



July 27, 2009

The Honourable Lawrence Cannon, P.C., M.P.
Minister of Foreign Affairs
Foreign Affairs and International Trade Canada
125 Sussex Drive
Ottawa, ON K1A 0G2

Dear Minister:

Re: Deterioration of the Rule of Law in Fiji

Further to your letter of June 12, 2009, I am writing to inform you of developments in the situation in Fiji.

Attached are remarks from one of our colleagues in the International Bar Association, Graham Leung, formerly President of the Fiji Law Society. He was to deliver these remarks to the Fiji Institute of Accountants Congress on June 12, but was unable to do so due to interference from the Fiji military regime. They detail the severe economic and social repercussions for Fiji arising from the coup and the suspension of the constitution.

Mr. Leung's observations are of a country unable to prosper as a result of the decline of the rule of law. It has declining international reserves and weak growth prospects. Its GDP ranking is 150 out of 159. Its military leader removed the Reserve Bank Governor, and aid funds are drying up. Judges have been dismissed, and the current judiciary is dysfunctional. Mr. Leung points out the connection between the latter and Fiji's dismal economic prospects:

Investors will get no relief from doing business in Fiji without the safeguards of an independent and competent judiciary to adjudicate over commercial disputes, including where the government is a party.

Mr. Leung is retiring from the practice of law in Fiji, rather than seek licensure from an army-appointed major to whom the power to license lawyers has now been transferred from the Law Society. He has received threats for speaking out on the political crisis and has relocated to a safe house. An independent, self-regulated, legal profession is as critical to the rule of law as an independent judiciary. Indeed, the two are mutually supportive. As our Supreme Court stated in *Andrews v. Law Society of British Columbia* in 1989:

It is incontestable that the legal profession plays a very significant — in fact, a fundamentally important — role in the administration of justice, both in the criminal and the civil law....[I]n the absence of an independent legal profession, skilled and qualified to play its part in the administration of justice and the judicial process, the whole legal system would be in a parlous state.

Mr. Leung's circumstances demonstrate that Fiji no longer has an independent legal profession to fearlessly pursue the interests of its citizenry in a democratic, accountable state.

I hope this information is useful, and wish you every success in placing international pressure on Fiji to restore the Rule of Law at the Post Forum Dialogue Partners' meeting of the Pacific Island Forum and subsequent meetings.

Yours truly,

(Original signed by J. Guy Joubert)

J. Guy Joubert

Remarks by Graham Leung
Fiji Institute of Accountants Congress, Sheraton, Denarau
Friday 12 June 2009

An Experiment In Nation Building *

Mr President, Your excellencies, members of council, members of the FIA, ladies and gentlemen. It is an honor and privilege to speak to you this morning.

We have had five coups in twenty-two years. Dictatorship and arbitrariness has replaced the rule of law, democracy and human rights. We have a regime whose authority is based on force rather than the consent of the people. That is our reality. Who can say with certainty that this scenario will not continue beyond September 2014? The prospect is depressing. How do we climb out of this quicksand into which we are fast sinking?

Fiji is not just in a political, but a deep financial crisis. The root of that crisis stems from the underlying political instability and coups which have ravaged the country over the last two decades. This crisis cannot be solved merely by getting the economic fundamentals right, because its origins lie in systemic political and governance issues. This crisis will not solve itself if we just ignore it. No matter how attractive the fiscal and policy incentives cobbled together by the regime, there will be few takers given the present political instability and uncertainty. And the confidence needed to restore the economy will only come if we make the right decisions going forward.

The world has changed since 1987. Human rights concerns do matter. And in the world of *real politick*, we are vulnerable and small enough to be held accountable. Call it double standards, call it what you will. That is how international relations work. The regime may well think it can defy external pressures. But it will come at the expense of further decline in social services, our standard of living, decay in infrastructure, increased poverty, crime and other social ills.

Why should we despair?

The Reserve Bank of Fiji (RBF) has forecast a contraction of the economy by 0.3 per cent in 2009. This follows very low growth of

just 0.2 per cent in 2008 and a contraction of 6.6 per cent in 2007. Exports are projected to decline by 12.2 per cent in 2009. Investment in 2009 is estimated to fall to about 13 per cent of GDP, down from an estimated 15 per cent of GDP in 2008.

