



ACP-EU JOINT PARLIAMENTARY ASSEMBLY

BUREAU

17 September 2012

**REPORT OF THE FACT-FINDING MISSION OF THE ACP-EU
JPA BUREAU TO FIJI
22 TO 24 JULY 2012**

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Michèle RIVASI, MEP (Greens/EFA, France), Vice-President and Co-President a.i,
Head of Delegation

and

Lenata'i Victor Faafoi TAMAPUA (Samoa), Vice-President
Benedict Glen NOEL (Grenada), Vice-President
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Introduction

At its meeting of 27 May 2012, the Bureau of the ACP-EU Joint Parliamentary Assembly decided to send a fact-find mission to Fiji to assess the progress made by the authorities to return the country to constitutional order and parliamentary democracy. The mission was undertaken from 22 to 24 July 2012 and held extensive and open discussions with Government Representatives and a wide range of political stakeholders, leaders of Political Parties and the two previous Prime Ministers, as well as civil society and non-state actor representatives.

Brief historical background to the current Fiji political crisis

The current political crisis in Fiji can be traced back to the ethnic make-up of the population, which is divided between indigenous Fijians and Indo-Fijians (the descendants of indentured labourers brought from India a century ago). At independence, Indo-Fijians were roughly 51% of the population until the mid-2000s, by which time political issues had prompted thousands of Indo-Fijians to leave the country. They currently make up 39% of the population.

For 17 years after independence from British rule in 1970, the country was relatively stable until Colonel Sitiveni Rabuka's 1987 coup against an Indo-Fijian dominated government. Another military supported coup was to follow in 2000 led by businessman George Speight which overthrew the Government of the first Indo-Fijian Prime Minister, Mahendra Chaudhry.

In 2006, Army Commander Commodore Josia Voreqe Bainimarama deposed the Government of Prime Minister Laisenia Qarase, an indigenous Fijian, stating that it was corrupt and that it was conducting racially discriminatory policies against the country's Indo-Fijian minority.

The most apparent consequence of Fiji's coup culture is Constitutional instability. There have been 2 principle Constitutional arrangements since 1987: the 1990 Constitution, which had entrenched the domination of indigenous Fijians in the political system and civil service; and the 1997 Constitution, which was generally well regarded but still maintained the system of separate ethnic representation. The 1997 Constitution was suspended in 2009 and Prime Minister Bainimarama has ruled by Decree since.

In 2009, Prime Minister Bainimarama launched the Strategic Framework for Change, a roadmap for the social, political and economic development of the country which, *inter-alia*, envisions elections and restoration of democratic and constitutional government in 2014. In the July 2012 Constitutional Process Decree, the Government established a 5 member Constitutional Commission comprising prominent international and local personalities chaired by Professor Yash Ghai, a Kenyan Constitutional expert.

The Constitutional Decree states that the draft Constitution of Fiji must contain the following non-negotiable principles: a common and equal citizenry; a secular state; the removal of systemic corruption; an independent judiciary; elimination of discrimination; good and transparent governance; social justice; one person, one vote, one value; elimination of ethnic voting; proportional representation; and voting age of 18.

Press censorship and State of Emergency regulations have temporarily been lifted and political parties and civil society are now allowed to organise meetings without needing to apply for police permits.

Submissions from political parties and other non-state actors

The mission met representatives of political parties and non-state actors. While they held different views on the political situation in Fiji, they had common views on the following issues:

- i. With elections scheduled for 2014, the country would have been without a democratic system of government for 8 years. It was therefore important that the current roadmap for the restoration of democracy and elected government was respected.
- ii. The good name and reputation of the Constitution Commission should not be used to sanitise a Government manipulated constitution making process.
- iii. The Prime Minister had not shown willingness to have dialogue with political leaders and other stakeholders, with the result that the roadmap for change was being driven entirely by the Government. When the Constituent Assembly has completed its work, the Constitution will be submitted for review to a 5 person committee or tribunal appointed by the President. It is feared that this could make the final outcome dependent on the Prime Minister.
- iv. There are reservations about the new rules on the registration of political parties, which would require all parties to be de-registered first before re-registration. There was also concern over the power of the Attorney-General to elect the Elections Commission and act as Supervisor of Elections.
- v. People do not feel free to associate and debate freely and thus would not be able to effectively contribute to the Constitution process. The media environment is not conducive for the activities of political parties and non-state actors perceived to be against the government because of the media practice self censorship.
- vi. The Administration of Justice Decree of 2006 gives immunity to law enforcement officers and prisoners for any crime committed and also denies the right of aggrieved and injured people to challenge Government actions.

