

**10<sup>th</sup> ATTORNEY GENERAL'S CONFERENCE 2008  
29 November 2008**

**CLOSING ADDRESS BY THE ATTORNEY GENERAL AND  
MINISTER FOR JUSTICE, ELECTORAL REFORM, PUBLIC  
ENTERPRISES AND ANTI-CORRUPTION & ACTING MINISTER  
FOR INDUSTRY, TOURISM, TRADE AND COMMUNICATION, MR  
AIYAZ SAYED-KHAIYUM**

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**Acting Chief Justice, honourable members of the Judiciary,  
Solicitor General, members of the legal fraternity, ladies and  
gentlemen.**

**Normally milestones achieved are a time for reflection.  
Reflection on where we have been, where we are and where we  
should go and dare I say assess who we are – what we are and  
what we should be.**

**Conferences such as this provide us with the opportunity to  
precisely carry out these reflections. However, all such  
reflections, and assessments must involve critical thinking and  
honesty. A failure to be critical and honest makes you arrive at  
outcomes which are false and unrealistic. It provides solutions**

**that are completely inappropriate and ineffective. It leads to and demands mediocrity.**

**I am sure ladies and gentlemen you would all agree that the presentations at this conference were far from mediocre and stimulated intellectual debate and discussion.**

**Using the premise of robust intellectual discussion and honesty, I would like address four key areas which I believe require reflection; reflection to provide much needed assessment.**

### **The Legal Profession**

**The first is the role of the legal profession in Fiji. We know not only from the discussions in this conference but also from statements from the Consumer Council that the Fiji Law Society has failed dismally to deal with complaints against lawyers either qualitatively or quantitatively.**

**All institutions especially those on which the public relies must be accountable and any disciplinary processes must be transparent.**

**If there are approximately 190 reported cases against lawyers over the last ten years, what excuse can there be for the failure of the Law Society to deal with them? Are the events of 5 December 2006 an excuse for the Law Society not to discipline its lawyers? If the lawyers have made a considered decision to keep their practices open, make money and continue to go to court, then the Law Society Council must continue to discipline their lawyers. But my issue is not just about mere inaction.**

**My complaint is about selective action. My issue is with inconsistent stances. It took ten years to even acknowledge the complaints of the public against lawyers let alone respond to complaints by the Consumer Council but it took only a few days to suspend the practicing certificates of military lawyers against whom there was no evidence of impropriety. Due process did not apply to these military lawyers. The Law Society had a sudden and inexplicable burst of energy.**

**So are the disciplinary processes of the law to be applied only for certain lawyers? Does the Law Society perpetuate**

**cronyism? Is it an old boys and old girls club? Does it discipline only those out of favour? Will well connected lawyers not be disciplined? Is the Law Society's recent and sudden decision to set up an internal tribunal to look at its hitherto disciplinary inactivity, a knee jerk reaction to the Government's intention to make the discipline of lawyers transparent and independent? Is the Law Society's advocacy of the rule of law selective?**

### **Rule of Law**

**That brings me to the question of the rule of law. The rule of law is based on the premise that men and women regardless of their status are subject to the law. The rule of law means that you obey decisions of the court even if they go against you. If you lose a case you appeal it. Just because you have lost a case in court it does not entitle you or your client to allege that judges lack impartiality, are dishonest or corrupt.**

**For instance, in a recent case the former Prime Minister on a Friday morning together with some of his lawyer supporters**

announced that the Judiciary was independent after a ruling went in his favour. However, within 24 hours or so he had reversed his opinion and complained that the Judiciary was not independent because a ruling by a superior court went against him. Such irresponsible and unprincipled shifts in position fuelled by political opportunism undermine the rule of law.

Similarly, lawyers who grandstand about the rule of law only when it suits their agenda and who are silent on it when it suits them are equally guilty of undermining the rule of law. At the recent Law Asia Conference in Malaysia, I heard a former President of the Fiji Law Society use facts selectively to paint a picture about our Judiciary, individual judges, our lawyers, our legal system and indeed our country which was inaccurate, derogatory and for me unpatriotic. Worse still, he failed to disclose his own personal interest in the matters on which he was speaking - that he represented a number of persons charged by FICAC for corruption; that he represented persons charged by the DPP's Office in relation to the events in the aftermath of 2006; that his law firm together with another major

**law firm was given the bulk of State legal work by the previous government; that his law firm no longer receives business from this government; that he had a dissimilar position and was comparatively mute following the events of 1987 and 2000.**

**Going back to my initial point, intellectual honesty and truthfulness, full disclosure and non-manipulation of the facts are the inherent components of proper critical analysis and discourse.**

**Such selective analysis and lack of candor actively undermine the rule of law.**

**The rule of law also means that judges and magistrates themselves follow these principles. Just because a matter is listed for appeal and which has not been stayed does not mean judges or magistrates entertain applications that are contrary to the findings in the substantive matter.**

**More dangerous I find certain judges and magistrates who knowing that a ruling has not been overturned, speak against or make contrary statements against that decision. We have magistrates who are persuaded by loud and in some instances unscrupulous counsel to ignore the ruling of a superior court.**

**This is a reflection of magistrates, judges and counsel's inability and/or refusal to apply the law. The question is should an officer of the court which includes lawyers, who are duty bound to uphold the rule of law, make or entertain such an application in the first place? The answer is an emphatic no.**

### **Blurring of Demarcations**

**The blurring of demarcations has, I believe, been the bane of the application of the rule of law in Fiji. Let me explain. We have had certain judges drafting decrees, judges making pronouncements whether a government, interim or otherwise, can make laws or not, judges not adhering to various codes adopted by them, judges making findings that go against the grain of established and unchallenged law. Judges and**

