

**Crisis in Fiji:
Democracy and Human Rights
under threat
in the South Pacific**

Submission by

THE COMMONWEALTH HUMAN RIGHTS
INITIATIVE (CHRI)

to

THE COMMONWEALTH MINISTERIAL
ACTION GROUP ON THE HARARE
DECLARATION (CMAG)

New York Meeting

Friday 15 September 2000

THE COMMONWEALTH HUMAN RIGHTS INITIATIVE **(CHRI)**

The Commonwealth Human Rights Initiative (CHRI) is a non-partisan non-profit independent international non-governmental organisation mandated to work towards the practical realisation of human rights in Commonwealth countries.

Human Rights advocacy and education are at the core of all CHRI's activities, and the aims and ends of all its reports and investigations.

CHRI was born out of an awareness that although the Commonwealth countries have shared legal principles and values, little has been done to set human rights standards within the association itself or to promote a culture of human rights.

CHRI was created by a number of constituent groups in 1987 with a belief that there needed to be a Commonwealth based human rights organisation which looked specifically at human rights in Commonwealth countries. CHRI's constituent members are:

- The Commonwealth Journalists
- The Commonwealth Trade Union Council
- The Commonwealth Lawyers Association
- The Commonwealth Legal Education Association
- The Commonwealth Medical Association
- The Commonwealth Parliamentary Association
- The Commonwealth Press Union

CHRI aims to raise awareness of and adherence to internationally recognised human rights instruments and declarations made by the Commonwealth Heads of Governments, and more particularly the values embodied in the Harare Declaration.

FACT FINDING MISSION TO FIJI

In addition to CHRI's ongoing project work, and on invitation from a member of civil society in a Commonwealth country where events have brought into doubt the protection of human rights, CHRI can sponsor a Human Rights Fact Finding Mission to travel to that country to investigate the status of human rights.

On invitation from the Citizens' Constitutional Forum (CCF), a Suva based Fijian non-governmental organisation, CHRI sponsored a Human Rights Delegation to travel to the Republic of the Fiji Islands (Fiji) from 27 August – 5 September 2000 on a Fact Finding Mission.

CHRI is concerned that since the 19 May 2000 the only voices that have been participating in the dialogue determining the future of governance in Fiji have been the coup leaders, the military, the unelected interim government and politicians.

It is evident Fijian civil society have been lacking a voice in the dialogue which will determine the future of Fiji. Their lack of input into the debate to date has been exacerbated by the failure of successive international delegations to properly consult with civil society when visiting Fiji in the wake of the 19 May 2000 failed coup.

Therefore, the purpose of the Human Rights Delegation travelling to Fiji on a Fact Finding Mission was to consult widely with Fijian civil society, human rights defenders, community groups and the Fijian people to better understand the:

- Present status of human rights, democracy and the rule of law in Fiji and the extent the coup has lead to the breaches of fundamental human rights
- Best way Fijians believe democratically elected government can return to Fiji; and
- Most suitable process for achieving this end.

The Human Rights Delegation consulted with over 25 civil society organisations and community groups from Suva, Nadi and Loutaka on the main island of Viti Levu, as well as travelling to regional areas to discuss the above issues with rural communities and consulting with civil society groups which have been working on the second island of Vanua Levu.

The names of the civil society organisations and community groups consulted are listed in "Annex A".

This submission to the Commonwealth Ministerial Action Group is based on the input the Human Rights Delegation received from civil society during its Fact Finding Mission. The recommendations give voice to the strategy advocated by civil society in Fiji as the best way for lasting constitutional democracy to return to Fiji and for human rights and the rule of law to prevail.

The CHRI asks the Commonwealth Ministerial Action Group to listen to the voice of Fijian civil society.

SUBMISSION TO THE
COMMONWEALTH MINISTERIAL ACTION GROUP (CMAG)
ON THE
HARARE PRINCIPLES

Under the Millbrook Action Programme on the Harare Declaration the Commonwealth is obliged to advance the Commonwealth's fundamental political values and to take measures in response to violations of the Harare Principles.

Part 1 Section B sub-section 3 of the Millbrook Action Programme specifies that in the event a:

member country is perceived to be clearly in violation of the Harare Commonwealth Declaration, and particularly in the event of an unconstitutional overthrow of a democratically elected government, appropriate steps should be taken to encourage the restoration of democracy within a reasonable timeframe.

