised and the communal voting is removed, political instability would continue.

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<sup>28</sup> CCF, 2006, Election Watch III – 2006 General Elections Audit Workshop.

## Manifestation of Discrimination: Hate Speeches

### *CERD: Concluding observations*

The concluding observation of the CERD expressed concern that according to some information, hate speech and assertions of the supremacy of indigenous Fijians regularly occur. It recommends that the State party adopt all necessary measures to put an end to the dissemination of doctrines of superiority based on ethnic origin, which are socially unjust and dangerous, as well as in breach of the Convention.

Despite the foregoing, the Prime Minister indulged in hate speeches and also condoned some members of his party, SDL, who made hate speech under Parliamentary Privilege, in the Lower House Parliament. Closer to the 2006 elections, the main political leaders exchanged accusations of "terrorism." Prime Minister Qarase called Opposition Leader Mahendra Chaudhry a "terrorist" on 15 February 2006, for allegedly using his travels abroad to discredit the Qarase government.<sup>29</sup>

Chaudhry reacted by saying that the Qarase government was full of terrorists. "There are people in his Government, ministers, who have been convicted of offences relating to the May 2000 coup," he said. He claimed that Qarase had won the 2001 elections by vote-buying and by hiding from the voters the role that many of his candidates had allegedly played in the 2000 coup.<sup>30</sup>

In another incident the leader of the State party referred to Chaudhry as being 'unstable and unfit' to lead the country. He also challenged Chaudhry to produce evidence of his allegations that there were terrorists serving in his government.<sup>31</sup>

In spite of the fact that there was a multi-party government after the May 2006 elections, the Fiji Labour Party on 14 June 2006, was reminded by SDL Parliamentarian Hon I. U. Matairavula, that,

"I wish to advise the leader of the FLP and his Cabinet Members that in the next five years, they must base their policy decision mainly at the SDL Manifesto and its values like:

- (a) respect for the *vanua*, cultures and tradition of the indigenous Fijians and Rotumans; and
- (b) recognition of the paramountcy of the indigenous and Rotuman interest as proclaimed in the Constitution.

.... I speak as one of the 23 Fijian communal representatives."

In Parliament on Friday 16 June 2006, SDL MP Hon M. Bulanauca, commented that, "All these mighty forces (political parties of other racial groups) wanted to destroy the SDL Party, they wanted to destroy the Fijian interests and aspirations, but were to no avail, they failed miserably."

PM Qarase, on 16 June 2006, finally admitted in Parliament that, "... because of the ethnic composition of our society, that style of adversarial politics (parliamentary debate) in Fiji is inevitably viewed in a racial context. It emphasises the ethnic differences, rivalries and tensions." Thus, because political parties were divided on racial lines, parliamentary debate tended to deteriorate into instances of racist remarks and ethnic attacks.

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29 23 24 Concluding observations of CERD-United Nations Report, 2003

Fiji Human Rights Commission director Doctor Shaista Shameem noted that those engaging in hate speech on blogspots cannot be protected by the freedom of expression provisions of the Constitution. She said that while freedom of speech was protected by the Constitution, those freedoms did not include freedom to express hate speech or damage the reputation, dignity, privacy, or rights and freedoms of other individuals.<sup>32</sup>

Dr. Shameem observed that hate speech is increasingly, and disturbingly, being expressed in the blogs. "The commission will not tolerate any hate speech and advises that those expressing such speeches under the current cloak of anonymity on blogs should face the full brunt of the law if they are identified," she said. She claimed that only about 10 per cent of messages on the blogs contained accurate information. She noted that blogspots featured the personal addresses and telephone numbers of individuals, creating concerns about the personal and family security. The public should be aware that people disseminating blog messages which undermined national security or safety could not seek refuge in freedom of expression or speech because section 30 (2) of the Constitution placed limitations on such civil liberties in the interests of public safety, security and rights and freedoms of others.<sup>33</sup>

The Fiji Human Rights Commission had advised senior military and police personnel, as well as the interim Attorney-General about the constitutional and human rights guidelines to be followed when investigating blog messages and those suspected of creating them. She said the commission had also observed the violation of the right to privacy on these blogspots.<sup>34</sup>

The Citizens' Constitutional Forum also expressed disappointment and concern over racist public statements made by members of the State party just prior to the 2006 elections. CCF was concerned too about the manner in which the police treated dangerous racist remarks in some instances while Qarase was in power.

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32 Shameem, S. 2007. The Assumption of Executive Authority on December 5th 2006 by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces: Legal, Constitutional and Human Rights Issues. Fiji Human Rights Commission. Suva, Fiji.

33 Shameem, S. 2007. The Assumption of Executive Authority on December 5th 2006 by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces: Legal, Constitutional and Human Rights Issues. Fiji Human Rights Commission. Suva, Fiji.

34 Hate Speech Authors Liable: Shameem. May 19, 2007. <http://www.fijitimes.cm/stroy.aspx?id=62896>

**Table 3.1: Summary of the 6-13 May 2006 [Fiji House of Representatives](#) election results**

<b>Parties</b>	<b>Votes</b>	<b>%</b>	<b>Seats</b>	<b>+/-</b>
<b>Total</b>	<b>767,695</b>		<b>100.0</b>	<b>71</b>
<a href="#">Fiji Labour Party</a> (FLP)	300,797	39.18	31	+4
<a href="#">National Federation Party</a> (NFP)	47,615	6.20	0	-1
<a href="#">National Alliance Party of Fiji</a> (NAPF)	22,504	2.93	0	
<a href="#">United Peoples Party</a> (UPP)	6,474	0.84	2	+1
<a href="#">Party of National Unity</a> (PANU)	6,226	0.81	0	
<a href="#">Nationalist Vanua Tako Lavo Party</a> (NVTLP)	3,657	0.48	0	
<a href="#">Soqosoqo ni Vakavulewa ni Taukei</a> (SVT)	238	0.03	0	
<a href="#">National Democratic Party</a> (NDP)	123	0.02	0	
<a href="#">Party of Truth</a> (POTT)	51	0.01	0	
<a href="#">Social Liberal Multicultural Party</a> (SLM)	49	0.01	0	
<a href="#">Coalition of Independent Nationals</a> (COIN)	20	0.00	0	
<a href="#">Justice and Freedom Party</a> (JFP)	18	0.00	0	
<a href="#">Independents</a>	37,571	4.89	2	
<a href="#">New Labour Unity Party</a>	Didn't contest		0	-2

## **An analysis of racism and political instability in Fiji: A summary**

Political instability in Fiji since 1987 has been very closely linked to racism. It seems that when a dominant Indo-Fijian party forms a government, the indigenous Fijians become insecure and begin to destabilize the country. The symptoms of Indigenous insecurity takes the form of marches through the streets of the capital Suva, hate speeches, acts of sacrilege, burning and the looting of Indo-Fijian shops and homes by indigenous Fijian youths. The unfolding drama culminates in the storming of the Fiji Parliament and taking the Government hostage at the point of the gun. The 2000 coup however was also accompanied with non renewal of leases to Indo-Fijians by the indigenous landowners.

The coup d'etat on December 5, 2006 was different from the coups of 1987 and 2000. This coup was undertaken by the predominantly Fijian Royal Fiji Military Forces (RFMF) to overthrow a Government that was predominantly backed by indigenous Fijians. Commodore Bainimarama, the head of the RFMF in his pronouncements was against the racist policies of the State party of Prime Minister Lasenia Qarase. Since the beginning of 2007, the Interim Government conducted its business through a Multiracial Cabinet with the Commodore Bainimarama as Acting Prime Minister.

Under pressure from governments in New Zealand, Australia and the United States, the Interim Government has promised to hold general elections by March 2009.

### **Note**

State party in Fiji has been alternating in its composition: democratic government, military rule and interim government. Following the violent overthrow of the democratic government in 2000, the army restored law and order and put in place an interim government under Lasenia Qarase. Elections were held in 2001 and the *Soqosoqo Duavata ni Lewenivanua* (SDL) party formed a Coalition Government with Conservative Alliance *Matanitu Vanua* (CAMV) with Qarase as the Prime Minister. In year 2006, elections were held again and SDL formed a Coalition Government with the Fiji Labour Party (FLP). But this State party lasted for less than seven months. With a coup on 5 December 2006, there was military rule until January 2007. On January 5 2007, an interim government was formed with Commodore Bainimarama sworn in as the Interim Prime Minister. Thus the current State party is very much under the influence of the Royal Fiji Military Forces (RFMF). There are plans however to have fresh elections in March 2009 and return Fiji to parliamentary democracy.

## 4. RACE-BASED AFFIRMATIVE ACTION

### 4.1 Introduction

The concluding observations adopted by the Committee at its sixty-second session include the following statements:<sup>35</sup>

“The Committee strongly urges the State party to ensure that affirmative action measures it adopts to pursue the above objectives [of ensuring the social and economic development as well as the right to cultural identity of the indigenous Fijian community] are necessary in a democratic society, respect the principle of fairness, and are grounded in a realistic appraisal of the situation of indigenous Fijians as well as other communities. The Committee further recommends that the State party guarantee that the special measures adopted to ensure the adequate development and protection of certain ethnic groups and their members in no case lead to the maintenance of unequal or separate rights for different ethnic groups after the objectives for which they were taken have been achieved (article 1, paragraph 4, and article 2, paragraph 2, of the Convention).”

The fundamental problems that the CCF sees in the affirmative action programs operated by the current Government are:

- They are based on race rather than need. With far too few of the programs requiring a means test for eligibility, they do not target those who are genuinely disadvantaged.
- The majority of programs and the bulk of funds are targeted at one ethnic group alone – indigenous Fijians. This offends the principle of fairness.
- They are not informed by adequate research and analysis.
- They are not monitored and regularly evaluated for effectiveness and efficiency. This creates opportunities for abuse.

The existence and perpetuation of these problems leads many to doubt the commitment of the current Government to genuine affirmative action. There is a suspicion that current programs are really only intended to maintain the political support of elements within the indigenous Fijian community.

### Review of Social Justice Act

The affirmative action programs have been conceived within the context of the Social Justice Act. In this section, racist elements of both the Social Justice Act and the affirmative action programs are reviewed.

*CERD: Concluding observations*

Item # 16 of the CERD report reads:

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<sup>35</sup> CERD/C/62/CO/3 (2 June 2003), para 15.

*'The Committee notes that despite reports that levels of poverty among all Fiji nationals, including Indo-Fijians and Banabans, have worsened over the years, the State party's affirmative action programmes, as adopted under the Social Justice Act of 2001 and the 50/50 by year 2020 Plan, mainly target indigenous Fijians and Rotumans. The Committee strongly recommends that the State party ensure that its poverty alleviation programmes benefit all poor Fiji citizens, irrespective of their ethnic origin, to avoid undue stress on already strained ethnic relations. It also recommends that the adoption of any affirmative action programme be preceded by consultations involving all ethnic communities.'*

The Social Justice Act of 2001 has 29 programs of affirmative action in four areas: (a) education and training (b) land and housing (c) participation in commerce (d) participation in all levels and branches of the State. Social justice and affirmative action (SJAA) was revised in 2002 and made into a 20-year development plan (2001-2020) for the 'enhancement of the Indigenous Fijians and Rotumans'. In its current form, it focuses on eight broad priorities: education, human resource development and utilization, commerce and finance, public enterprises, health, resource based industries, tourism and rural development.<sup>36</sup>

The State party's (Qarase Government) principal justification for its affirmative action programs is that the rural sector is poorer than the urban sector. Thus it is argued that as majority of indigenous Fijians live in rural areas, this group needs most help. This argument however is seriously flawed because some of the poorest households in rural areas are those of Indo-Fijians. The State party continues to defend its affirmative action plans on the grounds that the average income of indigenous Fijians and Rotumans is below that of Indo-Fijians and other minority communities. The leader of the State party justified in his Forward in the 50/50 by 2020 Development Plan as follows:

*"The 1996 Census showed that 54% of Fiji's total population are rural-based and the majority of these are [indigenous] Fijians. The 1997 United Nations Poverty Report revealed that households with the lowest income were those in rural areas and the outer islands. Again the majority of these were Fijians. Fijians continue to lag behind other communities in education, in business and in the professions."*

However, in the absence performance indicators, the effectiveness of the Social justice and affirmative action (SJAA) programs cannot be monitored. There is also no data that relates to alleged disparities between indigenous Fijians and Indo-Fijians.

One major problem with the Social Justice Act 2001 and its amended form is that many of the programs are tailored on the basis of race and not on the needs of all Fiji citizens. As such it does not comply with the 1997 Constitution of Fiji, section 38(2) and fails to fulfill the requirements of section 21 of the Human Rights Commission Act.<sup>37</sup> The programs amount to unfair discrimination against Indo-Fijians. Additionally the 'special measures' requirements contained in International Human Rights Convention on the Elimination of All Forms of Racial Discrimination (CERD) are violated.

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<sup>36</sup> Concluding observations of CERD-United Nations Report, 2003

<sup>37</sup> Fiji Human Right Commission, 2006. Report on Governments Affirmative Action Programmes, 2020 Plan For Indigenous Fijians and Rotumans



CCF believes that Social justice and affirmative action (SJAA) is ill conceived. With emphasis on assisting indigenous Fijians and Rotumans through its 2020 Development Plan, the State party discriminates against all other minority communities especially the Indo-Fijians. The main reasoning behind the programs is that the majority of indigenous Fijians reside in the rural sector where there are lower income levels and standards of living. Thus the State party considers the indigenous communities as being the most disadvantaged. This argument lacks both substance and logic.

Additionally, the CCF believes Social justice and affirmative action (SJAA) policies and programs are based on outdated ten year old statistics. Some of the poorest people in the rural Fiji are Indo-Fijians but they have been systematically excluded from the 50/50 Development Plan. Many in this group are landless and without any gainful employment. A more recent report (the 2002-2003 Household Income and Expenditure Survey) shows that both the indigenous Fijians as well as the Indo-Fijians are victims of rural poverty.

In view of the foregoing, CCF further believes that the evolving Social justice and affirmative action (SJAA) policies and programs would undermine race relations and is not in the long-term interest of all Fiji citizens. Efforts to create a united Fiji with discriminatory affirmative action policies will not work as it would not contribute to national unity. Additionally, in its present form, Social justice and affirmative action (SJAA) policies and programs would be in conflict with ICERD's Bill of Rights.

#### **4.2 Background to Affirmative Action in Fiji**

Various affirmative action programs have been in place in Fiji since independence in 1970. They have been overwhelmingly for the benefit of indigenous Fijians, and their main intention has been to "bridge the gap" with other ethnic groups (especially Indo-Fijians) in education, commerce and the professions. However, there is no national consensus that indigenous Fijians as a group are disadvantaged in comparison to others, or that it is only indigenous Fijians who need affirmative action.

The emphasis on ethnically-based affirmative action in Fiji has its origins in the colonial period, when the government endorsed racial segregation of the population in employment, education, housing and politics.<sup>38</sup> Such segregation served a number of purposes, including the protection of British privilege and economic interests, and the preservation of traditional indigenous lifestyles.

The legacy of racial segregation is still being felt today – largely in negative ways. According to Fiji academic, Steven Ratuva, the desire to protect and enhance indigenous Fijian rights and interests has been expressed, both before and after independence, in two contradictory positions. The first was that indigenous Fijians should be separately governed through the neo-traditional institutions of the "Fijian Administration" established during the colonial period, which sought to preserve indigenous lifestyles, and mediated indigenous Fijian participation in

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<sup>38</sup> The ethnic division of labour is perhaps the most well-known instance of colonial segregation. One example of social segregation was the European Reservations Ordinance of 1912, which prohibited non-Europeans from entering residential districts for Europeans. Non-Europeans were also prevented from attending certain government schools. Political segregation became institutionalised through ethnically based representation in the Legislative Council. For more on this see White, C, (2001) "Affirmative Action and Education in Fiji: Legitimation, Contestation and Colonial Discourse", *Harvard Educational Review*, Vol. 71 No. 2, Summer.

NGOs Submission to the Committee on the Elimination of Racial Discrimination concerning Fiji mainstream commerce. The second position was to encourage indigenous Fijians to become more economically active.<sup>39</sup>

The maintenance of the Fijian Administration and other colonial legislation and institutions since 1970 has effectively continued a policy of “divide and rule”, and led to the strengthening and legitimation of a “state-chiefly class alliance”.<sup>40</sup> The result has been that indigenous Fijians exist within an ethnically-defined, restricted political space.<sup>41</sup>

The Social Justice Act 2001 was passed by Fiji’s Parliament on 21 December 2001 to implement section 44 of the Constitution, which instructs the Parliament to provide affirmative action programs “for all groups or categories of persons who are disadvantaged”. Such programs must be designed to achieve “effective equality of access” to:<sup>42</sup>

- education and training;
- land and housing; and
- participation in commerce, the public service, the police and the military.

They must be monitored for effectiveness by the “administering department or other agency” and the responsible Minister is required to report annually to Parliament on the results of such monitoring.<sup>43</sup> Programs that fulfill the requirements of section 44 may discriminate against individuals or groups in what would otherwise be a contravention of section 38 of the Constitution (the guarantee of equality before the law and freedom from unfair discrimination).<sup>44</sup>

### **4.3 Overview of Current Programs**

According to the Government’s first progress report on affirmative action programs under the Social Justice Act 2001, covering the years 2002 and 2003, the main intention of current programs is to provide equality of access to opportunities to indigenous Fijians and Rotumans (the ethnically-distinct indigenous people of the island of Rotuma), because “there are especially wide disparities generally between Fijians and Rotumans and those from other ethnic communities.”<sup>45</sup> This and similar assertions are justified by reference to the findings of a 1997 UNDP Fiji Poverty Report and the 1996 national census.

The report goes on to argue that the disadvantage of the indigenous Fijian population, relative to other ethnic groups, requires urgent attention because this disadvantage has contributed to past “political and economic instability” in Fiji.<sup>46</sup> The Government’s second progress report on affirmative action, for 2004, makes this argument more explicit, by stating that indigenous Fijian

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<sup>39</sup> Ratuva, S. (2000) “Addressing Inequality” in Haroon Akram-Lodi, A. (ed) *Confronting Fiji Futures*, Asia Pacific Press, Canberra, p 229.

<sup>40</sup> Since independence, and especially since 1987, a small elite class of indigenous Fijians, including both chiefs and commoners with close links to the State, has grown increasingly affluent and influential in national affairs.

<sup>41</sup> Ratuva (2000), p 229.

<sup>42</sup> Constitution (Amendment) Act 1997 s 44(1).

<sup>43</sup> Id, s 44(6).

<sup>44</sup> Id, s 44(4).

<sup>45</sup> Prime Minister’s Office, (2004) *For the Good of All: A Progress on the implementation of Affirmative Action Programmes under the Social Justice Act: 2002-2003*, Parliamentary Paper No. 66, Parliament of Fiji, Suva, p.2.

<sup>46</sup> Ibid.

NGOs Submission to the Committee on the Elimination of Racial Discrimination concerning Fiji disadvantage was “one of the root causes of the social and political upheaval[s] of 1987 and 2000”.<sup>47</sup>

The CCF does not accept either that all, or even most, indigenous Fijians are disadvantaged in comparison to the wider population, or that perceived indigenous Fijian disadvantage was a cause of the coups.

Of the 29 programs currently in place under the Social Justice Act 2001, 17 are said to be for the benefit of all ethnic groups, 10 are exclusively for indigenous Fijians and Rotumans, and two are for groups other than indigenous Fijians and Rotumans. It is not clear to what extent each of the 17 “open” programs really benefits all ethnic groups. Several of these programs have more generous eligibility criteria for indigenous Fijians than for members of other ethnic groups, for example:

The 10 programs exclusively for indigenous Fijians and Rotumans reportedly received \$18.97 million (Fiji dollars) in 2003 out of a total budgetary allocation for affirmative action of \$58.34 million.<sup>48</sup> In 2004, the exclusively indigenous programs received \$23.92 million out of a total allocation of \$60.23 million.<sup>49</sup>

The 2004 progress report also provides a budgetary breakdown of the programs according to their coverage of the sectors identified in section 44 of the Constitution:

**TABLE 4.1:** Distribution and Budgetary Allocation of Affirmative Action Programs under the Social Justice Act 2001

	No. of programs	2002 \$m	2003 \$m	2004 \$m
Education and Training	13	19.479 (33.42%)	19.504 (33.43%)	19.485 (30.81%)
Land and Housing	6	12.490 (21.43%)	13.50 (23.14%)	13.50 (21.35%)
Participation in Commerce and the State Services	7	12.842 (22.03%)	10.589 (18.15%)	15.487 (24.49%)
Others: Poverty Alleviation	3	13.499 (23.16%)	14.750 (25.28%)	14.761 (23.34%)
TOTAL	29	58.27	57.34	60.23

**SOURCE:** 2004 Report on the Implementation of Affirmative Action Programs under the Social Justice Act, page 5

#### 4.4 Analysis

Following is an example of why the CCF is concerned that current affirmative action programs are based on race and not need. Table 4.2, below, was used in the Government’s 2002-2003 progress report to justify affirmative action programs exclusively for indigenous Fijians.

<sup>47</sup> Prime Minister’s Office, (2005) *2004 Report on the Implementation of Affirmative Action Programmes under the Social Justice Act*, Parliamentary Paper No. 108 of 2005, Parliament of Fiji, Suva, p 4.

<sup>48</sup> See Prime Minister’s Office (2004), p 6.

<sup>49</sup> Prime Minister’s Office (2005), Appendix A, p 91.

**TABLE 4.2: Average Weekly Income By Ethnicity, 1990-91**

	Average Household Income	Average Per Capita Income
National	\$199.31	\$44.68
Indigenous Fijian	\$173.65	\$33.74
Indo-Fijian	\$217.89	\$49.50
Others	\$271.08	\$66.77

**SOURCE:** 1997 UNDP Fiji Poverty Report

This Table shows that the average weekly household income for indigenous Fijians in 1990-91 was approximately 20% lower than that for Indo-Fijians, 36% lower than that for other ethnic groups and 12.9% lower than the national average. According to the Government, this means that indigenous Fijians are disadvantaged.

However, Table 4.2 tells us nothing about the extent of differences in income within ethnic groups, and therefore does not give a true indication of the earning capacity of individuals. The truth is that the averages shown in the Table conceal huge differences in the income earned by individuals in the highest and lowest income brackets within each ethnic group.

A summary of the 1997 UNDP report in fact presents the same data on which Table 4.2 was based in the very different manner shown below.<sup>50</sup>

**TABLE 4.3: Average Weekly Household Income by Income Group and Ethnicity, 1990-91**

Income Group	Average Household Income		Average per Capita Income	
	Indo-Fijian	Indigenous Fijian	Indo-Fijian	Indigenous Fijian
1 (lowest)	32.40	38.10	7.10	8.10
2	60.80	67.60	13.60	13.80
3	81.60	89.50	17.80	17.50
4	101.50	107.90	22.10	21.50
5	124.20	126.70	27.30	25.60
6	152.50	147.80	32.80	30.40
7	186.70	175.30	40.30	36.20
8	240.60	217.60	52.50	44.40
9	327.90	288.50	74.80	60.20
10 (highest)	914.40	537.10	227.60	131.00

**SOURCE:** Fiji Poverty Report: A Summary (1997)

By contrast to Table 4.2, Table 4.3 reveals that the poorest 10% of Indo-Fijian households were poorer, on average, than the poorest 10% of indigenous Fijian households. In fact, Indo-Fijian households in all of the lower five income groups (that is the poorest 50%) were poorer, on average, than the corresponding Indigenous Fijian households. It was only the richest 10% of

<sup>50</sup> United Nations Development Programme and the Government of Fiji (1997), *Fiji Poverty Report: A Summary*, UNDP and Government of Fiji, p 5.

Indo-Fijian households that earned significantly more, on average, than the corresponding income group of indigenous Fijians.

Another Table presented in the summary of the 1997 UNDP report shows the number of households living below the poverty line by area and ethnicity:

**TABLE 4.4: Poverty by Area and Ethnicity, 1990-91**

	Basic needs Poverty Line (minimum gross weekly income)	Approx. number of households under poverty line	% of household under poverty line
Urban	\$100	12,780	24
Rural Settlement	\$84	10,960	28
Rural Village	\$75	9,950	22
Indigenous Fijian	\$93	17,760	28
Indo-Fijian	\$97	22,150	33
Other	\$93	1,370	26
National	\$83	34,600	25

**SOURCE:** Fiji Poverty Report: A Summary (1997)

Table 4.4, above, shows that there were more Indo-Fijian households living in poverty in 1990-91 than indigenous Fijian households, both in terms of numbers (22,150 Indo-Fijian households compared to 17,760 indigenous Fijian households) and as a proportion of the population of each ethnic group (33% compared to 28%).

The major conclusion of the 1997 UNDP Fiji Poverty Report was that poverty was evident in all ethnic groups and income inequality was more noteworthy within each ethnic group than between ethnic groups. This could hardly be a more different conclusion from the one drawn by the Government in its 2002-2003 progress report on affirmative action!

The CCF does not believe that the kind of statistical analysis exemplified by Table 4.2 is adequate to justify affirmative action programs such as those currently in place in Fiji, under either national or international law. Such analysis is not only simplistic and misleading – in that it suggests inequalities between ethnic groups only by concealing the far more pronounced inequalities that exist within ethnic groups – it is also too generalised and imprecise to justify any particular program of affirmative action. Each program, in the CCF’s view, should be referable to a credible body of research and analysis identifying the specific inequality that the program is designed to reduce or remove.

