

‘This Process of Political Readjustment’: Aftermath of the 2006 Fiji Coup¹

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Abstract

The first six months after the December 2006 coup have been a time of great anxiety and concern to the people of Fiji as the military-backed Interim Administration has attempted, without much success, to entrench itself into the public consciousness as a force for good of the nation. Several court cases loom, challenging the legality of the Interim Administration and of the Fiji Independent Commission Against Corruption. Important institutions of the state remain deeply politicised, including the Fiji Human Rights Commission and the judiciary. International opinion remains firmly set against the interim regime. Six months after the coup, nothing is resolved except the Interim Administration's determination to remain in power at all costs.

Democracy remains an article of faith - always. That is, it stands by the faith citizens have in themselves to arrive at proper decisions affecting their common future, and the faith they have in each other respecting that faith and its processes and outcomes. This renders democracy precarious because anyone at any time with sufficient resources can knock it over and down. All it takes is ‘bad faith.’ That is, anyone can destroy democracy by simply losing faith in what it is by its very nature.

- Fiji Daily Post (editorial), 21 April 2007

However much I may sympathize with and admire worthy motives, I am an uncompromising opponent of violent methods even to serve the noblest of causes.

- Mahatma Gandhi

¹ The quoted words are from Commodore Frank Bainimarama’s address to the nation on 5 December 2006, announcing the military takeover of the government. I thank Anthony Regan for asking me to write this paper and for his valuable editorial suggestions. For comments and advice for revision, I am grateful to Rod Alley, Satish Chand, Ian Campbell, Jon Fraenkal, Padma Lal, Peter Larmour, Vicki Luker, Robin Nair, Bob Norton, Biman Prasad and Robbie Robertson. They have been generous and constructive and frightfully candid: I could not have asked for anything more. The usual disclaimer applies.

Introduction

‘We consider that Fiji has reached a crossroad and that the government and all those empowered to make decisions in our constitutional democracy are unable to make these decisions to save our people from destruction,’ Commodore Josaia Voreqe (Frank) Bainimarama told Fiji at 6pm on 5 December 2006. The military, which had ‘observed the concern and anguish of the deteriorating state of our beloved Fiji,’ had, therefore, ‘taken over the government as executive authority in the running of the country.’ Those fateful words brought to a close the long running saga of escalating tension and mounting war of words between Laisenia Qarase’s Soqosoqo Duavata ni Lewenivanua (SDL) government and the Republic of Fiji Military Forces.² The following day, President Ratu Josefa Iloilo met Commodore Bainimarama. After confused vacillation and shortly before being sidelined, the President signed a military order dissolving parliament and inaugurating a military administration. Commodore Bainimarama assumed the President’s office. A month later when he restored Ratu Josefa as President, he was sworn in as Prime Minister.

Resuming formal executive authority on 4 January 2007, Ratu Josefa thanked Commodore Bainimarama for ‘having the courage to step in,’ and for ‘handing back all my executive powers.’ Noting that ‘decisive decisions needed to be made,’ he added, ominously (for a titular head of state), ‘... given the circumstances, I would have done exactly what Commodore Josaia Voreqe Bainimarama did since it was necessary to do so at the time.’³ This statement directly contradicted his press release of December 5 in which he ‘neither condone[d] nor support[ed] the actions of the military today, which is clearly outside the constitution, contrary to the rule of law and our democratic ideals’ (*Fiji Times* 6 January 2007: 6). Ratu Josefa’s opposing pronouncements were one of the more mystifying aspects of the confusing saga following the coup. Perhaps he was not the free agent the world imagined – or wished – him to be. Soon after the takeover, he was shielded from the public by the military, and denied access to his own traditional supporters. Statements issued in his name were prepared by the military. The President was a frail, fading figurehead, a decent man but ineffectual, a curious onlooker in the drama taking place around him—and in his name. Wittingly or unwittingly, he became the military’s fount of legality and legitimacy. And sadly so he has remained.

² The causes of the 2006 coup are considered in Lal (2007: 137-53).

³ From a typescript of Ratu Josefa Iloilo’s speech circulated to the media.