It is submitted that the failed coup in the Republic of Fiji Islands (Fiji) which commenced on 19 May 2000, and the subsequent replacement of the democratically elected civilian Parliament by an un-elected interim administration, which has been entrenched in power by military decree, constitutes "an unconstitutional overthrow of a democratically elected government" for the purposes of the Millbrook Action Programme.

Therefore the CHRI welcomes the CMAG implementing measures outlined in the Millbrook Action Programme aimed at the early restoration of democracy in Fiji.

1. THE COMMONWEALTH MUST STAND STRONG ON ITS COMMITMENT TO DEMOCRACY AND THE RULE OF LAW

1.1 Fijian civil society requests the support of the Commonwealth

Civil society has expressed their concern that if the international community, including the Commonwealth, were to capitulate as they did after the 1987 coup, then Fiji will never obtain a working constitutional democracy.

The clear message sent by the international community after the 1987 coup was that disaffected members of society who are not pleased with the policy direction of a constitutionally elected government are able to redress their grievances by plotting a coup and overthrowing a constitutionally elected government.

Furthermore, it has been noted in Fiji after the 1987 coup, and publicly stated by Speight during the hostage crisis, that if disaffected members of society are successful in overthrowing a constitutionally elected government, or are able to gain power after a failed coup, the international community will condemn them from afar but eventually will welcome them back into the international fold. Civil society fears the international

community may have forgotten the lessons they should have learnt after the 1987 coup in Fiji.

The only way not to reward the actions of those who seek to overturn democracy in Fiji is by adopting a firm position that the 1997 Constitution and the Parliament elected under the 1997 Constitution be returned.

Civil society's voice was clear and unequivocal in asking the Commonwealth to stand strong on its commitment to democracy and the rule of law and to insist Fiji return to democracy under the 1997 Constitution.

1.2 The 1997 Constitution is a document of the people and must be preserved

The 1997 Constitution was unanimously approved by the Great Council of Chiefs, the highest decision making body within Indigenous Fijian society. Furthermore the 1997 Constitution was passed by both houses of Parliament elected by the people of Fiji under the 1990 Constitution.

Civil Society has embraced the 1997 Constitution and the preferred outcome for an overwhelming number of civil society members is the return of constitutional democracy under the 1997 Constitution as soon as possible.

Civil society recognises that there has been widespread, and some groups argue, justified disquiet about the electoral system. However, the content of the Constitution has been heralded by all as a document which brought together the interests of all Fijians, therefore is a document which should be protected and used as a tool to reconcile the divides in Fijian society.

The recent appointment of a Constitutional Review Commission by the interim administration was greeted with great pessimism by civil society, with some civil society members regarding the process of constitutional review a farce aimed at giving the air of legitimacy to constitutional amendments sought by the interim administration.

Furthermore, civil society does not understand why there needs to be a review when the majority of Fijians do not want a new Constitution and the 1997 Constitution already satisfies the Terms of Reference the interim administration has given the Constitutional Review Commission.

The credibility of the constitutional review process has been further damaged by the make-up of the Constitutional Review Commission. The Chairperson has been widely reported as being an exponent, not of protecting and enshrining indigenous rights, rather of ensuring indigenous paramountcy over all other interests. The Chairperson is not known within the Fijian community as being a champion of democracy and other members of the Constitutional Review Commission are either from the opposition party, supporters of George Speight and the coup, or of indigenous supremacy. If the Commonwealth fails to act in order to protect the 1997 Constitution we may face a new apartheid in the Pacific.

There are no structural or institutional impediments to the interim administration calling new elections under the 1997 Constitution or to reconvening the 1999 Parliament elected under the 1997 Constitution. All that is required is the democratic will to do so.

1.3 The Commonwealth must not validate the un-elected interim administration

Civil society raised concerns over the actions of the un-elected interim administration. The appointment of the interim administration was justified on the grounds that administrators were required in order to ensure the mechanics of government continued after the failed coup.

However, recent comments by the Military in Fiji have made it clear that the Military supported the abrogation of the 1997 Constitution and acted swiftly in an attempt to remove the 1997 Constitution by decree and appoint a military backed un-elected interim administration which would support and further what has now been coined the "Speight cause".

Civil society absolutely refute that there is wide spread support for the abrogation of the 1997 Constitution and the appointment of an un-elected civilian administration backed by the military in either the indigenous Fijian or Indian Fijian communities.