It is also important to note that the data used in the 1997 UNDP Fiji Poverty Report was sourced from a household income and expenditure survey conducted by the Fiji Bureau of Statistics in 1990-91. This means that affirmative action programs in place in Fiji in 2006 are purportedly justified by reference to statistical information that is 15 years old. The Fiji Bureau of Statistics conducted another household income and expenditure survey in 2001-02, but the results have yet to be published in full.

Compounding the fundamental problem of inadequate research and analysis, is a continuing failure on the part of the Government to ensure that affirmative action programs are monitored and regularly evaluated for effectiveness and efficiency. The two progress reports, for 2002-2003 and 2004 respectively, are clearly intended to meet the requirement of section 44 of the Constitution for annual reports on such programs. However, such annual reports are supposed to include the results of monitoring by the administering agency of the “efficacy” of each program, measured against the “performance indicators for judging the efficacy of the program in achieving [its] goals”.<sup>51</sup>

For almost all of the 27 current programs, the two progress reports identify inputs to the program – including budgetary allocation, funds spent and activities carried out by the administering agency – but have little or nothing to say about outputs – in the sense of measurable improvements in the performance of program beneficiaries against relevant indicators. In the majority of cases, this appears to be because the performance indicators are immeasurable or otherwise flawed, or because the administering agency has not monitored the program for efficacy. Often, performance indicators appear to be flawed because the program in question does not sufficiently identify the intended beneficiaries or the nature and extent of their disadvantage.

The two progress reports also fail to candidly evaluate the efficiency of implementation of the affirmative action programs. Recent reports of Fiji’s Auditor-General have identified significant maladministration and corruption in the administration of some programs. One example of this, involving alleged misuse of more than \$1 million (Fiji dollars) allocated to the Ministry of Education for its Centres of Excellence program, is described in more detailed in Chapter 6 of this submission. However, the Government’s progress reports make no mention of this or other problems.

As a result of these problems of program design and implementation, the Government’s 2002-2003 and 2004 progress reports do not comply with section 44 of the Constitution, in the CCF’s view, and there is really no way of knowing whether current affirmative action programs are making any progress towards reducing inequality.

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<sup>51</sup> Constitution (Amendment) Act 1997 s 44(2)(c) and (6).

#### **4.5 Comments on Selected Programs**

##### **Program 1: Fiji Development Bank - Small Business Equity Scheme**

The Government's 2004 progress report states that, of the \$2 million allocated for the Small Business Equity Scheme in 2004, \$1.5 million was for indigenous Fijians and Rotumans and \$0.5 million was for other ethnic groups. The report briefly summarises how loans were intended to be used, but is silent as to whether loan moneys were in fact used as intended and whether loan recipients were able to service their debts.

##### **Program 2: Ministry of Education – Enhancement of Indigenous Fijian and Rotuman Education**

See Chapter 6 of this submission.

##### **Program 7: Ministry of Commerce, Business Development and Investment – Increase Indigenous Fijian and Rotuman Participation in Business**

This program reserves at least 50% of government contracts, licenses and permits for businesses owned by indigenous Fijians and Rotumans. There does not seem to be any monitoring of whether or how these businesses perform their government contracts or what use they make of licenses and permits issued to them.

##### **Program 9: Public Service Commission – Renting of Indigenous Fijian- and Rotuman-Owned Premises by Government**

Under this program, the Government rents premises owned by Provincial and Tikina (District) Councils within the Fijian Administration. It is hard to see how this can be regarded as an affirmative action program when any benefit to disadvantaged indigenous Fijians is entirely dependent on decisions of the beneficiary councils as to how rent moneys are to be spent.

##### **Program 10: Ministry of Lands and Mineral Resources – Loan Grant to Purchase Ancestral Land Alienated to Freehold**

This program assists indigenous Fijian landowning units (*mataqali*) to buy back freehold land that once belonged to them, by providing interest-free loans. One criterion for eligibility for assistance is that the landowning unit must not have sufficient land available for itself. The progress reports do not indicate how this criterion is applied.

Given that indigenous Fijians own approximately 90% of all land in Fiji under a system of collective, non-transferable native title, it is highly questionable whether indigenous landowning units that need more land should receive Government assistance to purchase land from the remaining 10% that is available to all ethnic groups. The CCF is especially concerned that similar assistance is not offered to displaced Indo-Fijian cane farmers or landless individuals from other ethnic groups. Where are the interest-free loans for Fiji's ballooning squatter population?

It is also disturbing to note that loan recovery under this program is described as “unsatisfactory”.<sup>52</sup>

### **Program 13: Ministry of Multi-Ethnic Affairs – Scholarships**

This program provides tertiary scholarships for students from the Indo-Fijian and other minority communities whose parents combined annual income is less than \$10,000. Quotas are reserved for the very poor and students from the smaller minority communities. The program may well be justified in itself. The point to note is that the corresponding scholarship program for indigenous Fijians and Rotumans does not include any income limit or other means test. There is no reason why students from more wealthy indigenous Fijian and Rotuman families should be eligible for a scholarship when families with similar incomes from other ethnic groups are not.

### **Program 15: Ministry of Regional Development – Self Help Projects in relation to Housing and Other Business Projects**

The main objective of this program is to provide access to housing and to encourage income-generating projects. The target groups are “Fijians residing in villages and citizens residing in other community settlements”.<sup>53</sup> It is not clear who is meant by “citizens residing in other community settlements” and neither of the two progress reports to date gives any indication of how much or what proportion of assistance granted under the program goes to groups other than indigenous Fijians.

### **Program 22: Ministry of Tourism – Participation in the Tourism Industry to Ensure Effective Equality in Access to Commerce**

This program aims to increase indigenous Fijian participation in the tourism industry through commercial operations, employment and share ownership. The difficulty that the CCF sees with the program is a lack of evidence that indigenous Fijians are disadvantaged in comparison to other ethnic groups with respect to the tourism industry. Anecdotal evidence in fact suggests indigenous Fijians are employed in the tourism industry in greater numbers than others.

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<sup>52</sup> Prime Minister's Office (2005), p 38.

<sup>53</sup> Id, p 48.



#### **4.6 Conclusions on Affirmative Action**

While there are well-known difficulties with data collection right across the Pacific islands, this cannot be an excuse for affirmative action programs that are largely based on suspicions and prejudices concerning ethnicity. In the CCF's view, the current (2001-2006) Government of Fiji has not made enough effort to inform its programs with research and analysis that identifies genuine needs.

We believe this failure reflects an underlying confusion between two distinct policy objectives:

- the protection and enhancement of traditional indigenous Fijian rights and interests; and
- the provision of special State assistance to disadvantaged groups.

For many indigenous Fijians, this confusion appears to arise out of a sense that it is they who have been most hardly done-by in Fiji's history. Many Indo-Fijians feel the same about themselves. These parallel and competing feelings of "victim-hood" are another legacy of the colonial policy of divide and rule. These feelings make it difficult for members of the two largest ethnic groups to agree who is disadvantaged, whose needs are the greatest and what factors are relevant in deciding these questions.

The whole structure of Fiji's Constitution reflects this difficulty in balancing equal rights for all with the protection of indigenous Fijian culture. Segregation and separate rights are maintained through:

- the Fijian administration (a system of local, district, provincial and national institutions exclusively for the governance of indigenous Fijians);
- communal voting in national elections (46 of the 71 seats in Fiji's House of Representatives are reserved for members elected by voters of their own ethnicity, on separate electoral rolls);
- the reservation of 14 out of 32 Senate seats for nominees of the Great Council of Chiefs (*Bose Levu Vakaturaga*);
- appointment of the President and Vice-President by the Great Council of Chiefs (the chiefs have a policy of only appointing chiefs to these offices); and
- last but by no means least, the entrenchment of a system of collective, non-transferable indigenous Fijian land ownership, applying to approximately 90% of all land in Fiji.

Clearly, these institutions do not sit easily with Fiji's obligations under the Convention, and this is why Fiji has always maintained extensive reservations to the Convention. The CCF, for its part, takes the view that several of these institutions, and the compromise they embody between equality and the protection of indigenous culture, are still relevant, appropriate and necessary in Fiji today. However, it is not difficult to see how this compromise confuses the issue of affirmative action.

The CCF believes that Fiji must move slowly and steadily towards greater equality in rights for all. Perceptions that there are two tiers of citizenship in the country are damaging and need to be minimised. Affirmative action can help in this regard, but at present it is making matters worse.

The only defensible approach is for all affirmative action programs in Fiji to be justified by reference to specific, expert research and analysis, the results of which are open to public scrutiny and verification, to be limited to the achievement of specific objectives within a specific

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period of time, and to be closely monitored for effectiveness and efficiency. This is the only way that the programs can gain greater popular acceptance and legitimacy – or of course comply with the Convention.

## 5. UNRESOLVED LAND ISSUES AND THE GROWTH OF SQUATTER SETTLEMENTS

### 5.1 Unsolved Land Issues: Executive Summary Draft

Race has been a critical factor in the Government policy on land ownership and land use in Fiji. The colonial government since its formation in 1874 had ensured that land remains in indigenous ownership. As a result, over 90 per cent of all lands in Fiji are owned communally by the indigenous people. Additionally, to protect the indigenous culture and traditions, the Colonial Government restricted the use of the indigenes on European-owned plantations. The ensuing labour shortage on sugar cane and coconut plantations was resolved with the introduction of indentured labourers (*girmityas*) from India. As a result, most Indo-Fijian farmers (descendants of *girmityas*) remain tenants of indigenous landowners.

The tenancy agreements between the Indo Fijians and the indigenous landowners are brokered by the Native Lands Trust Board (NLTB), an institution created by the Colonial Government in 1940. Some twenty years later (1966), security of tenure was provided under the Agricultural Landlord and Tenants Act (ALTA). Under ALTA, thirty year leases were granted to Indo-Fijians on indigenous owned land. Most of these leases are now expiring with thousands of Indo-Fijians facing evictions as a consequence of non-renewals. The State party under an indigenous Prime Minister (Lasenia Qarase) had been preoccupied through *Talanoa* (discussion) sessions in dealing with increases in land rents rather than finding solutions to land lease problems.

Additionally, the State party (Qarase Government) was embarking on new land bills that would have had negative effects on non-indigenous people who were landless. These were the so called *qoliqoli* and indigenous tribunal bills. These bills would have placed greater restrictions on non-indigenous people (mainly Indo-Fijians, Europeans, Melanesians, Rabi, Chinese, and other minority ethnic groups) over the ownership and the use of lands and sea resources in Fiji. Fortunately, there was a lot of opposition to these bills including from the Royal Fiji Military Forces (RFMF). The resulting opposition culminated in the overthrow of the State party (the Qarase Government) by the RFMF on December 5, 2006. The current State party with Commodore Bainimarama as acting Prime Minister has in effect nullified the *qoliqoli* and indigenous tribunal bills.

### Unresolved Land Problems

Racial discrimination in Fiji has evolved since the days of the colonial rule. Indigenous Fijians, Europeans and the Indians very much kept to themselves as a consequence of subtle colonial regulations. Racial groups had separate schools, places of worship, social clubs and sports activities among other things. There were also strict rules on land ownership and land use. Land was owned by indigenous peoples, Europeans and part-Europeans while Indians were either tenants or farm labourers. Today, a hundred years later, the situation has changed slightly with about 90% land now owned by the indigenous and the remainder is freehold or state land.

In this chapter, land problems in Fiji would be reviewed within the context of the concerns and issues raised at the sixty second session of the United Nations Committee on the Elimination of Racial Discrimination in Fiji (CERD/C/62/CO/3) held in Geneva in March 2003.<sup>54</sup>

### **Critical elements in the 2002 CCF Report**

The 2002 CCF report<sup>55</sup> noted that racial discrimination was evident in the following policies of the Fiji Government

- a) Indigenous Fijians are preferred to replace long-term Indo-Fijian tenants on the farms where leases have expired with no regards to whether they can continue to produce sugarcane.
- b) No alternative lands have been acquired by the NLTB since 1999 to resettle Indo-Fijian farmers.
- c) State lands are transferred to satisfy the “need” of 1 per cent of the population as against that of 50 per cent of the population who do not own land
- d) Also in terms of Section 38 of the Constitution, the consequences of the legislative amendments to the Native Land Trust Act (NLTA) and the Native Lands Act to facilitate the transfer of State Schedule A and Schedule B lands for the benefit of indigenous Fijian claimants to these lands are discriminatory on grounds of race. They introduced insecurity of tenure and devaluation of investment on these lands for Indo-Fijian tenants. These constitute ‘preference based on race” (Article 1 CERD) and “unfair discrimination” base on “race and ethnic origin” (Section 38 Bill of Rights)
- e) The Former Government’s plan to exempt 86 per cent of the land (i.e. native land) from the provision of the ALTA legislation will adversely affect the tenants, most of whom are not indigenous Fijians and is therefore racially discriminatory.

The 2002 CCF Report<sup>56</sup> was also critical of the Native Land Trust Board (NLTB). It was noted that NLTB had not demonstrated a professional capacity in dealing efficiently and urgently with programs for landless evicted tenants and farm labourers that have been improvised. The complaint about the gross inefficiency of the NLTB is common not just from Indo Fijian tenants but also from indigenous landowners. It is further reported that NLTB does not have the administrative, professional and technical capacity to administer leases in an efficient and commercial manner, let alone take effective measures to assist the landowners in projects for commercial development of their land.

It was noted that the CERD Committee reminded the Government of Fiji to observe article 2 of ICERD which obligates a State Party “to engage in no act or practice of racial discrimination (1(a)) and further not to defend discrimination (1(b)). It went further to suggest that the State party take effective measures on governmental policies and laws that perpetuate racial discrimination with respect to its land policies. In view of the foregoing, the concluding observations adopted by the Committee at its 62<sup>nd</sup> meeting held in March 2003 noted:

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54 CERD/C/62/CO/3 (2 June 2003), para 19.

55 37 Citizen Constitutional Forum and NGO Coalition on Human Rights, 2002. ‘The Submission of the CCF and NGO Coalition on Human Rights, Fiji.’ Suva, www.ccf.org.fj

“The Committee is concerned that the expiry of many leases of Native land has allegedly led to the ‘eviction’ of numerous farmers, mainly Indo-Fijians, and that the resettlement programme of the State party appears to be insufficient. The Committee underlines the State’s responsibility to provide assistance to ‘exited tenants’, and recommends that it increase its efforts to compensate and resettle affected families.

The Committee urged the State party to develop measures of conciliation between indigenous Fijians and Indo-Fijians over the land issue, with a view to obtaining a solution acceptable to both communities.”<sup>57</sup>

Additionally, the Committee wished for more detailed information (in the next periodic report) about the exact number of ‘exited’, resettled and compensated persons, disaggregated by ethnicity as well on the ways the State party planned to respond to the expected expiry of many more leases.<sup>58</sup>

## LITERATURE REVIEW

Following a series of coup d’etats, land tenure and land use in Fiji has been the subject of debate inside and outside of Fiji. Numerous reports, including from the academics have been written on the subject. Some of these writings are reviewed here.

Boydell<sup>59</sup> explores the philosophy of land as an asset within the conflicting paradigms of communalism and capitalism in Fiji. He observes that land problems in Fiji are constrained by myth and fear, suggesting that education is the ‘key to reconciling the myths and abating the fear.’ In short, he suggests that land problems in Fiji need to be approached in a culturally sensitive and non-provocative way to facilitate growth of the economy. In another article, Boydell<sup>60</sup> examines the Fijian perception of land ownership and questions the appropriateness of supplanted western/colonial ideals, democracy and land tenure within a Third World framework of communal ownership, respect and chiefly systems. In this paper, he explores the potential threats to freehold and leaseholds in the context of four issues: destabilization of democratic order, arguments in favour of restoring feudal aristocracies, ‘sub-revolutions of contemporary *nouveaux riche* new millennia chiefs...without the benefit of chiefly blood.’ and lastly ‘a people reaction at grassroots level.’ Additionally, Boydell provides a preliminary overview of the opportunities for modelling land tenure conflict as a tool for transformation. He outlines an analytical methodology for modelling land tenure conflict, grounded in conflict scenarios in Fiji. The conflict is analysed using a dual concern model and a stake & power-v-relationships model over an eighteen-month time horizon.

One of the major land problems currently facing Fiji is the non renewal of land leases by the indigenous land owners. Naidu and Reddy<sup>61</sup> explored tenant farmers’ views and perceptions

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57 CERD/C/62/CO/3 (2 June 2003), para 19

58 Chand, G (Ed) 2005. ‘Papers on Racial Discrimination : The CERD Papers.’ Fiji Institute of Applied Studies, Lautoka

59 Boydell, S. 2001 Philosophical Perceptions of Pacific Property – Land as a Communal Asset in Fiji, paper presented at Pacific Rim Real Estate Society Annual Conference. 21-24 January, 2001 Adelaide

60 Boydell, S. 2002. Modeling Land Tenure Conflict Transformation – a preliminary analysis, paper presented at Pacific Rim Real Estate Society 7th Annual Conference, 20-23 January, 2002 in Christchurch, New Zealand

61 Naidu, V., & Reddy, M. 2002. ALTA and Expiring Land Leases: Fijian Farmers’ Perception of their Future. A Ford Foundation Funded Project, June 2002

NGOs Submission to the Committee on the Elimination of Racial Discrimination concerning Fiji about their future. Yabaki et al<sup>62</sup> explored issues relating to the ownership, lease, and the use of native lands in Fiji. More specifically, this study evaluated how ethnic relations and politics harm the rights and interests of both indigenous landowners and the tenant communities through distortion. On a somewhat similar theme, Singh<sup>63</sup> has discussed the connection between land ownership and ethnic and internal tension in the South Pacific. She has looked at the cases in the Solomon Islands and Fiji. In the case of Fiji, she notes: 'Ethnic tensions have long been simmering between ethnic Fijians and Indo-Fijians. The 2000 coup rebels exploited this by pointing to the land leases held by Indo-Fijians as a sign of major economic clout'.

Rakai et al<sup>64</sup> have discussed developmental problems associated with traditional land tenure systems. The disparity in wealth between settler (Indo-Fijians) and the indigenous communities (*taukei*) has been attributed to a number of factors. The settlers have access to development funds while the *taukei* do not have this privilege. It is observed that the Fijians could not secure loans on the communal lands and therefore were unable to progress economically relative to other races. Further, the custom of sharing inherent in communal traditions, and associated non-materialistic values and attitudes were greatly encouraged and propagated by the adopted Christian religion and the colonial Government. Finally, they note that unless the economic disparity is overcome, Fiji's social, economic and political stability will always be threatened.

Davies<sup>65</sup> discussed the current land problems in Fiji. He argues that the current problems surrounding the tenure and use of native land have at their heart a single primary problem - the failure of leasing contracts under Agricultural Landlord and Tenants Act (ALTA) to be mutually beneficial to both landowner and the tenant. He notes that while tenants have benefited, the landowners have not. Consequently, as ALTA leases expire, many Fijian land owning units (*mataqali*) are refusing to renew them preferring instead to cultivate their own land, or else not renewing them under ALTA conditions.

Another paper<sup>66</sup> identified national interest regarding agricultural land as being served by the creation of an institutional mechanism that will enable leasing transactions to be based on the informed consent of both landowner and tenant. It is suggested that national interest requires the identification of a rental structure that simultaneously provides the maximum incentives to both the landowners and the tenants.

Gounder and Nithyanandam<sup>67</sup> have observed that income earning capacity, land property rights and the capacity to contribute to individuals and nation's well-being have become a racial issue. They noted that Government is considered a key player and are required to be attentive to how development strategies affect the nation.

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62 Yabaki, A. et al. Land Conflict and Ethnic Relations in Fiji: a Civic Perspective,

<http://www.sidesnet.org/mir/pacific/usp/landingmt/SYMOPSIUM/Abstracts.htm>

63 Singh, D.2000. Land Disputes Sow Seeds of Unrest, <http://www.atimes.com/oceania/BJ03Ah01.html>

64 Rakai, M & Williamsom, I.1995. Implementing LISGIS from a Customary Land Tenure Perspective – The Fiji Experience.<http://www.sli.unimelb.edu.au/research/publications/IPW/RakaiLISFiji.htm>

65 Davies, J.1999. Reforming the Leasing and the Use of agricultural Land in Fiji: an Economic Incentive Approach <http://plato.acadiau.ca/courses/econ/Davies/ladsept15.pdf>

66 Anon, 2007. 'High Return for Land Leases.' The Fiji Times. July 5, 2007 p.5.

67 Gounder, R., E & Nithyanandam, V.2002. Equals in Markets: Land Property Rights and Ethnicity in Fiji and Sri Lanka, paper presented at the 13th World Congress of the International economic History Association, 22-26 July, 2002 in Buenos Aires

The contemporary writing on land problems in Fiji have largely been on land policy, non renewal of leases with little on ethnicity, land ownership and land use. However there were some classic ethnographic works undertaken by Belshaw<sup>68</sup>, Crocombe<sup>69</sup>, Nayacakalou<sup>70</sup> and Ward<sup>71</sup>. These studies have largely dealt with land and population issues in the context of modernization.

Discriminatory principles adopted by Gordon have survived the colonial era and are very much in existence today on matters regulating the use and proprietorship of land in Fiji. These regulations and the new ones conceived by the Qarase Government (2001- 2006) and the Interim Government (2006-2007) are discussed within the context of CERD in below.

## **COLONIAL POLICY ON LANDS IN FIJI**

A brief review of the colonial policies of the late nineteenth century is crucial to an understanding of the contemporary land use practices in Fiji. Fiji was annexed by Great Britain in 1874. Reasons given for annexation included, among other things, the protection of Fijian customs, traditions and land. A landmark document in the history of Fiji is the Deed of Cession signed by the first Governor, Sir Hercules Robinson, and several of the high-ranking chiefs of Fiji. This document has been referred by some as the 'charter of the land'. Important features of the document include clauses pertaining to 'unconditional surrender' of lands in Fiji, in return for which the Queen of Great Britain (Queen Victoria) assured protection of the peoples of Fiji. However, the subsequent interpretation and acts of the colonial governors, especially Sir Arthur Gordon was contrary to the terms of 'unconditional surrender' on land policies. In fact Gordon's policies on the protection of customs, traditions, and land of the Fijians continue to affect the land use patterns in Fiji. These policies merit discussion here, particularly his perceptions of problems in Fiji and, his approach to solving them.

Gordon is noted for his paternalistic policies aimed at protecting the Fijians. On his arrival in Fiji he was beset with numerous problems. He found, for example, that the Fijian population was being decimated by an epidemic of measles; European settlers claimed the best lands and there was little capital following the collapse of the Fiji cotton industry after the post-Civil War American industry recovered. He expressed the immediate needs and associated problems in the following words: 'We want capital invested in the colony, we want a cheap, abundant and certain supply of labour; we want means of communication; we want justice to be readily and speedily administered; we want facilities for education; and lastly we want revenue'.<sup>72</sup>

The problem of insufficient capital was exacerbated by the colonial office's directive that the colony should be self-supporting.<sup>73</sup> The problem of insufficient finance was to some degree overcome with investments by the Australia-based Colonial Sugar Refining Company (CSR). The operations of this Company greatly influenced the land use practices in a number of different ways. First, it introduced a mono-crop agricultural system with its concentration on sugar cane. Second, to overcome the labour shortage problem, it divided its large plantation

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68 Belshaw, C.S.1964. *Under the Ivi Tree: Society and Economic Growth in Rural Fiji*. Routledge& Kegan, London

69 Crocombe, R. 1999. *Land Tenure in the Pacific*. Oxford University Press, Melbourne

70 Nayacakalou, R.N, Fiji: Manipulating the system pp.206-226 in RG Crocombe (ed), *Land Tenure in the Pacific*. Oxford University Press, Melbourne

71 Ward, R.G. 1960. *A Geography Study of Population and Land Use in Fiji*. University of Auckland, Auckland

72 53 54 55 Lal, V.B. 1992 *Broken Waves: A History of the Fiji Islands in the Twentieth Century*. University of Hawaii Press, Honolulu

estates into 10-14 acre lots and leased them to individual farmers who wished to remain in Fiji without renewing their labour contracts.

In his efforts to protect the Fijian culture and traditions, Gordon introduced a system of 'indirect rule' that was first practiced by Lord Lugard in East Africa. In adopting this system of administration, he hoped to 'seize the spirit in which native institutions had been framed, and develop to the utmost extent the capacities of the people of the management of their own affairs, without exciting their suspicions or destroying their self-respect.'<sup>74</sup>

The indirect system of administration affected the contemporary land use in a number of different ways. It laid the foundation of the Great Council of Chiefs whose function was to advise the Governor on matters relating to native regulations. Another important policy of the early colonial rule was the Native Labour Ordinance (1883) which restricted the use of Fijians for wage labour on plantations. Fijians were to continue their subsistence life style, cultivating staple crops within the confines of their villages. Their movement in and out of the village was carefully monitored by the village headman (*buli*).

As well as protecting Fijian customs, traditions and land, the new colony had to be self-supporting in line with the Foreign Office directive on this matter. Overseas investment was required to maintain the welfare of the Fijians but such investment was only possible with an abundant supply of cheap labour. Gordon opposed the use of Fijians on plantations fearing that if the 'Fijian population is ever permitted to sink from its present condition into that of a collection of migratory bands of hired labourers, all hope, not only of the improvement but the preservation of the race, must inevitably be abandoned'<sup>75</sup> He therefore sought to contract labour from India.

