

**ADDRESS - AUCKLAND WOMEN LAWYERS ASSOCIATION  
THE 2008 DAME SILVIA CARTWRIGHT LECTURE  
HERITAGE HOTEL, AUCKLAND  
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**Rambling thoughts about women, the coups of Fiji and me**

By P Imrana Jalal, Human Rights lawyer, Fiji

**Introduction**

Despite my many affiliations may I state at the outset that I do not speak on behalf of the organizations that I am associated with. These are my own opinions and mine alone. My employers require me to say that whenever I speak.

I am greatly honoured to deliver the Dame Silvia Cartwright lecture at the invitation of AWLA. I thank AWLA for inviting me. This city has fond memories for me because my *alma mater*, Auckland Law School, is located here. I have known Dame Cartwright for many years. She has been a great support in helping Pacific island women engage with the CEDAW process. She is a true friend to us Pacific island women.

As I stand here looking at you all I consider myself lucky that I chose NZ over other countries to come to Law School. In the southern hemisphere NZ has no parallel in terms of outstanding women in the law profession and in overall governance. Even Australia has yet to elect or appoint a female PM, or a female Chief Justice. Only recently did it produce its first female GG. I say this not only in terms of the sheer critical mass of numbers of women making their presence felt here, but also in terms of the quality of leadership, they provide. I know you feel that in NZ women still have a long way to go and I know that to be true. However, I look to Auckland Law School during my time and I think of Margaret Vennel, Margaret Wilson, Jane Kelsey and many more...who provided amazing role models to a young, naïve, and highly impressionable Pacific islander. When I left Auckland it was because of these women, and my law colleagues (Tonia Calderwood, Andrea Farkas and others...) that I felt that there was really nothing that I could not do. And this was the attitude that I headed back to Fiji with, albeit with a broken heart (in the romantic sense!), but with that "I'll take on anyone, anywhere, anytime attitude". I have NZ and the absolutely fabulous women I met here to thank for that.

When I told my father that I wanted to be a lawyer and wanted to go "overseas" to study, he was not happy about it initially, but then agreed that I could go either to NZ, Australia or the UK. I chose NZ, partly because I had no relatives here (my sister chose Australia and lived to rue the day because of family reports back to our parents every week about her behaviour). As those who partied with

me during my Auckland days know, I had no such limitations and lived life to the fullest!!!. Now, as I look around me I know absolutely I made the best choice.

When I received the invitation to speak at this event I decided that I was going to impress you with a learned treatise on the rule of law in Fiji. Then I received a copy of the Cartwright Charter for the address outlining the terms of reference. I was stumped because the Charter asks that you talk about yourself, you career, what drives you, highpoints and low points etc. How could I talk about myself for 45 minutes I wondered? So I consulted the wonderful Justice Susan Glazebrook while in Samoa, and the equally wonderful Margaret Casey and Sou Chiam. They advised that you might find what is happening in Fiji of some interest, and that I should intertwine the two. In many ways the story of race relations and the coups is my story too.

So why have I ended up being a big fish in a very small pond, albeit a turbulent pond? So I will start with recent events and work my way backwards.

On Monday 4 December 2006 I was at The Fijian Resort, Sigatoka, conducting human rights training for 30 Fiji Judges and magistrates. During a break I received a call on my mobile. The caller did not identify himself even though I asked him to. He appeared to be an indigenous Fijian mature male, judging from his accent.

He told me in graphic sexual detail what he would do to me if I chose to speak openly about the political events unfolding in my country, that he would "fix me up and shut my mouth up forever." (I should have said to him at that point, that better men than he had tried to shut me up - including my former husband - which is why he is a former husband- and had failed, why should he imagine that he would succeed?) Of course one only thinks about what to say well after the event!

I told him that I wasn't scared of cowards like him and that he was such a brave man in not telling me who he was. He put the phone down first. I was in a state of shock for about 10 minutes. I told a number of Judges at the workshop what had happened. I then finished the presentation I was doing for them. I found out later that the phone was located in a phone booth just outside the Military Barracks at Nabua. When I got back to the Office in Suva, I discovered that a Major Davina Chan, a young female army lawyer of the Legal Unit, Fiji Military Forces, had called a colleague of mine, and got my mobile number from him earlier. Her supervisor, a lawyer, Lt Col. Mohammed Aziz had asked her to get my mobile number. He had not told her the reason. He has not explained to this day why. Davina came to my office to apologise to me some weeks later and when she asked me what she could do to make up for her unwitting part in the

saga I told her that she should resign from the military, and to document the human rights abuses happening at the camp if she wanted to rescue her integrity. She subsequently resigned from the military, some months later.

I was of opinion that the call had been made because of my article that had been published in *The Fiji Times*, a few days before, titled “Flirt With the Rule of Law at your Peril” in which I defended the rule of law and democracy as an appropriate governance system for Fiji, and criticized any threat of an illegal takeover of Government by the army. I had especially singled out Commodore Bainimarama for opprobrium. We had been colleagues (and friends) on the Fiji Rugby Union board for some years, he as President, I, as the first Indo-Fijian and first female to win an election to the heavily dominated Fijian Rugby Board. I think he thought that just because I disapproved of many of the actions of the deposed Government, that I would support him. One day after the phone call from outside the military camp, Bainimarama removed the elected Government, and we became a military dictatorship. That military dictatorship is becoming increasingly entrenched as the days tick by.

After that call I lived in fear for some days and slept in different houses. I spent that Xmas in Brisbane. My parents begged me not to return to Fiji, as did my husband, but I just had to come back. Eventually I got tired of sleeping in different houses and went back home. By that time, the army had realized that I was a UN employee and to a certain extent protected. That did not stop them however, from preventing me from leaving the country, and forcing my employers to negotiate for me to be given the freedom to come and go.

So what had brought me to this point? Why was it that the country I love so much, the country I had chosen to return to, and to not leave when all my family left after the coups of 1987 and 2000, reduced to this?

### **My Early Years<sup>1</sup>**

I think when I was was five years’ old, I became a feminist. If you grew up a girl in an Indian family in the 60s, then you have an instinctive understanding of what discrimination means. I think it was this underpinning in my life that has partially led me to co-found two internationally recognised organisations - the Fiji Women’s Rights Movement (FWRM) and the award winning human rights project, the Pacific Regional Rights Resource Team (RRRT). It was also this that ultimately led me to authour a book on women’s rights in the South Pacific, *Law for Pacific Women: A Legal Rights Handbook*; and to be the architect of the *Fiji Family Law Act*.

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<sup>1</sup> The majority of my personal story is directly extracted from a soon to be published article on transformative leadership titled *Imrana Jalal: Human Rights Activist* by Prof Rae Nicholl, unpublished, University of the South Pacific, 2008

I was the first-born child in a family of four girls and one boy. As with most Pacific families, my childhood was dominated by religion, but, in my case, the religious divisions in the family had a profound effect on my life.