Mandate and the Doctrine of Necessity

Announcing the formation of an Interim Administration, Iloilo outlined what he would call the ‘President’s Mandate’. This included upholding the constitution, facilitating legal protection and immunity from both criminal and civil offences for the military, recognizing the right of the military to suspend, dismiss or remove from office anyone it thought appropriate, steadying economic growth and ‘correcting the economic mismanagement’ of the previous government, restructuring the Native Land Trust Board to ‘ensure more benefits flow to the ordinary indigenous Fijians’, creating an anti-corruption unit in the Attorney General’s office to eradicate systematic corruption, introducing a Code of Conduct to improve ‘governmental and institutional transparency’, and preparing Fiji for democratic elections ‘after advanced electoral office and systems are in place and the political and economic conditions are conducive to the holding of such elections’. The astonishing scope of the mandate requires little comment. Taken at face value, it would take years to fulfill. It could also in the end prove to be futile anyway. Under the mandate, the word ‘interim’ could justifiably be stretched to mean semi-permanent, or at least a long way into the future. The Interim Administration had no intention of relinquishing power anytime soon, raising the unhappy, and once unthinkable, spectre of Fiji becoming the Pacific’s version of South-east Asia’s Burma.

More troubling was the patent illegality of the President’s action. The President gave, or, more accurately, was reported to have given, a mandate that was never his to give in the first place.⁴ In the Westminster system as adopted in Fiji, the President acts on the advice of the Prime Minister as the head of an elected government. The power that the President exercises in ‘his own deliberate judgment’ is carefully prescribed and limited, to be used in exceptional circumstances and, then only, for short periods of time. The proper course of action for the President to authorise would have been the prompt restoration of the deposed government. But illegal and improper though it was, the military and the Interim Administration recited the mandate as their overarching charter. The mandate became its mantra of legitimacy.

Just as the President’s mandate was misconceived, so too was the

⁴ S96(1) of the Constitution provides that ‘in the exercise of his or her powers and executive authority, the President acts only on the advice of the Cabinet or a Minister or of some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case’.

legal principle the military invoked to validate the overthrow of the Qarase government. The coup, Commodore Bainimarama told the nation on December 5, was justified by the ‘Doctrine of Necessity’. He had said repeatedly in the weeks preceding the coup that the country was in the hands of morally tainted and politically compromised leaders, and was riddled with corruption, heading towards bankruptcy. It was on the verge of inflicting unprecedented harm upon the nation with the imminent introduction of controversial bills, among them the *Promotion of Reconciliation, Tolerance and Unity Bill* and the *Qoliqoli Bill*, the latter designed to return the ownership and management of foreshores to indigenous resource owners.⁵ Supporters and perpetrators of George Speight’s coup, Bainimarama said, were still at large, many safely ensconced in the public service, statutory organisations and on the diplomatic circuit. They were a threat to national security. Therefore, he rationalised, the removal of their patron, the Qarase government, was a matter of national interest.

The *Doctrine of Necessity* has a long pedigree. Thomas Jefferson wrote: ‘The laws of necessity, or self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and those who are enjoying them with us; thus absurdly sacrificing the end to the means’ (as quoted in Iyer, 2005: 37). Since then, the doctrine has been confined within strict limits. In a landmark judgment of the Grenada Court of Appeal in 1986, these limits were carefully prescribed. For the *Doctrine of Necessity* to be enforced, it said, ‘an imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State’; ‘there must be no other course of action reasonably available’; any such action must be reasonably necessary in the interest of peace, order, and good government, ‘but it must not do more than is necessary or legislate beyond that’; ‘it must not impair the just rights of citizens under the Constitution’, and ‘it must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such’ (Iyer, 2006: 60).

Clearly, then, the *Doctrine of Necessity* only applies in cases of extreme emergencies – civil strife, a calamitous natural disaster, massive breakdown of law and order – when the duly elected government of the day is unable to govern. It is to be the last resort in the absence of any other option. In 2006, the Fijian state was under no fatal threat. The newly elected government was grappling with the normal problems gov-

⁵ For a discussion of the PRTU Bill, see Bhim (2007).

ernments in developing countries face: a sluggish economy, failing public infrastructure, ailing health and education services, and allegations of corruption. The Qarase government was by no means perfect: complacent about its well-advertised shortcomings, pandering to the Fijian nationalist fringe with whose support it had won the elections, quietly tolerant of widely reported cases of misdemeanours in government and statutory organisations, and rewarding political loyalists with lucrative appointments to boards and diplomatic missions. All that said, many in Fiji felt the country was turning a new corner, especially after the May 2006 elections with the advent of the multi-party cabinet.

