

ATTACKS ON JUSTICE – FIJI

Highlights

The aftermath of the May 2000 coup continues to affect political life in Fiji. Following elections in 2001, a dispute over the composition of the Cabinet under the constitution’s power-sharing rules, which was submitted to the High Court, remains unresolved. Within the High Court, a major crisis has been raging between judges, mainly as a consequence of the Chief Justice’s involvement in advising the illegal military government following the 2000 coup. Access to justice is a problem, with Fijians experiencing long delays, especially in Lautoka. The death penalty was abolished in 2002.

BACKGROUND

Following the May 2000 coup in which government ministers were held hostage, the President ousted and martial law imposed by the Fiji military, an attempt was made to abolish Fiji’s [1997 Constitution](#) (see “[Attacks on Justice 2002](#)”). Some judges were involved in drafting military decrees; a serious rift emerged within the judiciary and some judges and magistrates resigned. In a landmark decision in March 2001, the Court of Appeal ruled that the 1997 Constitution was still in force: under this constitution, the previously guaranteed indigenous Fijian Parliamentary majority was abolished and a Prime Minister of any ethnicity was allowed.

In national elections held in 2001, the Fijian People’s Party (SDL), led by Laisenia Qarase, the Prime Minister of the interim civilian government, won 31 of 71 Parliamentary seats; 27 seats were won by the Labour Party (FLP), led by Mahendra Chaudhry, an Indo-Fijian who had been Prime Minister before the May 2000 coup. The indigenous supremacist Conservative Alliance (CAMV), which counts jailed coup leader George Speight as a member, gained six seats. On 10 September 2001, President Iloilo swore in Qarase as the new Prime Minister at the head of a SDL/CAMV coalition government.

Section 99 of the [Constitution](#) requires the Prime Minister to invite any party holding 10 per cent or more of the seats in the House of Representatives to join his/her Cabinet. Each such party must be offered Cabinet seats in proportion to its representation in the House. The FLP was the only party other than the SDL which met this requirement. Qarase accordingly invited the FLP to be represented in Cabinet, but with the proviso that the SDL election manifesto must be accepted as the basis for government policy-making. Chaudhry rejected the proviso. Qarase took this to be a rejection of his invitation, and advised the President to appoint a Cabinet which did not include FLP ministers. The FLP then took the government to court, and on 24 April 2002 the High Court ruled that Qarase was in breach of section 99 and must invite the FLP into his Cabinet, irrespective of policy differences. This was confirmed by the Court of Appeal on 24 May 2002 and by the Supreme Court of Fiji on 18 July 2003.

Following the court decision, disagreement arose between Qarase and Chaudhry over the number of Cabinet seats to which the FLP was entitled. As a result, the President sought an advisory opinion on the interpretation of section 99 from the Supreme Court, which delivered its judgment on 9 July 2004, explaining the formula for determining the entitlement of each political party to seats in Cabinet. Qarase subsequently made a fresh offer to the FLP of 14 seats in a Cabinet of 30, naming specific FLP members and their proposed portfolios. The FLP has recently rejected this offer, citing as its reasons the exclusion of Chaudhry and the trivial nature of the portfolios offered. It has instead assumed the Opposition benches. National elections are next due in 2006.

There has been a significant increase in emigration from Fiji in recent years, principally by professionals and skilled workers, mainly those of Indian descent. This is partly due to feelings of insecurity among the Indo-Fijian population, but also because of the recent expiry of many agricultural leases held by Indo-Fijian farmers. Since 88 per cent of land in Fiji is held by indigenous Fijians under a system of collective ownership, most Indo-Fijians farmers are their tenants. This has made them vulnerable to bullying and extortion by local landowners, as well as displacement on lease expiry. The Native Land Trust Board, which controls all land owned by indigenous Fijians, has recently applied a policy of non-renewal as a means of putting pressure on the government to reform the [*Agricultural Landlord and Tenant Act*](#) (which it believes unfairly favours tenants), and to encourage indigenous people to take up commercial farming.

