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Minister for Foreign Affairs  
Department of Foreign Affairs and Trade  
Australia

Honourable Murray McCully  
Minister for Foreign Affairs  
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New Zealand

Right Honourable William Hague MP  
Foreign Secretary  
Foreign and Commonwealth Office  
United Kingdom

Hillary Rodham Clinton  
Secretary of State  
U.S. Department of State  
United States of America

21 November 2012

### **Fiji - Constitutional Review and Electoral Process**

Honorable Ministers and Secretaries,

In March of this year, we collectively wrote to you outlining our serious concerns for the human and trade union rights violations of the military regime of Commodore Bainimarama in Fiji. Thank you for your replies.

We continue to hold serious concerns that decrees that violate internationally recognised human and trade union rights remain in place. This includes a number of industrial relations decrees and amendments to the Public Order Act. The targeting, harassment and intimidation of trade unionists and violation of human rights remains a fact of daily life.

This is not an environment in which an open and participatory discussion can take place amongst the Fijian people about the future of their country. As a result the ability of stakeholders to engage in open debate is severely curtailed. This has serious implications for the Constitutional Review and electoral process instigated by the regime.

We caution your governments against expecting too much from Professor Yash Ghai's Constitutional Review Commission. It would be difficult for the Commission to achieve all that is being asked of it *and* to deliver a process that will facilitate a return to democracy and respect for human rights in Fiji as the Constitutional Review Commission and Professor Ghai's role ceases with the presentation of his Report to the military regime (which is expected to occur in December this year). The Report will then be considered by a Constituent Assembly, whose deliberations will in turn be considered by a specially constituted Judicial Panel.

The Constituent Assembly and its Chairperson will be appointed by the interim Prime Minister and the interim Prime Minister also has the right to dismiss members. Over recent days the situation in Fiji has deteriorated further.

Disturbingly, Commodore Bainimarama's regime has now issued Decree 64 of 2012, amending the Terms of Reference under which Prof Ghai's Commission operates and truncating the period previously provided for Prof Ghai's Commission to conduct public consultations on the draft Constitution it has formulated. Decree 64 also removes from Prof Ghai's Commission the provision contained in Decree 58 that empowered the Commission to review all existing laws that violate fundamental provisions of the Draft Constitution including the "non-negotiable" provisions.

In a radio interview Prof Ghai has confirmed 'massive interference' from the Prime Minister's office in the work of his Commission, saying it has been subject to a 'kind of harassment' by the regime. Prof Ghai said:

*"I don't see how Fiji is going to have free and fair elections unless these decrees are cleaned up"*<sup>1</sup>

In characteristic form, Commodore Bainimarama has responded by again attacking Prof Ghai:

*"The Prime Minister said that Professor Ghai needs to comprehend that his function is to produce a constitution and submit it to the President.*

*Commodore Bainimarama said Ghai's job ends there and any public discussion on the draft constitution will be undertaken by the Constituent Assembly.*

*He stressed that it is not for Professor Ghai to hijack the Constituent Assembly process."*<sup>2</sup>

It is patently clear that the final outcome of the Constitutional review will be decided upon by the military regime, taking into account 'non-negotiable matters' notably including immunity for all actions by members of the military regime. The immunity is to cover the period from the 2006 coup to the first sitting day of the new parliament, including but not limited to their role in the coup and any abuses linked to the electoral process itself, consistent with the provisions of Decrees 57 and 58 introduced by the military regime earlier this year.

In response to this current situation, we share with you the Fiji Trade Union Congress' recommendations on a revised electoral process, process for adopting a constitution, and role for the military:

- The current leadership should relinquish effective control of the government by resigning from their positions at least 3 months prior to the election date

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<sup>1</sup> <http://www.radioaustralia.net.au/international/2012-11-06/fijis-pm-clashes-with-constitutional-commission/1041682>

<sup>2</sup> <http://www.fijivillage.com/?mod=story&id=0711127c62da786e392cecbd36efa2>

- During the 3 month period, an interim government should be established with a mandate to ensure free and fair elections and the day-to-day running of government administration
- Any amendments to the Constitution should be by public referendum (with changes requiring 70 percent support)
- All military personnel appointed to civil service positions resign from positions and apply (if they wish to) for reappointment through normal civil service appointment procedures under a new government

With respect to a revised Constitution, a full copy of the FTUC's submission is attached, but in summary the FTUC calls for:

- The supremacy of the Constitution to be upheld:
  - Reserved powers should not be bestowed on any office
  - The Constitution should not permit for its amendment or removal or abrogation by illegal means
- The Bill of Rights in the 1997 Constitution to be maintained:
  - The Constitution should state that any laws inconsistent with the Bill or Rights will be found invalid and repealed within 6 months of the first sitting of the Parliament
- A Multiracial Fiji:
  - The House of Representatives should be elected on the principle of 'one person one vote'
  - All political parties should be multiracial
  - The Great Council of Chiefs should be retained but it should not hold any political role
- A limited role for the Military:
  - The military should have no political role, its function should be limited to the defence of the nation from a foreign power, extremist forces and natural disasters

Your four governments have substantial political and economic relations with the government of Fiji and thus significant leverage. Silence on these issues of concern by your governments will be seen to confer legitimacy on an illegitimate process and the on-going role of the military in Fijian politics.

We request that your governments call on the regime to address these concerns immediately and if the regime fails to do so, advise the regime that you cannot give any assurances regarding recognition of the outcome of the constitutional review process due to the deeply problematic character of the process.

We appreciate your attention to this important matter. Please do not hesitate to contact us for more information, or with any questions or concerns.

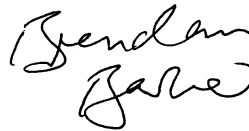
Sincerely,



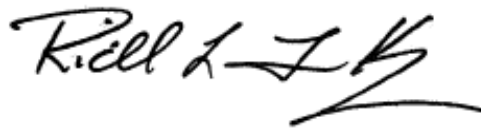
**Ged Kearney**  
**ACTU President**



**Peter Conway**  
**Secretary**



**Brendan Barber**  
**General Secretary**



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