



## **SUPREME COURT OF FIJI**

From: The Chief Justice  
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### **Statement by the Chief Justice of Fiji upon the travel bans imposed by Australia and New Zealand on the Judiciary and Magistracy of Fiji**

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It is trite to say in a civilized world Governments as well as individuals can hold whatever opinions they may choose. Taking action on those opinions however inevitably has consequences and is subject to limitations.

The Governments of Australia and New Zealand have successively now adopted policies of hostility towards the present Fiji Government. Those policies have been formulated in response to the military take-over in Fiji of December 2006 and the abrogation of the Constitution of April 2009. One of those policies of action adopted by Australia and New Zealand is to impose travel bans on a list of persons which have included the military, Government ministers, senior civil servants, Directors of statutory bodies, and Judges and Magistrates. It is with the latter two categories that I am concerned.

On 15<sup>th</sup> October 2009 Anjala Wati and her husband lodged an urgent application for a medical visa with the New Zealand High Commission here in Fiji. They did so because their 22 month old child Kartik had been diagnosed with a fully detached retina on his left eye. The Specialist Ophthalmologist at the Suva Private Hospital stated in his report, which had been lodged together with the visa papers, that the condition required an overseas operation, since the necessary corrective surgery was not available anywhere in Fiji.

The very same day, a Mr. Steve James described as the Branch Manager at the Immigration Section of the New Zealand High Commission, issued a letter in reply to the application. To most readers of that letter it was abundantly plain from its contents that the visa was to be rejected. When this matter blew up in the media the visa staff swiftly moved to explain that the visa had ‘not’ in fact been rejected and was still under consideration. As we all now know the medical visa was eventually, if begrudgingly, granted. The impediment as far as the New Zealand Government was concerned was the fact that Ms Wati was the Family Court judge, an appointment on the High Court of Fiji.

From the letter it is obvious that the writer did not understand that judicial appointments are made by H.E. the President and not by the interim Government.

The letter went on:

**“By virtue of accepting an appointment to the Ministry of Justice and you fall within the parameters of New Zealand’s travel sanctions.”**

The applicable policy was then quoted:

**“Despite any other provisions of Government immigration policy, none of the people to whom the ban applies may be issued a visa to enter New Zealand (including a transit visa) or granted any permit to be in New Zealand.”**

The judge was right to regard this statement as so categorical that there was no likelihood of the visas being issued.

To add insult to injury, the judge was reminded in the next sentence that “all applicants must be of good character.” The suggestion being that these cautionary words applied in her case.

Out of a mother’s desperation for her sick child and suppressing her own feelings of insult, Judge Wati went personally to the High Commission to see if she could appeal the decision. She was informed by Mr. Jones the Branch Manager and Ms Myers that she could appeal, but only through themselves. They would put her case to the Minister they said. Judge Wati derived little comfort from this advice since she had already been told she was regarded as “a person associated with the 2006 coup” by virtue of her accepting an appointment to the Bench. Similarly they had been dismissive of the gravity of the child’s condition saying “It wasn’t life threatening anyway.” Later those officers claimed ignorance of the gravity and urgency of the child’s condition. Life threatening the condition may not have been, but how much further medical explanation did they require of “full retinal detachment”. Any layman could have understood that. If untreated, it was a condition that would result in loss of sight in that eye. Anyway Judge Wati told them of the danger. If in doubt, one of the visa staff could have picked up the phone and spoken to the Suva Ophthalmologist about it. Instead the officers went upstairs to refer to consult their superior officer, no doubt the Acting High Commissioner. They returned and said the visa was refused. According to Judge Wati this was an unpleasant, hectoring and hostile interview.

After the matter came out in the media the High Commission changed its tune and the medical visa was indeed issued. Even this visa was subject to absurd restrictions such as that there was to be “no shopping”. Were it not for the kindness, generosity of heart and support of the Suva and New Zealand hospital doctors, Judge Wati would not have persisted with her intention of seeking medical help for her child from New Zealand.

There can be no doubt, as confirmed by the Deputy High Commissioner for New Zealand Mr. Cleaver, in his letter to the Fiji Government of 27<sup>th</sup> October 2009 that New Zealand’s travel ban policy was that “individuals who were subsequently appointed to the judiciary fall within the scope of the existing policy.”

I shall have more to say on this policy in a minute. I now go on to deal with Australia's policy and action towards our judiciary.