This compulsory power-sharing is a new aspect of the 1997 Constitution. It provides that any political party with more than ten percent of seats in parliament, that is eight of the seventy-one seats in the House of Representatives, is constitutionally entitled to be invited to nominate members to serve in the cabinet [(section 99 (96)]. In 2001, Qarase had abused the spirit of the power-sharing provision by offering the Fiji Labour Party portfolios of miniscule significance which the latter rightly refused. But in 2006, he surprised everyone by offering Labour significant portfolios, including Agriculture, Health, Labour and Industrial Relations, Local Government, Environment, Youth and Sports, Employment Opportunities, and Commerce, which the Labour party accepted. The multi-party cabinet faced the inevitable teething problems, compounded not in the least by Labour leader Chaudhry's decision to stay out while relentlessly needling his ministers in the cabinet.⁶ Nonetheless, Labour members of the cabinet held that the experiment was beginning to work. There was no sign of imminent collapse. On the contrary, there was a general sense of optimism that Fiji might be turning a new leaf in its political evolution, embracing a more inclusive approach to power-sharing.

Questions about the validity of the *Doctrine of Necessity*, raised in the Fiji media, amongst others by Brij Lal, led the military implicitly to modify its position by invoking the *Doctrine of Effectiveness*. That is, the military was the de facto government because it was effectively in control of the country. While it is true that there were no protest marches against the takeover, this was partly because of genuine confusion about the meaning and purpose of the coup. Race was not an issue as it had been in the past. Prominent Fijian institutions such as the Methodist Church and the Great Council of Chiefs were silenced and sidelined, bewildering

⁶ One cause of friction was Chaudhry's demand that his ministers in cabinet be answerable to him, not the prime minister. He eventually sacked several of them for bringing the party 'into disrepute' for questioning his leadership.

people looking for leadership from them. Confusion aside, there was a genuine fear of the military, which prevented open public debate. Regular reports of interrogations at the military barracks and of humiliating treatment and psychological 'torture' fostered self-imposed silence and censorship. This, above all, was the reason for the muted criticism of the military takeover. But effectiveness is more easily asserted than demonstrated. In the now famous *Chandrika Prasad* case, the Fiji Court of Appeal demanded a 'high civil standard' of proof of acquiescence on the part of the populace, requiring the regime 'to show that any conformity and obedience to it stemmed from 'popular acceptance and support as distinct from tacit submission to coercion or fear of force' (as quoted in Iyer, 2005: 55-6). The 'burden of the proof of efficacy', the Court ruled, 'lies on the *de facto* government seeking to establish that it is firmly in control of the country with the agreement (tacit or express) of the population as a whole.' The military would almost certainly have failed this test. Reports of interrogation at the military barracks and abuse of human rights were simply too publicly known to ignore.

The legality or illegality of the events of December 5 is moot, Commodore Bainimarama has said repeatedly. He emphasises that everyone should accept the reality of what happened and 'move on'. But even as the events unfolded, the military gave the impression of not being overly constricted by legality. They had the guns, they had deposed the government, and as far as they were concerned that was the reality. The military knew that its claim to be working within the ambit of the 1997 Constitution was similarly fraught, but this pretension served as a useful façade and foil. In truth, the military was working not so much within the spirit of the Constitution as in breach of it. Former president of the Fiji Law Society Graham Leung told the LAWASIA conference in Hong Kong in June 2007 that while the Interim Administration 'professes that the Constitution of Fiji is intact and has not been abrogated, all the signs point to grave departures from constitutional procedures that are corroding the lawful and proper governance of Fiji' (*The Fiji Times*, 9 June 2007). He expressed a widely held concern. The Constitution survives, but only just.

Appointment of the Interim Administration

The publicly stated aim of the coup was to eradicate corruption in government. It was not a coup, Bainimarama said, but a 'clean up campaign'. He pleaded for help to 'take the country forward.' Soon after taking over government, the military announced that all ministerial positions

in the new Interim Administration would be filled by application only. The applicants would need to have at least 'ten years experience in the workforce, be of sound character and must never have been declared bankrupt'; the advertisements appeared in all the dailies. Further, to prevent a conflict of interest, it was stated that they would not be able to stand in future elections. Hundreds applied, including an elderly Indo-Fijian taxi driver who thought himself a suitable candidate for minister of transport because he knew about pot holes and corrupt transport officials (personal communication). But the most prominent members of the Interim Administration, such as Fiji Labour Party leader Mahendra Chaudhry and National Alliance Party leader Ratu Epeli Ganilau did not apply. Instead, they were 'invited' into the line-up. The much touted show of transparency in the appointment of the Interim Administration turned out to be just that: a show. The final line-up featured many old and faded faces, some political re-treads (and a novice or two), while others were defeated at the last elections, all hoping to enjoy a last moment of glory. The pledge not to stand in future elections was hollow: unenforceable to start with and unconstitutional to boot. Bainimarama missed an important opportunity to make a fresh start with fresh faces – or to show non-partisanship by including some Soqosoqo Duavata ni Lewenivanua (SDL) members.