Fiji was suspended from the Commonwealth after the May 2000 coup, but re-admitted after the elections in 2001. Fiji remained on the watch list of the Commonwealth Ministerial Action Group until 2004.

On 10 January 2005, Ratu Joni was sworn in as Vice-President of Fiji, replacing the disgraced Ratu Jope Seniloli, who had resigned in November 2004 after having been condemned by the High Court for his role in the coup d'etat.

JUDICIARY

The independence of the judiciary is enshrined in the 1997 Constitution. The Supreme Court, the final appellate court in civil and criminal matters, has exclusive jurisdiction to hear and determine appeals from all final judgments of the Court of Appeal, with leave of the Court of Appeal or special leave of the Supreme Court. It also has advisory jurisdiction, exercisable on a reference from the President.

The Chief Justice is appointed by the President on the advice of the Prime Minister after consultation with the Leader of the Opposition. Other judges are appointed by the President on the recommendation of the Judicial Service Commission after consultation with the Minister and the sector standing committee of the House of Representatives responsible for the administration of justice. The Judicial Service Commission consists of the Chief Justice, who serves as chairperson, the chairperson of the Public Service Commission and the President of the Fiji Law Society. The Constitution provides that appointments to judicial office are "governed by the principles, first, that judges should be of the highest quality and, secondly, that the

composition of the judiciary should, as far as practical, reflect the ethnic and gender balance of the community”. These principles fulfil the requirements of Article 10 of the [*United Nations Basic Principles on the Independence of the Judiciary*](#).

The Constitution also guarantees security of tenure for judges. The term of office of the Chief Justice and judges of the Supreme Court expires upon their reaching the age of 70. For other judges, the retirement age is 65. Judges may only be removed for inability to perform the functions of office or misbehaviour. In such cases, the President appoints a medical board or a tribunal to enquire into the matter. If the medical board or tribunal advises the President that the judge should be removed, the President may remove the judge from office, under Section 138 of the Constitution.

Post-Coup Developments

As a consequence of the coup d'état of May 2000, Commander Bainimarama declared the abrogation of the Constitution and assumed executive authority, ruling by decree. In this legal limbo, some jurists collaborated in the drafting of an *Administration of Justice Decree* aimed at reconstituting the judiciary, among them Chief Justice Sir Timoci Tuivaga. In response to strong criticisms directed at the Chief Justice from the Fiji Law Society on 9 June 2000, including accusations of collaborating with the military government, he countered that the new decree would respect the freedom and independence of the courts. Moreover, he stressed that the previous Constitution did not afford sufficient stability in the country. A great number of lawyers in Fiji did not agree with the Chief Justice's position. Nevertheless some judges – including, Justices Michael Scott and Daniel Fatiaki of the High Court - supported his initiative and criticised the intervention of the Fiji Law Society. Chief Justice Tuivaga was also the actor of interference in a judicial process that concerned him. In this case the applicant challenged a judicial appointment to the High Court. The Chief Justice ordered the case be dismissed by the judge presiding over it, Justice Anthony Gates in the High Court at Lautoka. The Judge refused to obey the directions issued by the Chief Justice, perceiving them as unlawful and he referred to the Chief Justice's attempts to interfere with court proceedings in his judgement, which was subsequently published.

A major crisis within the bench of the High Court had been raging since the coup. In 2000, Chief Justice Tuivaga had assigned Justice Shameem to the Criminal Division, apparently to prevent her from hearing any constitutional cases, due to her views on the coup and the constitution. Justice Gates was transferred from Lautoka to Suva and also assigned to the Criminal Division in 2001, and Justices Shameem and Byrne received written reprimands from the Chief Justice for giving evidence against Justice Fatiaki in a case brought by the Citizens' Constitutional Forum (CCF). In addition, Justice Byrne, an expatriate serving in Fiji on a contractual basis, was threatened with non-renewal of his contract, although this did not eventually occur.