Indo-Fijians were first introduced to Fiji in 1879 under an indenture system to work as labourers on sugar, copra and banana plantations. By the end of the indenture system in 1917, 60,639 Indo-Fijians had been introduced to Fiji.<sup>76</sup> The Indo-Fijians with their methods of cultivation and new spice crops had a major influence on land use patterns in Fiji. Under the indentured labour scheme, a person was required to work for five years, after which he could return to India at his own expense. Alternatively, he could renew his contract for another 5 years and get a free passage back to India. Of the 60,639 Indo-Fijians that were recruited, 36,000 elected to remain in the colony. Most of the indentured Indo-Fijians were employed on cane plantations owned by the CSR Company. Later, the Company provided the independent farmer with credit for agricultural implements, provided information on methods of cultivation and purchased his entire crop for a fixed price. In return, the Company imposed rules on land use - crops other than sugarcane were not to be grown, a fixed method of planting was to be followed and land holdings were to be laid out in such a manner as to facilitate large scale harvesting in combination with the neighbouring farmers. About half the land was leased from the Fijian *mataqalis* and these tended to vary in size from 2.5 acres to 12 acres.

By far, the most important policy affecting land use was that on land tenure. While in the Deed of Cession there were explicit clauses on 'unconditional surrender', Gordon's paternalistic approach to protecting the Fijian customs, traditions and land had the opposite effects. In his efforts to keep the land ownership in the hands of Fijians he sought from the chiefs, not their



NGOs Submission to the Committee on the Elimination of Racial Discrimination concerning Fiji views as to the best way to administer their land for the future, but a clear statement of how it had been controlled in the past so that the customary order might be preserved.<sup>77</sup>

In short, Gordon's policies during the early years of colonial rule has resulted in creating rigid proprietary structure resulting in two separate registration systems – the Torrens system and a Native Land Register. The Torrens Register contained a record of all leases and lands in fee simple, including Crown lands while the customary lands were recorded in the Native Land Register. As over 86% of the land in Fiji is customary land, it would be appropriate to briefly explain how it is organized. On this matter, reference is made to the classic work of Nayacakalou.<sup>78</sup> He noted that Fijian land is registered in terms of matrilineal organized social units. The unit of the widest span is the *yavusa* the members of which trace their ancestry to *vu*. Genealogical segments of the *yavusa* are called *mataqali* while smaller segments of the *mataqali* are called *itokatoka*. Most Fijian land is registered by *mataqali* while some are registered in the name of *itokatoka* or *yavusa*.

### **LAND ISSUES AND PROBLEMS SINCE THE LAST CERD REPORT IN MARCH 2003**

Between 1997 and 2006, the number of ALTA cane leases that had expired numbered 7,016.<sup>79</sup> The largest number expired in 1999 and in 2000 being 1594 and 1955 respectively. It would seem that a relatively high number of expiring leases coincided with political instability in Fiji. The Appendix 3 shows ALTA leases with contracts on Native land (inclusive of 20 year extensions). It is reported that of 22,000 cane contracts, 53.3 per cent are on Native Land while the remainder (46.5 per cent) are on either State or Freehold.

Chaudhry,<sup>80</sup> the Leader of the Fiji Labour Party, in 2004 reported that 90% of all land in Fiji belongs to the indigenous Fijians and is non-alienable. Yet the State party under the Social Justice Act was allocating special interest free loans to the indigenous people to buy back freehold land which they consider to be their ancestral land. He felt that this was particularly unjust at a time when thousands of Indo-Fijian tenant farmers have been made homeless and destitute overnight due to the non-renewal of their native leases. Land has been a volatile issue in Fiji politics, with indigenous politicians using the threat of non-renewal of land leases to subdue Indo-Fijian demands for political and other civil rights by the State party. He concluded saying that uncertainty on land matters continues and confidence will only return once a satisfactory settlement on leasing of native land is reached at the political level.

Similar sentiments were expressed by the US State Department in their 2005 Country Report on Human Rights Practices in Fiji.<sup>81</sup> It was noted that land tenure was a highly sensitive and politicized issue. Ethnic Fijians communally held more than 80 percent of all land, the government held another 8 percent while the remainder was freehold which private individuals or companies may hold. Virtually all Indo-Fijian farmers were obliged to lease land from ethnic

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78 Nayacakalou, R.N, Fiji: Manipulating the system pp.206-226 in RG Crocombe (ed), Land Tenure in the Pacific. Oxford University Press, Melbourne

79 Fiji Ministry of Primary Industries, 2007. Evictions and resettlement Statistics, Nabua

80 Chaudhry, M. 2004. An Update on the Situation Regarding Violation of the Rights of Fiji Indians, GOPIO Conference, St John's University, New York.

81 Native Land Trust Board, 2006, Frequent Questions Asked, [http://www.nltb.com.fj/land\\_ownership.html](http://www.nltb.com.fj/land_ownership.html)

Fijian landlords. Many Indo-Fijians believed that their very limited ability to own land and their subsequent dependency on leased land from indigenous Fijians constituted de facto discrimination against them. Refusal by ethnic Fijian landowners to renew expiring leases has resulted in evictions of Indo-Fijians from their farms and their displacement to squatter settlements. Many indigenous Fijian landowners in turn believed that the rental formulas in the Agricultural Landlord and Tenants Act (ALTA) discriminated against them. Changes to the Bill were introduced but was defeated in the Fiji Parliament in 2005. A point worthy of note here is that while most of the lessees on native land are Indo-Fijians, they have been systematically excluded from NLTB Board membership and employment in the offices of the Native Land Trust Board.

In order to assist evicted farmers, SVT Government bought freehold lands to resettle farmers. This however was not done by the State party (Qarase Government). Instead it compromised by having numerous *Talanoa* sessions (traditional informal meetings to resolve differences) to resolve the expiring leases and the resettlement of Indo-Fijians tenants. The State party (Qarase Government) at these sessions was adamant in protecting the welfare of the indigenous Fijians. Additionally, the State party embarked on introducing more racist land bills similar to the earlier ones that transferred State Land (Schedule A and B) to Native land. The two controversial Bills are discussed below.

## **NEW LAND BILLS**

### ***Qoliqoli bill***

Rather than resolving the lease renewal problem, the State party was preparing another racist Bill, the so called *Qoliqoli* Bill<sup>82</sup>. The intent of the *Qoliqoli* Bill 2006 was to transfer the proprietary ownership of *qoliqoli* areas from state to the *qoliqoli* owners (as did the Schedule A and B lands). It planned on the establishment of the *qoliqoli* commission with powers and functions for the regulation and management of fisheries resources (and related matters) within *qoliqoli* areas. In the Bill, 'commercial operation' meant any fisheries or non-fisheries activity within *qoliqoli* areas that were undertaken for commercial purposes.

Additionally proprietary rights and interests meant all legal interests and rights which would be conferred upon the owners of native land under the Native Lands Act and the Native Land Trust Act. As such, Clause 20 of the Bill prohibits the undertaking of any non-fisheries commercial operation within *qoliqoli* areas without prior approval of the NLTB. NLTB approvals were to be given after consultations with the *Qoliqoli* Commission and the *qoliqoli* owners. This clause also clarifies that ownership of any lease or fee simple of any land abutting any *qoliqoli* area does not confer any rights to such owners except as may be authorized under this legislation. *Qoliqoli* owners may waive their usage rights as owners through conditions agreed with the commercial operators.

Prime Minister Lasenia Qarase noted that the *Qoliqoli* Bill was not conceived or plucked out of the air by the SDL party, adding: "It was on the agenda of the Alliance Party and the SVT and even the Chaudhry government in 1999."<sup>83</sup> The Finance Ministry defended the Bill stating that

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82 *Qoliqoli* Bill 2006. <http://www.parliament.gov.fj/legislative/index.aspx>

83 64 65 66 67 *Qoliqoli* Bill 2006. [http://en.wikipedia.org/wiki/Qoliqoli\\_Bill](http://en.wikipedia.org/wiki/Qoliqoli_Bill)

more ethnic Fijian participation in the eco-tourism sector would boost rural development. It said that for the Native Lands Trust Board's tourism policy, the proposed *Qoliqoli* Bill was critical. It would ensure sustainability of the tourism industry with resource owner participation.

Further, the State party (Qarase Government) defended the Bill on historical grounds. The Minister for Fijian Affairs, Lands and Provincial Development (Ratu Naiqama Lalabalavu)<sup>84</sup> said that expectations by the Fijian chiefs over their traditional customary *qoliqoli* rights (fishing and forest rights) has been there since Cession in 1874. He noted that the Bill would provide for establishing a mutually agreed framework between commercial operators (including hoteliers) and *qoliqoli* owners. Additionally, it was noted that the Bill would bring financial benefits to the *qoliqoli* owners.

Chaudhry observed<sup>85</sup> that demarcation of all off-shore rights to the indigenous community as their special fishing ground would create problems for other ethnic communities. Other communities wishing to access the ocean for fishing, water sports etc. will require special permission which maybe granted on payment of prescribed levies. Thus it would curtail the freedom of movement of people who wanted to enjoy the rivers and the ocean for recreational purposes.

Fiji's deputy opposition leader Bernadette Rounds Ganilau<sup>86</sup> said the bill was a joke because a large mass of land was lying idle in the country while Fiji continues to import food valued at over 180-million US dollars. She added that thousands upon thousands of vacant and re-possessed land was not being used, making Fiji the world's largest producer of weeds and grass. She said the *Qoliqoli* Bill was a joke because Fiji imports over 13-million US dollars worth of prawns every year and most of it is from Kerala in India. The country imports 46 per cent of its tuna which is then processed and exported as Fiji tuna.

The Fiji Law Society<sup>87</sup> also made a submission to the joint committee in which they stated that the bill is unconstitutional, in that it infringes on the Native Land Trust Act. Further it has the potential to create conflict between and among *qoliqoli* owners because the ownership boundaries were not clear. It was noted that individual Fijians had already begun intercepting Indo-Fijian fishermen and foreign tourists at sea demanding money. The RFMF also did not agree with the *Qoliqoli* bill. It was claimed that Commodore Bainimarama's dismissal of the Qarase government was justified by two key pieces of legislation: a bill that included provisions for amnesty for the perpetrators of the 2000 coup and mutiny and the proposed *Qoliqoli* bill that would have transferred rights of coastal waters from the government to indigenous Fijians. Bainimarama believed that the two proposed legislation were not in the best interests of Fiji. The Commodore's views found support from within the tourism industry.

#### *Views of stakeholders on Qoliqoli Bill*

As most of the *Qoliqoli* owners are indigenous Fijians, the Bill as conceptualized would have had an adverse affect on the non-indigenous peoples, mostly Indo-Fijians and Europeans. It would have indirectly affected tourists using the beach and the foreshore within the *Qoliqoli* areas and hoteliers most of whom are Europeans. Thus the Bill would have been a disaster to

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the tourist industry of Fiji. Even prior to the Parliamentary debates on the Bill, the indigenes had commenced intimidating hoteliers with claims. Some of newspaper accounts are reported below to highlight the gravity of the problem.

Ms Korovavala, the indigenous Chief Executive Officer of the Fiji Islands Hotels and Tourism Association (FIHTA) claims that *qoliqoli* claims is adversely affecting the hoteliers. She noted that *qoliqoli* owners have often confronted hotel owners demanding money without evidence that they are the rightful owners of the *qoliqoli* in question. The hoteliers are forced to pay because they want to maintain peace with the indigenes. She illustrated the *qoliqoli* sagas in the following way:

‘A group of *qoliqoli* owners will turn up at the hotel on any given day and demand money. The very next day, another lot will turn up with the same demands for the same area – all in exchange for money’.

FIHTA claimed that this was ongoing in most resorts across the country and were of the view that it was caused by the Government’s (Qarase) inconsistent policies<sup>88</sup>. There was also some opposition from indigenous persons to the *Qoliqoli* Bill. This group explained that collecting money by ransom was an illegal act.

The hoteliers warned that they would leave and set their operations in another country if they were made unwelcome with the passage of the *Qoliqoli* bill. The hoteliers also stressed that the bill will cause serious damage to Fiji’s image as a tourist destination. It would enable individuals to try to stake their claims on the *qoliqoli* and upset hotel operations and visitors.<sup>89</sup>

The indigenous lobby group Viti Landowners and Resource Association (V.L.R.A.) led by high chief Ratu Osea Gavidi also expressed reservation on the ability of the Native Lands Trust Board to act in the best interest of *Qoliqoli* owners.<sup>90</sup>

Professor Ron Duncan of the University of the South Pacific supported the concerns of resource owners and called on the government to look at returning the management of leasing customary land to the landowners with the right to negotiate lease terms, rentals, and renewals directly with their respective tenants. A more pressing problem however is balancing the rights of indigenous resource owners with those of hoteliers and the hotel industry in general and also assuring foreign investors that there will not be any hiccups following the purchase of freehold land.<sup>91</sup>

Sukhdev Shah<sup>92</sup> a lecturer in Economics with the University of the South Pacific wrote: “In short, the *Qoliqoli* Bill and its companion, the Lands Tribunal threatens the livelihoods of half of Fiji’s wage-earning and salaried work force, whereas there are very few options for creating substitute employment.”

Another commentator wrote:

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88 Elbourne, F. 2006. ‘Hotel Say Attacks Hurt.’ The Fiji Times, November 2006. p.1

89 Fiji Village News Sept 4

90 71 72 . Fiji Parliament: Bill No 11, 2006, ‘Indigenous Claims Tribunal Bill

“Investors warn that misinformation, inadequate consultation and resource provisions in the *qoliqoli* bill could cripple tourism, Fiji’s greatest money-maker. “Villagers misunderstanding of their fishing rights and the bill have already harmed the industry, they claim. “In November 2004, villagers claiming fishing rights and ownership over Narara Reef area in the Yasawa Islands in western Fiji, a prime cruising and resort location, intimidated two tourists and stole their diving equipment”<sup>93</sup>

The Qarase Government with its regulations and bills has also been adversely affecting the non-indigenous fishermen. The State party (Qarase Government) had through its bureaucracy legitimized the fishing grounds or *qoliqolis*. Permission was required from *qoliqoli* owners prior to the issuance of the mandatory annual fishing license by the Fisheries Department. Receipts from the *qoliqoli* owners were required in the fishing license applications. It was claimed by some fishermen that the *qoliqoli* owners generally demanded a thousand dollar annual fee which occasionally was reduced to five hundred dollars if proper Fijian etiquette was followed.<sup>94</sup>

Some fishermen claimed that they were harassed despite having a fishing license and approvals from the *qoliqoli* owners. The problem here arose from confusion over *qoliqoli* boundaries. Non-indigenous fishermen were often victims of harassment in situations where the contiguous *qoliqolis* were difficult to demarcate. In Ba Province for example, there are three large *qoliqolis*: Nailaga, Votua and Varoka. Of these, the largest one is Votua. It was claimed by some Indo-Fijian fishermen that *qoliqoli* boundary disputes were frequent in the ‘commons’ especially in stormy weather conditions.<sup>95</sup> In conflict situations, boats are generally seized by indigenes and all catch confiscated together with boats, engines and fishing equipment. In such circumstances the fishermen were generally chased away. The *Qoliqoli* Bill would also have affected real estate and overall investments in the country.<sup>96</sup> The bill would have adversely affected the value of beach properties because all coastal area would have come under the *Qoliqoli* Commission and the purported *qoliqoli* owners. In the absence of clear *qoliqoli* boundaries, *qoliqoli* legislation would have also generated conflicts among the indigenous Fijians similar to the conflicts generated by the transfer of Schedule A and B lands from State to Native ownership.<sup>97</sup>

### ***Indigenous Claims Tribunal***

Closely related to the *Qoliqoli* bill is the Indigenous Claims Tribunal bill No. 11 (2006).<sup>98</sup> This bill if it were to pass would allow indigenous Fijians to establish historical claims for loss of right or legal interest of any nature relating to any *Qoliqoli* area or to the occupation, use, or enjoyment of the ancestral land of a *mataqali* (landowning unit), resulting from any land sale, acquisition,

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73 74 *Qoliqoli* Bill 2006.[http://en.wikipedia.org/wiki/Qoliqoli\\_Bill](http://en.wikipedia.org/wiki/Qoliqoli_Bill)

75 76 Singh, J. 2005. Foreign Assistance and Land Conflicts in Fiji, paper presented at Woodrow Wilson Foundation, December 28, 2005, Washington, D.C

77 Singh, J. 2005 Indo-Fijian fishing village of Votua, Ba: A socioeconomic Survey, paper presented at PIM XXX1 Conference 27-30 July, 2005 in Townsville

97 Singh, J 2004. Race, Land and Politics in Fiji, paper presented at the Pan Pacific Business Association, July 28, 2004

98 Fiji Parliament: Bill No 11, 2006, 'Indigenous Claims Tribunal Bill

bequest, exchange, transfer, or assignment by any person or the state prior to the coming into force of the Native Land Trust Act in 1940. Like the *Qoliqoli* bill, the Indigenous Claims Tribunal would determine restitution or compensation.

If the Tribunal was satisfied that a claim was well-founded, it could recommend to the government any remedial action to be taken, including compensation for loss of right of any nature for the occupation, use, or enjoyment of ancestral lands. Former prime minister and former coup leader Sitiveni Rabuka said that government should nationalize all indigenous resources. His calls were supported by some in the indigenous community who argued that there will be very few claimants for ancestral land and in most cases; their claims will fail because of the complexity surrounding native land alienation prior to the Second World War.

The Fiji Labour Party (FLP)<sup>99</sup> has criticized the government for instilling confusion in the minds of freehold investors. At the beginning of 2006, the Fiji's military objected to both bills (*Qoliqoli* and Claims Tribunal) stating that it would have a devastating impact on investment, which was already low. More than 25 percent of GDP was needed to cushion rising unemployment, which in turn is fuelling crime.

On reflection, Indigenous Claims Tribunal Bill (2006) was yet another discriminatory legislation proposed by the State party (Qarase Government). In the proposed legislation, historical indigenous claim means a claim for loss of right or legal interest of any nature relating to any qoliqoli area or to the occupation, use or enjoyment of the ancestral land of a mataqali, as a result of any land sale, acquisition, bequest, exchange, transfer or assignment by any person or the State prior to the coming into force of the Native Land Trust Act. The effect of this legislation would have been grossly unjust to persons with freehold properties, most of whom are non-indigenous.

The claimants were defined as 'only a native land or *Qoliqoli* owning unit, and not an individual member thereof, duly registered under the Native Land Register or Register of *Qoliqoli* Owners has the right to lodge a claim under this Act. Section 21 of the Indigenous Claims Tribunal notes that in the exercise of its jurisdiction and powers under this Act, the Tribunal shall have regard to the principles and the spirit of relevant provisions of the official versions of the Deed of Cession. Seen from this perspective, the proposed Bill would have contradicted aspects of the Deed of Cession.<sup>100</sup>

Deed of Cession was unconditional, it read: "AND WHEREAS in order to the establishment of British government within the said islands and said Tui Viti and other the several high chiefs thereof for themselves and their respective tribes have agreed to cede the possession of and the dominion and sovereignty over the whole of the said islands and over inhabitants thereof and have requested Her said Majesty to accept such cession - which cession the said Tui Viti and other high chiefs, relying upon the justice and generosity of Her said Majesty, have determined to tender unconditional."<sup>101</sup>

With respect to land ownership, Section 4 of the Cession reads: "THAT the absolute proprietorship of all lands not shown to be now alienated so as to have become bona fide the

99 Peters, C. 2007. 'Land Unused Land, Minister Tells Fijians.' The Fiji Sun, June 30, 2007. p.2

100 . Fiji Parliament: Bill No 11, 2006,'Indigenous Claims Tribunal Bill

101 Fiji Parliament: Bill No 11, 2006,'Indigenous Claims Tribunal Bill

property of Europeans or other foreigners or not now in the actual use or occupation of some chief or tribe or not actually required for the probable future support and maintenance of some chief or tribe shall be and is hereby declared to be vested in Her Majesty her heirs and successors.”

Currently over 90 per cent of the lands are native owned and fraught with conflicting claims and mismanagement. It would seem prudent that the six per cent of freehold lands be maintained in fee simple in order to attract investments and create jobs. Litigation by indigenous members of the legal fraternity is further destabilizing the economy by discouraging capital investments on freehold lands.

### *Views of the Military*

Commandore Bainimarama described both bills as ‘racist, unconstitutional and damaging to tourism. Had it become law, resort operators could have faced enormous payments to tribes in exchange for the right to access their beaches and reefs.’

### *Views of CCF*

The Constitutional Forum (CCF) noted that the *qoliqoli* bill could further damage inter-ethnic relations by fuelling resentment among non-indigenous people to whom it offers no benefits. The bill could potentially be a disappointment to the *qoliqoli* owners too with raised expectations of windfalls. CCF is of the view that this form of racism practiced by the Ministry of Fijian Affairs should be stopped forthwith.<sup>102</sup>

### *Efforts of the Bainimarama’s Interim Government to resolve the non-renewal of leases*

The current Interim Government is claiming they will resolve land problems in Fiji. It has dropped the *qoliqoli* and the Indigenous Land Claims proposals. With respect to non-renewal of leases, the Interim Government is trying to make rental payments to landowners relatively more attractive. It has, for example, endorsed increases in the value of all land outside of the Agricultural Landlord and Tenants Act (ALTA) to market value.<sup>103</sup> Additionally, the Fiji Independent Commission against Corruption (FICAC) is also looking into the Native Lands Act, Native Land Tenant Act and ways to improve land registration. These moves, hopefully, would entice landowners to lease unused land. It was reported that returning land left idle to its once productive status (before the expiring of land leases) is ‘the new intention of the interim administration’<sup>104</sup>. The purported actions of the Interim Government thus far are not racially motivated as was the case of the Qarase Government. In its utterances, the interim ministers have expressed a sincere interest in the welfare of all Fiji citizens irrespective of race.

### **Concluding Remarks**

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102 Citizen Constitutional Forum and NGO Coalition on Human Rights, 2002. ‘The Submission of the CCF and NGO Coalition on Human Rights, Fiji.’ Suva, [www.ccf.org.fj](http://www.ccf.org.fj)

103 US State Department, 2006 Fiji Country Report on Human Rights

104 Native Land Trust Board, 2006, Frequent Questions Asked, [http://www.nltb.com.fj/land\\_ownership.html](http://www.nltb.com.fj/land_ownership.html)

Land ownership in Fiji since the colonial times has been the source of much racial discrimination. Through legislation, the early English Governors to Fiji vehemently forbade the alienation of native lands. European claims of land sales prior to Cession (in 1874) were legitimized by the Native Lands Commission in 1880 and have, since been referred to as freeholds. Those lands that were unclaimed by the indigenes were vested in the Crown and today are referred to as State land. Schedule A and Schedule B lands were also part of State land but the Qarase Government has transferred it to Native land. (See Note 2) The Indian labourers who were introduced to Fiji since 1879 have been virtually landless and relegated only as the users and not the owners of the land. This form of racial discrimination with its origins in the colonial times has persisted to this day. The situation has recently deteriorated with the non-renewal of leases and evictions of thousands of Indo-Fijian tenant farmers.

The Mara regime was the architect of the Agricultural Landlord & Tenants Act (1967) that provided thirty year leases to Indo-Fijian tenants on native lands. The provision for extension for another thirty years depended on the wishes of the indigenous land owners. These extensions however are closely linked to the whims of the State party. The State party under Qarase had not satisfactorily resolved the leasing of the native lands but was making land problems worse with the *qoliqoli* bill and the indigenous land claims tribunal. In fact these racially biased bills contributed to the overthrow of the Qarase Government on December 5, 2006 by the Royal Fiji Military Forces (RFMF).

#### **Note 1**

State party in Fiji has been alternating in its composition: democratic government, military rule and interim government. Following the violent overthrow of the democratic government in 2000, the army restored law and order and put in place an interim government under Lasenia Qarase. Elections were held in 2001 and the *Soqosoqo Duavata ni Lewenivanua* (SDL) party formed a Coalition Government with Conservative Alliance *Matanitu Vanua* (CAMV) with Qarase as the Prime Minister. In year 2006, elections were held again and SDL formed a Coalition Government with Fiji Labour Party (FLP). But this State party lasted for less than seven months. With a coup in December 2006, there was military rule until the end of 2006. In January 2007, an interim government was formed with Commodore Bainimarama as the Interim Prime Minister. Thus the current State party is very much under the influence of the Royal Fiji Military Forces (RFMF). There are plans however to have fresh elections in March 2009 and return Fiji to parliamentary democracy.