The inclusion of Mahendra Chaudhry in the ministerial line-up was one of the surprises in the Interim Administration, although his ceaseless hostility to the Qarase government and lukewarm condemnation of the coup should have signaled his new political disposition.⁷ 'A strange twist of destiny' was how he described his new situation (*Fiji Times*, 10/01/2007), although on December 6, a day after the coup, he had promised 'never [to] be part of an illegal set up because he believe[d] in democracy and the rule of law' ('It's illegal, Chaudhry').⁸ Such are the processes of political transformation in Fiji. More importantly, Chaudhry accepted four senior ministries for himself: Finance, Sugar, National Planning and Public Enterprise.⁹ He claimed that he had been offered the Finance portfolio (along with Deputy Prime Ministership) by Qarase weeks before the coup but had declined. Sugar was predictable, as this

⁷ His closest Labour ally and often his spokesman, Lekhrum Vayeshnoi, Interim Minister for Youth and Sports, described the coup as a 'Godsend.' See '2006 coup was a godsend: Vayeshnoi', 21 June 2007, <http://www.fijilive.com>.

⁸ See also *Fiji Sun*, 9 December 2006: 'I will not be part of anything that is not constitutional.' Chaudhry's supporters raise the Mara defense, 'My country needs me.'

⁹ The last portfolio was taken away from him by his arch rival, former Labour Member of Parliament expelled from the party for insubordination, Poseci Bune.

has always been his powerbase. Some of his support had slipped in recent years, so Chaudhry moved swiftly to have the Chief Executive Officer of the Sugar Cane Growers Council, National Federation Party-leaning Jag-nath Sami, sacked, through an extraordinary presidential decree. A head of state sacking the chief executive of an independent statutory body must be a rarity in the modern world. Sami was replaced by a former Labour parliamentarian, Jai Gawandar, while Labour's Udit Narayan was appointed to a newly created (potentially EU-funded) post of Principal Officer in the Ministry of Sugar ('Sugar industry posts queried,'). This was one internal coup among several in the aftermath of December 5.

Chaudhry's membership of the Interim Administration gave it a multiracial face and a large, if often silent and puzzled, Indo-Fijian base. Chaudhry is the dominant Indo-Fijian leader. Many in the Indo-Fijian community had long been dissatisfied with and disaffected by the Qarase government's pro-Fijian affirmative action policies and nationalist rhetoric. They also found crossing over to the Bainimarama camp easy. Chaudhry's presence in the line-up made the shift easier, or at least easier to justify. But Chaudhry's participation in the Interim Administration came at a cost. Many Fijians opposed to the coup now saw it not so much as a military overthrow of a democratically elected government as much as an 'Indian' – Chaudhry's – coup against a Fijian government. The Interim Administration, in which Mahendra Chaudhry is easily the most experienced politician, was seen by many ordinary Fijians as his 'handmaiden.'¹⁰ Never their favourite, Chaudhry became a powerful lightning rod of the Fijian nationalists. 'Race' was once again in the picture.

Along with Mahendra Chaudhry, Ratu Epeli Ganilau was another leader whose inclusion in the Interim Administration invited comment. A high chief, the eldest son of former President Ratu Sir Penaia Ganilau, former army commander and chairman of the Great Council of Chiefs, the founding leader of the National Alliance Party (NAP), a latter day version of Ratu Mara's original Alliance party, Ganilau had a distinguished pedigree. But he was also a failed politician. His party had won only around six percent of the votes in the May 2006 elections. But he and fellow failed NAP member Manu Korovulavula were among the ministerial line-up. Others included former Speaker of the House, Ratu Epeli Nailatikau - like Ganilau, a son-in-law of the late president, Ratu Sir Kamisese Mara - as well as the ever politically agile (not to say opportunistic) Poseci Bune, another publicly unacknowledged member of the

¹⁰ This is Ratu Joni Madraiwiwi's description of average Fijian perceptions in a talk (Madraiwiwi, 2007).

Mara family. The Mara dynasty is widely seen as being intimately associated with the military and the Interim Administration. Ratu Mara's youngest son, Ratu Tevita Uluilakeba, is the commander of the army's Third Fiji Infantry Battalion. In the eyes of many Fijians opposed to the coup, the military and the Mara clan morphed into one indistinguishable entity.