**magistrates should not be influenced by what is fashionable and politically correct, they should not be influenced by media pressure; they should not be influenced by international opinion and they should not be influenced by what foreign governments think of us. Judges should have the courage to simply apply the law.**

**We have lawyers advocating the merits of their case in front of television cameras, we have lawyers ostensibly making submissions which contain political statements. We have some editors, publishers and senior journalists forgoing all professional behaviour and standards and making and advocating political statements and agendas, without declaring their interest.**

**The system of justice in Fiji would work more efficiently if all the players simply remembered their proper roles and stuck to them.**

**Media**

Recently, the Lautoka AG's Chambers was given a new motor vehicle – a motor vehicle which replaced one that had been un-road worthy for a number of years. To mark the occasion, the staff of the Chambers held a function at which I made a few remarks, in the presence of the media.

I said amongst other things, that while elections are an important part of democracy, it is not the only practice or institution that ensures democracy. What I said was that laws pertaining to freedom of information for example ensure transparency and accountability and indeed democracy. I then went on to give a practical example. I said that when a person applies for a taxi permit and that permit is refused, then that person like all our citizens, has a right to know why that permit was refused.

The next day the *Fiji Times* reported that the Attorney General said that all persons in Fiji must have a taxi permit!

**Ladies and gentleman, I categorically state that giving tax permits to all our citizens will not guarantee democracy!**

**The media has a special role to play in developing nations. This role is even more important than it is in countries with strong institutions of state and strong economies. In a country like Fiji in which 40% of our population live on or below the poverty line, the media has a pivotal role in helping in the development process. Sadly in this country, the media has lost sight of this important role. Since the events of 5 December 2006, certain media outlets have taken an obviously political position without declaring that bias. Furthermore, certain sections of the media in Fiji have obstructed economic development. Since December 2006, mainstream print and television media have failed to acknowledge economic development and opportunities that exist to improve the lives of the ordinary men and women of our country. Unfortunately, the Media Council also has failed to accept this bias, this obstruction.**

In 2000 for example, when his Excellency our President appointed the Qarase interim government, media outlets such as the *Fiji Times* openly supported the appointment. It said what had happened had happened and we must move ahead as a nation. It does not now. Worse still the *Fiji Times* editorial, following the decision of Justice Gates in Chandrika Prasad, stated that it was unrealistic to have Parliament reconvened, and I quote, “peace now justice later”.

Two nights ago, *Fiji One Television* reported the Fiji Law Society judicial review decision. The Fiji One reporter while quoting extensive parts of Justice Bruce’s ruling stated that leave had been granted to the Fiji Law Society. However, he failed to mention that the judge had given leave to appeal and given a stay until all appeal processes had been exhausted. Selective reporting.

At the annual journalism awards at the University of the South Pacific last night, it was said that the answer to media scrutiny was a review of the Media Council. It is too little too late.

**Certain sections of the media have proved themselves to be incapable of holding themselves accountable.**

**What is needed is true independent scrutiny. As I have often said and also in relation to lawyers, if everyone one is acting within their roles, why be afraid of independent scrutiny? Why be afraid of accountability and transparency?**

### **Chambers/Cases**

**Never before in the history of Fiji has the Attorney General's Chambers simultaneously defended so many constitutional cases. Following the events of 1987, there was only one legal challenge to the overthrow of the Dr. Bavadra government which fizzled away. In 2000, we had Chandrika Prasad. Two other constitutional challenges on foot in 2000 were merged. The other of course, is the Akuila Yabaki matter which was heard after the appointment of the SDL government.**

**Since the appointment of this Interim Government by His Excellency our President, which has been held by the Courts to**

be valid in law and shall remain so unless overturned, the Chambers has had to deal with a barrage of constitutional matters. Some have not had merit. Others have blatantly brought vexatious litigation arising from ill guided, unsound, substandard and fanciful legal advice. This was recently noted by the Court of Appeal. What we have seen is willingness by the legal profession, some aided and abetted by foreign missions and the media to abuse the process of the court.

Notwithstanding this deluge, our Chambers have not only survived but it has thrived. Perhaps, it is true that challenges strengthen every institution. You know you will always be able to stand your ground if you stick to the rules, if you are consistent, principled and you are honest.

Acting Chief Justice, members of the Judiciary, ladies and gentlemen, I am sure you will all agree this has been a most vibrant and successful conference. Yet again we pride ourselves in providing a forum at the end of the judicial and legal year which stimulates intellectual discussion, suggest

**changes to our legal system and attracts men and women of the highest quality to present their papers.**

**This year we have been most fortunate. A judge has presented in every session. To promote gender equality within our Chambers and in the public eye, female professional officers have chaired each session as they did last year.**

**Ladies and gentlemen, no conference could succeed without an efficient administration staff. Our secretariat has been untiringly working on the organization of this conference for months. I wish to thank them and ask them to join me here on the stage as we did last year. I would also like to ask the Acting Chief Justice to come up to the stage to present to them as a token of appreciation a small gift in recognition of their hard work.**

**Given that this is the 10<sup>th</sup> anniversary of the conference and the fact that all members of the Chambers have been relentlessly under pressure, I would now seek your indulgence and call up all the members of the Chambers on to the stage to publicly**

**acknowledge their fortitude, professionalism, decorum and diligence.**

**Acting Chief Justice, members of the Judiciary, members of the legal profession, ladies and gentlemen, I thank you once again for your attendance. Please enjoy the rest of the activities of the conference and I look forward to your participation next year.**

**Vinaka Vakalevu.**

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