#### **Note 2:**

The State holds these two types of land in trust for the indigenous landowner. Schedule A is land that once belonged to a landowning unit that has become extinct. Schedule B is land that was not claimed during the initial sittings of the Native Land Commission in the early part of the 1900s. Under s.18 of the Native Land Trust Act, the Reserves Commissioner is empowered to allocate these types of state owned land to indigenous landowners who genuinely need more land. The recognition by government and legislation to the reversionary rights of the indigenous



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landowner to these types of state land is evidence of government's trusteeship role in holding such land for the indigenous owner.<sup>105</sup>

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105 Native Land Trust Board, 2006, Frequent Questions Asked, [http://www.nltb.com.fj/land\\_ownership.html](http://www.nltb.com.fj/land_ownership.html)

**Appendix 1: Effects of Government Policy on Land Use**

Government Policy	Objectives	Enabling Legislation	Effects on Land Use	Unintended Consequences
<b>Deed of Cession (1874)</b>	Annex Fiji to protect indigenous customs, traditions & land			Created a rigid & complex land proprietorship
<b>Protection of Fijian Customs, Traditions &amp; Lands</b>	Welfare of Fijian people	Established the Great Council of Chiefs (1875) to advise the colonial Governors on regulations affecting Fijians. 'Buli' system (1874). Established Native magistrates appointed to ensure that the Fijian customs were followed.	Consolidation of subsistence agriculture. The Fijian custom of 'creeker' justified in exchange of goods but not land	The practice of 'kerekere' made it difficult for Fijian 'galala' farmers to get involved in cash economy
<b>Land Ownership</b>	Land ownership to remain with Fijians for their maintenance & support	Native lands Ordinance (1880)	Extensive tracks of land (83%) in Fijian ownership	Inequitable land distribution/large number of tenant farmers
<b>Use of Land</b>	To be made available for economic development	Agricultural landlord & Tenant Act (ALTA, 1967)	Discouraged long term investment for maximum productivity	Some Fijian 'mataqalis' are today reluctant to renew leases to Indians
<b>Labour</b> • <b>Fijian</b>	Restrict the use of Fijians on plantations	Labor Ordinance (1883)	Fijians encouraged to practice subsistence agriculture	Relatively few Fijians in commercial agriculture today
<b>Labour</b> • <b>Indentured Indians</b>	To protect indigenous customs and traditions.	Indenture system (1879-1916)	60,639 Indians were recruited to work on plantations. With abolition of indenture in 1916; Indians were permitted to own (lease) & cultivate 10-12 acre farms	Rapid increase in Indian population; surpassed Fijian population in 1945
<b>Capital</b>	Colony to be self-supporting	To attract venture capital • Colonial Sugar Refining Co. (CSR) to invest in Fiji (1880-1973)	Large tracts of cane plantations established on the coastal plains of large islands	Monopoly created with CSR running the whole operation from planting to milling & marketing of sugar & molasses
<b>ALTA</b>	30 year leases on Native Land		Security of tenure 30 years	Non renewal of leases
<b>Schedule A and B of all lands in Fiji</b>	Transfer from State to Native lands		<ul style="list-style-type: none"> <li>Increased native land ownership from 83 to over 88 percent of all lands in Fiji.</li> <li>Increased conflict amongst Fijian mataqalis over ownership claims.</li> </ul>	<ul style="list-style-type: none"> <li>Decline in cane production</li> <li>Increased native ownership from 83 to over 88 per conflicting ownership claims</li> </ul>

**Source:** Singh, J 2004. Race, Land and Politics in Fiji, paper presented at the Pan Pacific Business Association, July 28, 2004.

**Appendix 2: Resettlement of Ex ALTA Farmers As At March 2007**

Location	Total Lots Available	Total Lots Issued	Balance Lots To Be Allocated
Batinikia/Busa S/D Navua	36	35	1
Raiwaqa S/D Stage DP 8038 Navua	23	23	0
Raiwaqa S/D Stage II DP 9070 Navua	16	15	1
Navovo S/D Nadroga, Navosa	51	16	35
Navudi Stage I	18	14	4
Navudi Stage II & III Dreketi Macuata	42	26	16
Vunicibicibi Dreketi Macuata	32	4	28
<b>TOTAL LOTS</b>	<b>218</b>	<b>133</b>	<b>85</b>

**Source:** Ministry of Primary Industries, Land Resource Planning & Development, 2007

**Appendix 3: ALTA Statistics on Evicted Farmers in Fiji Islands.**

Expiry Year	Central & Eastern	North Western	Northern	South Western	Total
1997	11	30	30	29	<b>100</b>
1998	22	85	54	53	<b>214</b>
1999	259	413	371	511	<b>1,554</b>
2000	104	912	497	463	<b>1,976</b>
2001	74	141	133	125	<b>473</b>
2002	108	231	185	158	<b>682</b>
2003	46	101	225	135	<b>507</b>
<b>TOTAL</b>	<b>624</b>	<b>1,913</b>	<b>1,495</b>	<b>1,474</b>	<b>5,506</b>
2004	56	97	114	86	<b>353</b>
2005	21	152	113	69	<b>355</b>
2006	32	136	228	97	<b>493</b>
2007	152	185	330	145	<b>812</b>
2008	30	100	155	71	<b>356</b>
2009	40	88	128	70	<b>326</b>
2010	118	203	51	81	<b>453</b>
2011	68	117	109	75	<b>369</b>
2012	69	159	65	85	<b>378</b>
2013	40	195	76	137	<b>448</b>
2014	43	125	69	90	<b>327</b>
2015	29	437	154	97	<b>717</b>
2016	43	67	110	79	<b>299</b>
2017	27	18	67	22	<b>134</b>
2018	22	49	64	54	<b>189</b>
2019	29	47	89	30	<b>195</b>
2020	18	18	61	16	<b>113</b>
2021	9	39	43	9	<b>100</b>
2022	13	17	49	23	<b>102</b>
2023	10	18	56	23	<b>107</b>
2024	12	14	35	4	<b>65</b>
2025	19	25	13	22	<b>79</b>
2026	11	10	19	18	<b>58</b>
2027	13	3	23	14	<b>53</b>
2028	23	18	18	22	<b>81</b>
<b>TOTAL</b>	<b>947</b>	<b>2,337</b>	<b>2,239</b>	<b>1,439</b>	<b>6,962</b>

**Source:** Ministry of Primary Industries, Land Resource Planning & Development, 2007

## GLOSSARY

- buli* - village headman, a native officer in charge of a tikina
- dalo* - a taro plant, (*colcasia esculenta*) traditional Fijian staple crops
- galala* - exempt (as from duty or tax) independent Fijian farmers that are not bound to their mataqalis
- ivi* - the native chestnut tree, (*inocarpus fagferus*)
- mataqali* - the primary social division in Fiji, larger than *tokatoka* and smaller than *yavusa* customary land

Source: Capell, A. 2003. *The Fijian Dictionary*.

## 5.2 The growth of squatter settlements: Race, Squatters and expiring leases

The growing squatter settlements are closely associated with the non-renewal of native leases resulting in mass evictions of Indo-Fijian farmers. On this issue the CERD report had noted:

'The Committee is concerned that the expiry of many leases of Native land has allegedly led to the 'eviction' of numerous farmers, mainly Indo-Fijians, and that the resettlement programme of the State party appears to be insufficient. The Committee underlines the State's responsibility to provide assistance to 'exited tenants', and recommends that it increase its efforts to compensate and resettle affected families. The Committee urges the State party to develop measures of conciliation between indigenous Fijians and Indo-Fijians over the land issue with a view of obtaining a solution acceptable to both communities. Further the CERD Committee wished to receive more detailed information, about the exact number of 'exited', resettled and compensated persons, disaggregated by ethnic membership, as well as on the way the State party plans to respond to the expiry of many more leases in due course.<sup>106</sup>

In response to the CERD queries, the State party in its submissions in 2006 had provided provisional estimates of the number of leases that were to expire by the year 2006. It was noted that the current status of Farming Assistance Scheme (FAS) has also been provided. With respect to disbursement of funds, for example, it was noted that in 2004, majority of the FAS recipients were 'replaced' indigenous farmers (1,551) who were replacing the dispersed Indo-Fijian farmers. With respect to farmer resettlement, 95 Indo-Fijian farmers were resettled and 10 indigenous Fijian farmers were resettled.<sup>107</sup>

Additionally, the Fiji Government 2006 Report had failed to show that one of the main reasons for the increase in squatter settlements was the non-renewal of agricultural leases. One widely referenced research on squatters in Fiji was undertaken by Father Kevin Barr (2007) of ECREA. In this report it is noted that apart from the rural/urban drift and the increasing cost of urban rents, much of the new squatters can be attributed to the expiry of agricultural land leases. In the six years from 1999 to 2004, the number of squatters has almost doubled. This increase is not surprising when we learn that from 1999 to 2004; about 5,545 leases expired affecting about 27,725 households. It is further noted that while some of the expiring leases may be renewed, many may not be renewed.<sup>108</sup>

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106 Chand, G (Ed) 2005. 'Papers on Racial Discrimination.' Vol 1. The CERD Papers. Fiji Institute of Applied Studies, Lautoka

107 Chand, G (Ed) 2005. 'Papers on Racial Discrimination.' Vol 1. The CERD Papers. Fiji Institute of Applied Studies, Lautoka

108 Barr, K.J 2007. Squatters in Fiji - The Need for an Attitudinal Change. CCF Housing and Social Exclusion Policy Paper 1

### *Current squatter situation*

A June 2003 survey showed a very high percentage of squatters about one in ten Fiji citizens. An estimated 82,350 people in 13,725 households lived in 182 squatter settlements with Suva and Nausori the worst affected areas. Urban migration, unemployment, and the breakdown of nuclear and extended families were cited as factors contributing to this trend. The report projected that the population of squatters could increase to 90,000 in Suva-Nausori corridor by 2006. This would be a further strain on infrastructure - water supplies, electricity, and sewage and road services. The State party through its Prime Minister (Lasenia Qarase) said that the squatter problem had become so serious that the State party was contemplating seeking funds from abroad.

Similar accounts of squatters are provided by Walsh. He noted that in 2004, 10% of Fiji's populations were squatters with 82,350 people living in 182 squatter settlements. This represented a 14% increase since January 2001 and a 73% increase since the 1996 census. Further, he observed that currently (2007) about 12.5% of Fiji's population is living in over 182 squatter settlements around the country. The largest number about 8,908 households or 50,508 people are concentrated in the Lami-Suva-Nausori corridor. In 2004, Walsh estimated that at least 16.4% of the greater Suva populations were 'squatters'.<sup>109</sup>

### *Land tenure in Fiji as a cause of increasing squatters*

The native land which comprises over 88 per cent of all lands in Fiji is not easily available. The leader of the State party (Qarase) conceded that there is a need for all stakeholders to be more proactive, emphasizing that the transition period from the outgoing tenant farmer (generally an evicted Indo-Fijian) to that when the replacement farmer (in most cases an indigenous Fijian) moves in, takes years because of the slow lease processing for replacement farmers by the Land Owning Units. This in effect adversely affects the entire economy. This is especially true with the loss of sugar cane crop resulting from the high cost of rehabilitating the ratoon crop and the leased farm land taken over from evicted farmers.<sup>110</sup>

According to NLTB statistics<sup>111</sup>, of the 5,506 leases which expired between 1997 and 2003, 987 were renewed to the sitting tenant. Of these 771 were cane leases, 148 for residential leases and 68 for other leases. The remaining 2,639 were leased to new tenants – either going back to the original Fijian landowner or

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109 Peters, W. 2006. Fiji aid to focus on squatter settlements <http://www.beehive.govt.nz>

110 Chand, G (Ed) 2005. 'Papers on Racial Discrimination.' Vol 1. The CERD Papers. Fiji Institute of Applied Studies, Lautoka, page 320

111 NLTB Report 2007

to third parties. Of these 1,925 were cane leases, 580 for residential leases and 134 for other leases.

The National Advisory Council Cabinet Sub-Committee Report on poverty (2002) entitled *Poverty in Indo-Fijian and Minority Communities* stated;

'Displaced farmers and those dependent on them, like cane cutters, are converging on the outskirts of town, overcrowding already overpopulated squatter areas, occupying marginal land (mangroves, swampy land, dumping areas), thus posing dangerous health and ecological problems, aggravating health related problems in poorly serviced squatter settlements.'<sup>112</sup>

Speaking of the effects of the expiry of land leases and forced evictions on Indo-Fijian families, the report had noted (2002):

"The human costs are immense: break-up of family and community, social and cultural impoverishment, stress and emotional anguish and economic hardship. Hence suicides, family feuds, abuse of women and children are linked to internal displacement.

Forced evictions are even more traumatic. Forceful occupation of homes has taken place when disagreement occurred between NLTB and landowners. Violations such as these traumatize women and children. There is a sense of powerlessness and loss of faith in the legal and political system. Children who are witness to evictions can become a generation filled with resentment for the establishment.

Where homes and land have been taken over, the farmers are left without assets to begin a new life. Some are taken in by friends and relatives, thus increasing all-round impoverishment."<sup>113</sup>

### *Ethnic composition of squatters*

Father Barr quotes Walsh to reinforce his point that since 1978, there were more Indo-Fijian than indigenous Fijians in squatter settlements. The report notes that the expiry of many land leases in recent years has probably increased the percentage of Indo-Fijians in squatter settlements.

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112 Barr, K.J 2007. Squatters in Fiji - The Need for an Attitudinal Change. CCF Housing and Social Exclusion Policy Paper 1, page 18

113 Barr, K.J 2007. Squatters in Fiji - The Need for an Attitudinal Change. CCF Housing and Social Exclusion Policy Paper 1, page 18



The ethnic make-up of the squatter settlements is shown in Table 5.1.

Table 5.1: Squatter population by ethnicity

<b>Ethnicity</b>	<b>1978</b>	<b>1983</b>	<b>1991</b>	<b>1994</b>	<b>2001</b>	<b>2003</b>
Fijians	3204	3384	3808	5000	4657	6309
Indians	4390	5483	4175	5200	6570	7348
Others	254	315	198	178	53	68
<b>TOTAL</b>	<b>7848</b>	<b>9137</b>	<b>8181</b>	<b>10378</b>	<b>11280</b>	<b>13725</b>

**Source:** 'Squatters in Fiji – The Need for an Attitudinal Change' By Father Kevin Barr (2007, p.7).

It can be seen from the above table 5.1 that the highest number of squatters was Indo-Fijians. Further, there was a significant increase of Indo-Fijian squatters from 1994. This may have been in anticipation of non-renewal of leases and harassment by landowners prior to the expiry of the leases which began to take effect from 1997. The non-renewal of leases has contributed to an increased number of displaced people (especially Indo-Fijians) who had relocated in squatter settlements in search of alternative livelihoods. An Asian Development Bank Report (2003) shows that highest squatter growth occurred among Indo-Fijians in the sugar belt of Western and Northern Fiji. It was anticipated that 3,500 farming families with a total population of approximately 18,000 will be displaced and seek resettlement in the next few years.<sup>114</sup>

Aside from the non-renewal of leases, the State party also failed to regulate the price of land, housing and rents, which has escalated in urban areas. This has also contributed to the rise in the number of squatters. The Barr report advocates that the State party's negative and insensitive attitudes need to change. It is noted that some people in government and city councils are propagating myths about squatters and blaming them for the predicament they are in. It was further claimed that most of the squatter settlers are not poor and do not need to live there. The Barr<sup>115</sup> study claimed however that only a small percentage (about 5 per cent) of squatters may fall in this category. The report cites an example of the State Minister for Housing Adi Asenaca Caucau (the Minister for Social Welfare, Poverty Alleviation and Women in 2003) who said "squatters were like thieves

114 Lingam, D (2002) "The Squatter Situation in Fiji" in National Consultation on Evictions , Squatters Settlements and Housing Rights. Suva Citizens Constitution Forum.

115 Barr, K.J 2007. Squatters in Fiji - The Need for an Attitudinal Change. CCF Housing and Social Exclusion Policy Paper 1, page 18

because they took other people's land and used it for themselves."<sup>116</sup> She suggested that the squatters should be driven out of the settlements by the police. In his election speech in 2005, the Lord Mayor of Suva Ratu Peni Volavola said squatters were a bane in any society as they brought lawlessness, unsanitary conditions; health risks and exerted a strain on the city's meagre resources. Although he later apologized, the squatters he was referring to were more likely Indo-Fijians.

### *Life of squatters: Case studies*

In a Housing and social exclusion Policy Dialogue Paper No. 2 published by CCF (2007) the struggles and tribulations of the squatters are recounted. Some of these are presented below:

A Fijian woman gave her account of assisting at election time for the State party in the promise to get secure land tenure for all people living in the settlement. She claims however that the promises were never fulfilled and today she is still a squatter. It was noted: 'It was the same with the SVT (or Rabuka) and SDL (or Qarase) governments where promises were made at election time to attract the votes of the people in the settlement but the promises were never fulfilled. They only raised false hopes and bitter disappointment among the people. The big change in her life came however with the support of ECREA.<sup>117</sup>

An Indo-Fijian couple in their late 70's receive an income of only \$35 per month through the Social Welfare Family Assistance Scheme. This they used to buy groceries, pay medical expenses, travel expenses and pay water bills. This person was a cane cutter with little income. With no saving for old age the couple at times goes without food. He recalled that once, when his wife became very ill, he had to go scavenging in order to feed his wife. The couple consider themselves lucky to get even one meal a day. Every single day is a challenge as they fight against sickness and poverty to go on living. They still hope that they will some day get help from the government. Living in such misery, they sometimes prayed to God to let them die.<sup>118</sup>

Indigenous Fijians are also suffering living in squatter settlements. The question arises as to why they leave their villages to live in a squatter settlement. Of the many reasons given, one indigenous squatter explained that it was difficult for them to live in the village because they were discriminated against by their own fellow villagers for not taking part fully in the *vanua* and *lotu* obligations. It was

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116 Barr, K.J 2007. Squatters in Fiji. - The Need for an Attitudinal Change. CCF Housing and Social Exclusion Policy Paper 1, page 18

117 Barr, K.J. et al. 2007. Poverty in Paradise-No way to live: Stories of squatter families and those working among them. CCF Housing and Social Exclusion Policy Paper No. 2. page 15

118 Barr, K.J. et al. 2007. Poverty in Paradise-No way to live: Stories of squatter families and those working among them. CCF Housing and Social Exclusion Policy Paper No. 2, page 7

explained that their inability to meet the *vanua* and *lotu* obligations was in fact a consequence of their poverty.

Thus it might be concluded that in the case of Indigenous Fijian squatters, there was a choice of either remaining in the village or beginning a new life on a squatter settlement. In the case of Indo-Fijians, however, with forceful evictions, there was no choice but to compromise with a new life style in a squatter settlement.

### *Concluding remarks*

It seems that the State party under Qarase had little to offer to disadvantaged peoples especially the Indo-Fijians. The State party's attempt to resolve the expiring land leases had failed, resulting in many Indo-Fijians to leave their farms and relocate in squatter settlements.

Its racist policies was instrumental in the political instability caused by December 5, 2006 coup. Thus at the center of the current social, economic and political problems of Fiji is racism. The current contracting economy is affecting all communities in Fiji and contributing to the rise of squatter settlements. But this then raises questions of good governance of the State party. It seems that the State party was too preoccupied with racial policies rather than the well being of all Fiji citizens through good governance. Further, it seems that the State party was no longer interested in the concerns of all taxpayers of Fiji but only a few nationalist indigenous causes as acquiring rights over coastal waters with its *qoliqoli* bill.

Additionally, the State party had negative attitudes towards the increasing number of squatters who they said were making money from someone else's land. But in some credible reports (Father Kevin Barr, 2007) it is reported that only 5% of the squatters would fall in this category. Many of the Indo-Fijian squatters had no choice after their forceful evictions but to relocate in squatter settlements. Further, the State party did little to regulate the property market, forcing many to live on informal arrangements (*vakavanua*) with landowners.

### ***Note1: Reasons for squatting***

Father Kevin Barr has provided six major reasons why people in Fiji are living in squatter settlements. These are:

- (a) Rural-urban migration - the push and pull factors associated with urbanization - people are looking for employment and better education and health care for their children;
- (b) Because governments, over the years, have not provided an adequate supply of affordable low cost housing;

- (c) Because of poverty, unemployment and low wages; governments have not established a minimum wage and have allowed too many workers to be paid wages well below the poverty line;
- (d) Because too many people have lost land leases and been forced to find some sort of informal housing for themselves and their families;
- (e) Because of the difficulty of obtaining land through the proper channels;
- (f) Because of the rapid escalation in the price of land, housing and rents in urban areas.

**Source:** Barr, K.J 2007. 'Squatters in Fiji - Thieves or victims?', CCF Housing and Social Exclusion Policy Dialogue Paper 1, page 13.

**Note 2:**

This in fact has had a negative effect on the Indo-Fijians. There are four categories of land tenure in Fiji. These are: Freehold land (7.9%), State land (3.9%), and Native land (87.9%). In terms of tenure, the freeholds and the State land are perceived to be the best. However, as native land is the most abundant and conducive to farming, the farmers have little choice but to aspire to obtain a lease on native lands through Native Land Trust Board (NLTB). But it takes 2-3 years to get a lease on Native land. The costs can be quite high and beyond the reach of many evicted tenants.

In such situations the only alternative is to squat on State land or to make an informal arrangement with the landowning unit and obtain *vakavanua* tenancy. This tenancy involves goodwill payments to landowners without a signed lease. As a result, the landowning unit can terminate the arrangement at will. Despite the undesirable nature of this arrangement, many evicted Indo-Fijian farmers have no other option but to build a makeshift house.

**Note 3: Poverty on squatter settlements**

A study undertaken by ECREA between June to August 2005 of 199 households in three squatter settlements around Suva (Jittu Estate, Muanivatu and Veidogo and Wailoku) produced the following results:

Table 5.2: Research on informal sector

Income Level	Number of Families
Households earning below \$25 a week	32
\$50 “	28
\$75	33
\$100	45
\$125	20

\$150	13
Households earning between \$150-\$250	19
Households earning between \$250-\$300	3
Households earning between \$300-\$400	6

**Source:** Barr, K.J 2007. 'Squatters in Fiji – The Need for an Attitudinal Change' CCF Housing and Social Exclusion Policy Dialogue Paper 1, page 44

It was concluded that if the poverty line was around \$130 a week, then 158 households (or 79%) were living in poverty. Only 41 households (or 21%) were earning incomes above the property line. One household which earned close to \$400 was supporting 11 dependents in various educational establishments, including FIT and USP.

The table 5.2 above shows that a relatively high percentage of Indo-Fijians in both rural and urban areas of Fiji live in poverty. In general, 80% of the squatter households earn less than F\$90 per week.

The 2002-2003 Housing, Income and Expenditure Survey has also reported a high degree of poverty in the nation in both urban and rural areas as shown in the Table below:

Table 5.3: Percentage of population living in poverty in rural and urban areas

	Fijians	Indians	Others
% of the population In poverty in <b>rural</b> Areas	38.0	43.1	41.3
% of the population In poverty in <b>urban</b> Areas	27.2	29.1	17.3

**Source:** Ahlburg, S 1996. *The Extent of poverty in Fiji*. P. 32.

Ahlburg (1995)<sup>119</sup> has discussed different aspects of Fijian and Indo-Fijian household poverty. He has also shown the percentage of households with unacceptable housing characteristics. His findings are shown in table 5.3 below:

Table 5.3: Subjective assessments of minimum cash incomes

	Use of pit toilet	Use wood for cooking fuel	Use kerosene light	No electricity	No safe source of water

119 [http://www.undp.org.fj/\\_resources/main/files/fijipovertyreports/ch3.pdf](http://www.undp.org.fj/_resources/main/files/fijipovertyreports/ch3.pdf)

Fijian	34.9	65.1	52.5	62.1	11.5
Indo-Fijian	54.5	49.7	16.0	29.2	21.6

Source: Ahlburg, S 1996. *The Extent of poverty in Fiji*. P. 37.

Another interesting report by Ahlburg summarizes poverty by ethnicity (1990-1991)

Table 5.4: Poverty by area and ethnicity 1990 to 1991

	<b>Basic needs poverty (Minimum gross weekly income)</b>	<b>Approx. number of HH under poverty line</b>	<b>Per cent of households under poverty line</b>
Fijian	\$93	17,700	28
Indo Fijian	\$97	22,150	33
Other	\$93	1,370	2?
<b>Total</b>	<b>\$83</b>	<b>34,800</b>	<b>25</b>

Source: Ahlburg, S 1996. *The Extent of poverty in Fiji*. P. 34

## 6. RACIALISM IN THE EDUCATION SECTOR

Besides the comments already referred to concerning affirmative action, the Committee's concluding observations from its sixty-second session included a request for updated statistics on education in Fiji and State support for multiracial and other schools.<sup>120</sup> The CCF has attempted in this Chapter to introduce the Committee to the "Fijian education problem", and to analyse the Government's response to it.

### 6.1 Background

The provision of education in Fiji was very uneven when the country gained its independence in 1970. Non-government organisations and community groups owned and managed the majority of schools. This unfortunately meant that rural schools were often poorer and less well-equipped than their urban counterparts, because rural communities had fewer resources to support them.

Today, Fiji has a well established system of schools, but the pattern of school ownership is largely unchanged and the disparity in the quality of education between rural and urban schools remains a problem. This disparity leads to inequalities in students' later life. Statistics published in the Fiji Islands Education Commission *Learning Together* report of 2000 show that schools controlled by committees and religious organisations dominate both the primary and secondary sectors. Government is only a minor player, with control over two primary schools and 12 secondary schools out of 715 and 154, respectively.<sup>121</sup>

Another important feature of the school system in Fiji is that many schools are identified with one or the other of the two major ethnic groups, and/or with a religious group. This identification is usually obvious from the school's name – so for example the Ratu Sukuna Memorial School in Suva is identified with the indigenous Fijian community. An ethnic identification usually means that the school's management committee is dominated by members of the identified ethnic group and that the school culture is dominated by the religious and other traditions of that group. It often also means that the student body is exclusively or predominantly made up of students from the identified ethnic group. However, this is now less common in Indo-Fijian schools, which may be related to demographic changes. It is notable that the majority of Government-controlled schools are indigenous Fijian in identification.

Unfortunately, the CCF has been unable to obtain comprehensive statistics on ethnically-identified schools in Fiji for the purpose of this submission. Presented below in Tables 6.1 and 6.2 are statistics provided by the Fiji Teachers Union

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<sup>120</sup> CERD/C/62/CO/3 (2 June 2003), paras 18 and 26.