In early March 2009 official foreign reserves stood at FJ\$674 million, equivalent to around 2.7 months of goods imports. The abrogation of the Constitution is likely to worsen the liquidity situation. The RBF's introduction of measures to tighten exchange controls on 14 April in order to protect foreign reserves underscores the fragility of our economy.¹

In April 2009, Standard and Poor's Rating Services announced that it had revised its outlook on the long-term sovereign credit rating on Fiji to negative from stable. Standard and Poor's affirmed its 'B/B' foreign currency credit ratings on Fiji. The outlook revision reflects Fiji's declining international reserves and weak growth prospects. It also reflects a likely rise in external borrowings this year and into the future at a time when the government's fiscal flexibility and economic options are diminishing.

The RBF reports that reserves have fallen to US\$431 million (7.2% of GDP) in December 2008 from US\$618 million at the end of 2007 (or 10.3% of GDP). They have come under pressure from recent floods that have damaged Fiji's key earners of foreign exchange: tourism and sugar. Recessionary conditions in key export markets have also weighed on merchandise exports and remittance flows. These factors may also impair short-term. Growth will also be depressed by an uncertain business environment with lower levels of investment.

Recent figures by the International Monetary Fund (IMF) show that Fiji's GDP ranking is in the same league as Eritrea, Bhutan and the Central African Republic. We were ranked 150 of the 192 countries listed by the IMF. Zimbabwe was ranked 159, nine places behind Fiji. Not exactly comforting statistics. You don't have to be a genius to work out that we are in the bottom 20% of the class -the dunce in the class.

Savenaca Narube until recently the Governor of the Reserve Bank, was appointed by the Constitutional Offices Commission. But he

¹ Policy Brief – Fiji: The Flailing State, April 2009. Published paper by the Lowy Institute. See page 4

was sacked by the army backed regime. There is no evidence that the Board of the RBF protested against his summary removal. For that matter, there is no evidence that anyone did. What does it say about us as a nation when senior constitutional office holders can be swept away without not so much as a murmur from the business and financial community? Did anyone stand up and say "No you can't do this. This man has done nothing wrong? What is his crime?" Sadly, courage and truth have become rare commodities in this country.

In a report published in April, the Sydney based Lowy Institute for International Policy said "the removal of the respected Reserve Bank Governor will destroy what is left of business confidence and deter potential foreign investors. Fiji faced a serious liquidity crisis even before 10 April; the negative outlook for the economy will be dramatically worse as a result of the actions of President Iloilo and Commodore Bainimarama."²

Fiji has been suspended from the Pacific Islands Forum. The Commonwealth is likely to take a similar decision later in the year. EU aid funds have dried up. Even the normally conservative Japanese Government declined to invite the current regime and its leader to an annual summit with Pacific Island Leaders that was held in Hokkaido last month. Our international standing has never been any lower.

The situation has been made worse by the dismissal of the judges and a judiciary which is now even more dysfunctional. More recently, the regime took over the licensing of lawyers, removing the power to grant licenses to practice from the law society to the Registrar of the High Court, an army appointed major. Mr Frank Youn executive director of the Australia Fiji Business Council said "Both existing business operating in Fiji and prospective investors would be very concerned by this radical development."³ Reacting to the unilateral changes to the Legal Practitioners Act, the President of the Law Council of Australia John Corcoran expressed concern that the changes could be the first step to the "government's" attempts to control the country's legal profession by not allowing lawyers who oppose the regime to practice law. He said that "An independent judiciary and legal profession are vital to the stability of

² Policy Brief – Fiji: The Flailing State, April 2009. Published paper by the Lowy Institute. Ditto

³ www.theaustralian.news.com.au/business/story/0,28124,25588281-36418,00.html

a nation. Without an independent legal profession, a crucial ingredient in upholding the rule of law in Fiji would be missing.”

