



FIJI HUMAN RIGHTS COMMISSION

GPO Private Mail Bag
SUVA, FIJI ISLANDS

REPLY TO STATEMENT OF SIR GEOFFREY PALMER, A. QUENTIN BAXTER, AND HELEN AIKMAN

Introduction

There has to be a reason other than intellectual integrity that has brought such venomous wrath on the head of the FHRC from the NZ Labour Government legal cronies, Palmer, Baxter and Aikman. Their press statement released on 12th September on the FHRC's investigative report of August 29th, presumably to be taken seriously due to the combined weight of the writers' knights, queens, et al (pawns?) labels, should be seen as the greatest obstacle to NZ Government's restoration of diplomatic relations in our part of the Pacific.

The contents of the press statement also show that we really have to think twice about sending our children to acquire a decent legal education in NZ. The statement is not worth a legal response. It is not what we would consider to be a legal opinion in any sense of the word. It is merely a slavish echo of the NZ Government's brutal stand on Fiji. In fact, the press statement smacks of legal imperialism.

Our reply is in two parts, and is brief, in keeping with our view that the troika's press statement does not carry much legal credibility. The first part deals with the need for the writers to fully disclose their private interests in this matter, and the second deals with such minor constitutional issues as are raised in the press statement.

Conflict of Interest

Section 156 (2) of the 1997 Constitution of Fiji states that:

Persons to whom this section applies must so conduct themselves in relation to the performance of their public duties as not (*inter alia*):

- (a) to place themselves in positions in which they have, or could be seen as having, a conflict between their private interests and their public duties
- (b) to compromise the fair exercise of their public duties

(d) to allow their integrity to be called into question

It is a great pity that NZ public law does not require public officers to declare their private interests. Had there been such a law, it may have prevented the authors of the press statement from putting their names to anything that would bring their personal and legal integrity into question. But perhaps there is a reason why NZ does not have a Constitution, nor such a Code of Conduct. The Law Commission could consider recommending a Code of Conduct for its public officers. Section 156 of our Constitution would be helpful in this regard.

What are the conflicts of interest that the authors ought to have declared in their press statement? A brief summary of their individual private interests is set out below.

1. Sir Geoffrey Palmer

- (i) NZ Labour Party stalwart; briefly Prime Minister; known for literally blowing his trumpet around the Beehive balcony at the height of his fame, and in fact, only known for this event, so brief was his reign.
- (ii) Author of the White Paper on NZ Bill of Rights- famously leaving out the right to property clause which could have permitted Maori people, who had lost their land to Europeans, from claiming their inheritance as a right to property issue (Fiji has such a provision in section 40 of the 1997 Constitution)
- (iii) Labour Government appointed head of the NZ Law Commission.

This lawyer is unlikely to become an 'errant knight' with respect to the policies of the NZ Labour Government in relation to Fiji. His views are colored by his Labour Party crony label.

2. Alison Quentin Baxter

- (i) One of the legal drafters recruited to draft the 1997 Constitution of Fiji, along with Jon Apted and Walter Rigamoto, though apparently, a legal firm in Australia wrote the final draft.

- (ii) At a cocktail party at the NZ Prime Minister's residence last year she told me she disagreed with the FHRC (2006) report on affirmative action. She said that Fijian people were backward and needed affirmative action to catch up with the Indians in Fiji. I found her analysis appalling, patronizing and racist, and told her so.
- (iii) The Constitution she thought she had helped to draft was not actually what the people of Fiji ended up with but she was oblivious to that fact.

3. Helen Aikman (QC)

- (i) Crown solicitor for many years, defending the NZ Labour Government against Maori claims.
- (ii) Previously married to Jone Dakuvula, of Citizens Constitutional Forum (ccf).
- (iii) Close personal friend of Anasa Vocea former CEO of Public Works, sacked by Commodore Bainimarama in December 2006.

These issues relating to the authors' private and personal allegiances are being made transparent in the public interest. They have an important bearing on the authors' views of FHRC's independent investigation and report

2. Constitutional points raised in the Press Statement of Palmer, Baxter and Aikman

First, I expected more from these authors with respect to the FHRC investigative report of August 29th 2007.

What does their statement 'we dismiss the report both as to its accounts of the facts...' mean? Did they do their own investigation of the facts?

And 'it is an attempt to provide a legal justification for the unlawful usurpation of power'.. Surely this is not a serious critique of our report!

Further: 'Not only is the reasoning flawed, but the opinion is in conflict with the Constitution of Fiji' Is this a statement of fact, or of opinion? If opinion, where is their reasoning?

Their reference to the Compact provision is similarly ludicrous. How is that provision of the Compact relevant?

And finally, they say.. ‘in the final analysis, the problems of Fiji have to be cured by the people of Fiji’. Granted. Then what are Palmer, Baxter and Aikman doing in our jurisdiction? The Fiji Human Rights Commission looks after the interest of all the people of Fiji. It is not clear yet that the Government of Fiji under the Qarase regime was the ‘will of the people’.

That is all the ‘legal’ analysis, in fact, polemics, that this press statement represents.

Further to this, if Aikman QC does not like the idea of His Excellency, the President of Fiji being able to exercise sovereign prerogative power as explained in our report, then perhaps she should consider how oxymoronic her objection sounds, given that bestowing a Queen’s Counsel (QC) title is a sovereign prerogative. What is good for the goose must be good for the gander! This is yet another example of legal imperialism that the press statement represents.

The press statement authored by the three cannot even pretend to be a legal opinion. It is nothing short of an embarrassment to the NZ Law Commission, to the legal community in NZ and to its Government.

The FHRC will not bother to make any further response.

Dr Shaista Shameem

Director