<sup>121</sup> Fiji Islands Education Commission/Panel (2000), *Learning Together: Directors for Education in the Fiji Islands*, Government Printer, Suva, pp 27-28.

showing the ethnic breakdown of students attending selected Indo-Fijian managed schools in the Central Division, and the numbers of indigenous Fijian students attending indigenous Fijian and other secondary schools in the Western Division, in 2004.

**TABLE 6.1:** Ethnic Composition of Selected Indo-Fijian Schools in the Central Division in 2004

School	Indo-Fijian	% Indo-Fijian	Indigenous Fijian	% Indigenous Fijian
DAV Girls	162	30.7	366	69.3
Suva Sangam	176	28.1	450	71.9
Shreedhar College	32	12.1	233	87.9
Saraswati College	295	55.5	237	44.5
Ahmadiya Muslim College	135	30	315	70.0
Vunimono High School	490	48.3	525	51.7
Indian College	356	41.6	500	58.4
Nausori High	122	49.0	127	51.0
Nakasi High School	112	43.75	144	56.25
TOTAL	1,880	39.4	2,897	60.6

**SOURCE:** Fiji Teachers Union

**TABLE 6.2:** Indigenous Fijian Students in Indigenous Fijian and Other Secondary Schools in the Western Division in 2004

District	Total Roll	Indigenous Fijians in Indigenous Fijian Schools	% Indigenous Fijian	Indigenous Fijians in Other Schools	% Indigenous Fijian
Nadroga/Navosa	1,915	800	41	1,115	59
Lautoka/Nadl/Yasawa	5,186	1,775	34	3,411	66
Ba/Tavua	2,201	505	23	1,696	77
Ra	1,289	848	66	441	34
TOTAL	10,591	3,928	37	6,663	63

**SOURCE:** Fiji Teachers Union

Table 6.3 below, shows primary and secondary school enrolments in Fiji by ethnicity at five-yearly intervals from 1970 to 2000. According to these statistics, the total primary school roll increased by 18% from 1970 to 2000, while the total secondary school roll grew 327% over the same period. Besides these overall trends, there have also been significant changes in the ethnic breakdown of enrolments. In 1970, there were more Indo-Fijian than indigenous Fijian students



in both primary and secondary schools, but by 1999 this situation had reversed. This appears to have been due to the emigration of many Indo-Fijian families since the coups of 1987 and a lower birth rate among Indo-Fijians.<sup>122</sup>

**TABLE 6.3:** Enrolments in Schools in Fiji by Ethnicity, 1970-2000

Year	Primary School Enrolments				Secondary School Enrolments			
	Indigenous Fijian	Indo-Fijian	Others	Total	Indigenous Fijian	Indo-Fijian	Others	Total
1970	49,102	65,004	7,268	121,374	4,820	9,642	1,503	15,965
1975	58,368	69,525	7,078	134,971	9,330	16,827	1,915	28,072
1980	56,682	67,517	6,873	131,072	11,345	20,461	2,328	34,134
1985	59,540	61,813	5,933	127,286	16,694	21,588	2,953	41,505
1990	63,581	66,008	6,336	135,925	21,758	27,689	3,788	53,235
1995	74,934	63,379	6,834	145,147	31,060	33,392	3,826	68,278
1999	82,238	55,507	6,539	144,284	33,017	31,969	3,253	68,229
2000	*	*	*	142,621	33,104	32,180	3,565	68,129

\* Statistics not available.

**SOURCE:** Fiji Islands Education Commission report 2000, page 18.

The May 2000 coup had a very negative impact on Fiji's education system. During and after the hostage crisis, most schools were closed for extended periods and a number of schools in Suva temporarily relocated their students to other schools outside the capital. The visiting and resident students at these schools then typically received lessons for half of each day, sharing the available facilities for several weeks.

## 6.2 "Fijian Education Problem"

Education is a major challenge for Fiji and for indigenous Fijians in particular. There have been improvements in access to education and participation since independence but there is still a significant gap in academic performance between indigenous Fijian and other students.

By 1970, ethnically based labour recruitment and other colonial policies had produced a well-established urban ethnic division of labour, corresponding to the rural ethnic division of labour, where indigenous Fijians were mainly subsistence or cash crop farmers and Indo-Fijians worked on sugarcane farms. Indo-Fijians and indigenous Fijians had equal representation in low to mid-level government positions, but in senior positions Indo-Fijians were dominant. Indo-Fijians also dominated in the education, business and other professions. The negotiations over arrangements for Fiji's independence brought issues of group inequality to

<sup>122</sup> Tavola, H, (2000) "Status Report" in *Fiji Islands Education Report 2000*, Government Printer, Suva, p 18.

the fore. Many indigenous Fijians viewed with apprehension Indo-Fijian domination of the private sector and the prospect that they might soon overtake indigenous Fijians as the largest ethnic group in the country. Many indigenous Fijian leaders saw indigenous political control as an essential counter-balance, and wanted a constitution that would put the rights and interests of indigenous Fijians ahead of other groups. This came to be known as the “paramountcy of Fijian interests”.<sup>123</sup>

The disparity in educational achievement between indigenous Fijian and other students was singled out for attention in the independence negotiations and came to be known as the “Fijian education problem”. Some reasons for the Fijian education problem were identified in a 1969 Education Commission report. They included rural poverty, geographic spread and isolation of rural indigenous Fijian schools, student weariness due to daily long distance travel, cultural discontinuity between home and school and home conditions that were not conducive to study.<sup>124</sup> The report recommended increases in funding, development and expansion of secondary schools in rural areas, establishment of junior secondary schools in strategic locations and the reservation of 50% of government university scholarships for indigenous Fijians.<sup>125</sup>

It can thus be seen that affirmative action in education has a long history in this country. In fact, the main goal of Fiji’s Development Plan 6 (1971-5) was to “achieve a marked improvement in indigenous Fijian education” and to rectify the inequality in the educational achievement of indigenous Fijians.<sup>126</sup> A scholarship plan was developed and implemented in 1975 that set the minimum qualifying score in entrance examinations for the University of the South Pacific (USP) at 216 points for indigenous Fijians and 264 for others.

Table 6.4 below, follows the progress of a group of students who enrolled in Class 1 (for ages 5-6 years) in 1988. It can be seen that in 1988 there were more indigenous Fijians than Indo-Fijians in the group. By the time the group reached Class 6 (for ages 10-11), in 1993, the number of students from the two main ethnic groups had evened out. By Class 8 (ages 12-13), in 1995, indigenous Fijian students were out-numbered by Indo-Fijian students and this trend continued through to Form 7 (ages 17-18) in 2000.

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<sup>123</sup> White, C, (2001) “Affirmative Action and Education in Fiji: Legitimation, Contestation, and Colonial Discourse”, *Harvard Educational Review*, Vol 71 No 2, summer, p 248.

<sup>124</sup> Lasaqa, I, (1984) *The Fijian People Before and After Independence: 1959-1977*, ANU Press, Canberra, pp 86-7.

<sup>125</sup> Id, p 89. Lasaqa notes that the idea of reserving 50% of government scholarships did not go down well among other ethnic groups: id, p 91.

<sup>126</sup> White (2001), p 249.

**TABLE 6.4:** Progress of the 1988 Class 1 Cohort for 13 Years

Year	Class	Roll					
		Fijian	Indo-Fijian	Others	Male	Female	Total
1988	Class 1	11,117	9,738	1,055	11,449	10,461	21,910
1989	Class 2	*	*	*	*	*	20,717
1990	Class 3	*	*	*	*	*	20,403
1991	Class 4	9,324	9,311	957	10,189	9,404	19,593
1992	Class 5	9,619	9,566	749	10,101	9,833	19,934
1993	Class 6	9,084	9,079	877	9,606	9,434	19,040
1994	Class 7	8,994	8,966	990	9,449	9,501	18,950
1995	Class 8	8,223	9,189	906	9,248	9,070	18,318
1996	Form 3	7,399	8,262	787	7,909	8,539	16,448
1997	Form 4	6,906	7,539	636	7,222	7,859	15,081
1998	Form 5	5,811	5,922	666	5,937	6,462	12,399
1999	Form 6	5,733	6,012	586	5,697	6,612	12,309
2000	Form 7	1,247	2,604	250	1,915	2,146	4,061

\* Statistics not available.

**SOURCE:** Fiji Islands Education Commission report 2000, page 30.

Table 6.4 shows that, despite steady improvements in enrolments and the introduction of tuition fee-free education shortly after independence, the number of indigenous Fijian students who drop out of school prematurely has continued to be a problem. Of the 11,117 indigenous Fijian students who enrolled in Class 1 in 1988, only 5,811 reached Form 5 in 1998 (52.3%) and only 1,247 of them reached Form 7 (11.2%) in 2000. By comparison, of the 9,738 Indo-Fijian students enrolled in Class 1 in 1988, 5,922 (60.8%) reached Form 5 in 1998 and 2,604 students (26.7%) reached Form 7 in 2000. Nearly half of the indigenous Fijian students entering Class 1 in 1988 dropped out of school before they reached Form 5 (for ages 15-16 years) in 1998.

The 2000 Education Commission report also identified some reasons for the disproportionate drop-out rate among indigenous Fijians. One major factor was the national examinations conducted in Class 6, Class 8, Form 4 and Form 6. Other factors were financial problems, family pressures, lack of parental guidance and support, violence in schools, school admission policies and peer pressure.<sup>127</sup> The report also went on to discuss some wider factors that appeared to be having an impact on indigenous Fijian education. Factors internal to Fiji included provincialism, influence of the church, lack of economic and political security of the country, and lack of strong leadership and resources. External factors were the proliferation of democracy and globalisation, multiculturalism,

<sup>127</sup> Fiji Islands Education Commission/Panel (2000), p 182.

the information and communication revolution and growing demand for a better quality of life.<sup>128</sup>

**TABLE 6.5:** Fiji School Leaving Examinations, 1989-1997

Number of Candidates and Passes							
Year	Indigenous Fijians			Others			% Diff.
	Sat	Passed	% Pass	Sat	Passed	% Pass	
1989	2,987	12,477	41.7	4,010	2,179	54.3	12.6
1990	3,366	1,420	42.2	4,006	2,263	56.5	14.3
1991	3,844	1,595	41.5	4,603	2,618	56.9	15.4
1992	4,317	1,516	35.1	4,894	3,006	61.4	26.3
1993	4,750	1,806	38.0	5,280	3,217	60.9	22.9
1994	5,012	1,899	37.9	5,340	3,287	61.5	23.6
1995	5,274	2,062	39.1	5,720	3,454	60.4	21.3
1996	5,489	2,126	38.7	6,029	3,556	59.0	20.3
1997	5,376	2,102	39.1	6,248	3,695	59.1	20.0

**SOURCE:** Fiji Islands Education Commission report 2000, page 181.

Table 6.5, above, shows the number of indigenous Fijian and other students who sat for, and passed, the Fiji School Leaving Certificate Examinations (FSLC) from 1989 to 1997. In that period, indigenous Fijians had an average pass rate of 39.3% and others had an average pass rate of 58.9% in the FSLC.

Table 6.6, below, shows the number of indigenous Fijian students who sat for, and passed, secondary school examinations each year from 1995 to 1999. It can be seen that the number of indigenous Fijian students reaching Form 7 (Year 13) was alarmingly low. Perhaps the most distressing statistic is that a huge number of indigenous Fijian students chose not to remain in school after completing their Fiji Junior Certificate Examination in Form 4 (Year 10).

<sup>128</sup> Id, pp 182-3.

**TABLE 6.6:** Indigenous Fijian Examination Candidature and Results, 1995-1999

Exam Candidature and Results	1995	1996	1997	1998	1999	Total
<b>Fiji Junior Certificate (FJC), Year 10</b>						
No. of candidates	6,405	6,253	6,390	6,605	6,477	32,130
No. Passed	5,217	5,123	5,289	5,477	5,448	26,554
% Passed	81.45	81.93	82.77	82.92	84.11	84.65
<b>Fiji School Leaving Certificate (FSLC), Year 12</b>						
No. of candidates	5,274	5,489	5,376	5,402	5,202	26,743
No. Passed	2,062	2,126	2,102	2,076	2,309	10,675
% Passed	39.1	38.73	39.1	38.43	44.39	39.92
<b>Fiji Seventh Form Examination (FSFE), Year 13</b>						
No. of candidates	871	934	968	998	963	4,734
No. Passed	387	460	644	627	502	2,620
% Passed	44.4	49.25	66.53	62.83	52.13	55.34

**SOURCE:** Fiji Islands Education Commission report 2000, page 188.

### **6.3 Explaining the Gap Between Indigenous Fijian and Other Students**

One explanation for the discrepancy between indigenous Fijian and other students in academic performance and drop out rates, consistent with some of the reasons given in the 2000 Education Commission report, is that indigenous Fijian families tend to give greater priority than others to social, cultural and religious responsibilities, and this comes at the expense of their children's educational needs. Prominent Fiji economist Wadan Narsey has stated that "indigenous Fijian students are often expected to have a wider focus on sports, culture, dance and song (which turns them into well-rounded persons) while Indo-Fijian students are preoccupied with academic success, to the detriment of other important objectives in life."<sup>129</sup> Narsey suggests that it has become a tendency for the public to vent its disappointment over the poor performance of indigenous Fijian students in education. While the Ministry of Education has been trying to solve the Fijian education problem for decades now, there is "no mechanism", argues Narsey, to compel indigenous Fijian schools, principals, teachers and students to start out on the difficult learning curve that they must follow if there is to be a real improvement in indigenous Fijian education over time.<sup>130</sup> Study after study has been carried out on the problems. There are predictable factors such as lack of library and laboratory resources, qualifications and experience of teachers, home environments for indigenous Fijian students not conducive to study, schools being too far away, and student-to-teacher ratios. However, there are also factors such as performance of teachers and principals,

<sup>129</sup> Narsey, W, (2002) "Fijian Education: the good news", *Fiji Times*, September 10.

<sup>130</sup> *Ibid.*

parent and student motivation and indigenous Fijian cultural obligations, which present special difficulty for political reasons.<sup>131</sup>

A study conducted by Narsey in 1995 of a group of indigenous Fijian students in Form 7 who attended multi-ethnic and indigenous Fijian schools showed remarkable results. Schools such as Natabua and Labasa Secondary and Adi Cakobau School (ACS, for indigenous Fijian girls) were the top performing schools in Fiji. Indigenous Fijian schools with a significant minority of non-indigenous Fijian students performed better than the elite indigenous Fijian boys schools of Queen Victoria School (QVS) and Ratu Kadavulevu School (RKS) (which performed dismally). The performance of indigenous Fijian students in multi-ethnic schools was much better than in indigenous Fijian schools. In multi-ethnic schools, the average marks for indigenous Fijian students were nearly equal to the average marks for other students. Narsey suggested that greater (inter-ethnic) competition, positive peer pressure and the influence of principals and teachers may have resulted in the impressive performance of these indigenous Fijian students. The 1996 FJC (Form 4), FSLC (Form 6), and FSFE (Form 7) examinations showed comparable trends at all levels. Narsey also noted that, while QVS and RKS have always been among the most well-resourced indigenous Fijian schools in the country, and have attracted the best indigenous Fijian students, their academic performance was in fact disappointing.

The impressive performance of indigenous Fijian students in multi-ethnic schools such as Natabua and Labasa College, as found by Narsey's 1995 study, suggests that the school environment, including principals, teachers and multi-ethnic student peer groups, are major contributing factors. The performance of the elite indigenous Fijian girls school, ACS, suggests that the gender of the student population can also be a contributor.

#### **6.4 Affirmative Action in Education under the Social Justice Act 2001**

Like its predecessors, the current Government has affirmative action programs in place to enhance indigenous Fijian education. These include the creation of Centres of Excellence (upgrading facilities such as school buildings, building new classrooms and staff quarters and purchasing new library books), the upgrade of boarding facilities, the provision of textbooks to indigenous Fijian schools (including textbooks in the Fijian language) and community awareness projects for indigenous Fijian parents and students. One of the more recent and controversial programs was to provide scholarships to "all indigenous Fijian students in Form 7 in 2005 regardless of parental income."<sup>132</sup> This met with fierce opposition from the Fiji Teachers Union and other non-government organisations, including the CCF. The program was discriminatory in the sense that assistance was provided on the basis of race and not need. There was no means test. Even

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<sup>131</sup> Ibid.

<sup>132</sup> Fiji Teachers Union, (2005) "Press Release: Government's Affirmative Action Plan", February 10.

worse, despite the fact that nearly 40% of indigenous Fijian students attend Indo-Fijian managed schools,<sup>133</sup> scholarships were only given to those in indigenous Fijian schools. By penalising indigenous Fijian students in non-indigenous Fijian schools, the free Form 7 program promoted racial segregation.

The Fiji Teachers Union has advised that the free Form 7 affirmative action program was applied in 2005 but not in the current school year (2006). The CCF hopes it has been quietly terminated.

However, racial segregation appeared to be an objective of another education policy of the 2001-2006 Government. The 2004 Corporate Plan of the Ministry of Education outlined a proposal to establish a new Form 7 college exclusively for indigenous Fijian students. In light of Narsey's finding in 1995 that indigenous Fijian students in multi-ethnic schools tended to outperform indigenous Fijian students in indigenous Fijian schools, it is highly questionable whether a new college, exclusively for indigenous Fijians, would be of benefit to the students or the wider community.

There have also been reports of misuse of funds provided for under affirmative action programs. Of the \$2 million (Fiji dollars) that was approved under the affirmative action program for the creation of Centres of Excellence, for example, more than \$1 million was allegedly misused.<sup>134</sup> As a result, the three schools benefiting from the program in 2002 were dropped, and new "Centres of Excellence" were selected from 2003 onwards. According to the Auditor-General, schools dropped from the program had made advance payments for building materials, held unaudited bank accounts, failed to record payments and made excessive payments for casual labour. One secondary school principal was criticised for wrongly authorising local purchase orders and payments. A school board was advised by Baba Forests Company, a company owned by the national secretary of the governing SDL party, to purchase building supplies that were then not used. In a third case, funds earmarked for the improvement of school infrastructure were used to buy uniforms for a provincial rugby team and local chiefs who supported the team.<sup>135</sup>

The reservation of 50% of government scholarships for indigenous Fijians since the mid-1970's is another program that has achieved disappointing results.

Table 6.7, below, provides statistics on the number of indigenous Fijian students who received scholarships from the Ministry of Fijian Affairs to attend tertiary institutions between 1984 and 1999. A total of 6,252 tertiary scholarships were awarded to indigenous Fijian students during this period, but only 2,466 students (39.4%) graduated. Approximately \$60 million was spent on these scholarships

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<sup>133</sup> The Fiji Teachers Union gave this statistic in a letter of complaint sent to the Fiji Human Rights Commission concerning the "Free Form 7" policy, dated 6 October 2003.

<sup>134</sup> Wilson, C, (2005) "\$1m Lost in School Plan", *Fiji Sun*, 6 December, p 1.

<sup>135</sup> Auditor-General of Fiji, (2005) *Special Investigations Report of the Auditor General of the Republic of Fiji Islands*, November 2005, Section 02.

over the 16 years in question. Despite being so clearly ineffective, the program continues to date without change. A non-indigenous Fijian student is eligible for a tertiary scholarship if his or her parents' annual family income does not exceed \$10,000 (Fiji dollars), while for indigenous Fijian and Rotuman students there is no income limit or other means test. Besides undermining the effectiveness of the policy in targeting disadvantage, the lack of any means test creates opportunities for abuse by administrators.

**TABLE 6.7:** Ministry of Fijian Affairs Tertiary Scholarships, 1984-1999

Institution	Scholarships	Graduates	% Graduating
Overseas	526	319	60.7
University of the South Pacific	3,133	774	24.7
Fiji Institute of Technology	2,369	1,220	51.5
Fiji School Of Medicine	66	43	65.2
Fiji College of Agriculture	67	50	74.6
Corpus Christi Teachers' College	20	12	60.0
Fiji College of Advanced Education	2	2	100.0
Fulton College	14	10	71.4
Pilot Training	55	36	65.5
TOTAL	6,252	2,466	39.4

**SOURCE:** Fiji Islands Education Commission report, page 200.

As the programs described above demonstrate, affirmative action in indigenous Fijian education has not been sufficiently grounded in research and analysis, and the policies themselves have not been targeted to assist those genuinely in need. It is notable that the 2000 Education Commission report recommended the application of a means test to indigenous Fijian scholarships so that only those students whose parents cannot afford tertiary education for their children are eligible. The report also suggested that a study be undertaken to identify the factors that play a role in the poor performance of indigenous Fijian students in tertiary institutions. As far as the CCF is aware, neither of these recommendations has been implemented to date.

In 1995, Wadan Narsey conducted a study on indigenous Fijian students' performance at the University of the South Pacific (USP), in which he found that the low quality of subject passes on entry into USP (that is, lower university entrance scores) contributed directly to poor performance of students at university.<sup>136</sup> Narsey suggested that more attention should be given to try to improve the quality of subject passes if indigenous Fijian students are to do well at university. He argued that, from the very start, indigenous Fijian university

<sup>136</sup> Narsey, W, (1995) "Fijian Academic Performance at the USP: Where are the Problems?", unpublished paper.



students are disadvantaged and they lag behind others who were required to achieve higher entrance scores.

## **6.5 Conclusions on Education**

It is undeniable that indigenous Fijian students continue to lag behind students from other communities in Fiji's education system, and affirmative action is needed to reduce this gap. However, the CCF believes that affirmative action programs in the education sector must change to be based on detailed and reliable information that identifies genuine needs, not suspicions and prejudices concerning ethnicity. As discussed in Chapter 4 of this submission, on affirmative action, there is also an urgent need for all affirmative action programs to be monitored and regularly evaluated.

The Government's current affirmative action programs in the education sector are fundamentally flawed. Its free Form 7 program for indigenous Fijian students who attended indigenous Fijian schools in 2005 was racist and divisive. The lack of any means test in this and other programs renders them ineffective and open to abuse. The proposal to establish a Form 7 college exclusively for indigenous Fijians would promote racial segregation. Some of the programs arguably reward inferior performance rather than encouraging improvement.

The tertiary scholarship program for indigenous Fijian students clearly does not provide good value for taxpayers' money and needs to be redesigned. From Table 6.7, above, it can be seen that nearly half (3,133) of all scholarship awards between 1984 and 1999 were to indigenous students who attended USP. Only 24.7% (774) of these students graduated. This means that, on average, 48 indigenous Fijians graduated annually out of 196 who received scholarships. One of the problems here is that, as Narsey's 1995 study on the performance of USP students confirmed, lower university entrance requirements lead to a higher rate of failure. Indigenous Fijians at university are competing with a wider student body that was required to achieve significantly higher entrance scores. It may be that the indigenous Fijian scholarship program would be more effective if it were means tested and the university entrance requirements were equalised.

There is a strong argument for programs that intervene earlier to encourage better academic performance and reduce school drop outs. Rather than providing tuition-free Form 7 for indigenous Fijians, for example, more resources could be put into keeping students in the school system after the Fiji Junior Certificate Examination in Form 4.

If the Government is genuinely committed to improving indigenous Fijian education, the CCF believes it should put more effort into promoting multi-ethnic schools. Further research will no doubt confirm the benefits of this approach, which is already supported by the results of Narsey's study on secondary school

student performance, and multi-ethnic schools offer the added advantage of promoting multiculturalism and inter-ethnic harmony.

Poorly designed and unmonitored affirmative action programs benefiting only indigenous Fijian students reinforce ethnic divisions in the minds of Fiji's youth. They are a source of resentment among other ethnic groups and contribute to the sense that there are two classes of citizenship in Fiji. A higher priority needs to be given to problems of performance and drop outs in other ethnic groups. The "Fijian education problem" should not be allowed to eclipse the plight of disadvantaged children and young people from all communities.

## 7. DISPROPORTIONATE EMIGRATION OF INDO-FIJIANS

The Committee's concluding observations from its sixty-second session did not specifically address the issue of emigration from Fiji. This is a very serious issue for the national economy, and our society as a whole. The CCF believes it is also an important indicator of the state of inter-ethnic relations in the country.

### 7.1 *The Facts*

One of the major problems faced by Pacific island countries such as Fiji is emigration of their citizens to developed countries, especially Australia, Canada, New Zealand and the USA. With this emigration, the Pacific island countries lose valuable human capital. It is well-known that migration is an important factor in socio-economic development the world over.<sup>137</sup> In the larger Asian countries, where there is a surplus of labour, emigration of skilled and professional citizens is sometimes seen as contributing positively to economic development. However, in the Pacific islands, with their much smaller populations, the supply of labour – and especially that of skilled labour – is very limited and the demand for it is high, so emigration is harmful to the development of their small, vulnerable economies. In our region, the flight of skilled labour is popularly referred to as “brain drain”.

Table 7.1, on the next page, provides annual statistics on emigration from Fiji by ethnicity from 1978 to 2003. This shows that the country has experienced a massive outflow of its skilled citizens over the past 25 years, and especially since the coups of 1987 and 2000. According to the Fiji Islands Bureau of Statistics, more than 87,000 people left Fiji between 1987 and 2003, at an average rate of over 5,100 people per year. This compares to an average of approximately 2,300 emigrants in the years 1978 to 1986. 87.5% (94,430) of all emigrants from 1978 to 2003 were Indo-Fijians, 6.8% (7,283) were indigenous Fijians and 5.7% (6,156) were people from other ethnic groups.<sup>138</sup>

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<sup>137</sup> Reddy, M, Mohanty, M, and Naidu, V, (2002) “Economic Cost of Human Capital Loss from Fiji: Implications for Sustainable Development”, paper presented at the 5<sup>th</sup> International Conference of the Asia Pacific Migration Research Network (APMRN), September 24-26, at Naviti Resort, Coral Coast, Fiji, p 3.