On 1<sup>st</sup> October 2009 I wrote to the Australian High Commissioner Mr. Batley to inquire what his government's policy was concerning the judiciary and the travel bans. To this letter I received no reply. I wrote again on 17<sup>th</sup> October 2009. On 22<sup>nd</sup> October 2009 I received through the mail a two line acknowledgment from Mr. Batley stating a response was being prepared. The response finally came from an Acting High Commissioner, one Sarah Roberts on 28<sup>th</sup> October 2009.

In this letter Ms Roberts said "following the abrogation of the Fiji Constitution in April of this year, individuals appointed to the judiciary become subject to these restrictions" [i.e. travel restrictions]. She said the restrictions applied regardless of citizenship.

Appointments have been made to the Magistracy and Judiciary from amongst Fiji and overseas passport holders. No doubt recommendations will continue to go to the President for such appointments to be made regardless of the policy of neighbouring States who have no part to play either constitutionally or unconstitutionally in such matters.

It was therefore extraordinary to learn of a recent incident involving new appointments to our bench from Sri Lanka. There has been a long association between the Benches of Fiji and Sri Lanka going back to the early 1980s. Later Sri Lanka helped us to restore the judiciary and the magistracy after the coups of 1987. There were no restrictions then placed on those judges and magistrates by Australia and New Zealand nor on any Fiji passport holders.

Following the termination of the judiciary in April this year, attention was again turned to Sri Lanka. The Sri Lankan Government, quickly realizing the importance of restoring our judiciary and of bringing it back to its full capacity, readily agreed to second serving judges from its own Benches to assist us. This was an extremely generous offer of support at this critical time. Those judges and magistrates begin arriving tomorrow. Others will arrive in a few weeks time. The Sri Lankan Judicial Services Commission has permitted its judges leave of absence in order that they might serve here for 2 to 3 years.

The Sri Lankan judicial officers have travelled via Korea. They were to transit in Australia. They applied to the Australian High Commission in Colombo for transit visas. This process is normally completed within 48 hours at the outside. After waiting for 8 days and the day of departure approaching, the applications and passports had to be withdrawn from the Australian High Commission in Colombo, and a decision made to switch airline and to travel via Korea. Nothing was said by High Commission staff at the time of withdrawal.

Later each one of the judicial officers was telephoned by a visa officer from the Australian High Commission counselling them against taking up the appointments in Fiji. They were each warned that if they took up the appointments they would not be allowed to travel to Australia during their time in Fiji and that they would not be allowed into Australia for medical treatment for themselves or their families either. These judges, normally stoic in their work, were temporarily non-plussed. Conscious of the insult and of the interference in their work, they nonetheless resolved to carry on with their decision and to travel by a different route. They have been commendably brave and steadfast in doing so.

Like many a Chief Justice I would normally be slow to issue a press statement let alone appear on camera for such a purpose. However, as Head of the Judiciary in Fiji I must stand up against such interference. Fiji must have a judiciary. And it is not for Australia and New Zealand to tell us we cannot have one, or to tell us who we are to appoint. No international convention allows for such a supervisory role to a neighbouring state.

In the case of the serving Sri Lankan judges who are seconded to us, the Australian action amounts to an interference with the judiciary of another Commonwealth country and no doubt the Government of Sri Lanka will require an explanation for such interference.

As for Fiji, I cannot speak for Fiji's Government. The Prime Minister and Attorney-General have been briefed by me. Sometimes it is said the doctrine of the separation of powers is such that an Attorney-General or a Government will not seek to defend the judges when challenged, attacked or their role interfered with.

If that is so, or if the Government takes that view, then the judiciary as an institution must stand up for itself.

Strange it is that the policies of the international community towards countries enduring conflict has always been to build up the independent institutions of that country whatever view they take of its central government, and yet towards Fiji they have singularly failed to be so constructive and supportive. International diplomacy, if that is a phrase with any worthwhile professional meaning, has in its exercise been riddled with inconsistencies. In Ms. Robert's letter she referred to Australia placing "a very high importance on maintaining open channels of communication." I feel that expression will sound little or no resonance with our new appointees from Sri Lanka and none with that courageous group of persons who already serve on the Benches of Fiji in the Magistracy or the Judiciary.

If the judiciaries of Australia and New Zealand can see this interference to be clearly wrong I would urge such judges to speak with their parliamentary colleagues on the need for its rejection. Whether or not our Government stands up to defend us, or whether judges in Australia and New Zealand urge our cause, one thing is clear, the judiciary in Fiji will not be cowed by such machinations.

I call upon the Governments of Australia and New Zealand to discard this policy now.

1 November 2009

A.H.C.T. Gates  
Chief Justice of Fiji

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