I grew up in a household where I had a Muslim father and a Catholic mother and both were very devout about their religion. My mother was quite a westernised Indian but my father was a traditional Indian. When they had their first child, me, it was a source of a lot of controversy in our family life because my father wanted to raise us as Muslims, and my mother, as Catholics.

My maternal grandmother, Elizabeth Kamla Maharaj Grant, a famous and imposing Suva Brahmin aristocrat, socialite and hostess, known for her wonderful parties and open house, had a powerful influence on the family and, in the end, the first three children were raised as Catholics. For the first 17 years of my life, I was raised as a Catholic, used the Catholic first name of Patricia or Trish (as some of you know me by), and attended Catholic schools.

After the first three Jalal children had been born, my father returned to Pakistan to a village on the Pakistan and Afghanistan border to find his mawlana (priest) father, whom he brought back to Fiji, with his third wife and their 4 year old son, to live with us. The inclusion of my strict Pakistani family in our household had a profound influence on all of us girls, as well as my mother. My father became not only more devout, but more strict with us, constantly curbing our behaviour, our dress (no more shorts!!), and trying to raise us more traditionally. After that trip, two more children were born, another girl and, finally, the longed-for boy. When my brother came along, he was the pride and joy of my father's life. And still is! These younger two children were raised as Muslims, given Muslim names, but still sent to Catholic schools. This decision 'created a schism in our family'.

I had a difficult relationship with my father. I think my father was disappointed that I wasn't a boy. It would have been better if I were a boy because my father still thinks I have the personality of a man. I am a feminist so I must have the personality of a man! However in my family, my father also believed fundamentally that girls had to be educated. As an Islamic father, he had a responsibility to ensure that we were educated, that we could earn our money and that we would not be dependent on men. At the same time, he had a vision of me being a good Muslim wife and daughter. It was very confusing, I am sure even in his own head. He wanted us never to be subservient to a man but still be a traditional wife and mother. I think once you get an education, to try to keep us in a strait-jacket according to the vision of a nice Indian girl, is impossible.

Relationships at home were strained and my father attempted to instil discipline in his daughters. My mother did try to protect us. I got many hidings when I was a kid and even as a teenager. Physical discipline is regarded as acceptable in the Pacific. I don't have any negative feelings about it now but I certainly did then. It was always about wanting more freedom to express myself and to go out freely. We were not allowed to until I went to university. So the fights were always about that, and having boy friends. In our culture you are not allowed to have boyfriends. And then you only see the boy that you are supposed to marry.

Then I wanted to go overseas to university and that was a bit of a problem because it meant losing control over us. All Indians want their children to be doctors. It is the epitome of success. "My daughter is a doctor, my son is a doctor." But I wanted to be a lawyer, and in the end my father gave in.

I spent my seventh form year at Marist Sisters' College in Auckland before enrolling for a law degree at the University of Auckland where I did my bachelors and masters degrees. I then returned to Fiji and worked as a lawyer for a couple of years before deciding that I wanted to undertake further study. Again, it seemed as though I was disappointing my father. When I told him that I was applying for a scholarship, he asked if I was intending to do a PhD in law. When I responded that I was planning to enrol in a Masters in Women's/Gender Studies programme in Sydney, he retorted 'What is that?' He could not believe I would waste two years of my life doing feminist studies.

I acknowledge the sacrifices made by my parents, who were not wealthy, to give us the opportunities that they had never enjoyed. I remember how my father 'sold goats on the side' to pay for my university education. He would send me money from time to time and say "just sold a goat today - here's some money" so the thought of failing and making all this sacrifice a waste of time for them was too horrible a prospect to contemplate. Only in recent years have I realised what a wonderful man he is. We enjoy a robust and loving relationship now and I think its fair to say that of my siblings, I am the closest to him. No doubt my sibs would disagree!!

After studies in New Zealand, I began to look around for ways in which I could use my newly acquired legal knowledge to improve women's rights. In 1986, the idea of championing equal rights for women using legal methods was an unmapped area in the Fijian context. While women in Fiji might be allowed to vote and hold down professional jobs, most women remain in a subordinate position to men, both at home and at work.

My interest in human rights led me to accept a position with the Office of the Attorney-General. I defended the state in civil cases and quickly became aware of

the unequal treatment handed out to women. After several years, I worked in the Legal Aid unit as a barrister mainly in the Domestic Court. I began defending the poorest of women. They endured triple forms of discrimination. That was the steepest learning curve for me. Those years gave me the philosophical underpinning to something that was forming in my brain but had not actually crystallized.

### **Fiji Women's Rights Movement**

In 1986, a group of us founded the Fiji Women's Rights Movement. I was the only lawyer in the group. With the imperative that women must be protected by the laws of the land, our group decided that the organisation would campaign and lobby on a number of fronts. FWRM has been described by others as "a transformational organisation with transformation leadership. Now over 20 years old, FWRM can reflect on a long list of achievements that have helped to 'redress the imbalances of women's socio-economic and political status.'"<sup>2</sup> We face many contemporary challenges at FWRM, amongst them: trying to retain a cutting edge feminist ideology (God help us if we become a boring liberal feminist organisation!), hiring, training and retaining staff that have the appropriate level of mature analytical and intellectual sophistication to meet the complex political challenges, and ensuring that we do not lose our capacity to shape and influence the development of the rule of law and democracy in Fiji. The latter will largely depend on whom we employ, the membership of our Board and how seriously our national leaders perceive our influence to be.

### **Law for Pacific Women: A Legal Rights Handbook**

In 1991, I was awarded the US Fulbright Scholarship that would have allowed me to study gender and the law at Stanford University in the United States. As the Fulbright Scholarship was not sufficient to pay both tuition and living costs, I approached the Secretary of the Public Service Commission, Poseci Bune, for paid study leave. It was standard practice in the Attorney General's office - everyone applied for a scholarship - and I was anticipating leave with pay so that I could continue to meet my debts while studying. The Public Service Commission turned down my application, even though my supervisor, the Attorney General, had agreed to it. Poseci, later a Minister in the Labour Party and Interim Administration, sent me a letter explaining that 'Women's issues are not a priority for this government'. I kept that letter and resigned from the Attorney General's Office. I think its fair to say that Poseci has lived to regret the day he made that statement. I wrote about it in the foreword to my book later. Poseci was an MP in one of the Parliaments I lobbied to pass the Family Law Act, and he said to me many times "why won't you ever let me live that down?"

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<sup>2</sup> Rae Nicholl, USP, 2007

Although I may forgive, I shan't forget. Poseci is typical of the men of his generation and genre, many of whom who are national leaders.

