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Commodore Ratu Voreqe Bainimarama
Commander Republic of Fiji Military Forces
Strategic Headquarters
SUVA.

CONFIRMATION OF GENERAL COURT MARTIAL FINDINGS
AND SENTENCES BY HIS EXCELLENCY THE PRESIDENT.

1 The Prime Minister the Hon. Laisenia Qarase and the Minister for Home Affairs and Immigration the Hon. Jokatani Cokanasiga, have been advised of your defiance to execute His Excellency's confirmation of the Court Martial Findings and Sentences of soldiers involved in the Sukanaivalu VC Barracks Mutiny on 4th July, 2000.

2 Your defiance, according to reports, alleged that you acted with "disrespect" by personally returning the confirmation document to His Excellency and after advising him of your refusal, left the said document with his ADC and departed. Confirmation of Sentences and Findings by the President is herewith returned for your immediate execution.

3 Also attached for your information is a correspondence from Government House reporting of your ".....unprofessional, unethical and disrespectful" actions at the Office of the President which in government's view **borders on insubordination.**

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2.

4 Whilst His Excellency the President is not obligated to advise you of basis of his actions in confirming the Sentences, you are however, reminded of the provision of Section 23(2)(b) of the **Republic of Fiji Military Forces Act, Cap 81**, Laws of Fiji which states that **"no sentence exceeding two years imprisonment by a court martial upon a trial of a soldier when serving within the limits of Fiji shall be carried into execution unless confirmed by the Governor-General (President)"**. This provision mirrors the procedural requirement imposed by section 107(1) of the Army Act 1951 (UK) which states **"where a court martial finds the accused guilty on any charge, the record of the proceedings of the court martial shall be transmitted to a confirming officer for confirmation of the findings and sentence of the court on that charge"**. Section 107(2) of the Army Act 1955 is very definitive in stating that **a finding of a guilty or sentence of a court martial** shall not be treated as a finding or sentence of the court **until confirmed**.

5 Basically, the provision expressly require Commander-In Chief of the RFMF, that is, HE The President, to confirm a court martial decision regarding a soldier on the three permissible grounds. That is to say, that the finding and the sentence of the general court martial for the 4th July 2000 mutiny at the Sukanaivalu VC Barrack, Labasa only becomes legally valid after it has been confirmed by the HE The President. Furthermore, Section 110(3) of the Army Act 1955 (UK) provides that **"... where it appears to the confirming officer that a sentence is invalid, he may in lieu of withholding confirmation of the sentences substitute thereof a sentence of any punishment or punishments which could have been awarded by the court, not being greater than the punishment or greatest of the punishments awarded by the court and not in his opinion more severe than that punishment or those punishments"**.

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6. On this basis, it is our understanding that the Commander in Chief exercised his discretion under section 23(2)(b) of the RFMF Act to substitute or vary the sentence passed by the court martial as contemplated by section 110(3) of the Army Act 1955 (UK) in relation to the disparate sentencing as illustrated in the following factors:

- (a) The soldiers charged for mutiny at QEB did not plead guilty, and they were convicted after a full and costly trial. In contrast, all the soldiers charged for mutiny at the Sukanaivalu Barracks in Labasa pleaded guilty, and this was accepted by the Court Martial as showing remorse. In law, a plea of guilty is always a strong mitigating factor which Courts must take into account. A comparison of the sentencing between the two groups of soldiers appears to offend this basic principle of sentencing. It operated almost in reverse as the soldiers who pleaded guilty received more severe sentences than those who pleaded not guilty;
- (b) Although the Court Martial noted that the Labasa mutiny was the first ever in Fiji's military history, there was no bloodshed and no lives lost as a result. In contrast, there was bloodshed in the mutiny at the QEB where lives were also lost;
- (c) The mutiny at the Sukanaivalu Barracks was associated with the political turmoil following immediately after the coup of May 2000 and the soldiers appeared to be supportive more of political ideologies instead of being directly opposed to military leadership. In contrast, the mutiny at the QEB appeared to be directly for the purpose of overthrowing the military leadership;
- (d) All soldiers both in Suva and in Labasa are convicted of the same offence which is mutiny, although the extent of their individual involvement are set out in the Summary of facts in the Labasa mutiny and in the Judgement in the QEB mutiny trials;

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- (e) *There are no clear reasons in the Sentencing part of the Court Martial decisions on both trials to explain the differences in the quantum of sentences meted out among the 54 soldiers charged for the Labasa mutiny, and in the quantum of sentences meted out between the two groups of soldiers;*
- (f) *In the QEB trial, the time spent on remand or awaiting trial was not only taken into account by the Court Martial, but the soldiers were actually given credit for that in their sentences in the reference to "Time Served", albeit in relation to conviction for a different offence arising from the same mutiny. In contrast, the Court martial took into account in the Labasa mutiny trial "time spent" on remand or on awaiting trial, but this was not actually credited towards the sentences of the soldiers convicted.*

7. *Based on the foregoing considerations, the President, in the exercise of his own deliberate judgment, exercised mercy by reducing some of the sentences of these 54 soldiers as follows:*

- a** *The sentences of all the 10 soldiers who received sentences of imprisonment for 6½ years or more, to be confirmed without variation; and*
- b** *The sentences of all 44 soldiers who received sentences of imprisonment for 6 years or less be reduced by 50% across the board;*

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with the hope that it will result in the maintenance of a fair measure of consistency in sentencing by the recent Courts Martial and thus proportionate to the sentences passed against mutineers at QEB, Suva. His Excellency viewed the 10 Soldiers whose Sentences were not varied as Instigators.

8 Furthermore, given the political nature of the offence, the Confirming Authority also took into consideration that most of the 44 Soldiers were married with children and the disastrous consequences on the families of long term imprisonment.

9 In view of the above I am to advise you that the execution of the Confirmation of the Findings and Sentences of the General Court Martial is to be effected forthwith and without fail. Such execution must facilitate the issuing of the Committal Warrant to the Commissioner of Prisons in the next 72 hours.

(J M Waqanisau)

**Permanent Secretary for Home Affairs &
Immigration**

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