Broadly speaking, the Interim Administration was made up principally of Labour and NAP figures, leading many to the cynical conclusion that those defeated at the polls had entered the corridors of power under the cover of guns. Were they the 'shadowy characters' Police Commissioner Andrew Hughes had in mind on the eve of the coup (Interview, ABC Lateline, 23/11/06)? Bainimarama might have enjoyed more public support for his claim to transparent governance and for his own leadership had he appointed people of genuine national stature not discredited by past failures or charges of improper behaviour. Instead, he surrounded himself with people who lacked moral or political credibility and who had personal and political agendas of their own. However it is looked at, the Interim Administration lacked lustre and vigour.

Politicisation of Public Institutions

For reasons already mentioned, there was muted public condemnation of the military coup of December 5. But the reaction from and within two quarters perplexed the public. One was the Human Rights Commission, especially its director Dr Shaista Shameem. With a doctorate in sociology and a law degree from Waikato University in New Zealand, Shameem was well qualified for the position. She had long been at loggerheads with the Qarase government which, she felt, had ignored her complaints about the unconstitutionality of some of its policies (such as the race-based affirmative action policy)¹¹ and sought to politicise her office and thus undermine her effectiveness. Her reports were repeatedly disregarded. By 2006, her cup of disillusionment with the government was full, and the coup provided an opportunity to retaliate. In a wide-ranging report on the coup made on her own initiative, Shameem made a number of claims. She argued that the Qarase government was founded on an illegality. After the resolution of the 2000 coup, she asserted, the President had erred by appointing an Interim Administration headed by Laisenia Qarase, not Mahendra Chaudhry. The High Court as well as the

¹¹ As part of the Fijian 'Blueprint' designed by the Qarase government to offer assistance to indigenous Fijians lagging behind in various fields.

Court of Appeal had ruled in the *Chandrika Prasad* case in 2001 that the purported abrogation of the 1997 Constitution was invalid, which should have restored the Labour Coalition to power. This was not done. Between the judgment of the High Court and that of the Court of Appeal, the 2001 election had taken place, bringing Qarase to power, making the issue moot. Nonetheless, Shameem argued, 'the cases are still relevant for the important constitutional principles that the courts established' (Shameem 2007).

The army was not the culprit, Shameem asserted, but the Great Council of Chiefs 'which not only acted against the decision of the Court of Appeal in the *Chandrika Prasad* case, [but] emasculated the ability of the RFMF Commander to act in the national interest according to section 94 of the 1990 Constitution as imported into Section 112 of the 1997 Constitution Amendment Act' (Shameem, 2007). But the military was neither as innocent nor as hobbled as Shameem implies. To the contrary. While it expected President Iloilo to respect the spirit of the Constitution, the military wrote to him saying that 'as a matter of national interest we cannot afford to have Mr Chaudhry and his group back' (as quoted in Lal, 2006: 220). For the military, preserving law and order, which might be jeopardized if Chaudhry was returned to power, took precedence over constitutionalism.

Shameem also wrote scathingly of the Qarase government which, she argued, 'did everything in its power to undermine the Constitution, especially the entrenched Bill of Rights.' The government's race-based affirmative action policies were in breach of the Constitution, Shameem said, as were its tolerance of hate speeches and racially inflammatory remarks – by Minister for Women Asenaca Caucau, for instance, who called Indo-Fijians 'noxious weeds' – and its support for various pieces of legislation designed ultimately to grant amnesty to the 2000 coup plotters and perpetrators. The promulgation of the controversial Qoliqoli and Land Claims Tribunal Bills 'would have the effect of removing the constitutionally protected property rights of at least 50 percent of the population and also causing havoc and potentially serious violence among the indigenous population.' In short, Shameem argued:

The Qarase Government was involved in massive violations of human rights in Fiji, constituting crimes against humanity, and made serious attempts to impose ethnic cleansing tactics in Fiji. The Commission attempted to thwart such inroads into constitutionality by a combination of persuasion and warnings, but ultimately, its funding was reduced, and even foreign government funding politicized by adverse reports on the Commis-

sion's investigations and analysis of government's abuse of human rights and fundamental freedoms.

Since writing the report in the weeks following the coup, Shameem has continued to reiterate her views about the unconstitutionality and inhumanity of the Qarase government. Inevitably, she has become a figure of controversy in Fiji. Her pro-coup views, expressed on many other occasions, have been denounced across a broad spectrum both in Fiji and overseas. Many in Fiji have reportedly refused to report abuses of human rights to the Human Rights Commission because they claim they lack faith in its impartiality due to its proximity to the military's position.¹² Others have accused the Commission of being indifferent towards the investigation of the breaches of human rights committed by the military. The acrimonious exchanges between Shameem and one of the Human Rights Commissioners, Shamima Ali, is public knowledge. Dissociating herself from Shameem's report, Ali had refused to acknowledge the appointment of Rodney Acraman as Acting Chairperson of the Commission. In July 2007, Shameem was appointed to the substantial position of Ombudsman, and by virtue of this, as the Chairperson of the Human Rights Commission.