I was subsequently fortunate to receive two scholarships from the Australian and Queensland Associations of Women Graduates and was able to attend Sydney University, where I graduated with a Master of Arts in Women's Studies in 1992. Money was tight, so I worked part-time as a waitress at the Tandoori Palace in central Sydney before returning to work in Suva.

I had enrolled for women studies specifically to provide the FWRM with a better theoretical understanding of our activities and it was my intention as to turn my Masters thesis into a book. Writing the book was arduous. Nothing had been documented and I travelled extensively, whilst pregnant with my first child, throughout the Pacific to collect primary data. From 1991-93, I wrote the book, travelled and did some part-time work as a consultant during two pregnancies. My editor, Bess Flores, remarked once that she knew well the parts of the book that I had drafted whilst breastfeeding!! She happily edited those sections out or toned them down from the heavy duty feminist perspective!!

*Law for Pacific Women: A Legal Rights Handbook* was published by the FWRM and launched in March 1998. The 700-page book was designed to make the law accessible to legislators, policy planners, non-lawyers and activists with the research covering the human and legal rights of women in Fiji, Nauru, Tuvalu, Kiribati, Cook Islands, Samoa, Tonga, Vanuatu and the Solomon Islands. The book also hopefully fulfilled its requirement to provide the philosophical foundation for the activities of the Movement and provided the organisation with a strong research base. All proceeds from the sale of my book are ploughed back into the organisation.

### **Pacific Regional Rights Resource Team (RRRT)**

After I had done my research the United Kingdom Department of International Development (DFID) gave me a grant to stay home full-time, to finish my book. During that time, Kim Stanford-Smith of DFID and I formed a regional organisation called RRRT. He had been a judge in Vanuatu, Tonga and the Solomon Islands. We shared a sense of the injustice that women in the Pacific faced. RRRT grew out of that and my work at FWRM. RRRT grew at an exponential rate taking on a life of its own. When Kim Stanford-Smith died in May 2006 I paid tribute to him in *Right Hia*, remembering him as 'an unusual man who believed in gender equity and women's empowerment long before it became trendy for men to be that way. In that way he was ahead of his time'.<sup>3</sup>

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<sup>3</sup> *Right Hia* newsletter 2006:2

RRRT has become a successful and visible agency working in 12 Pacific Island countries. With a staff of about 14, half are lawyers and the remainder work as development specialists. My role is that of human rights adviser providing human rights support in training, policy and technical advice. As part of my job, I train NGOs in the Pacific on how to mount campaigns to improve human rights and works with government agencies on how to integrate human rights into their programmes.

RRRT has produced a number of far reaching changes in the Pacific human rights landscape including the building of a 300-strong network of community paralegals/local human rights defenders in several PICs; human rights compliant legislation, new judgements, helping Governments and NGOs prepare UN CEDAW reports, accountable leadership at community levels and the delivery of civil, political, economic and social rights including for example the right to water. There is a strong focus on human rights and gender training for community groups, police, lawyers and judicial officials; and policy makers such as MPs.

RRRT won the prestigious 1998 UNICEF Maurice Pate Award from a field of 111 international candidates. It is cited as an Asia-Pacific Best Practices rights based approach project by the Office of the High Commissioner for Human Rights (OHCHR).

### **Family Law Act 2003**

The Family Law Act is an important reforming piece of legislation, and I suppose will forever be associated with me, warts and all. Recently a lawyer berated me for some of its provisions whilst another congratulated me. A NZ lawyer told me that she recently had to work with both the NZ and Fiji legislation and that the Fiji one was significantly better than the NZ one! So I take the good with the bad! Up until its enactment in 2003, the family law in Fiji was based on nine pieces of legislation imported from the United Kingdom between 1892 and 1973. The law discriminated against women, legitimated violence against them, was sexist, patriarchal and based on rigid concepts of women's roles within the family, including women's lack of autonomy. The process to change the law took many years but the Bill was ready in May 2000. Another coup d'etat in 2000 held up enactment for a few more years until, finally, the Family Law Act became effective on 1 January 2005. There had been much opposition to the bill along the way. For example, the Fijian Methodist Church called me an 'evil force in society' and accused me 'of trying to destroy the institution of marriage.

During this period I was also writing a weekly column on women, politics and social issues. I was accused in the Senate during debate, by the then Deputy Speaker of the Senate, Ratu Ratalemo Ratakele (a high Chief from Vanua Levu)

of inciting men to commit rape because my comments would anger men. He said that he himself felt like that when he read my columns. My friend Maraia, who at that time was travelling in Nepal, said these comments were a news item in a Nepali newspaper! To give him due credit he eventually apologised and once attended a fundraiser at FWRM!

The new law is based loosely on the same principles as the Australian and New Zealand family law legislation. It will give unprecedented rights to women and children. It will for the first time give divorced women rights to apply for a share of matrimonial property. It will allow women who have been victims of domestic violence to divorce their tormentors after one year's separation instead of penalising them to a three-year "sentence" of wife beating. It will also give men some rights that they never had before. It will at the very least create a level playing field between men and women. It will force the law and parents to put children at the centre of a discussion whether financial or custodial. Ultimately if this law fails to meet its promise it will be because people have failed to make it work and the appropriate human and financial resources have been lacking, and not because it is a "bad law."

For me personally this law is a culmination of a journey, 12 years in the making. Not all stakeholders are happy with all parts of the new law. For example some feminists believe that I sold out by not insisting that *de facto* partners be given the same rights as married partners, a position I had initially insisted on. I was forced to compromise with the AG and omit legalising *de facto* partnerships. I knew this was a battle I would not win with the conservative legislatures (3 of them through 3 coups!) and was not prepared to jettison the whole legislation on this basis. I was prepared to fight this battle another day. It is a battle I will not hesitate to engage in at the right time. I know it will be in my lifetime.

At the end of the day all legislation has to be a compromise of many different views. That is the nature of democracy.

An evaluator of our RRRT project called me a "man hater". He said: "You call yourself a human rights activist but all you talk about is women's rights and if that is your expertise, you should not call yourself a human rights person." He told others that the Indo-Fijian in the project is clearly a man hater" and even referred to me several times in the document as "that Indo-Fijian female". I look upon it as a compliment. I worry constantly, working in the broad area of human rights, that I might lose my women's rights edge. That is why human rights must be scrutinised with a feminist lens.

### **A little bit on my personal life**

When I left NZ in 1984 for Fiji I left with a broken heart. I had fallen in love with a gorgeous Jewish New Zealander, but my father, a devout Muslim, horrified at the prospect of having a Jewish son-in-law persuaded me to return and give Fiji a chance. The thought of going back to my country, which I saw as unsophisticated and backward, especially about women, was a prospect I did not welcome. (In fact I initially enrolled for the Masters in Law programme to delay going back to Fiji and to enable me continue to my relationship in NZ!) A combination of distance, and two families on both sides, working hard to sever our ties (especially on the Remuera side!), eventually brought our relationship to an end. I amazed myself at how quickly I grew passionate about Fiji, and about my work, despite all the numerous problems. My sense of injustice about women and racial issues angered me, and drove me to try to change what little I could about this world I had returned to.