The suspension of the Chief Justice, together with Justices Scott and Fatiaki, and the initiation of investigations for their involvement in alleged incidents of judicial misconduct was proposed by a national human rights group, the NGO Coalition on Human Rights. These allegations were made on the basis of the justices' contribution towards drafting the *Administration of Justice Decree* and for the advisory role they assumed for the military government, regarding methods to dissolve the Parliaments

and dismiss former President Mara. The Chief Justice responded with a declaration to establish a tribunal to investigate these matters. However, no such tribunal has been created.

Chief Justice Tuivaga refused to retire when he turned 70 in October 2001. Nevertheless he eventually did and Justice Fatiaki took his position as new Chief Justice in July 2002.

Justice Jai Ram Reddy, who resigned as President of the Court of Appeal after the 2000 coup, has since been re-appointed as a Justice of Appeal, and is currently on leave, serving as a judge on the International Criminal Tribunal for Rwanda. Justice Ratu Joni Madraiwiwi, a well-known human rights advocate, who also resigned in 2000, returned to legal practice in Fiji and in 2004 was appointed Proceedings Commissioner of the Fiji Human Rights Commission.

LEGAL PROFESSION

Following the call by Fiji's Law Society Council for his resignation (see above under Judiciary), the Chief Justice barred all but two of the council from appearing before him to argue cases. This decision was challenged by Ms Florence Fenton, an executive council member and partner in a private firm, who claimed his action was unconstitutional; however, after she began court proceedings against him, he lifted his ban.

ACCESS TO JUSTICE

Delays and Case Backlogs

Two of the main problems affecting access to justice are the limited resources allocated to the judicial system and the geography of the country, that makes it both difficult and rare for magistrates' courts to visit the smaller islands. As a consequence justice is dispensed mainly in the major town and cities. Although official statistics are not available, some practical examples illustrate the situation of the judiciary. There are cases in the system that have been delayed for up to 10 years. There is a lack of stenographers and equipment that makes the judge obliged to take notes by hand, thereby slowing down the procedure. As a consequence some remand prisoners have been granted bail in criminal cases because the delays in the trial violated their constitutional right to be tried within a reasonable time,

Of particular concern is the situation at the Lautoka High Court. Business and Legal constituencies of the zone speak of a systematic neglect of this district by the Governments that succeeded in power. Justice Byrne told that between 1975 and 2004 the number of judges did not increase in the district while in the Suva High Court went from three to nine. A third judge was later appointed to the Lautoka High Court in February 2005. According to the Deputy Registrar in December 2004 there are still 6,500 civil proceedings pending. This figure is contested by the Attorney General's Office that estimates a number of around 800. The ethnic and political composition of the district, inhabited mainly by Indo-Fijians and supporting mainly the Fiji Labour

Party, gives rise to the suspicion that the Executive's neglect of this zone may be a product of political and racial tensions.

Political, Extrajudicial Killings and Police Abuse – Impunity

Following the May 2000 coup, Commander Bainimarama declared martial law, invoking the *1998 Emergency Powers Act*, and attempted to abrogate the 1997 Constitution. Military and prison authorities were allegedly involved in violations of fundamental human rights at that time.

On 2 November 2000, members of the Counter Revolutionary Warfare Unit (CRW) mutinied at the Queen Elizabeth Barracks in Suva. Five mutineers and three loyalist soldiers were killed. There have since been allegations that some of the mutineers were in fact beaten to death, rather than killed during a shoot-out. Some 30 people were reportedly injured. (<http://web.amnesty.org/library/Index/ENGASA180092000?open&of=ENG-FJI>).

When loyalist soldiers regained control of the barracks, mutineers were detained, and some allegedly beaten and denied family visits. International observers were initially denied access to the detainees. Representatives of the ICRC began visiting them on 11 April 2001, and, according to local media reports, raised concerns regarding detention conditions. The military has claimed that allegations of human rights abuses committed against the mutineers are being investigated by the police.

