

## **Pacific Concerns Resource Centre's Submission to the Session of the Working Group on the Universal Periodic Review (UPR) on Fiji, February 2010 in Geneva**

Warm greetings from the Pacific Concerns Resource Centre (PCRC) a regional non-governmental organisation based in Suva, Fiji Islands.

### **1. Introduction**

PCRC was established in 1980 as the secretariat for the Nuclear Free and Independent Pacific (NFIP) movement. The NFIP movement was founded in 1975 and it grew out of struggles led by activists, women's groups, indigenous peoples including churches on calls for political independence and cessation of nuclear testing and dumping of nuclear wastes in the Pacific region. PCRC was first set up in Hawaii and then moved to New Zealand in 1986. It relocated to Fiji in 1993. PCRC was registered in Fiji under the Charitable Trusts Ordinance of Fiji on January 1993. Its work is mainly focused on advocacy and policy engagement in matters relating to decolonization, demilitarisation, environment, human rights and governance and sustainable development affecting the Pacific region. PCRC obtained General Consultative Status with the United Nations Economic and Social Council (ECOSOC) in 1998. In May 2008, it was approved Consultative Status in Pacific Islands Forum processes under the Policy on Consultative Status and Accreditation Between the Pacific Islands Forum and Pacific Regional Non-State Actors.

### **2. Executive Summary**

2.1. The submission is mainly focused on Fiji's adherence to human rights principles contained in the following, the United Nations Declaration on:

- a) Human Rights (1948) and particularly Article 20 (1) and (3) and
- b) The Rights of Indigenous Peoples, (2007) and in particular Article 18 and Article 19.

2.2. Due to space constraints and in view of possible submissions from other stakeholders during the UPR process for Fiji, PCRC had refrained from focusing primarily on international human rights instruments that Fiji is a state party to.<sup>1</sup> It has chosen to focus on the "mother" human rights instrument, the UN Declaration of Human Rights and in particular the Article outlining the basis of authority and legitimacy of a governing structure. In Fiji's situation, this principle is not adhered to. The second area addressed in this paper pertains to the rights of indigenous peoples. PCRC wishes to address this issue because for a long time public discourse had largely been on the racial polarisation of the two major ethnic groups in the country that has permeated the political development and equally the woes and internal instabilities faced by Fiji. It is hoped however through this submission that the issues and concerns of indigenous peoples in Fiji will not be lost in the 2010 UPR dialogue process.

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<sup>1</sup> Fiji is state party to International Convention on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989).

2.3. In preparation for the upcoming session in Geneva of the Working Group on the UPR process on Fiji scheduled in February 2010, PCRC is grateful to the UN member states for approving and creating a new human rights mechanism to review the fulfillment by each of the UN member states of their human rights and obligations. We are also very grateful for the opportunity to make a submission as a non-governmental organisation as a result of the Human Rights Council resolution 5/1 of 18 June 2007.<sup>2</sup>

### 3. Main Issues of Concern

In the last four years (2006 to 2009), Fiji had not upheld numerous human rights principles and standards contained in the United Nations Charter, UN Declaration of Human Rights and other human rights instruments.

These principles include:

3.1. Under the **Universal Declaration of Human Rights, 1948** and specifically the following:

**Article 20 (1) and (3)** principles relating to the *“Right to take part in the government of his country, directly or through freely chosen representatives; and the*

*(3) Will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be by secret ballot or by equivalent free voting procedures;*

#### 3.1.1. *Basis*

(i) Fiji is currently under the control of a military regime. The military came into power on December 5<sup>th</sup> 2006 when the Republic of the Fiji Military Forces (RFMF) led by Commodore Voreqe Bainimarama overthrew the democratically elected government that was in power for seven months. The initial mantra for the coup led by the RFMF was that it was a “Clean Up Campaign”. Over time the rationale underwent further changes from the need for “electoral reforms and having a non-racial system of voting and the implementation of the so-called People’s Charter” to “creating a perfect, corrupt-free and politics free society”.

(ii) In the months leading up to the coup, beginning in January 2006, the RFRM publicly built up its campaign against the recently elected government led by Laisenia Qarase of the Soqosoqo Duavata ni Lewenivanua (SDL) Party. By November 2006 Commodore Bainimarama was making strident demands for the resignation of the democratically elected Government. PCRC maintains that this is not the constitutional role of any public

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<sup>2</sup> Provides that UPR should ensure the participation of all relevant stakeholders, including non-governmental organisations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may taken in this regard.

funded army as it is the electorate that decides who is elected to the House of Representatives.

(iii) Under the terms of the 1997 Fiji Constitution, SDL had forged a coalition government with the Fiji Labour Party (FLP) as the second largest party that secured more than ten percent of the 71 seats in the May 2006 national elections for the House of Representatives. The coalition between the SDL and FLP was ground – breaking in Fiji’s development since its independence in 1970 as it emerged out of a provision of the 1997 Constitution which made it compulsory for the different political parties and consequently ethnic groups to share power in national politics. FLP was led by Mahendra Chaudry.