The make-up of the military backed un-elected interim administration has not endeared the administration to the Fijian community, except those who supported George Speight and his failed coup. The majority of the interim administration are made up of Speight supporters, people who participated in the 1987 coups, people who were present at the Parliamentary complex during the hostage drama, members of the opposition party in the 1999 Parliament or extreme nationalists who believe in indigenous supremacy over all other human rights.

Since the interim Prime Minister of Fiji, Mr Qarase released his "Blueprint" on 13 July 2000 it has become obvious that the interim administration has gone beyond ensuring the mechanics of government continue and has boldly entered into the realm of policy development and implementation, with the assent of the military.

This is even to the extent of amending, by decree, laws previously passed by democratically elected Parliament and reversing the policy direction of the government. The discontinuation of the Land Use Commission, re-instigation of financial support to the Native Land Trust Board and the removal of native land from the ambit of the Agricultural Landlords and Tenants Act exemplifies the interim administration's intent to govern as if they were mandated to give policy direction to the country.

Furthermore, amendments of the Bill of Rights when it was promulgated by decree indicates the interim administration is prepared to erode the human rights conferred on all Fijians under the 1997 Constitution when it does not suit their policy objectives.

After consulting civil society organisations, in particular civil society groups who represented sections of the indigenous Fijian community, it became clear that there is little public support for the military backed interim administration.

There are grave concerns that an un-elected administration, which consistently fails to consult the people, which is far from transparent, is not accountable to the people or Parliament, and which is not representative of Fiji's multi-ethnic and multi-religious

society is now directing the shape of Fiji's future, and the world will stand by and permit this to happen.

The Commonwealth must not validate the interim administration by dealing with them as if they are an elected democratic government. Constructive engagement by the Commonwealth will only reinforce the interim administration as a legitimate governing and policy making body. If the interim administration and their policies are validated by the international community, George Speight's demands will be achieved, albeit by a de facto procedure, and democracy, the rule of law and the protection of human rights in Fiji will be lost.

1.4 The Impartiality of the Judiciary has been undermined

There are concerns over the impartiality of some members of the judiciary, in particular the actions of the Chief Justice in assisting with the drafting of the Administration of Justice Decree 2000. The notable effect of the Administration of Justice Decree 2000 was to remove the highest appellate court in Fiji, whose judiciary was primarily made up of members from other common law jurisdictions around the Commonwealth, and to extend the age of retirement for the Chief Justice from 70 to 75 years. The Chief Justice turns 70 this year.

The Chief Justice's involvement in the drafting of any decree constitutes a fundamental breach of the separation of powers and has brought the entire judiciary into disrepute. Furthermore, there are a number of cases presently before the court which raise Constitutional issues. The Chief Justice has issued an internal memorandum informing all judges that such matters are to be transferred to Suva to be heard by particular judges, who coincidentally have also been implicated in assisting in the drafting of the Administration of Justice Decree 2000. The Chief Justice has failed to uphold the Constitution, and has supported the military and un-elected interim administration rule by decree. These actions have sent a clear message to the people of Fiji that the rule of law is under threat.

Recommendation 1:

The Commonwealth should reaffirm its commitment to the principles enunciated in the Harare Declaration and restate the Commonwealth's unconditional call for the restoration of the 1997 Constitution as soon as possible.

The Commonwealth should not validate the present interim administration by dealing with them as if they are a democratically elected government. The Commonwealth must send a clear message that the international community views the interim administration as a mechanism for keeping the wheels of government operating, not a body mandated by Fijians to give policy direction to the country.

2. FORMATION OF A "GOVERNMENT OF NATIONAL UNITY"

After the return of the 1997 Constitution, a "Government of National Unity" must be created to take over from the interim administration. Civil Society calls for a "Government of National Unity" made up of elected members of Parliament from all sides of politics to come together, and after a vote of confidence by the 1999 Parliament, govern Fiji until fresh elections can be held. By including representatives from all sides of politics in a "Government of National Unity" it will be assured of receiving the support of Parliament.

If a "Government of National Unity" believes constitutional reform is necessary, they as the elected representatives of the people of Fiji can undertake a consultation process to assess what the people would like to see amended in the 1997 Constitution and undertake to amend the 1997 Constitution according to the process laid out in the Constitution itself.

Alternatively, each political party can go to the next election on a platform of Constitutional change, outlining the changes they would seek. It is then up to electorate to confer their mandate on the party which represents the true wishes of the people.

Recommendation 2:

The Commonwealth urge the un-elected interim administration to reconvene the 1999 Parliament in order for a "Government of National Unity" to be formed of representatives elected by the people.