I eventually married an Indian Fijian and we had two sons together. We separated in 1999. Gibraan and Shaquille, my two elder sons were born out of this marriage. I remarried in 2003 – this time to an indigenous Fijian, again, to the horror of both sides of the family. Saki, Ratu Sakiusa Tuisolia, is a traditional Fijian chief, as is his father, and was, at that time, the Deputy Permanent Secretary in the Prime Minister's Office. On the day of the wedding Saki did the traditional apology ceremony to his father as eldest son, by presenting him with a whale's tooth, seeking his blessing for our marriage. His father wept openly, and begged him not to marry me saying, "Indians are so different from us. They don't understand us. It will always be that way. You have responsibilities as a chief to marry someone who understands your duties". Neither of our parents attended the wedding although my mother attended the brief ceremony, but not the reception, out of deference to my father. Curiously though, my father, who is well known for his Indian cooking, cooked the goat curry and palau and sent it to the reception. Some months later, I was formally accepted into Saki's village, by his *mataqali/tikina*, and his traditional alliances. Out of deference to them, I promptly got pregnant and gave birth to the longed for son of the eldest son! It took the birth of our son, for my father to thaw towards Saki. When Roma was born I had to go and stay in Saki's village and to undergo the *bogiva* ceremonies. For 4 days and nights I only saw Roma to breastfeed him, as the women of several tribes had to carry him for 4 days and 4 nights, his body could not touch the ground. It was a nightmare for me but I endured it for Saki's sake and to gain acceptance. I have no lingering regrets about it now. One thing I know about indigenous Fijians, you give a little and you get it returned a hundredfold. It is a lesson that many in my ethnic group, especially our Indian political leaders have not yet learned.

My husband, a Fiji/UK trained economist is one of the blue-eyed boys of the Fijian cadre of professionals and is closely observed by both the Fijian and Indian establishment. When we married, several websites discussed our marriage in great detail, “voting” for or against it, even in the Fijian diaspora, and as far afield as soldiers on duty in the Middle East. At that time a researcher, a mixed race Fijian –Indian woman, based at the University of Hawaii, Portia Richmond, was writing her PhD thesis on race and marriage in Fiji. She mentioned Saki and me, several times in the thesis. She said that, several people, of both major races, that she had interviewed, had remarked that I, that we, had entered into our marriage for “political reasons”. I suppose what they meant was for political ambition – ours was a political marriage for future political ambition. I suspect that the accusation was more directed at me, the implication being that I had deliberately married Saki, knowing that he was being groomed for some sort of leadership, and this would give me access to political power. These comments were a source of great amusement to me, not only because it assumes that I am, in my own right, without influence, but also because anyone who knows me, and who knows or has seen my burly, muscular, handsome rugby playing husband would know, that the reason I started seeing him had nothing to do with politics but everything to do with lust, pure unadulterated lust! And the reason I married him was lust (somewhat honed by then), because I was madly in love with him, and because he is brilliant, honest, ambitious and confident; and has never viewed my career and travel as a threat. He shares also the same vision of Fiji as me. Our marriage is not an easy one, straddling as we do, both our badly polarized races and cultures, but because of this I have learnt so much about what it will take to live together in peace, as one people.

### **The Coups and Me**

While my experiences in speaking out against injustice have not resulted in long-term imprisonment, I have been arrested, prosecuted and harassed. In May 1988, I was arrested in Sukuna Park in Suva, along with 17 others, by the Police when taking part in a demonstration, to mark the first anniversary of the 1987 *coup d’etat*. We were taken to the Central Police Station, and the group, which became known as The Democracy Eighteen, were split up, with the nine women being placed in one cell and the nine men put into another. Jane Ricketts wrote of the experience:

As the long night passes we overcome our fears by singing together. Kenneth [Zinck] and Imrana improvise their own version of “There’s a Hole in the Bucket”. Not everyone is on our side though, and the singing angers some in authority. A vehicle is backed up against the grille window in the corridor outside our cell. The engine is revved so that carbon monoxide fumes fill the cell. We try desperately to cover our faces. Someone has brought us a mat to cover the cement floor of the cell which

is too small for the nine of us to lie down at once. From time to time we're taken to the toilet. There's no light, no paper, no soap or towel and the floor is awash.<sup>4</sup>

After one night in the police cells, we were released on bail. Seven months later, our group was found guilty of holding a meeting without a permit but were discharged without conviction.

The 2006 military *coup d'etat* led to more harassment of my fellow activists and me. Much of this has to do with a carefully documented matrix of human rights abuses sent to international partners. In particular, rightly or wrongly, it holds my NGO associates and me, wholly or partially responsible for the matrix. The documentation of human rights violations was a major threat to the regime. It was part of the EU's deliberations when it decided not to grant Fiji some 9 million euro of sugar funds last year. The withdrawal of promised funds was a major setback to the regime.

To give you some background one needs to understand the nature of race politics in Fiji. There is little doubt that we live in a deeply racially divided country, Fijians on one side and Indians on the other, with very little integration between the two. One price that is paid for over protecting our cultures is communalism. The majority of Fijians of all races grow up in our own neighbourhoods, we mix with people of our own kind, we go to ethnic based schools and then marry our own kind, and bring up our children similarly. We don't mix well because we think we do not have much in common, and we do not have a common language to expose this so there is little opportunity to forge the ties that bind.

Political parties are also, generally, race based, and each party since independence has played the race card to the hilt, banking on the deeply held suspicions we have of each other, in order to win elections. In 1987 the Indian dominated Labour Party broke Fijian political hegemony after 17 years in power since independence. Twice since independence, the Indian dominated Labour Party won government and was removed by nationalist elements, first in 1987 by Col. Rabuka in a military putsch; and in 2000 by George Speight (who is serving a life sentence for treason). In 2000 Bainimarama's army removed Speight from power and installed Qarase's Interim Administration until elections in 2001. In November 2000, Bainimarama only narrowly escaped from being killed by his own men, during a botched mutiny. In my view this factor is something that dominates his thinking and explains much of his actions. Qarase's SDL party,

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<sup>4</sup> Ricketts, Jane (1997) 'Our lives will never be the same; 14 May 1987', in *With heart and nerve and sinew: post-coup writing from Fiji*, compiled and edited by Arlene Griffen, Christmas Club, Suva, Fiji.

with its strong nationalist leanings, and its alliance with the right wing Christian Alliance Matanitu party, subsequently won power legitimately, in 2001 and 2006.