Investors will get no relief from doing business in Fiji without the safeguards of an independent and competent judiciary to adjudicate over commercial disputes, including where government is a party. The level of distrust within and between communities is unprecedented in our history. The rivers of political enmity and suspicion between our leaders run deeper than ever before.

The news is not good. In fact it is positively depressing. And it will get worse. The spin doctors cannot fool us. The facts and figures do not lie. Fiji is falling apart. If we do not stem the tide, Fiji will be a failed state.

The Problem

As we look back over the last 39 years, one thing has become clear. Constitution bashing and finding fault in the supreme law has become something of a national past time. Whenever there is a crisis, there is a tendency in some circles to blame the Constitution for the country’s woes and to think that by changing it, we would thereby fix our problems.

May I remind you that the 1970 Constitution produced a Labor Prime Minister with substantial support from the Indo Fijian community. Similarly the now vilified 1997 Constitution produced a second Labor Prime Minister. And following the last general elections in 2006, it produced a multi-party cabinet with a significant number of Labor ministers in an SDL government. So it is misleading and simplistic to suggest that the Constitution is the cause of our problems. The comment of those who dismiss the Constitution as racist is shallow and simplistic. Context is everything.

The Constitution was not perfect. Reform of some of its parts was work in progress. But what we should remember is that every time we criticize and demonize the Constitution, we are contributing to its erosion and the erosion of democracy. Because it lends the uninformed detractors of the Constitution an excuse to tear it up and to dump it. This is a lesson we must all remember moving into the future. We must stop treating the Constitution as if it were an expendable document that can be chopped and trashed at will.

We must give the Constitution the respect that must be accorded to the supreme law. The lack of respect for the Constitution and a recurring failure to honour the rule of law has been one of the biggest sources of political instability in Fiji.

Time and again our fragile democracy has been hijacked by people who prefer the language of force instead of persuasion. The notion that you can secure real lasting democracy and security through force is misconceived. It is a wicked lie. The twin evils of racism and corruption will not be eradicated overnight. Neither will they be rooted out by the force of arms. The best Constitution in the world will not fix our problems. And how have we responded as a people to the rape of democracy?

For whatever reason, the great majority of us have chosen to remain passive, even acquiescent in the face of illegality, hoping that the excesses of the usurpers will soon end, trusting in their vision. Since the first coup staged by Rabuka, we have rewarded and left the usurpers unpunished. We are paying a heavy price for so doing.

So who is responsible for the situation that Fiji is in today?

We all are. Not just the politicians and political leaders, both successful and failed. Not just the corrupt businessmen who support them. Not just the extremists at both ends of the political spectrum. Not only the lawyers and judges who have succumbed to the easier path of acquiescence and revenge. Not just the chiefs who have chosen expediency over what is right. Some religious leaders, members of civil society and the trade union movement must also share some of the blame.

Leaders who have failed us and a culture of selfishness, greed and revenge have also partly led us to where we are today. All of these different elements have worked over the last three decades to weaken and undermine democracy in Fiji.

One day the educated elites in all the professions will have to answer for their silence in the face of despotism and authoritarianism. All of us who have looked the other way and did nothing are as much to blame for our political predicament and economic woes. For not raising our individual and collective voices to condemn the rape of the constitution, the weakening of

democratic institutions, of the judiciary, of parliament, the muzzling of the press and the erosion of fundamental freedoms.

Instead of adding voices of reason to the debate on issues of national importance most of us have chosen the easier path of silence and complacency. It is too inconvenient, perhaps even embarrassing to get involved or to take a stand. There is a possible fear of recrimination in some quarters. Some of the reservations about speaking out are understandable. But it is not excuseable.

What should we do?

We must tell our rulers that we have had enough of leaders who choose the path of force over dialogue, who would govern us by fear instead of persuasion. Who tell us that they know what is good and better for us only because they say so. We need to stand up against the evil of dictatorship. Because make no mistake it is an evil. If we continue to remain silent in the face of what is taking place we become complicit in the wrongs that are happening. I appreciate there is a fear of retribution and of being singled out. But if we all speak out that will lessen the chances of some being targeted for unfair treatment.