What, then, about the substance of Shaista Shameem's allegations? Some of the force of her case was vitiated by the sharp rhetorical excesses of her prose. 'Ethnic cleansing' and 'crimes against humanity' do not ring true nor correlate to reality in Fiji. Ethnic discrimination, distasteful though it always is, cannot be equated to 'ethnic cleansing,' and the wrenching violence invariably associated with it (as in former Yugoslavia or Rwanda). Shameem's frustration with the stalling tactics of the Qarase government regarding her various reports on the abuse of human rights and of the breach of the Constitution itself is evident and probably coloured her diagnosis of the situation.

On legal and constitutional matters, Shameem's judgments have been questioned. A response prepared by a group of senior Fiji lawyers and released anonymously to the public (for fear of retribution by the military) accused Shameem of being innocent of fundamental constitutional principles. They rejected her interpretation of the *Doctrine of Necessity*, adding that as a 'matter of law, the doctrine of necessity cannot be invoked or taken advantage of by the persons who create or precipitate

¹² Among them Ted Young of the SDL Party who was questioned at the barracks. Shamima Ali is another one who does not believe in the impartiality of the Commission's investigations.

the necessity' ('A Response to...'). They disputed her understanding of the constitutional role of the military in the public life of Fiji. Instead of being the supreme arbiter of the national interest, the military operated under civilian control. The Qarase government was not as unresponsive to criticism and public opinion as Shameem alleged. Were the elections unfair? The lawyers argued that the general elections 'were the most transparent and closely observed in the country's history'. They were as robust in their response as Shameem was in her report: 'What emerges from the Report is a pathological dislike of Prime Minister Qarase and his two Governments. The tragedy is that in confusing the latter with its apparent approval of the RFMF's perspective in relation to its own actions, the Report has compromised the Fiji Human Rights Commission and Shameem's own standing as well as set back the cause of human rights in Fiji'. That it sadly has done. Even Shameem's ardent supporters, equally vocal on the sidelines, enjoin circumspection and tactfulness in public discourse and urge a repairing of the harm done to the image and reputation of the Human Rights Commission. In present circumstances, that seems a difficult task. Emotions are too aroused and wounds too raw for calm to return anytime soon.

Another institution similarly embroiled in controversy after the coup was the judiciary. The causes of this division go back to the aftermath of George Speight's attempted coup in May 2000. Differences arose in the judicial ranks over the Chief Justice Timoci Tuivaga's advice supporting the military's proposal to abrogate the 1997 Constitution to resolve the impasse.¹³ In this stance, he was reportedly supported by two other fellow judges, Michael Scott and Tuivaga's successor as chief justice, Daniel Fatiaki. Justices Nazhat Shameem and Anthony Gates opposed the advice. With time, coalitions formed; feelings on the bench hardened and rifts deepened. Bainimarama's coup provided Fatiaki's opponents within and outside the judiciary the opportunity to derail him. On 15 January 2007, Fatiaki was sent on forced paid leave, pending an investigation into 'the involvement of certain members of the judiciary in the events of 2000, the subsequent politicisation of the Judicial Bench, in particular the Magistracy and numerous instances of corruption, irregularities and gross inefficiency in the Judiciary' (Republic of Fiji Military Forces, 15/01/07). A tribunal of competent outside judges was promised to be given the investigation task, but six months later, nothing has happened. A speedy resolution of the Chief Justice's saga was the principal recommendation of a LAWASIA mission to Fiji.

¹³ For more discussion, see Lal (2006: 200-201).

The suspension of the Chief Justice is one issue of concern. There are others, including, especially, the manner in which his successor was appointed. Sensing public disquiet and confusion, on 6 December 2006 the judges of the High Court issued a media statement reassuring the public that they remained ‘committed to their judicial oaths to uphold the Constitution and do right to all manner of people in accordance with the law,’ uphold the rule of law and for all courts to remain open and accessible to the public as normal. Meanwhile, with Fatiaki on leave, the Judicial Services Commission, which appoints judges and magistrates and is chaired by the chief justice, was convened by Justice Nazhat Shameem¹⁴, with the President of the Fiji Law Society Devenesh Sharma in attendance, and appointed Anthony Gates as Acting Chief Justice. Shameem justified her assuming the Chair of the Commission on the grounds of being the most senior substantive puisne judge of the High Court, next in the line of seniority to Fatiaki himself. Criticising Gates’ acceptance of the appointment as a ‘breach of trust,’ Fatiaki said, ‘They could have called me but they did not. Why did the Attorney General ask another judge to call a meeting of the Judicial Services Commission? The meeting for the Commission is only supposed to be convened by the chair of the Commission which is the Chief Justice. It does not mean that if I am on forced leave, that I cannot come in and call a meeting of the Commission’ (*Fiji Times*, 18/01/07).¹⁵ That view, perfectly reasonable, was not the point: minds had already been made up that Fatiaki should go. The matter is before the courts. In the opinion of at least one distinguished lawyer, James Crawford (2007), the appointment of Anthony Gates as Acting Chief Justice was in breach of the constitution.¹⁶