On 5 December, 2006, the Commander removed the lawfully elected Government of Laisenia Qarase and the SDL party, sending Fiji into an abyss from which there appears to be little hope of return for the next 10 years. He did this “clean up campaign, not a coup” to remove corruption and racism, to build bridges between racially polarized indigenous Fijians and ethnic Indian Fijians and to “build a better Fiji”. One of his first actions was to “not renew” my unfortunate husband’s husband’s contract with AFL – a company that Saki had turned around in 3 years, from a decade of losses, into a \$6 million profit making company, when he left. Frank subsequently handpicked Ministers for his unlawful administration, amongst them Mahendra Chaudhury, the leader of the Fiji Labour Party, former stalwart defender of the rule of the rule of law and democracy, and some indigenous Fijian chiefs and leaders who had lost in the previous elections, most of them unemployed. Whilst “multiethnic in character, it has limited Fijian support”, wrote a Fijian commentator.<sup>5</sup>

In an unprecedented action in the human rights global community, the Director of the Fiji Human Rights Commission, Shaista Shameem, sister of well known Judge, Naazhat Shameem, issued two long winded reports justifying the coup on spurious legal grounds. This woeful action for a lawyer and a supposed human rights defender pit Shaista against the only remaining legitimate and constitutionally appointed Commissioner, Shamima Ali (also head of the Fiji Women’s Crisis Centre). Shamima accused Shaista of being an apologist for the coup maker, Bainimarama and the military rulers of Fiji. Shaista continues to vigorously defend the military to this day. Commissioner Shamima Ali stands tall amongst human rights defenders in Fiji, defending dissidents, democracy, the rule of law, and consistently challenging the interim administration for its violations of human rights, even as others’ voices have grown quieter.

A commentator wrote poignantly of Shaista’s actions, “ The helplessness of the ordinary citizen was heightened by the inexplicable stance assumed by the Fiji Human Rights Commission (FHRC) in favour of the military. That has continued to the present day. It was the Director of the FHRC who issued an elaborate justification for the military’s actions of 5 December 2006. One that has emboldened and sustained the military in its peculiar understanding of what adherence to the Constitution means.”<sup>6</sup>

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<sup>5</sup> Ratu Joni Madraiwiwi, *MYTHIC CONSTITUTIONALISM: WHITHER FIJI’S COURSE IN JUNE, 2007?* Remarks at Australia National University, Canberra, 5 June 2007

<sup>6</sup> Ratu Joni Madraiwiwi, *MYTHIC CONSTITUTIONALISM: WHITHER FIJI’S COURSE IN JUNE, 2007?* Remarks at Australia National University, Canberra, 5 June 2007

The military ruler also suspended the Chief Justice, D V Fatiaki and allowed, through his “handmaidens” in government, the careful, orchestrated selection of some Judges and Magistrates to various Courts.

Bainimarama also set up the army controlled Fiji Independent Commission and Corruption (FICAC) run by Col George Langman.

I believe that my human rights activities and that of rugby politics (only in Fiji!) has much to do with Frank’s personal vendetta against Saki and I . Frank has never forgiven Saki for taking over the Presidency of the Fiji Rugby Union after Frank resigned from the Presidency, in a huff, when the FRU Board refused to sack an FRU staffer at his request; and for subsequently ignoring Frank as “Prime Minister” at various national rugby events. One such event was the catalyst for the “expulsion” of the NZ High Commissioner, the inimitable Michael Green, from Fiji. So that is how serious matters get over rugby in Fiji.

The fact that the DPP, the Director of Public Prosecutions (the official legally responsible for filing criminal charges in Fiji) has “washed his hands off” these FICAC prosecutions is very revealing.

Which government is ever, not guilty of some form of corruption? These actions may range from - “sure, I’ll put in a good word for you to the head of the committee/tribunal” ....to accepting a gift out of cultural obligations.....to outright bribery. In my view, removing a lawfully elected government, and thereby forever damaging the rule of law, is the **least** sensible, and **least sustainable** way to deal with corruption or racism. The former needs to be dealt with by institutional reform to reduce the opportunity for corruption; and to incrementally change a culture in which gift giving, largesse or *noblesse oblige*, and chiefly giving and taking can be also confused for corruption; and the latter through slow but steady education, integrating schools, having a common name and language, developing ties that bind through relationships, and leading by example.

This is the background against which we are currently operating in Fiji.

But what has brought me to this point. What has been the impact of this and other coups on Fijian society?

## The Impact of the Coup(s) in Fiji

### *A sorry sad soap opera of human rights violations, revenge and petty jealousies*

The breaches in human rights since the 2006 coup have been on a wide scale culminating in at least 2 coup related deaths. Unlike other coups this coup is mostly about revenge and pay back - a soap opera of tragic proportions.

The Economist Magazine wrote of this independently:

“Commodore Bainimarama has sacked all the previous parliamentarians and has purged top civil servants. Dismissals and suspensions have often taken place on the flimsiest of evidence. Soldiers, installed in a new complaints centre, listen to public grievances and send out vigilante missions to tackle everything from village quarrels to landlord-tenant difficulties and domestic disputes. Scores of alleged bootleggers, drug pushers and prostitutes have been rounded up, while opponents of the new order have been beaten up at the army's Queen Elizabeth Barracks in Suva. Yet the emphasis on rounding up the small fry looks increasingly like a deliberate distraction from the army's failure to prove its coup-justifying claim of widespread corruption in the ousted government.”<sup>7</sup>

Those who had been assaulted and detained fell into two broad categories. The first was made up of those who had been openly critical of the military. At the end of March 2007 the detentions of human rights activists appeared to have ceased because of the media attention they attract.

The second group of those who were being unlawfully detained was made up of those who had been suspected or accused of committing crimes or misdemeanors or being critical of soldiers. The vast majority of accusations falling into this category were opportunistic and unsubstantiated; and many were “grudge complaints” by neighbours or others.

By the end of 2007, blatant breaches of human rights were for the most part over. What continues is the macro level structural violation of free speech and free movement, including deportations of ex-patriate journalists for breaching “national security”, on the basis of spurious and unproven allegations.<sup>8</sup> Punishing free speech and dissent with travel bans is a common feature of free speech violations. Those who dare to challenge the military rulers have been punished by not being allowed to leave the country, forcing human rights activists to obtain injunctions. In order to find out whether you are free to travel you need to pay a \$12 fee to the Immigration Dept which is under the control of

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<sup>7</sup> AsiaGet article background Fiji and Tonga A tale of two island states And of their contrasting attitudes to democratic reform Mar 15th 2007 | SUVA, From *The Economist* print edition

<sup>8</sup> I refer to the recent illegal deportations of Russel Hunter of the *Fiji Sun*; and Evan Hannah of *The Fiji Times*

Col Viliame Naipoto, a military henchman, to know whether you on “the list”. The list is so arbitrary that you might be on it one day and off it the next. I have gotten used to traveling one day earlier to give me a day for my employers to negotiate my departure in case I am stopped from traveling. U N security seeks advice from the immigration every time I am due to leave.