Indifference is the friend of the oppressor. Indifference is not a response in the present crisis which has befallen Fiji. Indifference in the face of the human suffering which affects so many is a denial of the humanity of those that suffer. And we betray our own humanity in the process.

Fiji needs to return to constitutional legitimacy. This will generate hope and confidence. It will restore a framework that will allow for respectful debate and conversations about the way forward. It will bring about political stability and accountability, the necessary preconditions for economic recovery and sustainable long term growth. It will allow the voices of the people, all the people of this country, to be heard.

We need to restore trust at all levels. We need to reject extremism and violence in all its forms. Because violence begets violence. A coup is not just an act of violence. It is a crime and it can never be justified, whatever the cause. By accepting dictatorship we perpetuate it. The road ahead will be long. We will trip. But we must stand up again and continue the journey of rebuilding a Fiji of which we can all be proud. The task to be accomplished will not be

achieved in our lifetime. But we must start that work today. We cannot delay the job of reconciling ourselves to each other. Within and between races. Within and between religions. Within and between families. We have no choice. The alternative to peace, reconciliation and democracy is too horrible to imagine. Further conflict, tension and arbitrary rule will bring untold hardship. Historians will remember this dark chapter in the nation's development as the generation of lost opportunities. Future generations will ask: what did you do to halt the decline? And what will your answer be?

It is sometimes said that we get the leaders we deserve. There is a grain of truth in this. When we reminisce about the past, I think it is fair to say that by and large many of our elected parliamentarians have been fairly uninspiring and unimpressive. This is partly the result of political party selections typically based on patronage and connections. It has resulted in successive parliaments being dominated by poor leaders, lacking vision and wisdom. Leaders who have not led but divided. Leaders whose ideology has contributed to the destruction, instead of the growth of the nation. Leaders who have sown the seeds of discord and rancour. And let me say this. They are not confined to any one community or political grouping. And we are reaping a bitter harvest.

The well being of all who live in these beautiful islands is inextricably linked to the ability and willingness of all our leaders to come to terms and deal with one another on the basis of tolerance, dialogue and mutual respect. There is no escaping this simple truth. They must abandon past hatreds. We need to insist that this process commence forthwith. If it is delayed, we will be doomed to become another failed, sad state like Zimbabwe.

Possible way forward

The immediate need is to restore legitimacy and confidence. As a start, the 1997 Constitution must be restored. Commodore Bainimarama, let our people go. Put down your guns and let us talk. A nation that lives under the cruel tyranny of dictatorship loses its vitality and zest for life.

Legitimacy in the sense of a government broadly acceptable to the people of this country. One that is also able to attract international recognition as well. This might be a caretaker government comprising the political parties, civil society and the military. I know

any suggestion of military involvement is anathema to many. I have my own reservations. But for as long as we have a standing army of significance, they will not disappear overnight. The task of such a government would be to take the country to elections under a new electoral system within agreed time frames. September 2014 is unacceptable. It is too far off. By then the damage to the country would be beyond repair.

What incentives would there be for the military to accept this arrangement. First, they would require assurances of immunity. This would have to be negotiated according to broad principles, with exceptions. Already, we have allowed a culture of impunity to take root and it must be ended. How it is to be achieved must be left for another day.

Second, financial incentives could be provided with support from abroad to reduce the size of the military. Third, peacekeeping assignments might be widened as part of our return to good standing in the global community. Fourth, a refocusing of the military's role from security to national and community development.

Given the commitment and resources that went into the making of the 1997 Constitution, it would make sense to restore it. Let us remember it was the product of widespread consultation with the people and that it was adopted unanimously by both Houses of Parliament. The only aspect that appears to attract some criticism is the electoral system. So let the political parties and civil society discuss what system would best suit Fiji. My own thinking is that some form of proportional representation would be best for the country. Because it protects minor parties and ensures that the larger parties do not secure exaggerated majorities.

The military has said it favours a non racial electoral system. That is possibly not the challenge it once was. Demographics have softened the stance of Fijian political parties in this regard which is why proportional representation makes sense for ethnic minorities in this country.