Tension within the judiciary aside, there is also concern regarding the legality as well as the calibre of people appointed to the bench. The appointment of a former military lawyer, Major Ana Rokomokoti, as magistrate generated controversy about her experience and suitability for the position and spawned fears about the military making judicial appointments for people sympathetic to it. The President of the Court of Appeal, Gordon Ward, as well as another Appeals Court Judge, Michael Scott, both had their contracts ending in mid-2007. Their replacements

¹⁴ Justice Shameem is Dr Shaista Shameem’s younger sister.

¹⁵ ‘How Gates reached the top,’ in *Fiji Sun*, 5 March 2007, reveals the contents of confidential minutes of the proceedings which led to Gates’ appointment.

¹⁶ James Crawford, SC, is Whewell Professor of International Law, University of Cambridge and Barrister, Matrix Chambers, Gray’s Inn. The Opinion was issued on 20 February 2007. Another (similar) advice came from James Dingemans, QC of James Hawkins, Temple, London.

may be difficult to find in Australia and New Zealand in the present climate, causing further erosion of confidence in the judiciary. A Suva lawyer stated: ‘[t]here is nothing we can do about the High Court now ... but we must do everything to protect the Court of Appeal and the Supreme Court’ (Personal Communication).

There is similar concern being expressed about the civil service. The Fiji civil service was once widely admired for its impartiality and integrity, but it has suffered a mixed fortune since the coups of 1987. In the years that followed, a concerted effort was made to ‘Fijianise’ it.¹⁷ As senior Indo-Fijian civil servants migrated or resigned in frustration, Fijians were appointed as replacements not necessarily on seniority or merit but because of their ethnicity and family or political connections. More recently, an effort had been made, with the appointment of chief executive officers, to re-introduce professionalism into the service. But after December 5, a number of senior civil servants were either sacked or sent on leave because of their alleged closeness to the Qarase government and because of doubt about their loyalty to the Interim Administration.¹⁸ Some were sacked because of alleged mismanagement and corruption, none of which is proven so far. The travel bans imposed by Australia and New Zealand discourage replacements from outside.

The drain of talent and experience is one problem plaguing the civil service. Another is its collapsing morale. A number of senior military personnel have been moved into the service in recent months, blurring the line between the military and the civil service. Among them are Captain Esala Teleni as Commissioner of Police, Captain Viliame Naupoto as Director of the Immigration Department, Lt Col Iaone Naivalarua as Commissioner of Prisons, and Lt Commander Eliki Salusalu as manager of the Government IT Centre. Land Forces Commander Pita Driti has been nominated as Fiji’s new high commissioner to Malaysia and his chief of staff, Mason Smith, has been nominated for Fiji’s Mission to the United Nations. Military spokesman, Major Neumi Leweni has been posted to China as Counsellor at the High Commission in Beijing. The appointment of military personnel to civil and diplomatic service is not new in Fiji. After the 1987 coups, a number of senior military personnel were appointed

¹⁷ After 1987, among others by Poseci Bune and Dr Jona Senilagakali, both members of the present Interim Administration. Bune headed the Public Service Commission while Senilagakali headed Foreign Affairs after the 1987 coup.

¹⁸ Among them were Jioji Kotabalavu, chief executive officer in the Prime Minister’s office, Solicitor General Nainendra Nand and the chief executive officer of the Public Service Commission Anare Jale.

to the public service, some even as district commissioners.¹⁹ None of them were spectacular successes. Their appointments caused bitterness and frustration among senior civil servants bypassed or sidelined. There is a similar crisis of confidence in the civil service now (*Daily Post* 13/06/07).²⁰ With the departure of talent from the civil service, and from Fiji generally, the problem acquires a graver complexion.