<sup>138</sup> Some commentators have suggested the official statistics understate emigration by non-Indo-Fijians.

**TABLE 7.1: Emigration by Ethnicity, 1978-2003**

Year	Indigenous Fijians	% Indigenous Fijians	Indo-Fijians	% Indo-Fijians	Others	% Others	Total
1978	78	4.2	1,592	85.8	186	10.0	1,856
1979	70	4.4	1,377	85.6	162	10.0	1,609
1980	131	7.2	1,487	82.8	177	9.7	1,795
1981	161	6.3	2,146	84.0	247	9.7	2,554
1982	162	6.5	2,086	83.6	248	9.9	2,496
1983	196	7.6	2,152	83.4	232	9.0	2,580
1984	179	8.0	1,849	82.6	210	9.4	2,238
1985	217	7.8	2,307	83.1	252	9.1	2,776
1986	178	6.2	2,362	81.6	354	12.2	2,894
1987	351	6.8	4,294	84.0	473	9.2	5,118
1988	263	4.8	4,808	87.5	425	7.7	5,496
1989	249	4.5	4,921	90.4	280	5.1	5,510
1990	307	5.4	5,020	88.9	323	5.7	5,650
1991	280	5.2	4,911	90.4	241	4.4	5,432
1992	248	5.4	4,184	90.5	189	4.1	4,621
1993	268	6.5	3,707	90.3	132	3.2	4,107
1994	252	6.0	3,748	89.8	175	4.2	4,175
1995	285	5.8	4,463	90.5	183	3.7	4,931
1996	319	6.3	4,527	90.0	184	3.7	5,030
1997	324	7.2	3,999	89.0	170	3.8	4,493
1998	362	7.5	4,273	88.5	194	4.0	4,829
1999	418	8.7	4,244	87.7	175	3.6	4,837
2000	468	8.9	4,568	86.6	239	4.5	5,275
2001	511	8.1	5,550	87.9	255	4.0	6,316
2002	421	7.7	4,831	88.1	228	4.2	5,480
2003	585	10.2	4,964	86.0	222	3.8	5,771
Total	7,283	6.6	94,430	87.5	6,156	5.7	107,869

**SOURCE:** Fiji Islands Bureau of Statistics

**TABLE 7.2:** Emigration of Professional and Technical Category, 1987-1999

Category	Total loss 1987-1999	% loss	Annual average 1987-1999
Architects	1,439	20.9	110.7
Accountants	1,065	15.5	81.9
Teachers	2,125	30.9	163.5
Medical Workers	893	13.0	68.7
Others	1,347	19.0	103.6
TOTAL	6,869	100.0	528.0

**SOURCE:** Fiji Islands Bureau of Statistics

Table 7.2, above, shows the number of Fiji citizens in the professional and technical category who emigrated in the period 1987 to 1999. It can be seen from these statistics that an average of 528 skilled migrants left Fiji annually from 1987 to 1999. According to Reddy, Mohanty and Naidu, this figure increased to nearly 1,000 per year in 2000 and 2001 – demonstrating the emigration spike that followed the May 2000 coup.<sup>139</sup>

The education and health sectors in Fiji have been the most drastically affected by brain drain since the 1987 coups and again since 2000. Teachers were the largest single professional group to emigrate between 1987 and 1999, accounting for nearly 31% (2,125) of the entire professional and technical category, followed by architects and related professions at 21% (1,439).

## **7.2 Factors Contributing to Emigration from Fiji**

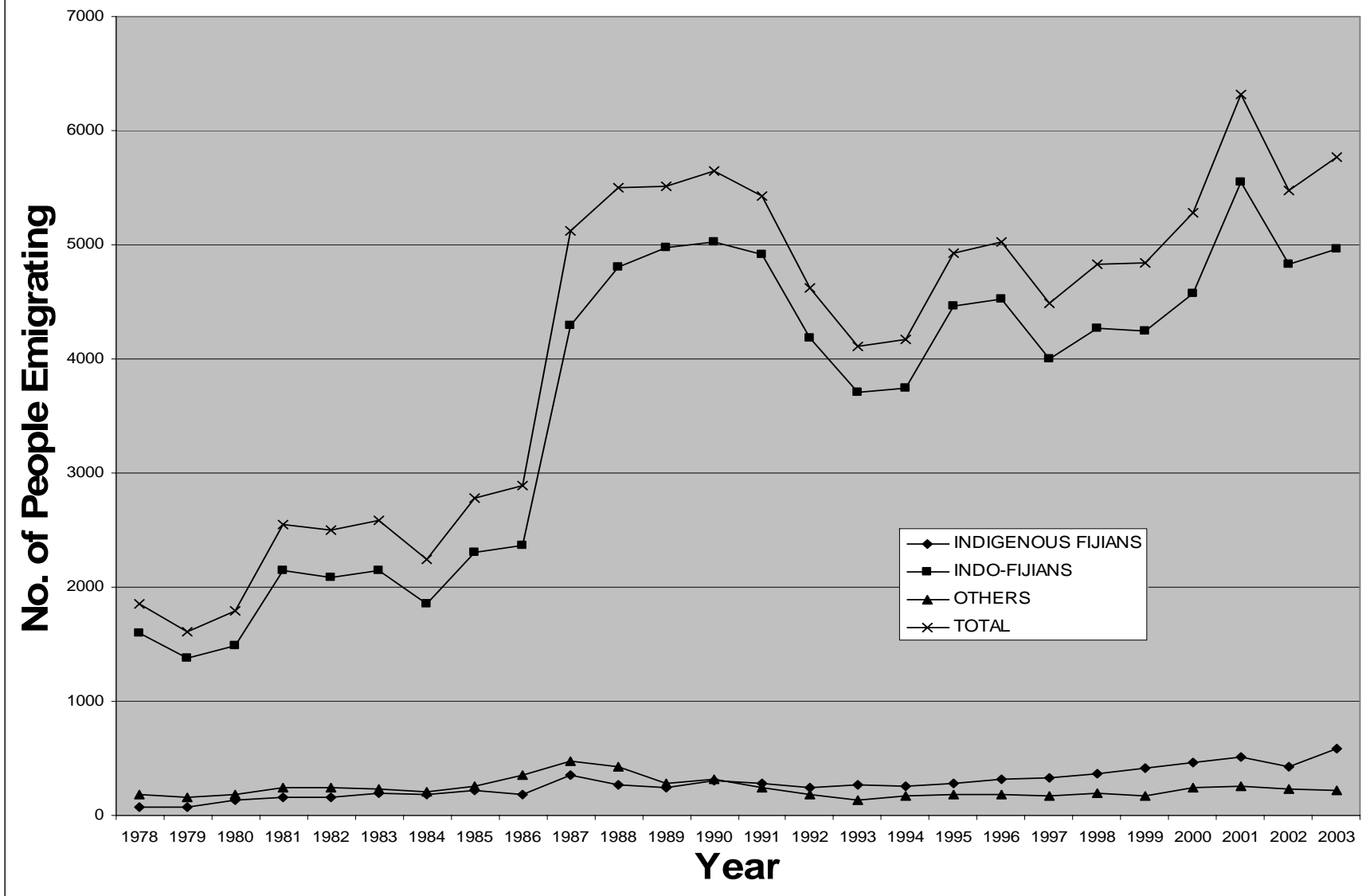
Commentators often explain trends in emigration in terms of “pull factors” and “push factors”. Pull factors are characterised as those career and life opportunities available in another country that attract people to emigrate there. They are typically economic in nature, and include better job prospects, higher wages and a generally higher standard of living (including education, health care and so on). Push factors are characterised as the threats or challenges of life in the country of birth that drive people to leave. These are typically political, social or environmental in nature.

Many indigenous Fijian leaders appear to deny that there are any push factors contributing to emigration from Fiji. Members of the 2001-2006 Government seemed oblivious to the issue. However, the statistics show a clear link between emigration and the three coups. From Table 7.1 (on the previous page), for example, it can be seen that, in 1987, the year in which Fiji experienced its first two coups, the number of emigrants was almost double what it had been the year

<sup>139</sup> 831 and 977 professional, technical and related workers left Fiji in 2000 and 2001, respectively, giving a total of nearly 9,000 for the fifteen year period from 1987 to 2001: Reddy, Mohanty, Naidu (2002), p 5.

before. This dramatic increase was sustained – at an average of 5,500 emigrants per year – until 1992, when the first elections were held under a new constitution introduced by the Government of coup leader, Sitiveni Rabuka. By 1997, emigration had stabilised at approximately 4,500 emigrants per year. However, when the May 2000 coup intervened, the number of people leaving Fiji peaked at a new high of 6,316 in 2001, and sustained its post-1987 average of 5,500 for the years 2000 to 2003. Figure 1, on the next page, plots these numbers on a graph in order to display visually how the coups of 1987 and 2000 drove people to leave Fiji in unprecedented numbers.

**Figure 7.1: Emigration by Ethnicity, 1978-2003**



Aside from the dramatic effect of the coups, the most striking feature of this Figure is the huge disparity in emigration between Indo-Fijians and other ethnic groups. Between 1978 and 2003, the overall ratio of Indo-Fijian emigrants to indigenous Fijians and others was more than 7:1. The ratio of Indo-Fijians to indigenous Fijians alone was nearly 13:1. Given that the populations of indigenous and Indo-Fijians living in Fiji were approximately equal during this period,<sup>140</sup> this disparity is astounding.

Several factors appear to contribute to it. One is undoubtedly that Indo-Fijians as a group have tended to perform better than indigenous Fijians in education and employment (as to education, see Chapter 6 of this submission). As a consequence, there are more Indo-Fijians with the kinds of qualifications and work experience that make them attractive as employees to overseas businesses and qualify them for the developed countries' skilled migrant programs.

Secondly, it has been suggested that Indo-Fijians are disproportionately represented among emigrants because Fiji's land laws effectively deny many of them the opportunity to own land, by reserving approximately 90% of all land for collective indigenous Fijian ownership.<sup>141</sup> Indo-Fijians have traditionally been tenant farmers, and this has left them vulnerable to intimidation and lawful or unlawful expulsion by indigenous Fijian landowners (especially during periods of political instability).

A third factor, and perhaps the most troubling, is that Indo-Fijians were the primary victims of the coups. One of the distinguishing features of the two Governments that were overthrown in 1987 and 2000 was that they had each been elected with the support of an overwhelming majority of Indo-Fijian voters. At all other times in Fiji's post-independence history, the political parties supported by the Indo-Fijian community have been in opposition. When defeated politicians and extreme nationalists in the indigenous Fijian community demonised the Governments elected in 1987 and 1999 for being "Indian dominated", they were not only referring to those Governments' parliamentary membership, but also to their popular support base. It was, in effect, the political leaders of the Indo-Fijian community who were thrown out of office (although this is not to say that many indigenous Fijians did not vote for them as well). Similarly, it was Indo-Fijians who felt most personally threatened during and after the coups, and it was their businesses that were primarily targeted by looters and vandals. As a consequence of being victimised in this way, Indo-Fijians experienced feelings of dispossession and insecurity concerning their future in Fiji. This is borne out statistically by the fact that, while emigration by indigenous Fijians and other ethnic groups rose by approximately 47% between the pre-coup

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<sup>140</sup> In fact, a lower birth rate among Indo-Fijians and disproportionate emigration have meant that the indigenous Fijian population has grown relatively larger since the mid-1990s. The 2007 Census by the Fiji Bureau of Statistics reveals the indigenous Fijian population is 473,983 (57% of the total), Indo-Fijians at 311,591 (38%) and balance made up by others at 42,326 (8%), <[www.statsfiji.gov.fj](http://www.statsfiji.gov.fj)>. The total population was said to be 827,900.

<sup>141</sup> Reddy, Mohanty, Naidu (2002), p 6.



period of 1983 to 1986 and the immediate post-coup years of 1987 to 1990, emigration by Indo-Fijians leapt by 120%.<sup>142</sup>

A fourth possible factor in Indo-Fijian emigration suggested by a few indigenous Fijian commentators is that Indo-Fijians do not feel the same sense of loyalty to Fiji as indigenous Fijians. This may be just a pejorative way of explaining that Indo-Fijians feel victimised by the coups and the Governments that have been installed as a result of them.

To sum up then, the factors contributing to emigration from Fiji appear to fall into two groups: socio-economic (pull) factors and political (push) factors.

The prospect of earning higher wages is probably the single greatest pull factor attracting skilled Fiji citizens to emigrate to countries such as Australia, New Zealand, Canada and the USA. This combines with all the advantages of larger and more developed employment markets, and generally higher standards of living.

The obvious push factor is political instability and the insecurity and economic problems that have been brought about by the coups of 1987 and 2000. It is notable that a study by Ghani and Ward in 1995 on the migration of professionals from Fiji to New Zealand suggested that political instability in Fiji was a greater factor than the demand for labour in New Zealand.<sup>143</sup> Uneven distribution of land ownership, insecurity of tenancies and ethnic tensions are probably other contributors to emigration. For example, the late 1990s and early 2000s also saw the expiry and non-renewal of unprecedented numbers of 30-year agricultural leases, with expelled tenants being overwhelmingly Indo-Fijian.

Indo-Fijians have been over-represented in emigration from Fiji throughout the independence period, and this appears to be largely due to their relatively better performance in education and employment. However, the extent of this over-representation rose alarmingly after the 1987 coups and has only begun to reduce since the mid-1990s through a gradual increase in emigration by indigenous Fijians. This indicates that, besides exacerbating the overall problem of brain drain, Fiji's recent history of political instability has also disproportionately driven away Indo-Fijians. As mentioned above, the current Government has taken no specific action to address this issue.

One effort by the Government to encourage indigenous Fijian emigrants, but not those from other ethnic groups, to return to Fiji is discussed below.

### **7.3 Racist Provision in the Immigration Act 2003**

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<sup>142</sup> These calculations are based on the statistics in Table 1.

<sup>143</sup> Ghani, A, and Ward, BD, (1995) "Migration of Professionals from Fiji to New Zealand: A Reduced Form of Supply-Demand Model", *World Development*, Vol 23(9), pp 1,663-37.

On 1 March 2004, during its sixty-fourth session, the Committee held a thematic discussion on non-citizens and racial discrimination. In the course of that discussion a representative of London-based NGO, Minority Rights Group International, by the name of Mr Baldwin, made a statement at the CCF's request concerning new immigration legislation that had been introduced by the Government of Fiji in 2003. According to the record of the discussion, Mr Baldwin said that a new Act of Parliament had "come into force in November 2003, which had led to discrimination against certain unregistered groups and Indo-Fijians. There was no legitimate objective for such discrimination, and it was wholly inconsistent with the Fijian Bill of Rights."<sup>144</sup>

One detail of this statement was inaccurate: the Act was passed into law in 2003, but it did not "come into force". To date, the Act remains on the statute books, but the Government has not taken the final step necessary to bring it into effect (namely, to publish a notice of the Act's commencement in the *Gazette*).

Aside from this detail, the CCF stands by the statement of the Minority Rights Group International. The offending provision is section 8(1)(g) of the *Immigration Act 2003*. It provides that non-citizens of Fiji who are registered in the *Vola ni Kawabula* (VKB) or Register of Native Lands may enter, reside and work in Fiji without a permit. In effect, individuals to whom section 8(1)(g) applies will have the same immigration status as citizens. The other classes of non-citizens to whom this privilege is extended are children of Fiji citizens, foreign diplomats, authorised military personnel and employees of the Government.<sup>145</sup>

The problem with section 8(1)(g) is that only indigenous Fijians may be registered in the VKB, because only indigenous Fijians may own native land in Fiji. This means the provision will apply only to former citizens who are indigenous Fijians and any of their children who become registered in the VKB. As a result, it discriminates against former citizens who are not indigenous, and the children of non-indigenous former citizens, on the ground of ethnicity. It may also discriminate against indigenous Fijians who are not registered in the VKB and minority indigenous groups. In the CCF's view, section 8(1)(g) is therefore inconsistent with Fiji's Constitution, as well as the Convention.

We put our objection to section 8(1)(g) to both the Prime Minister and the Minister for Immigration in October 2004, but have not yet received any response. The Fiji Human Rights Commission has advised us that it agrees section 8(1)(g) is unconstitutional, and that it has raised the matter with the Attorney-General. This may be one reason why the Government has delayed bringing the *Immigration Act 2003* into effect.

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<sup>144</sup> CERD/C/SR.1624 (5 March 2004), para 54.

<sup>145</sup> Immigration Act 2003 s 8(1)(b)-(f).

Besides being unconstitutional, the CCF also believes that section 8(1)(g) is economically counter-productive in that it is likely to discourage non-indigenous former citizens and their children from returning to Fiji. Like other developing countries, Fiji receives an enormous amount of funds in the form of remittances, or monetary gifts sent to citizens by their family members living abroad. These family members are generally working in more developed countries, and many are skilled tradespeople and professionals. The CCF believes that Fiji should be opening its doors to these people when they wish to return to the country of their birth or family, because they are likely to bring with them skills and savings that the country sorely needs.

## 8. SUICIDE RATES

In the concluding observations from its sixty-second session, the Committee took note of statistics presented to it by the NGO Coalition on Human Rights concerning the alarmingly high rate of suicide among Indo-Fijians. The Committee recommended that the Government “conduct research into the causes of this phenomenon and keep the Committee informed.”

The CCF is not aware of any action the Government has taken in response to this recommendation. However, we present in Table 8.1 on the next page updated statistics on reported suicides<sup>146</sup> provided by the Fiji Police Force. The statistics cover the period from 2000 to 2004 and include a breakdown by ethnic group.

The statistics presented in the submission of the NGO Coalition on Human Rights in 2002 were sourced from the Ministry of Health and included an ethnic breakdown of suicides and attempted suicides for 1999 and 2000. These statistics showed 10 suicides and 7 attempted suicides by indigenous Fijians, 75 suicides and 84 attempted suicides by Indo-Fijians, and 3 suicides and 0 attempted suicides by members of other ethnic groups in 1999. When these numbers are compared with those shown in Table 8.1 for the following year, it is notable that there was a significant rise in Indo-Fijian suicides and attempted suicides (from 159 to 202 total cases) between 1999 and 2000, but no rise among indigenous Fijians and others. Early 2000 was of course, the time when Fiji suffered its latest coup.

The CCF’s purpose in presenting these updated statistics is simply to reiterate the point made by the NGO Coalition on Human Rights in 2002, that the disproportionate rate of Indo-Fijian suicides is extremely disturbing and warrants urgent attention by the Government.

As mentioned in the previous Chapter of this submission, on emigration, the latest figures published by the Fiji Bureau of Statistics estimate that the Indo-Fijian community made up 38% of the total population at the end of 2004.<sup>147</sup> indigenous Fijian population at 456,207 (54% of the total), Indo-Fijians at 320,659 (38%) and others at 63,335 (8%), as of 31 December 2004: see <[www.statsfiji.gov.fj](http://www.statsfiji.gov.fj)>. In other words, approximately 38% of the population accounted for 86% of all suicides and attempted suicides in the five years from 2000 to 2004.

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<sup>146</sup> For the purpose of these statistics, suicide is defined as death due to self-inflicted injury committed with the intent of causing death.

<sup>147</sup> Indigenous Fijians made up an estimated 54% of the total, and others the remaining 8%: <[www.statsfiji.gov.fj](http://www.statsfiji.gov.fj)>. The total population was said to be 840,201. These estimates appear to be forward projections from the 1996 national census.

**TABLE 8.1: Suicides and Attempted Suicides by Ethnicity, 2000-2004**

Year	Indigenous Fijians			Indo-Fijians			Other ethnic groups			Totals		
	Suicides	Attempted Suicides	Total	Suicides	Attempted Suicides	Total	Suicides	Attempted Suicides	Total	Suicides	Attempted Suicides	Total
2000	12	5	17	92	110	202	1	3	4	105	118	223
2001	14	13	27	101	112	213	2	1	3	117	126	243
2002	18	12	30	90	107	197	1	2	3	109	121	230
2003	21	12	33	79	80	159	2	1	3	102	93	195
2004	16	10	26	75	94	169	2	1	3	93	105	198
Total	81	52	133	437	503	940	8	8	16	526	563	1089

**SOURCE:** Fiji Police Crimes Statistics Department, Nabua

Another way of describing the statistics is to say that the average annual rate of suicide in Fiji for the period 2000 to 2004 was approximately 12.5 deaths per 100,000 people. Of these deaths, Indo-Fijians made up 10.4, indigenous Fijians 1.9 and others 0.2. This is more than double the representation of Indo-Fijians that you would expect if the suicide rate were uniform across the three ethnic categories.

Wadan Narsey has attempted to explain the Indo-Fijian suicide rate by reference to “intense feelings of helplessness and hopelessness” brought on by the 1987 and 2000 coups, systematic discrimination by the Government, messages of hopelessness preached by Indo-Fijian politicians, and the breakdown of Indo-Fijian communities caused by massive emigration from Fiji combined with urbanisation within the country. He also blames Hindu religious organisations for failing to speak out against suicide, and the influence of a traditional story of two Hindu deities, Rama and Sita, told in the Ramayana, which appears to condone suicide as a means of proving a woman’s honour. Narsey also suggests that poor treatment of women in rural areas may contribute to suicides.<sup>148</sup>

Table 8.2, below, shows a breakdown of the suicide statistics for 2000 to 2004 by gender. Unfortunately, a combined breakdown by gender and ethnicity was not available.

**TABLE 8.2:** Suicides and Attempted Suicides by Gender, 2000-2004

Year	Males			Females		
	Suicide	Attempted Suicide	Total	Suicide	Attempted Suicide	Total
2000	61	44	105	44	74	118
2001	68	42	110	49	84	133
2002	64	39	103	45	82	127
2003	45	47	92	57	46	103
2004	57	45	102	36	60	96
Total	295	217	512	231	346	577

**SOURCE:** Fiji Police Crimes Statistics Department, Nabua

It can be seen from this Table that more males committed suicide than females during the five year period for which statistics are available. However, if attempted suicides are taken into account then the female numbers are higher.

<sup>148</sup> Narsey, W, (2002) “Politics, Religion and Suicide: Strange Silences”, *Fiji Times*, September 5.

The statistics from the Fiji Police Force also identify the method of suicide used. Of these, hanging was the most common method for all ethnic groups and for females as well as males. Ingestion of paraquat (a weed killer) and other chemicals was the next most commonly used method of suicide. A significant number of females, but not males, also committed or attempted suicide by burning themselves.

In conclusion, the CCF believes that the high rate of suicide among Indo-Fijians is partly explained by cultural factors, but we are concerned that this may not be the whole story. As Narsey has suggested, community breakdown and feelings of helplessness and hopelessness, associated with systematic racial discrimination and State neglect, as described elsewhere in this submission, could also be contributors. It seems plausible that suicides in Fiji may be influenced by the same “push factors” as emigration, but operating on a more disadvantaged section of the community. As with emigration, the 2001-2006 Government appeared to have done nothing to address the issue.

*CERD: Concluding observations*

Item #24 of the CERD report on Fiji took a note of the growing rate of suicide among Indo-Fijians, and recommended that the State party conduct research into the causes of this phenomenon, and keep the CERD Committee informed.

**TABLE 8.3: Suicide and attempted suicide by ethnicity**

<b>Ethnicity</b>	<b>2000-2003</b>	<b>2004-2006</b>	<b>Total</b>
Fijian	107 (12.2%)	77(14.7%)	184 (13.1%)
Indo-Fijian	772 (87.8%)	446 (85.3%)	1218 (86.9%)
<b>Total</b>	<b>879 (100%)</b>	<b>523 (100%)</b>	<b>1402 (100%)</b>

SOURCE: Fiji Police Crimes Statistics Department, Nabua, July 2007.

It can be seen from the Table 8.3 there is a significant difference in the suicide rates of the indigenous Fijians and Indo-Fijians. It might be noted that the suicide and attempted suicide for indigenous Fijians from 2000-2006 was 184 while for the Indo-Fijians, the figure for the same period was 1,218. The highest number (86.9%) of suicide and attempted suicide for the Indo-Fijians was during the first three years after the 2000 coup. During the period 2004-2006, there was a significant decline in suicides and attempted suicides for both indigenous Fijians and Indo-Fijians. The decline in percentage points for indigenous Fijians and Indo-Fijians was 16 and 26 (points) respectively.

With respect to suicide and attempted suicide it might be noted that there has been a significant decline in suicide and attempted suicide rates of Indo-Fijians since 2000. The mean point of suicide and attempted suicide rates for Indo-Fijians between the years 2000-2003 was 271. The figure however had dropped to 148 over the next three years (2004-2006).

It might be reasonable to suggest that the relatively high suicide rate among the Indo-Fijians during the first three years of 2000 may have been caused by the 2000 coup d'etat. This may be due to their feelings of helplessness and hopelessness resulting from 2000 coup. Data disaggregated by race and gender was not available to make inferences of mistreatment of Indo-Fijian females (at the height of 2000 coup in places like Dreketi and Muaniweni). High suicide and attempted suicides among the Indo-Fijian may also be due to cultural reasons as was suggested by academics like Wadan Narsey<sup>149</sup>. He blamed Hindu religious organizations for failing to speak out against suicide, and the influence of traditional stories of Hindu deities which tended to condone suicide as a way of proving a woman's honour. Additionally, he suggests that poor treatment of women in rural areas could also contribute to suicides.