Once formed the Commonwealth should encourage the "Government of National Unity" to either:

- 1. Undertake a consultative review of the 1997 Constitution and electoral system leading up to the next election, which is inclusive of the Fijian people and civil society, and makes amendments to the 1997 Constitution using the process outlined in the 1997 Constitution; or**
- 2. Continue to keep the mechanics of government running smoothly until a fresh election is held, preferably within six months. Any political party which campaigns on the issue of constitutional reform and is able to secure a vote of confidence in Parliament can consider that it has a mandate from the people to undertake constitutional reform.**

Which ever course is taken, the Commonwealth should commit to providing the resources Fiji needs to undertake free and fair elections and election monitors should be provided to oversee the election process and electioneering prior to the polls.

3 ABUSES OF MINORITY RIGHTS IN FIJI

3.1 Racial Discrimination

Thousands of Indian Fijians have been driven from their homes and off their leasehold and freehold lands in Tailevu, Natasiri and Vanua Levu. There are hundreds of documented cases of groups of indigenous Fijians in these rural areas committing gross human rights violations against Indian Fijians, including severely assaulting adults and children over extended periods of time, sexually assaulting women and children, theft, looting, arson and destruction of property.

Only Indian Fijians have been targeted during this reign of terror which has been perpetrated by indigenous Fijians. Homes in some rural areas are still being raised, while indigenous Fijians in the targeted regions continue to inform Indian Fijian farmers that if they return to their farms they and their families will be killed. The justification offered by the indigenous Fijians perpetrating these human rights violations are that the farms constitute indigenous land, therefore do not belong to the Indian Fijians. This is the case even if the Indian Fijian farms are on freehold land, leased from the crown or validly leased from indigenous Fijians.

Such claims indicate that concerns over ownership of land is at the core of these human rights violations, however, the motivation does not detract from the fact that a wave of terror has swept through a number of rural areas in Fiji whereby people were targeted for violence because of their ethnic background.

Numerous sources have indicated that these acts of violence have been fuelled by propaganda aimed at indigenous Fijians prior to the failed coup. Oral propaganda disseminated by word of mouth via the "coconut telegraph" and through some Christian church services, as well as through written flyers, depicted Indian Fijians as a sneaky ethnic group which had designs on taking the leadership of the country and stealing indigenous Fijian's land. The source of this propaganda is not clear, however, when combined with the SVT's "destabilisation process" whereby they consciously made every political issue a race issue after they were relegated to opposition in the 1999 elections, the scene was set for race based violence.

The Indian Fijian communities have felt helpless to stop the waves of racial violence which swept through Fiji. This is especially so considering there are verified eye witness accounts that members of the almost exclusively indigenous Fijian, military and police participated in the violence and looting.

Irrespective of who is responsible for inciting the racial hatred, it is the responsibility of the interim administration to provide protection. Reports coming in from the areas affected still indicate a lack of willingness on behalf of the police or military to act to protect the property or security of Indian Fijians.

Thousands of families are now displaced, living in different parts of the country, some with relatives, some at displaced persons camps and others with indigenous Fijian families in other areas of the country who do not support racial hatred. Fiji must address this problem over the coming months and take steps to protect all Fijian people, irrespective of ethnic background from race based violence and work towards the resettlement of people who have been displaced because of this wave of terror.

3.2 Discrimination Against Women and Children

The human rights of women and children are often the first affected in times of conflict. After speaking to a number of women's groups it is clear that violence against women and children has dramatically increased, however, the vast majority of cases are not reported because of social stigma and little or no action by police.

Incidents of domestic violence have also increased with men beating women with impunity since the break down of law and order and a lack of faith in the judicial system. Economic sanctions has impacted on levels of employment, with women being the first to suffer job losses or pay cuts, undermining their position in the home even further.

Presently cases of crimes against women and children are a low priority in the judicial system and women's groups have indicated the prevalence of race based violence is having a detrimental effect on how children are integrating with other races. The interim administration and the military must provide protection inside and outside the home for women and children in Fiji, irrespective of ethnic background.

Recommendation 3:

The Commonwealth must confer its disapproval to the interim administration at the continuing race based violence directed towards Indian Fijians and urge the interim administration to act immediately to halt race based discrimination and violence.

The Commonwealth must confer its disapproval to the interim administration at the increased incidence of violence against women and children and urge the interim administration and military to provide security to women and children in time of conflict.

4 THE WAY FORWARD

To date the actions of the Commonwealth, and the international community generally, have been ineffective in encouraging a return to democracy in Fiji under the 1997 Constitution.