Breaches of privacy continue with impunity. Emails are regularly hacked into as the communications institutions are controlled by the military, and almost all key institutions are militarized or controlled through the appointments of army headed boards or cronies of the military. Recently an emailed criticism of the illegal appointment of the Australian, Jocelyn Scutt, to the Judiciary was in the hands of the interim Attorney General within 12 minutes of it being sent.

### ***Militirisation, Nepotism and Croneyism***

There has been an increasing militarisation of key positions in government.<sup>9</sup> Several others have been placed in strategic positions in the civil service and in district administration. All this may not technically amount to the ‘militarisation’ of the civil service<sup>10</sup> but the military virtually controls all government boards, either directly or indirectly, including the government owned media, communications, the airport (share story here) and the ports.

There is little doubt that virtually all political parties that have governed Fiji have been guilty of nepotism and croneyism, but this coup has resulted in chronic nepotism and croneyism, with no opportunity for accountability. Further, no government before has ever stooped so low as to engage in the huge scale violations of political and civil rights. Croneyism, and mutual “back-scratching”, has led to the virtual cover-up of allegations against Mahen Chadhury (minister for Finance) for tax evasion, and a lack of investigation into the alleged strange collection of some FJD\$2 million dollars of funds in his Australian bank account. This seriously dents confidence in the interim administration’s claim to promote transparency and good governance.<sup>11</sup>

### ***Race relations & the Charter and Council for Building a Better Fiji***

Racism is widespread and rampant in both races. Whilst each ethnic group accuses the other of racism, no race in Fiji has the monopoly on racism, in the same way that every government has been guilty of some form of corruption. Race relations are the worst it has ever been since independence. One of the more

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<sup>9</sup> Commodore Esala Teleni heads the police force, Colonel Iowane Naivalarua is commissioner of prisons, and Captain Viliame Naipoto immigration

<sup>10</sup> Brij V Lal, One Hand Clapping, Reflections on the First Anniversary of Fiji’s December 2006 Coup

<sup>11</sup> Brij V Lal, One Hand Clapping, Reflections on the First Anniversary of Fiji’s December 2006 Coup

worrying elements of the second category of human rights abuses during the height of the crisis, right up until June 2007, was their racial nature. In a paper prepared for the Pacific Island Forum Secretariat (PIFS) Eminent Persons' Group by a human rights group it was pointed out:

“A significantly notable trend of the complaints in this group is that the majority of complaints are being made by Indian-Fijians against indigenous Fijians, and the vast majority of detainees are indigenous Fijians. Anecdotal evidence from doctors at hospitals appears to corroborate this. Racial politics is a consistent feature of the Fijian political landscape and is being exploited on a daily basis. This trend will contribute to further polarization of the major races.”

It has been said that the Interim Government is unfortunately perceived by many in the Fijian heartland as the “handmaiden of Mr Chaudhry. Many Fijians are convinced this was an indo Fijian coup. Still others, think it was a Muslim coup because of the association with a few prominent Muslims. These perceptions, even if mistaken, pass for reality from which conclusions are drawn. The actual explanation is less inflammatory: the interest of various individuals and groups happen to coincide with the military’s. It was both opportunistic and principled”, a few believing they were acting in the best interests of the country.<sup>12</sup>

The military ruler of Fiji has set up a National Council for Building a Better Fiji (NCBBF), backed by a military spawned and supported *Charter for Building a Better Fiji*. In the NCBBF are Bainimarama’s supporters, many Labour Party supporters and other well-intentioned, but naïve and ill-informed, NGOs. The SDL party has chosen not to participate, as has the Great Council of Chiefs, the powerful Methodist Church and the majority of indigenous Fijian Provincial Councils, between them, representing the vast bulk of indigenous Fijians. Some Indian institutions have chosen not to participate, amongst these the Fijian Muslim League and the TISI Sangam as well as the second largest Indian political party, the National Federation Party (NFP). However, the largest Hindu organizations, the Arya Pratinidhi Sabha and the Sanatan Dharam Pratinidhi’s leadership, support the Charter.

Despite this, the majority of Indians are perceived by the majority of Fijians to be supporting the coup, the army and its goals. Living in both communities as I do, I witness this on a daily basis. It is not an insight that I necessarily welcome. The Catholic Church openly supports the aims of the coup, led by the Archbishop, and Father Kevin Barr, whose machiavellian approach appears to be that perhaps out of the rule of the gun will come racial harmony, peace and prosperity. A priest I had formerly greatly admired, and with whom I was

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<sup>12</sup> Ratu Joni Madraiwiwi, *MYTHIC CONSTITUTIONALISM: WHITHER FIJI'S COURSE IN JUNE, 2007?* Remarks at Australia National University, Canberra , 5 June

arrested in 1988, Fr David Arms, recently made an astounding statement, to the effect that, whilst the Army was in control, the regime might as well get electoral reforms through, absent an elected Parliament. An unkind person might accuse the Catholic Church in Fiji of collaboration with a regime to suit its own purpose, an allegation that might sound familiar to them! Fortunately I am not an unkind person!!

Also supporting the Council and the Charter are prominent NGOs like the Citizens' Constitutional Forum (CCF), the Catholic Ecumenical Centre for Research and Advocacy (ECREA) and the Women's Actions for Change (WAC) all of whom, **frankly speaking** (I use this term advisedly!), should know better! It is irresistible to me to judge those who should know better more harshly than I would ordinary citizens. Amongst these are those NGOs who ironically call themselves human rights NGOs, some lawyers and worst of all, those Judges whose actions might suggest collaboration with the regime.

The army head has said many times that there will be no election unless and until the people of Fiji support his Council and his Charter for building a better Fiji. The Charter has many laudable aims for building race relations, amongst other praiseworthy goals, but there is little that is innovative in it. Furthermore, its problem lies not in its content, but in the messenger and the leadership behind the Charter and Council. A messenger without credibility is a message gone astray.

There is little doubt that change is needed. I have said so, many times, in both published and unpublished comments. However, in my limited experience of trying to change social attitudes, to convince a society or group to embrace an unpopular idea, the first article of faith is that the constituency must believe in the visionary leader trying to change the way of thinking or belief system. Then they might be prepared to go along with the new vision, even if they don't believe fully in the vision itself.