149 Narsey, W. 2002. Politics, Religion and suicide: Strange Silence. Fiji Times, September 5, 2002



*Fiji Government's views on suicides in 2006 report to CERD*

The State party (Qarase Government) was responsible for the formation of the National Committee for the Prevention of Suicides (NCOPS) in 2001 to prevent suicides. The three major goals of NCOPS are:

1. Coordinating National Activities on Suicide Prevention,
2. To adopt effective preventive strategies to the local setting /promoting awareness and training of relevant personnel,
3. Improving data collection and promoting research on suicide prevention.

It had taken steps to reduce suicide rates across races through networking with NGOs, community leaders through NCOPS and attempted operating out of the Ministry of Health. It could be quite possible that strategies currently undertaken by NCOPS have effectively reduced the suicide rates of all races.

No clear statement has been made to date by the Bainimarama regime on the high suicide rate of the Indo-Fijians. The regime has only been in existence since December 5, 2006 and has yet to make a statement on suicide and attempted suicide rates of any particular ethnic group.

The State party's (Qarase Government) initiative at suicide prevention through the Ministry of Health appears to be a step in the right direction in improving the quality of life of all Fiji citizens irrespective of race.

**Table 8.4: SUICIDE & ATT SUICIDE REPORT ANALYSIS 2000-2006**

Year & Race		Suicide	Attempted Suicide	Total
2000	Fijian	12	5	17
	Indian	92	110	202
	Others	1	3	4
<b>Total</b>		<b>105</b>	<b>118</b>	<b>223</b>
2001	Fijian	14	13	27
	Indian	101	112	214
	Others	2	1	3
<b>Total</b>		<b>117</b>	<b>126</b>	<b>243</b>
2002	Fijian	18	12	30
	Indian	90	107	197
	Others	1	2	3
<b>Total</b>		<b>109</b>	<b>121</b>	<b>230</b>
2003	Fijian	21	12	33
	Indian	79	80	159
	Others	2	1	3
<b>Total</b>		<b>102</b>	<b>93</b>	<b>195</b>
2004	Fijian	16	10	26
	Indian	75	94	169
	Others	2	1	3
<b>Total</b>		<b>93</b>	<b>105</b>	<b>196</b>
2005	Fijian	16	11	27
	Indian	59	89	148
	Others	2	2	4
<b>Total</b>		<b>77</b>	<b>102</b>	<b>179</b>
2006	Fijian	14	10	24
	Indian	53	76	129
	Others	0	1	1

**Source:** Fiji Police Crimes Statistics Department, Nabua, July 2007-08-09

## 9. GOVERNMENT'S FAILURE TO PROMOTE A NATIONAL IDENTITY THAT UNITES INDIGENOUS AND INDO-FIJIANS

### Great Council of Chiefs (GCC): Manifestation of Discrimination

*CERD: Concluding observations*

*Item #17notes:*

*The Committee is concerned about current perceptions amongst some Fijians that the State party is not paying enough attention to the issue of reconciling the different population groups in Fiji. It encourages the State party to explicitly promote a national identity that unites rather than divides indigenous and Indo-Fijians, as well as other communities, and to include this objective in its development plans.<sup>150</sup>*

*Evidence of racism*

The GCC while seemingly a non-political body may be considered political because it is responsible for the appointment of the President and Senators. Up until now, only the Fijian chiefs could be its members. But there are views from some quarters that it should have representatives from Fijian 'commoner' as well [10]. It was noted that the challenge for the Fijian chiefly leadership is to recognize that commoner Fijians can make enormous contributions to the GCC and be humble and brave enough to reform their institutions accordingly. While it is agreed that common Fijians be included in the membership of the GCC, it is also recommended that Indo-Fijian and other races be considered for its membership. This is suggested because GCC is an important institution which is actively involved in the selection of the President and the Senate and the NLTB Board members. Additionally, NLTB is the guardian of over 90 per cent of the resources including land in Fiji.

### 9.1 Religious Intolerance as a Manifestation of Racism

During the nineteenth and early twentieth centuries, Fiji and other Pacific island countries received significant numbers of Christian missionaries, and the overwhelming majority of indigenous Fijians today are Christians. Indo-Fijians, by contrast, have largely retained the Hindu and Muslim faiths their ancestors brought with them from the Indian sub-continent. In the 1996 national census:

- 58% (449,482) of Fiji's citizens<sup>151</sup> identified themselves as Christian. Of these,

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150 Chand, G (Eds) 2005. 'Papers on Racial Discrimination.' Vol 1. The CERD Papers. Fiji Institute of Applied Studies, page 328, Lautoka

151 The census gave a total population of 775,077. Further details can be found in the Citizens' Constitutional Forum, (2001) Ethnicity, National Identity and Church Unity: A Study on Fiji 2001, CCF, Suva, pp 42-3.

87% (390,380) were indigenous Fijians, 4.6% (20,713) were Indo-Fijian and 8.5% (38,383) were of another ethnicity;

- 34% (264,173) of the total population identified as Hindu. Of these, 99% (262,851) were Indo-Fijians; and
- 7% (54,323) identified as Muslim. 99% (53,753) of these were Indo-Fijian.

The remaining 1% who did not identify themselves in the census as Christian, Hindu or Muslim included Sikhs, Confucians, people of the Bahai faith and those who gave no religion.<sup>152</sup>

Fiji's 1997 Constitution affirms religious diversity, guarantees freedom of religion as a human right, and prohibits unfair discrimination on the ground of opinions or beliefs. However, these impressive legal statements do not always reflect the realities of daily life. While the Committee is of course primarily concerned with racial discrimination, religion in Fiji largely coincides with ethnicity. As can be seen above, this is especially true of Hinduism and Islam. Accordingly, one of the forms in which racism manifests itself is through intolerance or disrespect for religions primarily practiced by the members of other ethnic groups.

The CCF believes that expressions of religious intolerance have become more common in Fiji since the 1987 coups. There have been reports of attacks on places of worship and desecration of holy books and statues of deities in both rural and urban areas around the country. For the purpose of this submission, the CCF has obtained statistics from the Fiji Police Force on reports of crimes committed against places of worship in the period 2001-June 2005. Table 9.1, on the next page, shows the number of such reports in each year from 2001 to 2004, and in the six months from January to June 2005, along with the estimated cost of the crimes, taking into account both stolen items and property damage.

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<sup>152</sup> It is worth noting that considerable diversity exists within the Christian and Hindu communities. The census identified 14 different Christian denominations or categories, for example. The Methodist Church was by far the largest of these, with 280,628 people (36% of the total population) and 66.5% (261,972) of all indigenous Fijians: *ibid.*

**TABLE 9.1: Crimes Against Places of Worship in Fiji, 2001-June 2005**

YEAR	CHURCH	% CHURCH	VALUE \$	MOSQUE	% MOSQUE	VALUE \$	TEMPLE	% TEMPLE	VALUE \$	TOTAL OFFENCES	TOTAL VALUE \$
2001	5	17.2	4,340	4	13.8	1,370	20	69.0	10,341	29	16,051
2002	9	42.8	5,291	1	4.8	210	11	52.4	3,901	21	9,402
2003	7	19.4	3,148	2	5.6	1,780	27	75.0	7,638	36	12,566
2004	15	31.9	13,757	2	4.3	920	30	68.9	17,336	47	32,013
January -June 2005	3	11.1	3,924	4	14.8	655	20	74.1	10,256	27	14,835
TOTAL	39	24.4	30,460	13	8.1	4,395	108	67.5	49,471	160	84,866

**SOURCE:** Fiji Police Crime Statistics Department, Nabua.

It can be seen from Table 9.1 that crimes against places of worship during the 2001-June 2005 period did not exclusively target any one religion. However, it is alarming that the number of attacks on Hindu temples outnumbered the combined number of attacks on Christian churches and Islamic mosques by a ratio of more than 2:1. Hindu temples were targeted in 108 of the total 160 reported attacks. That is 67.5%, which is radically disproportionate to the representation of Hindus in the total population – 34% according to the 1996 census. Obviously this is an imperfect comparison, but the CCF believes it should not be ignored.

The same comparison for the Islamic faith suggests that the number of attacks on mosques – 13 or approximately 8% of the total – was roughly in proportion to the size of the 1996 Muslim population (7% of the total). However, churches were only targeted in 39 cases, or 24% of the total, which is a surprisingly small number when you consider that Christians made up 54% of the total population in 1996.

These statistics say little about the ethnicity or religion of the perpetrators of the reported crimes. For that information the CCF has only anecdotal evidence. Media reports and personal communications indicate that the offenders in these cases are overwhelmingly young indigenous Fijian males. This suggests that non-Christian places of worship are targeted disproportionately because these perpetrators do not feel an appropriate sense of respect or reverence for temples and mosques.

It is important to acknowledge another possible explanation. Hindus often leave money as offerings to their Gods and dress up their religious statues with jewellery, and the presence of these items in temples is likely to be attractive to thieves. However, two factors suggest that this is not a complete answer. First, Table 9.1 shows that the monetary value of the crimes against temples, which we understand includes the estimated combined cost of stolen items and property damage, was lower, on average, than that of the crimes against churches. This suggests that those who stole from temples generally did not get away with more valuables than those who stole from churches. Secondly, crimes against places of worship often involve not only theft but also the desecration of holy books and statues. This can only be seen as a deliberate or reckless insult to the targeted religion and religious community. It appears, then, that while the possible presence of money and jewels in Hindu temples may be an added inducement, those who attack them are also motivated by a disregard or contempt for the Hindu faith and its Indo-Fijian adherents.

To give an example, in 1997, a young indigenous Fijian male fire-bombed a Hindu temple, and when the magistrate before whom he was tried asked why he committed the offence, he reportedly replied that he did it “in the name of Fijians

and Jesus,” and against inferior and false religions.<sup>153</sup> Sadly, this view reflects the teachings of some ministers of the Methodist Church and some minority Christian churches in Fiji.

Some ministries in Fiji have even tried to use the Bible to justify the coups and the overthrow of democratically-elected Governments. Reverend Manasa Lasaro, after himself staging a coup within the Methodist Church in Fiji in 1987, helped to raise indigenous Fijian support for the first military coup of that year by publicly declaring that it was the “will of God” and that it would “free indigenous Fijians from bondage” and from the “heathen races”.<sup>154</sup> Too many Christian congregations in Fiji are told that non-Christians are heathen and the “divine” enemies of the indigenous Fijian people. The CCF believes this is hate speech. Such congregations have even heard that, if the leaders of Fiji were to be non-Christian, the indigenous Fijian race would become extinct.<sup>155</sup>

During the 2000 coup, some church leaders supported “the Fijian cause” on the basis that it was consistent with the “Christian doctrine” of fighting for the neglected. In effect, they used the Bible to justify a political power play. This kind of radical preaching was also linked with other violent and illegal activities such as the invasion of a mosque on the island of Vanua Levu by members of a Christian church, who drove out the Muslim worshippers and later used the mosque for their own religious activities.<sup>156</sup>

The CCF’s concern in all this is that a trend is clearly observable, in which young males from the majority indigenous Fijian community, who are overwhelmingly Christian, attack the places of worship of the minority Indo-Fijian community, who are overwhelmingly Hindu and Muslim. However, in the face of this trend, there has been little or no response from the leaders of the Christian churches in Fiji, or from indigenous Fijian chiefs – and the Christian-dominated Government appears to be ignoring the problem.

The CCF believes that religious leaders of all faiths have a duty to promote respect and reverence for other faiths among their followers. This is especially important in a nation of such rich ethnic and religious diversity as Fiji.

Sadly, the statistics presented in Table 9.1 show that crimes against places of worship have increased in the last two years. This adds urgency to the need for church and other leaders within the Christian community especially – which of course means predominantly indigenous Fijian leaders – to take remedial action.

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<sup>153</sup> *Fiji Times*, 17 July 1997.

<sup>154</sup> Citizens’ Constitutional Forum, (2001) *Ethnicity, National Identity and Church Unity: A Study on Fiji 2001*, CCF, Suva, p 47. This message was repeated frequently over the radio in the Fijian language in 1987.

<sup>155</sup> *Id.*, pp 47-8.

<sup>156</sup> *Id.*, p 56.

## Religious intolerance as a manifestation of racism

This is a supplement to section 9.3 discussed earlier. The focus here is on the rationale for Christian intolerance of other religious beliefs as well the coping strategies of the victims of sacrilege acts.

### *CERD: Concluding observations*

The Concluding observations of the Committee on the Elimination of Racial Discrimination at its sixty second session (CERD/C/62/CO/3) had noted in paragraph 23 that the Committee is concerned about information relating to racist attacks and acts of religious intolerance against Indo-Fijians, in particular during the 1987 and 2000 coups. It underlines that no in-depth information relating to the prosecution of the authors of such acts, or on the adoption of preventive measures for the future, has been provided. The Committee therefore requested that such information be provided in the next periodic report.

Table 1 shows a number of sacrilege offences over a six year period (2001-2006) by types of divine worship. The value represents the value of property stolen or damaged. It can be seen that Hindu temples were vandalized most (68%), churches (25%) and mosques (7%) out of 222 acts of sacrileges. In terms of value of the properties stolen per offence, it was found that churches on the average lost \$688, Hindu temples lost \$461 and mosques lost the least with \$341 per break-in.

**Table 9.2:** Crime against Places of Worship in Fiji, 2001-2007 (Refer To appendix for other tables)

YEAR	CHURCH	VALUE	MOSQUE	VALUE	TEMPL E	VALUE	TOTAL OFFENCES	TOTAL VALUE
2001	5	\$4,340	4	\$1,370	20	\$10,341	29	\$16,051
2002	9	\$5,291	1	\$210	11	\$3,900	21	\$9,401
2003	7	\$3,148	2	\$1,780	27	\$7,637	36	\$12,565
2004	15	\$13,757	2	\$920	30	\$17,336	47	\$32,013
2005	10	\$9488	4	\$540	36	\$14,011	50	\$24,039
2006	9	\$2933	2	\$299	28	\$9,644	39	\$12,876
2007	5	\$2330	0	\$0	1	\$7,615	6	\$9,945

**Source:** Fiji Police Crimes Statistics Department, Nabua, July 2007-08-09

*State party's (Qarase Government) 2006 Report to CERT on religious intolerance*



In response to item 23 of CERD Concluding Observations, the Fiji Government's Report to CERD, 2006<sup>157</sup> noted 'even though there are complaints that such acts are a result of racial discrimination, the State party takes such offence seriously and offenders are treated in the extreme of the law'. It is not too clear whether the State party is accepting that acts of sacrilege are the result of racial discrimination especially in light of its defensive stance that 'most of the offenders of sacrilege break into temples and places of worship not because of hatred of religion but with the intent to steal and get away with money and other valuables to buy alcohol and cigarettes. The Fiji report to CERD (2006) continued that there was a general perception that this offence was racially motivated, but it is not. The Christian places of worship have also been broken into by offenders in the past. The Fiji Government in its defence cited aspects of Fiji's Penal Code that any person who breaks and enters any place of divine worship or breaks out of any place of worship is guilty of the felony referred to as sacrilege, and is liable to imprisonment for fourteen years.

It seems that the fourteen year deterrent is not working because acts of sacrilege still continue and the sentences given are well below the fourteen year benchmark to be an effective deterrent.

Fiji is a multi-ethnic nation with many races and religious beliefs. The indigenous Fijians are mostly Christians while the descendents of peoples of Indian Subcontinent are either Muslims or Hindus. There is a general feeling among the indigenous people that they have a superior religion. In times of political instability with a standoff between the Indo-Fijians and the indigenous Fijians, the feelings of superiority manifests itself in the burning of temples and mosques, the desecration of holy books of Hinduism *and Islam*.

Gregory Baum (1975) has noted that the Christian message has divided the world into 'we' and 'they' thus generating a rhetoric of exclusion. Neil Darragh (1995:77) has also acknowledged the arrogance of many Christians in face of other religions: There is a temptation for Christians to think that they have a monopoly on goodness or that God is us rather than anyone else.' ECREA report (2005) notes that Christianity has always claimed unique access to divine revelation over and above that available through other faiths, a superior claim based on the understanding that the coming of Christ on earth supersedes God's self-disclosure in other religions. However increasing numbers of Christians perceive this to be a form of Christian imperialism that begets sectarian exclusiveness and oppressive religious dogmatism.

Baum notes that non-Christians are not inferior beings and suggests (1975:20)<sup>158</sup> Christian theologians must ask themselves to what extent the exclusivist form of Christian preaching and the consciousness it created are responsible for the suspicions, injustice, and cruelty Christians have often shown towards outsiders.

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<sup>157</sup> Concluding observations of CERD-United Nations Report, 2003

<sup>158</sup> Narsey, W. 2002. Politics, Religion and suicide: Strange Silence. Fiji Times, September 5, 2002

### *Reaction of Indo-Fijians*

A mosque and a Hindu temple located opposite each other at Nasole, Nasinu, were broken into and vandalized on July 25, 2007.<sup>159</sup>

Kamlesh Arya, president of Arya Pratinidhi Sabha of Fiji, after raids on Shiri Sath Prakash Mandir in Nasinu, said that the attack was perpetrated by people who are trying to create unnecessary social problems. Taking advantage of the political situation, social elements are at work desecrating places of worship. On the same evening, a mosque located across from the Hindu mandir was also vandalized. The mosque had 'Osama Bin Laden' and other graffiti written on its walls. One Muslim resident of the neighbourhood reacted saying: 'We are not terrorists, we are only following our religion. Terrorists. That's their problem, not ours.'<sup>160</sup>

### *CCF Views*

The CCF believes that expressions of religious intolerance have become more common in Fiji since the 1987 coup. There have been reports of attacks on places of worship and desecration of holy books and statues of deities in both rural and urban areas around the country. It can be seen from Appendix 1 that crimes against places of worship during 2001-June 2007 did not target one religion. This was a point highlighted by the Fiji Government's Report to CERD in 2006. However, it is alarming that the number of attacks on Hindu temples outnumbered the combined number of attacks on Christian churches and Islamic mosques by a ratio of approximately 2:1. Hindu temples were targeted in 153 of the total 228 reported attacks since 2001 to date.

Statistics say little about the ethnicity or the religion of the perpetrators. For this information CCF has only anecdotal evidence. Media reports and personal communications indicate that the offenders in these cases are overwhelmingly young indigenous Fijian males. This suggests that non-Christian places of worship are targeted disproportionately because these perpetrators do not have the same respect for temples and mosques as they have for their own places of worship.

To give an example in 1997, a young indigenous Fijian male fired-bombed a Hindu temple, and when the magistrate whom he was tried asked why he committed the offence, he reportedly replied that he did it "in the name of Fijians and Jesus," and against inferior and false religions. Sadly, this view reflects the teachings of some ministers of the Methodist Church and some minority Christian churches in Fiji. It might be noted that the Methodist Church in Fiji is very much

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<sup>159</sup> 131 Fiji Times, 2007. Temple, Mosque Target Raids' . July 28, 2007 p.15

influenced by the Methodist Church of the United Kingdom. Recently, Lord Griffith [9] said that it was alright for Methodists to get involved in politics much like the Hindus in the House of Lords. But this would contradict Section 11 of the CCF Charter which reads:

'We affirm the separation of religion and state and we proclaim respect for all religions and freedom of belief and practice.'

In summary, it might be noted that most acts of desecration are undertaken by Fijian males and is in most situations a reflection of hate towards non-indigenous people. The State party's claim that the motive is money and material things is unconvincing. In the examples above, why are the break-ins accompanied with graffiti statements and abusive acts on holy rituals? This only is seen as a deliberate or reckless insult to the targeted religion and religious community. It appears, then, that while the possible presences of money and jewels in Hindu temples may be an added inducement, those who attack them are also motivated by a disregard or contempt for the Hindu faith as being inferior to the Christian faith.

#### *Current Interim Government's action (2006 to present)*

The state party's legal machinery has not been effective in acting as a deterrent, resulting in acts of sacrilege to continue unabated. Hindus and Muslims are now putting up their own protective measures.<sup>161</sup> On this matter, Mr. Arya noted that the incidents should compel temple authorities and other places of worship to invest more in securing property and possessions.

#### *Concluding Remarks*

The State party's Penal Code of 14 year jail sentences is not an effective deterrent against sacrilege crimes. Additionally, the State party's claim that these acts are undertaken to get away with money and other valuables is questionable on the basis of existing information.

#### **Note**

State party in Fiji has been alternating in its composition: democratic government, military rule and interim government. Following the violent overthrow of the democratic government in 2000, the army restored law and order and put in place an interim government under Lasenia Qarase. Elections were held in 2001 and the *Soqosoqo Duavata ni Lewenivanua* (SDL) party formed a Coalition Government with the Conservative Alliance *Matanitu Vanua* (CAMV) with Qarase as the Prime Minister. In the year 2006, elections were held again and SDL formed a Coalition Government with the Fiji Labour Party (FLP). But this State party lasted for less than seven months. With a coup in December

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<sup>161</sup> Fiji Times, 2007. Temple, Mosque Target Raids' . July 28, 2007 p.15

2006, there was military rule until the end of 2006. In January 2007, an interim government was formed with Commodore Bainimarama as the Interim Prime Minister. Thus the current State party is very much under the influence of the Royal Fiji Military Forces (RFMF). There are plans however to have fresh elections in March 2009 and return Fiji to parliamentary democracy.

**Appendix 1: Sacrilege cases from 2001 to 15<sup>th</sup> July 2007**

**Sacrilege Cases 2001**

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	3	\$3,505.00	0	\$0	4	\$5,722.00	7	\$9,227.00
Eastern	1	\$800.00	1	\$65	2	\$890.00	4	\$1,755.00
Western	0	\$0	2	\$1,200.00	12	\$3,599.00	14	\$4,799.00
Northern	1	\$35.00	1	\$105.00	2	\$130.00	4	\$270.00
<b>Total</b>	<b>5</b>	<b>\$4,340</b>	<b>4</b>	<b>\$1,370.00</b>	<b>20</b>	<b>\$10,341.00</b>	<b>29</b>	<b>\$16,051.00</b>

**Sacrilege Cases 2002**

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	6	\$5,109.00	0	\$0	1	\$2,326.00	7	\$7,435.00
Eastern	0	\$0	0	\$0	1	\$300.00	1	\$300.00
Western	3	\$182.00	1	\$210.00	3	\$480.00	7	\$872.00
Northern	0	\$0	0	\$0	6	\$794.70	6	\$794.70
<b>Total</b>	<b>9</b>	<b>\$5,291.00</b>	<b>1</b>	<b>\$210.00</b>	<b>11</b>	<b>\$3,900.70</b>	<b>21</b>	<b>\$9,401.70</b>

**Sacrilege Cases 2003**

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	2	\$1,300.00	0	\$0	1	\$16.50	3	\$1,316.50
Eastern	2	\$1,248.00	0	\$0	3	\$278.00	5	\$1,526.00
Western	2	\$600.00	1	\$1,500.00	13	\$3,400.00	16	\$5,502.00
Northern	1	\$0	1	\$280.00	10	\$3,942.00	12	\$4,222.00
<b>Total</b>	<b>7</b>	<b>\$3,148.00</b>	<b>2</b>	<b>\$1,780.00</b>	<b>27</b>	<b>\$7,637.50</b>	<b>36</b>	<b>\$12,565.50</b>

**Sacrilege Cases 2004**

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	7	\$6,992.00	0	\$0	11	\$11,188.00	18	\$18,180.00
Eastern	2	\$3,200.00	0	\$0	1	\$12.00	3	\$3,212.00
Western	6	\$3,565.00	2	\$920.00	17	\$5,786.00	25	\$10,271.00
Northern	0	\$0	0	\$0	1	\$350.00	1	\$350.00
<b>Total</b>	<b>15</b>	<b>\$13,757.00</b>	<b>2</b>	<b>\$920.00</b>	<b>30</b>	<b>\$17,336.00</b>	<b>47</b>	<b>\$32,013.00</b>

**Sacrilege Cases 2005**

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	5	\$4,580.00	1	\$135.00	10	\$3,524.00	16	\$8, 239.00
Eastern	2	\$758.00	0	\$0	5	\$7,525.00	7	\$8,283.00
Western	3	\$4,150.00	3	\$405.00	19	\$2,812.00	25	\$7,367.00
Northern	0	\$0	0	\$0	2	\$150.86	2	\$150.86
<b>Total</b>	<b>10</b>	<b>\$9,488.00</b>	<b>4</b>	<b>\$540.00</b>	<b>36</b>	<b>\$14,011.86</b>	<b>50</b>	<b>\$24,039.86</b>

**Sacrilege Cases 2006**

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	5	\$893.00	2	\$299.00	7	\$2,162.00	14	\$3,354.00
Eastern	1	\$10.00	0	\$0	9	\$5,106.00	10	\$5,116.00
Western	2	\$2030.00	0	\$0	10	\$673.00	12	\$2,703.00
Northern	1	\$0	0	\$0	2	\$1,703.00	3	\$1,703.00
<b>Total</b>	<b>9</b>	<b>\$2,933.00</b>	<b>2</b>	<b>\$299.00</b>	<b>28</b>	<b>\$9,644.00</b>	<b>39</b>	<b>\$12,876.00</b>

**Sacrilege Cases 2007\***

Division	Church	Values	Mosque	Value	Temple	Value	Total offences	Total Value
Southern	2	\$1,450.00	0	\$0	0	\$0	2	\$1,450.00
Eastern	1	\$300.00	0	\$0	1	\$7,615.00	2	\$7,915.00
Western	2	\$580.00	0	\$0	0	\$0	2	\$580.00
Northern	0	\$0	0	\$0	0	\$0	0	\$0
<b>Total</b>	<b>5</b>	<b>\$2330.00</b>	<b>0</b>	<b>\$0</b>	<b>1</b>	<b>\$7,615.00</b>	<b>6</b>	<b>\$9,945.00</b>

\*Note: Table 7 accounts for the data up to 15<sup>th</sup> of July, 2007.