(iv) At the annual Pacific Islands Forum Leaders’ Meeting of October 2007 in Tonga, Commodore Bainimarama in a closed meeting with 16 Forum Heads of Governments made the undertaking that there would be elections by March 2009 according to the 1997 Fiji Constitution. This was markedly different from an earlier position that Fiji is supportive of elections *in principle*.

(v) Regrettably in the past thirty three months since the coup of December 2006, Fiji’s unelected, interim and military backed government led by Commodore Bainimarama had not taken tangible steps or formulated a credible road map of taking Fiji back to the polls where people can exercise their right to freely choose their own representatives.

(vi) The military backed government had however diverted resources towards the creation of various mechanisms and processes touted as pre-conditions to elections in Fiji.<sup>3</sup> Namely these are

- The formation of the National Council for Building a Better Fiji (NCBBF),
- “Dialogue” and “consultative” processes linked to the draft “Peoples Charter”, the proposed Presidential Dialogue Forum, round of talks between Commodore Bainimarama and political party leaders,
- *Bose ni Turaga* including
- Electoral reforms.

(vii) On April 9th 2009, the Fiji Court of Appeal ruled that Commodore Bainimarama had come to power illegally through a coup. The Fiji Court of Appeal ruling also called for the appointment of a caretaker Prime Minister including democratic elections to be conducted as soon as possible. The then head of state Ratu Josefa Iloilo assumed

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<sup>3</sup> In an address by Commodore Bainimarama on 27 October 2008 to leaders of twenty three political parties, two options were given. The first option was that in the Presidential Dialogue Forum, the interim government expects that consensus is reached on changes to the electoral system and also for these to be introduced through legal and constitutional means. The so called second option is that in the absence of support for the changed agenda from the political parties there will be a delay in the holding of elections under a truly democratic electoral system.

executive power on April 10<sup>th</sup> 2009 and announced the purported abrogation of the 1997 Constitution, dismissed members of Fiji's judiciary (including judges of the Fiji Court of Appeal that made the ruling on April 9<sup>th</sup> 2009) and reappointed Commodore Bainimarama, to the post of interim prime minister for a period of 5 years.

### 3.1.2. *Recommendations*

Fiji's military regime and governing structure under the leadership of Commodore Bainimarama does not have any basis of legitimacy or authority along the standards outlined in Article 20 (1) and (3) of the UNDHR.

The UPR Working Group is requested to:

- a) Convey to the military regime the impact (nationally and regionally) on the country's long-term security, stability, economic development and the goodwill and faith of the international community, development partners and investors when Fiji does not meet international human rights principles and standards of holding elections and having a governing structure elected through the will of the people in an open and free elections.
- b) Register its concern to the military regime for the continued lack of progress in conducting national elections and not adhering to its own initial commitment of restoring a constitutionally elected government according to the Fiji 1997 Constitution by March 2009.
- c) Encourage the military regime to relinquish its current governing role in Fiji, hand over power to a civilian care-taker administration that will primarily focus on taking the country back to the polls according to the 1997 Fiji Constitution and return to the barracks.
- d) Request Fiji's military regime to present a time table of taking Fiji back to the polls as soon as possible.
- e) Request Fiji's military regime to provide specific details and aspects of Fiji's 1997 Constitution that is problematic.
- f) Remind RFRM of its role in a governance structure and as a public funded institution of government.
- g) Urge the military regime that electoral reforms via the revision of election boundaries including ways of voting are best addressed by a constitutionally elected government following an open and inclusive consultative public referendum process.
- h) Urge Fiji's military regime to separate the process of taking Fiji to the polls according to the 1997 Fiji Constitution from the so called "People's Charter" and other "dialogue" processes.

3.2. Under the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)** adopted by General Assembly Resolution 61/295 on 13 September 2007 and specifically the following:

**Article 18 - *Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.***

**Article 19 - *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.***

Fiji military regime's policies and initiatives since 2006 that impact indigenous peoples, their governing structures including their access, ownership and use of land and marine resources are also a concern.

#### 3.2.1. ***Basis***

Since the coups of December 2006, the military backed government in Fiji had suspended the Great Council of Chiefs (recognized and contained in the 1997 Constitution) including creating a parallel and similar mechanism known as the "Bose ni Turaga"

These initiatives had been taken without prior consultation and informed consent of indigenous peoples.

#### 3.2.2. ***Recommendations***

Fiji's military regime and governing structure under the leadership of Commodore Bainimarama is not adhering to a host of human rights principles including those that affect and are of concern to indigenous peoples along the standards outlined in Article 18 and Article 19 of UNDRIP.

The UPR Working Group is requested to:

- a) Encourage the military regime in Fiji to adhere to the principles and standards of the UN Declaration on the Rights of Indigenous Peoples.
- b) Encourage and request the military regime to invite the Special Rapporteur on Human Rights of Indigenous People, Professor S. James Anaya to undertake a country visit to Fiji and make a report on the overall human rights situation of indigenous people in the country.

**ENDS** Submitted on September 1<sup>st</sup> 2009 by:

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