In the Council and Charter are missing key elements of strategic change, all of which must exist simultaneously. There must be a vision that is clear and is capable of being embraced i.e. the "better Fiji"; the messenger must be credible, respected, charismatic (perhaps), believable, (and dare I say it, intelligent?!), and be able to convince or compel people, not with a gun and with fear, **but on the promise of an idea whose time has come**; and the enabling environment must exist. This latter element is significant because it presupposes that the visionary leader has the backing of a critical mass of people. A critical mass of people is essential for all change and generally it should be the majority, but not necessarily the majority. All these elements are missing in Fiji, especially that of the following of a critical mass of people. The critical mass in this context must

include the leadership, both formal and informal, of indigenous Fijians. As I said, if they believe in the leader then they might be convinced to go along with the idea. But if they despise the leader, no matter how good the message, they will remain unconvinced.

So Frank and his squad have an impossible task. To try to convince an overwhelming number of indigenous Fijians and a significant number of ethnic Indians, that his vision is the just vision for Fiji. But if the majority of Fijians have nothing but contempt and hatred for him, why would they believe in his vision of a better Fiji? Although they might go along with what is happening now, out of fear and coercion, and because the alternative is bloodshed and ethnic war, the racial divisions will only deepen. When the elections occur, perhaps a decade from now, with the inevitable win by the indigenous Fijian parties, I would expect to see even more hard line nationalist policies and an even greater exodus of Indian Fijians from our shores.

The recent census shows that Indian numbers have gone from being about 54% of the population in 1987, to 37% in 2007. Indigenous Fijians are now 57%. Where does our future and that of the rapidly dwindling Indian minority lie? In brokering a power sharing arrangement with indigenous Fijians based on mutual respect and slowly evolving integration or on having multiracialism forced down our throats?

### *The Judiciary*

The judiciary is in a sorry state indeed. An unkind person might describe the state of the judiciary as one of the cynical sacrifice of the rule of law at the alter of ambition. Only recently, Justice D Pathik, appointed by the Military regime to the Court of Appeal, was apparently seen on Fiji TV during a news item, allegedly dancing and celebrating the Indian festival of *Holi* with Commander Bainimarama at the Indian High Commissioner's residence.<sup>13</sup> This was described and commented on by a letter writer to the dailies. Justice Pathik is one of the Judges adjudicating the *Qarase v Bainimarama* hotly contested case, the biggest court case of the decade, whose outcome will determine our legal destiny as a nation, whether we remain a banana republic or return to the rule of law. The whole country patiently awaits the outcome of this case with bated breath, whilst the Commander and the Judge do the salsa (or in this case, the chutney!) together! Ok I exaggerate, but can you imagine that Dame Silvia or CJ Sian Elias would be seen dancing or even conversing with a party to a major litigation, or any litigation, at a ball in this country?

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<sup>13</sup> Letter to the Editor (date?) in The Fiji Times, by Angie Heffernan, head of the Pacific Centre for Public Integrity

Those Judges who have been critical of post-coup developments and the obvious illegality of some of these subsequent activities, have resigned. In his farewell speech High Court judge Roger Coventry commented, 'I have been concerned with the speed with which cases of fundamental importance are progressing...I am concerned that acts, which on their face appear to be unlawful, are being presumed lawful until the court rules otherwise. I am concerned that in circumstances that require a judge or judges to take a particular course of action, that that course is not being taken.'<sup>ii</sup> The resignation of the entire panel of the Fiji Court of Appeal is a matter of crucial concern. Judges from Australia and New Zealand have refused to serve on the Fiji courts and even Judges from Malaysia have not taken up appointment. Meanwhile, judges from the High Court, with limited experience on the bench, are sitting on the Court of Appeal and some judges long past the retiring age have been appointed. The careful stacking of the Appeal Court is a matter of grave concern to the legal fraternity in Fiji.<sup>14</sup>

In order to demonstrate the state of affairs within the judiciary I borrow liberally from the remarks of the former President of the Fiji Law Society and like me, a former human rights commissioner.<sup>15</sup>

In one of her remarks at an international gathering of judges, Madam Justice Shameem put the lessons learnt from May 2000 powerfully:

"What are those lessons? Firstly, to stay out of the fray in a political crisis. Secondly, to uphold the law as long as it is possible to do so. Thirdly, to avoid collaborating with those whose actions may become the subject of constitutional litigation. Fourthly, to resign only when it becomes impossible to continue in office without legitimizing the usurpers".

On 15 January, 2007 while the Chief Justice remained suspended, Madam Justice Shameem proceeded to chair the Judicial Services Commission (JSC). She justified her role on the basis of an opinion obtained from a silk. This despite the fact that she would have known there was no specific provision in the Constitution authorizing a substitute to chair the JSC in place of the Chair, the Chief Justice. Justice Shameem would also have been aware that apart from the President of the Fiji Law Society, the Chair of the Public Service Commission's appointment was legally suspect since he had been appointed by the Army Commander.

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<sup>14</sup> Brij V Lal, *One Hand Clapping*, Reflections on the First Anniversary of Fiji's December 2006 Coup

<sup>15</sup> THE RULE OF LAW UNDER CHALLENGE IN FIJI By Graham Leung, (Remarks at the 20th Biennial Law Asia Conference, Hong Kong, Friday 8 June 2007)

It was at that meeting, that the JSC, as constituted, purported to appoint Mr Justice Anthony Gates as Acting Chief Justice. The fact he had apparently been consulted in advance and that Justice Shameem had obtained an opinion justifying her chairing of the JSC indicates a measure of prior knowledge. It was Gates J. who made the following remarks: <sup>16</sup>

“Unruly persons are unlikely to seek validation for their usurpations from judges. Nor should the courts give their sanction when application is eventually made under the doctrine of effectiveness, for there is no such force behind it. In this regard, I respectfully differ from Kelsen. Judges should expect and anticipate that the usurpers will see them removed. So be it. Judges do not represent the law. The doctrine of effectiveness has no moral underpinning, and judges do no honourable business therefore in according lawfulness to defacto administrations.”

Yet it apparently troubled neither Shameem nor Gates that the Chief Justice had been illegally suspended. To understand the state of the judiciary we need to travel back to the botched putsch of 2000, but that is a tale that I believe is already familiar to most of you present today.

Add to these unsavory aspects, several judicial and magisterial appointments by the regime, including a female military officer to the magistracy, and two women to the Court of Appeal, (Justice Shameem of Fiji, and Jocelyn Scutt of Australia) and we add a further layer of judicial intrigue. (Tupou Draunidalo, former DP of FLS was cited for contempt proceedings for commenting on the judiciary. The charges were subsequently withdrawn by the IAG)

*And what of the role of gender in this debacle?*

### *Gender and the Coup*

The regime promotes itself under the banner of gender equality, whilst it insidiously whittles away at the rule of law and human rights. It has passed, by promulgation, sans Parliament, an Employment Relations “Law” which grants women enhanced maternity protection and amongst other features, legally recognizes sexual harassment. The FWRM had campaigned for these new laws for many years. We have made a principled stand to reject it and many women are angry with us for taking this stand. The regime made much of being the first government to appoint two women to the Court of Appeal, an action we soundly rejected. It appointed its illegal Minister for Women to the Military Council on the grounds of gender equality, a dubious honour indeed. It promises to increase

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<sup>16</sup> Jokapeci Koroi & Ors v Commissioner of Inland Revenue & the Attorney-General Lautoka High Court, Civil Action No 0179/2001L:

the number of women on government controlled boards and of course has appointed a number of women to the magistracy and judiciary.