**Source:** Fiji Police Crimes Statistics Department, Nabua, July 2007-08-09

## 10. FIJI HUMAN RIGHTS COMMISSION

In its 2003 concluding observations, the Committee requested more information on “the results of the activities of the [Fiji] Human Rights Commission”, and on “the practical implications” of section 27, paragraphs (h) and (i), of the Human Rights Commission Act 1999.<sup>162</sup> Section 27(h) and (i) enable the Commission to decline to investigate a complaint if “the Commission has before it matters more worthy of its attention” or “the resources of the Commission are insufficient for adequate investigation”, respectively.

The CCF enjoys a good working relationship with the Fiji Human Rights Commission (the Commission), and we invited it to contribute any information it might wish to this submission. The Commission responded on the issue of section 27(h) and (i) of the Human Rights Commission Act 1999, indicating as follows:<sup>163</sup>

“The Commission wishes it be brought to the attention of the CERD Committee that it has no concerns about the quoted phrases, and that they have caused no practical difficulties for the Commission. All national human rights institutions have to prioritise their work – few, if any, are in a position to address every human rights issue, large or small, that arise in their countries [sic]. Most have processes for determining the most urgent matters and prioritising issues that are having the greatest effect on the largest number of people. In the case of the FHRC, one of its functions is to advise on any human rights matter referred to it by Government, having regard to the available resources and priorities of the Commission. It is theoretically possible that so many matters might be referred to the Commission that it would become overburdened. Hence the need for discretion not to give attention to matters which, while not trivial, are so minor as not to warrant the allocation of resources that may be urgently required for more important issues. The quoted phrases from section 27 merely give the Commission the ability to avoid becoming overwhelmed by its workload.”

The Commission then noted that it had never actually needed to use section 27(h) or (i). The CCF, for its part, does not have any concerns regarding these paragraphs. In our experience, the Commission acts independently of the Government and we are not aware of any instance of improper declining of a complaint.

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<sup>162</sup> CERD/C/62/CO/3 (2 June 2003), para 25.

<sup>163</sup> Letter from the Director of the Fiji Human Rights Commission to the CCF, dated 16 January 2006.

## **APPENDIX A: THE RECONCILIATION BILL: A SUMMARY**

### **WHAT IS IN THE RECONCILIATION BILL?**

*(THIS SUMMARY WAS PREPARED BY 'CONCERNED CITIZENS AGAINST THE BILL')*

The Promotion of Reconciliation, Tolerance and Unity Bill 2005 is a Government Bill that proposes to establish two new bodies:

- a Reconciliation and Unity Commission; and
- a National Council on Promotion of Reconciliation, Tolerance and Unity.

#### **National Council on Promotion of Reconciliation, Tolerance and Unity**

The main function of the Council would be to develop a national policy on reconciliation, to be approved by Cabinet. Once the national policy has been approved, the Council would be responsible for coordinating its implementation. The Council would have a wide membership, including representatives of the Fijian and Indo-Fijian communities and the three major religions. It would work independently but must comply with any direction given by the Government Minister responsible for its activities.

#### **Reconciliation and Unity Commission**

The Commission would have three main functions:

- to advise the President on the granting of amnesties to individuals who committed crimes or other acts or omissions that were associated with a political objective, during the period, 19 May 2000 to 15 March 2001;
- to award compensation to victims of gross human rights violations committed during this period; and
- to investigate and report on the events of the May 2000 coup and its aftermath and make recommendations to the Government designed to prevent coups in the future.

The Commission would work independently of the government. It would comprise three to five Commissioners appointed by the President on the advice of the Prime Minister, after consultation with the Leader of the Opposition. The Commissioners would not be required to hold any particular legal or other qualifications.

The Commission would be required to establish two committees:

- an Amnesty Committee; and
- a Victims and Reparation Committee.

These committees would assist the Commission in the performance of its functions with respect to amnesties and compensation. In either case, however, it would be the Commission that makes the final decision whether to advise the granting of an amnesty or award compensation.

Each of the committees would comprise three members appointed by the Commission with the approval of the responsible Minister. It appears that the Commission may appoint its own members to the committees, although this is not required, and that the same person may serve on both committees. The chair of each committee must be a retired judge or an experienced legal practitioner. Other committee members would not be required to hold any particular qualifications.

### **What is an amnesty and who could get one?**

The effect of an amnesty under the Bill would be to remove any civil or criminal liability attaching to the acts or omissions for which it was granted. If those acts or omissions constituted a crime, the person who committed the crime could not be prosecuted for it. If the person had already been prosecuted and was serving a sentence of imprisonment for the crime, he or she would have to be released from prison immediately.

If the acts or omissions for which an amnesty was granted constituted a civil wrong, the person could not be sued for damages (compensation) for that wrong.

The provisions of the Bill dealing with who could get an amnesty are hard to understand. It appears that anyone who took part in the May 2000 coup or committed acts or omissions in support of the coup could get one, provided they are willing to cooperate with the Reconciliation and Unity Commission and make a full disclosure of what they did.

### **Who could get compensation and how much?**

The provisions of the Bill dealing with who could get compensation are also hard to understand. It appears that only victims of gross human rights violations committed between 19 May 2000 and 15 March 2001 would be eligible for compensation. Victims of gross human rights violations would probably include anyone who was killed, severely injured, tortured, raped or held hostage. It would not include those who were merely hurt, threatened or made to live in fear. It would not include those whose property was damaged, who lost their jobs or who had to close their business.

Compensation awarded by the Reconciliation and Unity Commission would have to be paid by the government. It would be limited to the maximum amount payable under the *Workmen's Compensation Act*. That maximum is currently \$24,000 in cases of death and \$32,000 in cases of permanent total incapacity.



## **APPENDIX B: SECTION 99 OF THE CONSTITUTION (AMENDMENT) ACT 1997**

### ***Appointment of other Ministers***

- 99.**(1) The President appoints and dismisses other Ministers on the advice of the Prime Minister.
- (2) To be eligible for appointment, a Minister must be a member of the House of Representatives or the Senate.
  - (3) The Prime Minister must establish a multi-party Cabinet in the way set out in this section comprising such number of Ministers as he or she determines.
  - (4) Subject to this section, the composition of the Cabinet should, as far as possible, fairly represent the parties represented in the House of Representatives.
  - (5) In establishing the Cabinet, the Prime Minister must invite all parties whose membership in the House of Representatives comprises at least 10% of the total membership of the House to be represented in the Cabinet in proportion to their numbers in the House.
  - (6) If the Prime Minister selects for appointment to the Cabinet a person from a party whose membership in the House of Representatives is less than 10% of the total membership of the House, that selection is deemed, for the purposes of this section, to be a selection of a person from the Prime Minister's own party.
  - (7) If a party declines an invitation from the Prime Minister to be represented in the Cabinet, the Prime Minister must allocate the Cabinet positions to which that party would have been entitled amongst the other parties (including the Prime Minister's party) in proportion, as far as possible, to their respective entitlements under subsection (5).
  - (8) If all parties (apart from the Prime Minister's party and the party (if any) with which it is in coalition) decline an invitation from the Prime Minister to be represented in the Cabinet, the Prime Minister may look to his or her own party or coalition of parties to fill the places in the Cabinet.
  - (9) In selecting persons from parties other than his or her own party for appointment as Ministers, the Prime Minister must consult with the leaders of those parties.

## APPENDIX C: MULTI-PARTY GOVERNMENT IN FIJI: A TIMELINE

### MULTI-PARTY GOVERNMENT IN FIJI: A TIMELINE

*Prepared by the Citizens' Constitutional Forum in July 2005*

25 July 1997	<p><b>The <i>Constitution (Amendment) Act 1997</i> ('the Constitution') is passed by Parliament.</b></p> <p><b>Section 99 calls for executive power to be shared between the governing political party or coalition and other major parties in Parliament.</b> This is achieved by requiring the Prime Minister to invite all parties holding at least 10% of the total membership of the House of Representatives (8 or more seats, if all 71 seats are occupied) to be represented in the Cabinet. The overall size of Cabinet is left to the Prime Minister, but parties accepting the invitation to be represented must be offered Cabinet seats in proportion to their numbers in the House. The Prime Minister may also invite minor parties that do not fulfil the 10% requirement (such as a coalition partner) to be represented in his or her Cabinet, but if this is done then the representatives of those parties are deemed to be representatives of the Prime Minister's party for the purpose of calculating the number of Cabinet seats that must be offered to parties that fulfil the 10% requirement.</p> <p><b>Section 64 of the Constitution then uses the formula from section 99 to determine the entitlement of parties holding seats in the House of Representatives to nominate Senators.</b> 8 out of the total of 32 Senators are to be appointed on the advice of the Leader of the Opposition from among nominations made by the leaders of parties holding at least 10% of the total membership of the House of Representatives (that is, parties entitled to be offered Cabinet seats under section 99). The Leader of the Opposition must ensure that these 8 Senators comprise such number nominated by each entitled party as is proportionate to the size of their membership in the House.</p>
27 July 1998	<p><b>The Constitution comes into force.</b></p>
8-15 May 1999	<p><b>National elections are held to elect 71 members of the House of Representatives in accordance with the new Constitution.</b></p> <p>The President is later advised of the results as follows: The Fiji Labour Party (FLP) wins 37 seats. The Fijian Association Party (FAP) wins 10 seats. The Soqosoqo ni Vakavulewa ni Taukei (SVT) wins 8 seats. The Party of National Unity wins 4 seats. The Christian Democratic Unity Party, the United General Party and the Nationalist Vanua Tako Lavo win 2 seats each. The remaining 5 seats are won by independents. The High Court, sitting as the Court of Disputed Returns, later revokes the election of one of the Nationalist Vanua Tako Lavo candidates and declares a FAP candidate to be the winner of that seat.</p>
19 May 1999	<p>The President appoints the Leader of the Fiji Labour Party, Mahendra Chaudhry, as Prime Minister. Mr Chaudhry writes to the Leader of the SVT, Sitiveni Rabuka, inviting the SVT to be represented in a multi-party Cabinet in accordance with section 99 of the Constitution.</p>
20 May 1999	<p>Mr Rabuka replies to Mr Chaudhry's letter with a list of conditions on which the SVT would be willing to accept the invitation to join a multi-party Cabinet. The</p>

	conditions include that Mr Rabuka be made Deputy Prime Minister and Minister for Fijian Affairs, that three other portfolios be allocated to named SVT members, that three of the nine Senators to be appointed by the Prime Minister be nominated by the SVT, and that all ambassadors, high commissioners, and board members of statutory and state-owned enterprises appointed by the SVT be allowed to complete their terms of office. Mr Chaudhry replies to Mr Rabuka's letter, rejecting these conditions.
21 May 1999	The President, acting on Mr Chaudhry's advice, appoints 18 Ministers and 5 Assistant Ministers. None are from the SVT. The President summons Parliament to meet on 14 June 1999.
24 May 1999	The President appoints the Deputy Leader of the SVT, Ratu Inoke Kubuabola, as Leader of the Opposition.
7-11 June 1999	Correspondence is exchanged between Ratu Inoke and the President regarding the 8 Senators to be appointed on the advice of the Leader of the Opposition under section 64 of the Constitution. There are conflicting interpretations of the formula for calculating the number of Senate seats that must be offered to each political party holding at least 10% of the total membership of the House of Representatives.
12 June 1999	The President writes to Ratu Inoke and Mr Chaudhry, advising that he intends to ask Cabinet to advise him to refer the question of how many Senate seats must be offered to each party under section 64 to the Supreme Court for an advisory opinion.
15 June 1999	Mr Chaudhry replies to the President that Cabinet has agreed to advise him to make a reference to the Supreme Court regarding the interpretation of section 64. The President formally opens the new Parliamentary session at a joint sitting of both Houses.
16 June 1999	Ratu Inoke commences legal action in the High Court to contest the opening of Parliament before all disputes concerning the elections have been resolved and all Senators appointed.
21 June 1999	The Speaker of the House of Representatives declares the seat of SVT Leader, Sitiveni Rabuka, vacant following his resignation and election as Chairman of the <i>Bose Levu Vakaturaga</i> (Great Council of Chiefs).
24 June 1999	A Presidential reference is filed in the Supreme Court concerning the interpretation of section 64.
6 July 1999	Ratu Inoke commences legal action in the High Court to contest the exclusion of the SVT from Cabinet.
24 August 1999	The President's reference to the Supreme Court is enlarged to include issues raised in Ratu Inoke's legal actions.
3 September 1999	<b>The Supreme Court delivers its opinion on the enlarged President's reference (<i>President of the Republic of Fiji Islands v Kubuabola</i> (Tuivaga P, Lord Cooke, Mason, Brennan and Toohey JJ, Miscellaneous Case No. 1 of 1999)).</b>

	<p>It holds that power sharing is a “central purpose” of the 1997 Constitution. Sections 64 and 99 of the Constitution modify the traditional Westminster pattern so that political power is “divided among a number of groups, persons and parties” and “the share of each is in some way limited”. Under section 64, the Prime Minister is entitled to nominate 9 Senators only. The Prime Minister’s party is not entitled to be offered additional Senate seats from among the 8 to be filled on the advice of the Leader of the Opposition. However, parties in coalition with the Prime Minister’s party are not to be regarded as members of the Prime Minister’s party for the purposes of sections 64 and 99. Accordingly, if such parties hold at least 10% of the total membership of the House of Representatives, they will have a separate entitlement to be offered seats in the Senate and in Cabinet. The time for calculating the number of Senators that each party is entitled to nominate is the date when the Leader of the Opposition advises the President of the nominations. This has not yet occurred at the date of the Court’s judgment. There is one vacancy in the House of Representatives, leaving a total membership of 70. Besides the FLP, only the FAP (with 11 seats) and the SVT (with 7) hold at least 10% of this total. As a result, of the 8 Senators to be appointed on the advice of the Leader of the Opposition, the Court rules that 5 must be offered to the FAP and 3 to the SVT. Since the President must summon Parliament to meet no later than 30 days after the last day of polling in national elections (section 68 of the Constitution), this cannot be dependent on the receipt of advice from the Leader of the Opposition on Senate appointments. Accordingly, the Parliamentary session may begin before all Senate seats are filled.</p> <p>In relation to section 99, the Court holds that Prime Minister may only withdraw the invitation to other parties to join the Cabinet after a reasonable time has passed for accepting or rejecting it. The Court rules that Sitiveni Rabuka’s response of 20 May 1999 to Mahendra Chaudhry’s invitation to the SVT included conditions that Mr Chaudhry was not bound to accept. Mr Rabuka’s conditional acceptance of the invitation therefore amounted to a rejection.</p>
<p>27 August – 1 September 2001</p>	<p><b>Following the May 2000 coup and the ruling of the Court of Appeal on 1 March 2001 that the 1997 Constitution remains in force, national elections are held to elect a new Parliament.</b></p> <p>The results are as follows: The Soqosoqo Duavata ni Lewenivanua (SDL) Party wins 32 seats. The Fiji Labour Party (FLP) wins 27 seats. The Conservative Alliance/Matanitu Vanua (CAMV) wins 6 seats. The New Labour Unity Party (NLUP) wins 2 seats. The National Federation Party (NFP) and the United General Party (UGP) win 1 seat each and the remaining 2 seats are won by independents. The High Court, sitting as the Court of Disputed Returns, later revokes the election of the NFP candidate and declares a FLP candidate to be the winner of that seat.</p>
<p>10 September 2001</p>	<p>The President appoints the Leader of the SDL Party, Laisenia Qarase, as Prime Minister. Mr Qarase writes to the Leader of the FLP, Mahendra Chaudhry, inviting the FLP to join in a multi-party Cabinet in accordance with section 99 of the Constitution. The letter states that the policies of Mr Qarase’s Cabinet would “be based fundamentally on the policy manifesto of the [SDL]” and that “it is simply inconceivable that we should allow a situation where we become the minority group in [Cabinet]”. Mr Chaudhry replies that the FLP accepts the invitation but its participation “in Cabinet and in government” would be in accordance with the Korolevu Declaration, and that “Cabinet decision making ... should be on a consensus seeking basis” and “consensus seeking mechanisms in Cabinet</p>

	should include the formulation of a broadly acceptable policy framework”.
12 September 2001	Mr Qarase replies to Mr Chaudhry’s letter, stating that the conditions on which the FLP purported to accept his invitation to join Cabinet are unacceptable.
18 September 2001	The President, acting on Mr Qarase’s advice, appoints Ministers from the SDL Party, the CAMV and the NLUP. An independent and a Senator are also appointed to be Ministers. The FLP is excluded.
25 September 2001	Mr Chaudhry commences legal action in the High Court claiming that the FLP is entitled to be represented in Mr Qarase’s Cabinet.
2 October 2001	The President formally opens the new Parliamentary session at a joint sitting of both Houses.
19 October 2001	Acting on the advice of the Leader of the Opposition, Prem Singh, the President appoints 4 FLP nominees and 1 each from the CAMV, NFP, NLUP and UGP as Senators. This is done despite a difference of opinion between Mr Singh and Mr Chaudhry as to the FLP’s entitlement to be offered seats in the Senate. Mr Chaudhry has earlier declined the President’s offer to appoint him as Leader of the Opposition.
29 November 2001	The High Court poses a series of legal questions arising from Mr Chaudhry’s claim that the FLP is entitled to be represented in Cabinet, in the form of a Case Stated for decision by the Court of Appeal.
15 February 2002	<p><b>The Court of Appeal decides the Case Stated (<i>Chaudhry v Qarase (Eichelbaum, Ward, Handley, Smellie and Keith JJA, Miscellaneous No. 1/2001)</i>).</b></p> <p>It holds that section 99 of the Constitution does not enable the Prime Minister to impose any conditions on the offer of Cabinet seats to parties holding at least 10% of the total membership of the House of Representatives. The invitation to join Cabinet must be unconditional. The Court rules that Mr Qarase’s letter to Mr Chaudhry of 10 September 2001 did contain an invitation in accordance with section 99, and the inclusion of information as to how he intended the affairs of Cabinet to be conducted did not amount to a condition. Mr Chaudhry’s response of the same day accepted this invitation, and the inclusion of information concerning how the FLP would participate likewise did not amount to a condition. Accordingly, while Mr Qarase retains a discretion as to the overall size of Cabinet, he is required to advise the President to appoint a Cabinet in which the FLP is represented in proportion to its numbers in the House of Representatives. In selecting members of the FLP to become Ministers, Mr Qarase must consult Mr Chaudhry. The Court concludes that, in failing to appoint any FLP Ministers, Mr Qarase has breached, and is presently in breach, of a constitutional duty.</p>
15 March 2002	<p><b>The Supreme Court decides a Presidential reference dated 6 February 2002, concerning the appointment of Senators under section 64 of the Constitution (<i>In the matter of section 123 of the Constitution Amendment Act 1997 (Tuivaga P, Tikaram, Eichelbaum, Amet and Sapolu JJ, Miscellaneous Case No. 1 of 2002S)</i>).</b></p> <p>The issue in dispute is the distribution of the 8 Senate appointments made on the advice of the Leader of the Opposition. The Court holds that only parties holding</p>

	<p>at least 10% of the total membership of the House of Representatives, other than the Prime Minister's party, are entitled to nominate Senators to fill these 8 seats. Nominations are made by the leaders of entitled parties, but the nominees need not be members of those parties. It is clear from the Supreme Court's opinion on the 1999 <i>Kubuabola</i> reference that each entitled party must be offered that number of Senate seats from among the 8 which bears the same proportion to the total as the number of seats in the House of Representatives held by that party bears to the total number of seats in the House held by all entitled parties. This may be expressed mathematically as:</p> $\frac{SEP}{HREP} = \frac{8}{HRAEP}$ <p>where "SEP" means Senate seats that must be offered to each entitled party, "HREP" means seats in the House of Representatives held by that entitled party and "HRAEP" means the total number of seats in the House held by all entitled parties. Following the 2001 national elections, only one party, namely the FLP, is entitled to be offered Senate seats from among the 8 to be appointed on the advice of the Leader of the Opposition. Upholding its earlier opinion, the Court rules that, where there is only one entitled party, that party must be offered all 8 Senate seats. Accordingly, the FLP is entitled to nominate 8 Senators. In addition, the Court suggests that the President should decline to act on advice which he or she considers is not in accordance with the Constitution. The President may obtain independent legal advice on such matters.</p>
<p>24 April 2002</p>	<p>The High Court makes a declaration giving effect to the Court of Appeal's decision on 15 February 2002 in the Case Stated.</p>
<p>24 May 2002</p>	<p>The Court of Appeal dismisses an appeal by Mr Qarase against the High Court's declaration, but grants leave for an appeal to the Supreme Court.</p>

<p>18 July 2003</p>	<p><b>The Supreme Court decides Mr Qarase’s appeal (<i>Qarase v Chaudhry (Fatiaki P, Spigelman, Gault, Mason and French JJ, Civil Appeal No. CBV 0004 of 2002S)</i>).</b></p> <p>It holds that section 99 requires the Prime Minister to establish a multi-party Cabinet. This represents a modification of the traditional Westminster model, and may require some corresponding modification of Cabinet conventions. However, multi-party Cabinet can be achieved consistently with other requirements of the Constitution, including collective responsibility of the Cabinet to Parliament (section 102 of the Constitution) and the doctrine of Cabinet solidarity, which collective responsibility implies. “It is not to be expected, at this early stage of the implementation of the 1997 Constitution, that there will be settled conventions to cover all contingencies or difficulties”. Likewise, a multi-party Cabinet is not to be rejected as unworkable only because it may be more difficult to manage than a Cabinet whose members belong to the same party or a coalition that has worked out some consensus before its formation. There will no doubt need to be negotiations as to which members of parties other than the Prime Minister’s own will be appointed as Ministers, and which portfolios will be allocated to them. While the Prime Minister retains the authority to decide these questions, he or she must conduct the negotiations in good faith. It may even be necessary for such negotiations to take place during the formation of coalitions, before the Prime Minister is appointed. The Court also holds that “the obligation to establish a multi-party Cabinet carries with it an obligation to maintain a multi-party Cabinet. This latter obligation may arise in connection with ministerial resignations, by-elections or changes in the size of the Cabinet.” Accordingly, the appeal is dismissed and Mr Qarase is ordered to pay Mr Chaudhry’s costs.</p>
<p>9 July 2004</p>	<p><b>After unsuccessful negotiations between Mr Qarase and Mr Chaudhry concerning the number of Cabinet seats that should be offered to the FLP, the Supreme Court decides a Presidential reference on the question (<i>In the matter of section 123 of the Constitution Amendment Act 1997 (Fatiaki P, Gault, Mason, French and Weinberg JJ, Miscellaneous Case No. 1 of 2003)</i>).</b></p> <p>Upholding its opinions on the 1999 and 2002 references, the Court holds that parties entitled to be offered Cabinet seats under section 99 of the Constitution are to be identified by dividing the number of seats in the House of Representatives which each party holds by the total membership of the House. If the result is equal to or greater than 10% then the party in question is entitled to be offered Cabinet seats. While the Prime Minister is free to choose the overall size of his or her Cabinet, entitled parties must be offered proportionate representation in it. The Court holds that each entitled party must be offered a number of Cabinet seats which bears the same proportion to the number to be held by the Prime Minister’s party as the number of seats in the House of Representatives held by the entitled party bears to the number of seats in the House held by the Prime Minister’s party. This may be expressed mathematically as:</p> $\frac{CEP}{HREP} = \frac{CG}{HRG}$ <p>where “CEP” means Cabinet seats that must be offered to each entitled party, “HREP” means seats in the House of Representatives held by that entitled party,</p>

	<p>“CG” means Cabinet seats to be held by the Prime Minister’s party and “HRG” means seats in the House of Representatives held by the Prime Minister’s party. So, for example, in the present case, the SDL Party holds 32 seats in the House of Representatives and the FLP holds 28. The number of Cabinet seats to be offered to the FLP must therefore be equal to 28/32 or seven-eighths of the number to be held by the SDL. If the Prime Minister chooses to invite a coalition partner that does not hold at least 10% of the total membership of the House of Representatives to join the Cabinet, then any seats to be held by that non-entitled party will be counted as being held by the Prime Minister’s party. The proportion of Cabinet seats to which all parties are entitled must be re-calculated from time to time as the composition of the House of Representatives changes.</p> <p>However, section 99 is silent on the appointment as Cabinet Ministers of members of the House of Representatives who are independent of any political party or of Senators who are not members of a party represented in the House. The Court holds (with Gault J dissenting on this point) that the Prime Minister may appoint such independents or Senators to the Cabinet at his or her discretion, and any seats filled by them will not be counted in calculating the number of seats that must be offered to entitled parties. Accordingly, Cabinet seats to be held by such independents or Senators will be in addition to the entitlement of the Prime Minister’s party under section 99.</p>
<p>24 November 2004</p>	<p>After further negotiations with Mr Qarase concerning which FLP members would be appointed as Ministers and which portfolios would be allocated to them, Mr Chaudhry announces in Parliament that the FLP has decided to reject Mr Qarase’s offer to join his Cabinet and that it will instead assume the Opposition benches.</p>
<p>7 October 2006</p>	<p><b>This is the last date when the writ for the next national elections may be issued.</b></p>