In the period before elections, there would need to be agreement on the basic issues: the electoral system and government of national unity after the elections. This government would have the responsibility of implementing the reforms agreed to as well as the introduction of a new electoral system. A political dialogue could

determine whether the military might have a role to play in this process. Which brings me to the contentious part : the elections would have to be held under the present electoral system. Otherwise they would not be legal.

It is important to remember that changing the electoral system will not necessarily change ethnic politics. Cultural identity is a strong motivating factor and communities and individuals will still seek ways to express these sentiments. I raise this merely to address the belief that somehow altering our electoral system will remove ethnic issues from people's consciousness. It won't.

As part of this comprehensive political system, consideration might be given to the military being allocated seats in the government of national unity by appointment to the Senate. This would be one way of ensuring that the electoral and other reforms agreed to are effected. But I recognize that the suggestion is fraught with dangers. Ignoring the military, or seeking to emasculate them overnight is unrealistic. It is unlikely to happen. It will be a slow, gradual process. A portion of those in public service positions may be redeployed to the military. For the rest, demobilization from the military and complete integration in the public service might be the only possible alternative.

Whatever the solutions, the militarization of the public service has to stop. It blurs the distinction between the military and civil aspects of government. It undermines the ethos of the public service because the chain of command mentality of the military is ill-suited to civilian decision making. It compromises the criteria for the public service when military officers are appointed ahead of career public servants. The end result is a demoralised and dysfunctional public service.

We proceed to elections on the basis of the electoral system under the 1997 Constitution. If we are to move away from the destructive cycles of the past, we must build on what we have. So let us work within the Constitution to change it with the support of all concerned parties. But let us do so properly and legally following the right procedures. Just as there are no short cuts in life to success, there are no short cuts to making the perfect society.

Going forward, there is a need for genuine tripartite dialogue and co-operation between the government, the private sector, the unions and for the foreseeable future, the military. National

objectives, profit and the welfare of workers can be matched. There will always be tensions - that is the nature of the dynamic and the relationship. But the rebuilding process must begin with some common values of what is right and wrong. What has happened in the past has occurred precisely because sufficient of us have looked the other way and given aid and support to those who would overthrow the established legal order on one pretext or the other. Our political upheavals have come at great cost in terms of social economic, political and psychological loss. We have had five coups. We recover each time. But each time the recovery is longer and the human spirit weakened further.

Concluding remarks

I look back and I see a repetition of mistakes, of unexploited potential together with misguided and misconceived opportunism that has returned to haunt us. Our commitment to our narrow partisan interests rather than principle is a failing we need to reflect on deeply. It is only invoked when convenient to camouflage another agenda. An entire generation has grown up with the example of the last two decades. It is right to take what is not yours. To use force. To break the law when it suits you. That right is might; that bad behaviour will be rewarded and good behaviour will go unrecognized. No one should be surprised or shocked at the kind of society we have become. We have allowed it to happen.

We must act together now to put Fiji back on track. Because as the country drifts we become more isolated and the economy collapses. The lack of accountability nationally promotes arbitrariness and mediocrity in all spheres of life. There is a widespread loss of hope and hopelessness. The level of frustration and resentment grows by the day. The spirit of Fiji is broken. It is a time of extraordinary pain. The human impulse to create, to enjoy and to live has been dampened.

Double standards are practiced resulting in further loss of morale and confidence. That leads to abuse whether of office, of rights, of the public trust. We see it already before our eyes. The exceptions to retirement ages for the Commissioner of Police and the Commander of the RFMF, the release of the killers of Sakiusa Rabaka on CSO, the censorship of the media that prompts the government spokesperson to say the quality of reportage has improved, the use of FICAC to target certain people and not others.

The list is endless. It will grow longer if this situation is allowed to continue.

So the rebuilding that needs to be done is quite clear. Restoration of the Constitution, agreement on elections and the surrounding issues, possible involvement by the Military in the process, agreement on the broad changes including the electoral system, and a government of national unity to implement reform. It will require goodwill and commitment to doing what is right for Fiji and all its people. We have no choice. Time is running out for Fiji and for all of us who call this place home.