On 11<sup>th</sup> February, 2008, the FWRM issued a statement, published in the *Fiji Sun* newspaper, saying what hundreds of people were openly saying in Fiji, that the recent appointments to Fiji's Court of Appeal are illegal and further compromise the independence of the judiciary. But only this distinguished women's NGO was singled out for harassment by the judiciary. The organisation said, about the appointments of Shameem and Scutt, that the gender of the appointees was an irrelevant factor given the circumstances in which they were appointed. The rule of law cannot be sacrificed, even for a false sense of gender equality, it said. "These latest judicial appointments by the military-headed regime further undermine the rule of law in our country. We are on seriously shaky ground when the interim regime is hand-picking the judges for the Court that may ultimately decide on the illegality of their government takeover. We reiterate what the Fiji Law Society has pointed out; that all appointments to the judiciary since the military coup on 5<sup>th</sup> December, 2006 are unlawful. Further only if time The independence of the judiciary was further thrown into doubt after new appointee Justice Jocelyn Scutt publicly supported the controversial Fiji Human Rights Commission report on the 2006 general elections. Such comments lead the public to lose faith in the impartiality of the judiciary - which is a very serious threat to the rule of law."

On the same day Virisila was given 4 hours notice and ordered to appear before the 3 judges who has been appointed. In full regalia, from the Bench above, the two women Judges, Shameem and Scutt (a well known feminist) told her off in no uncertain terms. An extraordinary threat of intimidation, and unprecedented as a "legal proceeding"! To this day it has been impossible for the lawyer representing FWRM to get a proper transcript of the proceedings. In addition, the court clerk who gave our lawyer a draft copy of the proceedings is allegedly under investigation by the judiciary. The irony, of two women judges (the first in the CA) hauling a respected women's rights activist before them, is lost on the regime, an administration which touts gender equality as its mantra.

Having said all this, it is the women's NGOs, and the women in human rights NGOs, that have really been at the forefront of resistance to the regime apart from the political parties. Their bravery in the face of extraordinary intimidation and harassment ought to be applauded.

## **CONCLUSION**

So where does this leave us? What is the legacy of Rabuka, George Speight and Bainimarama? The granting of immunity to the armed forces for all actions,

including causing death, means that the future for the rule of law in Fiji looks bleak. Whatever political solution is reached, it will include an amnesty for all criminal actions, otherwise Bainimarama will never agree to go back to the barracks. Whether elections happen or not, the future is uncertain, given that the military has taken on the responsibility of our nation as its self-appointed guardian. It will be an ever present menacing presence, lurking in the shadows behind every elected government, unless we are completely demilitarized, or right-sized, consistent with our population size.

We are paying the price now for not having punished the usurpers for treason in 1987, and for granting Rabuka an amnesty. This has caused a coup cycle mentality in Fiji. Bainimarama thinks he can get away with this because Rabuka did. The reality is that any military man, with a disproportionate number of soldiers behind him, with guns, can.

Our judges will partly determine our future. If they reward Bainimarama by giving him the legitimacy he craves he and the army can hold an elected government to ransom forever. And what do we do with the Judges and Magistrates who appear to have either sided with the regime or appear to have accepted illegal appointments? Should we ask all to resign and reapply? What happens to our legal system if we don't? If it were my choice I would ask for the complete resignation of each and every one of them, the bad and the good, and for each to seek re-appointment on new terms and conditions, recruited by an independent outside panel of Judges. This is necessary to restore confidence in the Judiciary.

Civil society has been torn asunder. NGOs who support the aims of the coup like WAC, ECREA and CCF are confused. They argue essentially (although without erudite articulation) that there is a hierarchy of rights, that economic rights take precedence over civil and political rights, and that the corruption and racism of the Qarase government justifies the sacrifice of civil and political rights - much like the Soviets argued during the Cold War era. They are supported in this view by the Catholic Church and some Indian organizations. The logical extension of this flawed thinking is that it is acceptable to say to a poor family, "Well, if your stomach is full if you have a decent job, and your children are at school you should be happy with that and should be willing to sacrifice the right to free speech." Human rights organizations like FWRM, FWCC, PCRC, PCPI and others believe in the fundamentals of the human rights discourse, that rights are universal and interconnected and that all rights need each other to advance. Rights cannot be split when politically convenient. They come as a package.

Initially I was at a loss, not being able to understand why lawyers, judges and NGOs who protested the coup in 1987 and 2000 when the Indian Labour party

was deposed did not do the same when the SDL Fijian party was thrown out. One perspective is that they do not believe in the principle of the rule of law. It is a convenient shibboleth, flung away when it does not suit the politics of race or of convenience. The other perspective is that the rule of law can be dispensed with for a “greater good” depending on your perspective about what is the greater good.

How critically the regime wants our support is illustrated by a recent event. A prominent pro-regime NGO person, tried to persuade Saki, to persuade Shamima and I, to get behind the National Council for Building a Better Fiji, co-chaired by the military head, Commodore Frank, saying, that if we did, the anti regime NGOs (not many remain!) would follow our leadership!! Saki laughed in the NGO person’s face and said - “you obviously don’t know my wife or Shamima well – since when did they ever listen to us mere males?”

Incidents like these underscore for me the precious, precious nature of the rule of law. How lucky you are my sisters in law that you live in a society knowing that you can say what you want to without having to carefully choose your words, and that you appear in courts that are independent and unbiased.

My commitment to human rights and the rule of law remains resolute. Saki remains his calm confident self and is concentrating on his various business ventures which are doing so well. He opened his 3<sup>rd</sup> business, Roma’s Hook & Chook, his second restaurant, in downtown Suva recently. We are both upbeat and doing fine. We believe that the next few years will be difficult but justice will be done in the end.

The history of national leadership in my country have, with some notable exceptions, been unfortunate ones, riddled with bad governance. I end with a question I ask myself again and again - where is it written that in the Pacific islands live lesser people entitled to lesser rights than that enjoyed by others?

Thank you for listening.

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<sup>i</sup> Victor Lal, ‘Name the Minister,’ *Fiji Times*, 16 Nov 07.

<sup>ii</sup> ‘Fiji judge urges lawyers to speak out,’ *fijilive*, 25 Jan 08