The definition of treason has been widened with jail terms of up to 10 years for some offences.

- vii. Judicial independence has been compromised. Judicial office holders are appointed at the President's discretion rather than through an independent selection process by the Judicial Services Commission.
- viii. The Government does not engage with the unions in industrial relations. For instance, it had not consulted the unions on the revision of the retirement age to 55 years, which had led to immediate loss of jobs for a number of workers. The Government withdrew the possibility of automatic subscriptions (pay-roll deductions) for union dues, denying the unions funding to organise themselves and is of the view that union membership is no longer necessary as, if there are more than 75 workers in an organisation, they can establish a bargaining agency under the supervision of the Prime Ministers' office.

Exchange of views with Government Representatives

Meeting with Anthony Gates, Acting President, Chief Justice

In the absence of President Ratu Epeli Nailatikau, the mission met Anthony Gates, Acting President, Chief Justice, who highlighted:

- i. The importance of the widest public consultation on the Constitution making process.
- ii. The separation of powers between the various branches of government does not or should not change just because of a military coup. The Judiciary should not issue statements on the constitutionality of any particular action but should wait to adjudicate any case that come before it.
- iii. There was need to move away from the system of reserved seats for races, religious groups or any specific groups of people. The electoral process must be conducted flawlessly this time around, unlike in 2006.

Meeting with the Acting Permanent Secretary for Justice and Anti-Corruption

Ms Meresini Vuniwaqa, Acting Permanent Secretary for Justice and Electoral Reform, was also in charge of the electoral office pending the appointment of a Supervisor for Elections. One of the innovations was the introduction of the electronic voting system. 200,000 people had so far registered to vote, with the aim to register 600,000 voters.

Meeting with Minister of Foreign Affairs, Minister of Labour, Governor of the Reserve Bank and the Permanent Secretary for Sugar

The economic situation - impacted by the slow-down in the global economy - was improving, led by growth in the tourism sector. Foreign reserves were continuing to grow, with 5 months of import cover. Government debt was projected to fall to levels comparable with other countries in the Pacific. The government had also embarked on some employment programmes, for instance by promoting access to grants and loans in order to promote micro-enterprise.

The biggest challenge of the sugar industry was decline in cane and sugar production due to the reduction in export sugar prices, rising costs of production, poor performance of sugar mills and aging farmers. Because of the political situation in the country, the EU had suspended support to the industry.

On the issue of restrictions of union activities, the Minister of Labour stated that on the contrary, the current system allowed for all workers to be assisted in collective bargaining with their employers, whether unionised or not. Workers in firms of 75 or more could establish bargaining agents with the assistance of the Ministry of Labour. The reduction of the retirement age to 55 was aimed at creating employment opportunities for young people.

Strategic Framework for Change

The Strategic Framework for Change is the Government blueprint that lays down measurable targets for political, economic and social development for the country for the period 2009-2014. The focus during the period 2009-2012 will be on economic and social development, and 2012-2014 will be on Constitutional development.

The Constitution Commission

Professor Yash Ghai, Chairperson of the Constitution Commission, stated that the Constitutional process is a very important milestone for the country and agreed that there is need to ensure that the process is properly conducted. He expressed reservations about the lack of clarity as to how the Constituent Assembly will be appointed, and about the role of the five person tribunal that will be appointed by the Chief Justice to review the final draft Constitution to ensure compatibility with the “non-negotiable principles”, and was of the view that the tribunal must not impose a Constitution on the people. On the immunity issue, he stated that the best way would have been for the matter to have been discussed in the Constituent Assembly. A referendum was not appropriate in multi-ethnic societies such as Fiji, but rather in more homogenous ones.

Meeting with the Attorney General and Acting Prime Minister

Aiyaz Sayed-Khaiyum, Attorney-General, informed the mission on the Government's roadmap to democracy and the non-negotiable principles and values for the new Constitution. He highlighted the following issues:

- i. Fiji had never had strong institutions. The political system had been based on personalities and ethnicity. All previous coups were ethnically based except for the last. Strong independent institutions and a representative system in a secular State would diminish the justifications for the military to intervene.
- ii. The Government would not back down on the non-negotiable principles because these go to the heart of the causes of past coups. Immunity was necessary to ensure continuity. However it would not mean that people could not speak about the past. Media restrictions had been abolished and no journalists had been charged or persecuted.
- iii. The Constitution Commission would prepare a draft Constitution and present it to the President. The Constituent Assembly - whose members would be nominated by the sectors of Fiji society foreseen in the Decree - would be able to amend the text by a two-thirds majority and a Tribunal would review it to ensure that the non-negotiable principles are embedded.
- iv. The technical aspects of the elections must ensure that the Government was not elected on a questionable electoral system.
- v. The Government was in favour of proportional representation in a multi-member constituency with a reduction in the size of Parliament, but with better pay for legislators in order to attract the best candidates.