More broadly we the people have to face up to our own responsibilities. We cannot shirk them. We must tell our leaders to stop the bickering and the rancour. We are weary of division and polemic. Our spirit is wounded and our souls yearn for real leaders of humility and integrity who will take us to the promised land. We must be careful of false prophets in our midst. Leaders who divide and conquer must be rejected. We do not need them. They pretend to pray at the alter of high principle but instead feed from the trough of self interest and hypocrisy. If we accept and acquiesce in what is happening around us, how then can we complain about the path the country is following? So I am suggesting that those of us who say that they truly love this nation, must be prepared to put their money where their mouth is. To stand up and be counted.

If I have succeeded in leaving you in a somber and reflective mood, my time here today would not have been wasted.

Hope in Fiji is all but dead. Hope does not happen by chance. It must be created. All of you, by virtue of your training and education, are well placed to play a big part in restoring hope to this country. You can choose to create hope or you can continue to stifle it.

When you leave this salubrious and indulgent gathering, the problems and challenges that you left behind will once again confront you. Poverty, high unemployment, political uncertainty and an economy in freefall. They will not disappear. Will you say that it is for others to fix and pretend they are not yours to address as well? Will you remain an idle bystander while others destroy all that our respected leaders who led us to independence have put together? Will you avoid confronting the challenges facing Fiji today and upon which our very survival as a nation depends? Or will you answer the call to national service?

So I end where I began. Fiji is falling apart. This is not an exaggeration. The choices you make and the decisions you take when this conference ends may determine whether Fiji continues its journey of ruin and misery or whether we will wake up to a new dawn of hope and opportunity.

The time for burying our heads in the sand is over. It is a time for action. We cannot carry on and pretend that all is well in our beleaguered country. We all know what the problems are. If we are allowed to engage in unconditional and open dialogue over these issues I am hopeful that there are many men and women of goodwill out there who have the wisdom and the resolve to solve Fiji's problems.

My fellow citizens. Today I challenge you to search deeply into your conscience. Each and every one of you can make a difference. It is not an answer to say that those who are taking us on this course of madness and disaster bear the force of arms. No force however strong can ever be a substitute for reason, logic and consensual governance. History has taught us that regimes which rule through fear and the blunt instrument of coercion will fail.

Franklin Roosevelt the only United States President to win four consecutive terms said "Happiness lies not in the mere possession of money, it lies in the joy of achievement, in the thrill of creative effort" and I might add, in the service of one's neighbour and one's country.

We should act now. Without further delay. For the Fiji we all love lays wounded and bleeding. The words of the national anthem that speak of "a land of freedom hope and glory" ring hollow. Where is the freedom when the press is muzzled? What hope is there to anticipate when all the signs are of economic stagnation and ruin? What glory is there when we are being led by rulers who revel in duplicity, the politics of division and double speak? The time for action has surely arrived.

There is no room for timidity and ambivalence in the face of confronting evil. It is time to break out of the cycle of coups and violence as a way of solving our problems. It is time to reach a new and enduring understanding through respectful dialogue. It is time for the real leaders and the people of this country to put their hands

up and say enough is enough. And that includes all of you in the audience today.

Together we can help redefine the destiny of these islands. Together we must work to restoring hope to our hearts and to our families. It is only with political stability, a common vision and respect for the rule of law that we can build a prosperous Fiji which is home to all of us. A Fiji based on respect, equality and dignity for all its people.

My dear countrymen. No other generation of citizens has been bestowed the sacred responsibility of preserving the future of our beloved country. That responsibility has been placed on your shoulders. That rare opportunity and privilege is yours. There will be no second chance.

Thank you and God bless Fiji.

*** This was the paper I was to have delivered at the annual Fiji Institute of Accountants Congress convention to be held at the Sheraton Fiji this Friday. As a result of instruction by the police on Monday 8th June 2009 that the permit to hold the convention would be revoked unless Professor Brij Lal, Richard Naidu and myself were dropped from the speakers' list, this paper will now not be delivered as intended. It is being circulated to stimulate discussions on the "way forward".**