According to the military, 39 soldiers were detained after the mutiny. All were tried by courts martial over the next four years, and 38 were convicted, receiving sentences ranging from two years to life imprisonment. One soldier was acquitted due to lack of evidence. One of the 38 convicted mutineers committed suicide in his cell block in Korovou Prison on 6 February 2005, while 20 of the mutineers have appealed to the Court of Appeal, arguing that the court martial had no jurisdiction to try them, that their convictions were wrong in law and that their sentences were too severe. These appeals have yet to be determined.

In April 2001, the police criminal investigation department announced that all investigations related to the May 2000 coup would be completed before the August elections. However, many of the coup leaders were not charged until 2004, and various investigations are still under way. The delays appear to have been caused by a combination of a lack of resources and government resistance to the prosecutions. In the immediate aftermath of the hostage crisis, police abuse of suspects was allegedly widespread and some said that excessive force was used in the arrest of the Speight group.

Six individuals who were sworn into Speight's illegal government during the coup were charged with treason-related offences in 2004. Five were convicted in the High Court in August, receiving sentences ranging from one to six years' imprisonment. Their appeal to the Court of Appeal failed. One of these was Ratu Jope Seniloli, who was appointed Vice-President by the interim civilian government in 2001. Ratu Jope was released from jail in November 2004 under a compulsory supervision order issued by the Minister for Justice, and immediately resigned his office as Vice-President. The Citizens' Constitutional Forum (CCF) is challenging the release in court. Another of the five, Ratu Rakuita Vakalalabure, was elected to Parliament in

2001 and appointed Deputy Speaker of the House of Representatives. Both he and Ratu Jope remained in office following their convictions and continued to receive salary and benefits. Ratu Rakuita's seat in the House was recently declared vacant by the Speaker, a ruling against which he has mounted a legal challenge.

Senator Ratu Inoke Takiveikata was convicted in the High Court in November 2004 and sentenced to life imprisonment for inciting the mutiny at the Queen Elizabeth Barracks. He continues to receive salary and benefits pending an appeal to the Court of Appeal. Senator Josefa Dimuri and Ratu Naiqama Lalabalavu, Minister of Lands, were convicted in a magistrates' court on 4 April 2005 of unlawful assembly in connection with the coup. Transport Minister Simione Kaitani is awaiting trial on a treason-related charge.

The continuation of salary and benefits for jailed coup leaders suggests preferential treatment by the government. Prosecutors and judges, however, appear to have acted independently. By contrast, the military has treated the CRW mutineers harshly and there are allegations of bias on the part of the court martial.

The Speight Trial

Committal proceedings for the treason trial of coup leader George Speight and his 12 co-accused began in July 2001, amid tight security in the Suva Magistrates Court. The trial itself did not get under way in the High Court until February 2002. In the meantime, Speight was elected to Parliament as a CAMV member. He lost his seat, however, after missing two consecutive meetings of the House without the Speaker's permission.

In a dramatic turnaround on the first day of the trial, Speight changed his plea to guilty. Justice Scott then imposed the mandatory death penalty; however, this was immediately commuted to life imprisonment by the President. A bill to abolish the death penalty altogether was passed by Parliament shortly afterwards. Speight was transferred to Nukulau Island, a former quarantine station, where he remains imprisoned. Local lawyers say he could be released after serving seven to 10 years.

Ten of Speight's co-accused also pleaded guilty to lesser charges of wrongful confinement, and received prison sentences ranging from 18 months to three years. Two others, Ratu Timoci Silatolu and Jo Nata, maintained their 'not guilty' pleas and were convicted of treason. By the time they were sentenced, the death penalty had been abolished and both were sentenced to life imprisonment. They were initially imprisoned with Speight on Nukulau Island, but have since been transferred elsewhere.

The CAMV and its supporters have continued to call for Speight to receive a full pardon.

LEGAL REFORMS DURING THE PERIOD

February 2002: death penalty abolished for all crimes except under military rule.