Meeting with the Pacific Island Forum Secretariat

The Pacific Islands Forum is an inter-governmental organisation that aims to enhance cooperation between the independent countries of the Pacific Ocean. Fiji was suspended indefinitely from the Forum in 2009 after abrogating the constitution and rejecting the deadline for setting a date for the general election. According to the Forum, Fiji's interim government had made progress towards democracy committing to elections in 2014 but there was still some way to go.

Observations and recommendations

Fiji has endured a fractured and highly polarised political system during the past 25 years. Ethnic divisions and institutional instability have compromised the fundamental principles of democracy, good governance, respect for human rights and the rule of law. The stated objective of the current Government is to rid Fiji of ethnically based

politics and create a common national identity that does not refer to ethnicity. Based on our interactions with various stakeholders in Fiji, we would like to make the following observations and recommendations:

- i. The government needs to ensure that the current deadline for the full restoration of democracy in 2014 is adhered to.
- ii. The Constitution making process must be guided by the general and commonly accepted international norms and values of democratic government and constitution making, such as consultation, dialogue and inclusiveness. The process must lead to the establishment of strong and effective institutions of governance to ensure that military would be less inclined to intervene in future.
- iii. There is need for consensus on how the Constitution will be approved. Under the current arrangement, the Prime Minister will appoint the members of the Constituent Assembly who will review and may amend the text produced by the Constitutional Commission. Thereafter, a five-person tribunal appointed by the Chief Justice will review the text to ensure that the non-negotiable principles are adhered to. It is crucial that the process of setting-up the Constituent Assembly is transparent, participative and inclusive and that the political and media environment is conducive, which would guarantee the legitimacy of the draft Constitution without recourse to a referendum.
- iv. The Government proposal to grant immunity to current and former officials of Government has attracted strong criticism. We consider that some form of immunity from prosecution for certain acts of an interim military administration is necessary to move the process forward. The Attorney-General explained that the immunity is also necessary to ensure that certain actions of the current government in the normal course of its duties should not be open to judicial challenges in future. However, there are genuine fears on the part of the opposition that offering *carte-blanche* immunity would only create incentives for military coups in future. A better approach would be for the question of immunity to be part of the Constitution making process itself, to be discussed and decided by the Constituent Assembly.
- v. Given that the military has been the instigator of all the Coups in Fiji, there is need to properly define its future role in a civilian administration. It would be disastrous for the future of the country if the military uses the process of change to legitimise its hold on power through the electoral process, or if it leads subsequent elected governments to be subservient to the military.
- vi. The people of Fiji should be able to debate the issues affecting the future of their country freely without fear of reprisals. It is therefore important to guarantee press freedom. The Constitution Commission itself has expressed disquiet over ‘the wide-ranging powers of the security forces’ and that

‘generally people have no redress for actions taken against them by the state because the right of access to the courts has been removed’.

- vii. The electoral system must be open, transparent and representative in order to enable all Fijians the right and opportunity to participate in the election of their political leaders and formation of the next government. The electronic voter registration exercise is therefore to be commended and we would like to urge the government to increase financial support to the electoral office in order to enhance its technical and human resource capabilities to undertake this important task.

Conclusion

We acknowledge that the process for the restoration of democracy depends on the people of Fiji themselves, according to their own social, economic and political priorities. For Fiji to be readmitted to the circle of democratic countries, at least three essential elements must be present, namely, meaningful contestation for government office; a high level of political participation; and a level of civil and political liberties sufficient to ensure meaningful public participation in political activities, policy and legislation. If these conditions are met, the international community can provide advice as well as financial and technical support to the efforts of the Fijian people to create a stable and sustainable democratic system. We remain confident that with enough political will, the Fijian people can find solutions to the political issues that confront them and thus build a better society for present and future generations.