The interim administration, whilst promising a return to democracy, is nevertheless proceeding on a reform agenda which will see the demands of George Speight implemented by stealth and under the guise of a legitimate constitutional process.

The CHRI congratulates the CMAG on promptly implementing all measures under the Millbrook Action Programme except for Part 1 Section B sub-section 3 (viii) in their attempt to urge the return to constitutional democracy under the 1997 Constitution.

However, civil society has indicated that these endeavours alone will not be enough to urge the military backed interim administration to return to the 1997 Constitution and hand over interim government to elected representatives making up a "Government of National Unity".

It has become clear that while the international community is united in their call for a return to democracy they are nevertheless acting in a disjointed fashion. A united call will be the most potent means of expressing to the military backed interim administration that the international community expects a return to democracy under the 1997 Constitution and anything less will result in an undemocratic Fiji remaining an international pariah.

Accordingly, the CMAG should instruct the office of the Secretary-General of the Commonwealth, to make contact with appropriate officers in the European Commission and the United Nations in order to arrange a co-ordinated response by regional and international organisations around the world to the crisis in Fiji.

The measures for enticing the interim administration to comply with the will of the international community and civil society in Fiji will differ; for instance while the Commonwealth can suspend Fiji from the Councils of the Commonwealth, the European Commission can restrict trade under Article 366 of the Lome Convention (and under its successor, the Contou Agreement) for human rights breaches.

Irrespective of the sanctions able to be imposed, if the expectations of the international community are conveyed using a united voice with a promise that each organisation will implement their respective measures if those expectations are not met, then the interim administration will have no choice but to take into account the concerns of the international community.

Under Part 1 Section B sub-section 3 (viii) of the Millbrook Action Programme the Commonwealth is able to consider appropriate further bilateral and multilateral measures. This measure has been limited to circumstances where the government in question decides to leave the Commonwealth or has not returned to democracy within two years.

It is argued that the purpose of sub-section 3 (viii) is to provide additional measures to the Commonwealth when all other measures listed in Part 1 Section B sub-section 3 have

failed. If a co-ordinated effort with the European Commission and the United Nations fails to bring about a return to democracy under the 1997 Constitution by the next Commonwealth Heads of Government Meeting and a race based Constitution is implemented in Fiji, CMAG should introduce the measures in Part 1 Section B sub-section 3 (viii) and expel Fiji from the Commonwealth.

Recommendation 4:

The CMAG request the Commonwealth Secretary-General contact the appropriate officers in the European Commission and the United Nations to collectively call for the restoration of democracy under the 1997 Constitution and the formation of a "Government of National Unity" made up of elected members of Parliament as soon as possible.

The Commonwealth liaise with the EC and the UN to lay down a timeline by which the restoration of democracy under the 1997 Constitution must be restored.

Agree what sanctions each organisation can implement as a mechanism to encourage the return to democracy in Fiji.

If democracy has not returned to Fiji under the 1997 Constitution by October 2001, CMAG should recommend to the next Commonwealth Heads of Government Meeting that Fiji be expelled from the Commonwealth for serious and persistent violations of the Harare Declaration.

Annexure A

CIVIL SOCIETY GROUPS CONSULTED DURING CHRI FACT FINDING MISSION TO FIJI 27 AUGUST – 5 SEPTEMBER 2000

- | | |
|---|--|
| 1. Arya Prathnithi Sabha of Fiji | 15. Fiji Women's Crisis Centre |
| 2. Catholic Women's League | 16. Fiji Women's Rights Movement |
| 3. Citizen's Constitutional Forum | 17. Girit Centre Displaced Persons
Camp |
| 4. Columban Fathers | 18. Human Rights Group |
| 5. Fiji Council of Churches
Research Group | 19. India Sanmarga Ikya Sangam |
| 6. Fiji Council of Social Services | 20. National Council of Women |
| 7. Fiji Human Rights Commission | 21. NGO Youth Network |
| 8. Fiji Law Society | 22. Pacific Concerns Resource Centre |
| 9. Fiji Manufacturers Association | 23. Suva Chamber of Commerce |
| 10. Fiji Media Council | 24. Women's Action for Change |
| 11. Fiji Methodist Church | 25. Young Men's Christian
Association |
| 12. Fiji Muslim League | 26. Young Women's Christian
Association |
| 13. Fiji School of Medicine | |
| 14. Fiji Trade Union Congress | |