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FIJI
22-24 JULY 2012**

COMPOSITION OF THE MISSION

ACP MEMBERS

Musikari KOMBO (Kenya), Co-President
Lenata'i Victor Faafoi TAMAPUA (Samoa), Vice-President, Co-Chair of the
Committee on Political Affairs
Benedict Glen NOEL (Grenada), Vice-President

MEMBERS OF THE EUROPEAN PARLIAMENT

Michèle RIVASI (Greens-EFA, FR), Vice-President, Co-Chair of the Committee on
Social Affairs and the Environment
Frank ENGEL (EPP, LUX)

EUROPEAN PARLIAMENT SECRETARIAT

Donatella PRIBAZ, Head of ACP Unit

ACP SECRETARIAT

Michele Dominique RAYMOND, Assistant Secretary-General for Political Affairs
and Human Development
Lawrence CHILIMBOYI, Expert



ACP-EU JOINT PARLIAMENTARY ASSEMBLY

Fact-finding mission of the ACP-EU JPA Bureau to Fiji Programme

24 July 2012

Saturday 21 July 2012

Arrival from Apia (Samoa): Flight FJ852 Apia 14:10 – Nadi (Fiji) 15:10

Internal transfer from Nadi to Suva: Flight FJ 021 Nadi 18:00 - Suva 18:30

Sunday 22 July 2012

09.30-11.00 **Meeting with the EU Head of Delegation, EU and ACP Ambassadors**
(Venue: EU Delegation)

- Alistair MacDonald, acting Head of the EU Delegation for the Pacific
- Gilles Montagnier, Ambassador of France
- Elizabeth Snell, acting Head of Mission, British High Commission
- John Patteson Oti, High Commissioner, Solomon Islands

11.00-13.00 **Meeting with external representatives** (Venue: EU Delegation)

- 11:00-12:00 - Glenn Miles, acting High Commissioner – Australia
- Phillip Taula, acting High Commissioner – New Zealand
- Jeffrey Robertson, Chargé d'Affaires a.i. – USA
- 12.00-13.00 - Gary Wisemann and Tracy Vienings, UNDP Pacific Center

13.00-14.30 **Lunch break**

14.30-16.30 **Meetings with economic and social actors and civil society organisations** (Venue: EU Delegation)

- 14:30-15:00 - Fiji Trade Unions
- 15:30-16:00 - Human rights group
- 16:00-16:30 - Other civil society organisation

Monday 23 July 2012

09.00-13.00	Meetings with Fijian Government Authorities
09.00-10.00	- Meeting with Anthony Gates, Chief Justice, Acting President (Venue: Boron House)
10.00-11.00	- Meeting with Meresini Vuniwaqa, Acting Permanent Secretary for Justice and Electoral Reform (Venue: Elections Office, Toorak)
11.00-12.00	- Meeting with Ratu Inoke Kubuabola, Minister of Foreign Affairs and International Cooperation (Venue: Ministry of Foreign Affairs)
12.00-13.00	- Meeting with the Strategic Framework for Change Coordination Office (SFCCO) (Venue: Parliament)
13.30 - 15.00	Field Visit to Ballantine Memorial School (Venue: Ballantine Memorial School, Delainavesi Road)
16.00-18.00	Exchange of views with the main political actors (Venue: EU Delegation)
16:10-17:00	- Fiji Labour Party
17:00-17:40	- SDL (United Fiji Party)
17:40-18:20	- United People's Party (UPP)
18.30 - 20.30	Reception offered by Ratu Inoke Kubuabola, Minister of Foreign Affairs and International Cooperation (Venue: Boron House)

Tuesday 24 July 2012

09.00-12.30	Exchange of views with other political actors
08.30-10.00	- Meeting with the Constitutional Commission (Venue: EU Delegation): Prof. Yash Ghai, Prof. Christina Murray, Prof. Satendra Nandan, Dr. Taufa Vakatale, Peni Moore
10.00-11.30	- Meeting with Aiyaz Sayed-Khaiyum, Attorney General, Acting Prime Minister (Venue: Ministry of Justice)
11.30-12.30	- Meeting with the Pacific Islands Forum Secretariat (Venue: Pacific Islands Forum Secretariat): Tuiloma Neroni Slade, Secretary General, Andie Fong Toy, Deputy Secretary General, and Feleti P. Teo, Deputy Secretary General
13.00 -14.00	Press Conference (Venue: EU Delegation), Sandwich lunch
14.30 - 15.30	- Meeting with Manasa Vaniqi, Permanent Secretary for Sugar (Venue: Ministry of Foreign Affairs)
15.30 - 16.30	Debriefing (Venue: EU Delegation)