The Church, the Chiefs and the Indians

While the December coup was no surprise, it elicited different responses from the two major communities. Among Fijians, there was much confusion and puzzlement. How could this crisis have come to pass, they asked? One senior Fijian civil servant had talked optimistically about the '60:40 solution' to Fiji's political problem (personal communication). In the very near future, Fijians would constitute around sixty percent of the total population and Indo-Fijians around forty percent. Fijian numerical preponderance would then translate into permanent political domination, ending the decades-long Fijian fear of 'Indian domination.' But just when the prize was within reach, the coup jolted that dream. Fijians are puzzled and confused and divided in their response to the coup. Many, it would seem, oppose it but there are also some (such as some members of the Kadavu Provincial Council) who support it, along with elements of the Fijian middle class and those who have independent careers, as well as Fijians living abroad. However, no clear-cut pattern of response has emerged from the Fijian community, especially from those on Bainimarama's side.

One reason for this is the paralysis of the most important institutions of Fijian society, the Methodist Church and the Great Council of Chiefs, both the traditional bastions of the Fijian establishment. In 1987, and to a lesser extent in 2000, the Methodist Church rallied its supporters behind the coups, promising to make Fiji a Christian state complete with the enforced observance of the Sabbath. Since a majority of Fijians are Methodists, the power and reach of the church was considerable. The church's task was easier then, because the 'Other' was visibly different: non-Fijian and non-Christian. Soon after the December coup, the Methodists pledged

¹⁹ For instance, Col Kacisolomone, Col. Lomaloma and Col. Kaukimoce. Isikia Savua was posted to the office of Fiji's Permanent Representative to the United Nations and later made the Commissioner of Police.

²⁰ The collapsing morale in the civil service was the subject of Jioji Kotabalavu's address to the Australian National University on 5 June 2007.

support to the military, more in hope than conviction that the military intervention might bring better times (*Fiji Sun* 11/01/07). Then the Church leadership went quiet as the military imposed its hold on the country. Six months later, the Church is beginning to assert its views. In June, the Methodist Church and the Association of Christian Churches said, '[t]he nation and our people have suffered enough. It's only proper that the nation be returned to democratic rule of law at an early opportunity' ('Churches want early return to democracy'). The Methodist Church is likely to take a harder line against the Interim Administration as it strives to regain its pride of place in Fijian cultural hierarchy, reflecting perhaps a hardening Fijian view of the coup as the work of individuals and institutions opposed to the preservation of fundamental Fijian interests.

Like the Methodist Church, the Great Council of Chiefs too vacillated in the early days of the coup, giving the military the benefit of the doubt.²¹ The military intervention was rationalised as part of God's plan for Fiji. 'We need to work hand in hand and move forward as a country so we can rebuild this nation,' said Council chair Ratu Ovini Bokini ('Chiefs Approve').²² 'The Council fully supports the interim ministerial appointments.' But with time, dissension surfaced. Some resentment arose from the disrespectful manner in which Commodore Bainimarama had treated the Council, telling the chiefs to refrain from meddling in politics, to relax and drink homebrew under a tree.²³ Such symbolic humiliation and disrespect for the highest umbrella organisation of Fijians was unprecedented. Some members of the Council were also part of the deposed Qarase government. The most vocal among them was Ro Teimumu Kepa, the Roko Tui Dreketi and former Minister of Education. A Fijian nationalist and a supporter of George Speight's coup, she, along with many others, was now a transformed and principled democrat opposed to Bainimarama's coup.²⁴

The impasse between the military and a palpably hobbled and humiliated Council of Chiefs came to a head over the appointment of the Vice President, following Ratu Joni Madraiwiwi's resignation soon after the coup when the GCC refused to facilitate the military's plans. The is-

²¹ An overarching consideration of the GCC is in (Norton, in press).

²² Several chiefs from western Viti Levu trooped up to the Queen Elizabeth Barracks to show their 'appreciation' to the military.

²³ Bainimarama himself is a chief though he does not use the honorific chiefly title 'Ratu.'

²⁴ She was not alone in her new found respect for law and order and the rule of parliamentary democracy. Among them an astonishing example is Mere Samisoni, a SDL Member of Parliament and a prominent Speight supporter and sympathiser.

sue was pressing in view of the President's frail condition and indifferent health and his need for regular medical check ups overseas. Normally, the Vice President, and in his absence or unavailability, the Speaker of the House of Representatives, would act as Head of State. But since the parliament was dissolved, there was no Speaker. The Chief Justice, next in line, was appointed in controversial circumstances, the legality of which was before the courts. And he was not a citizen. The interim administration nominated former Speaker of the House and current Minister for Foreign Affairs Ratu Epeli Nailatikau for the position. Ratu Epeli is an affable socialite, unthreatening, apolitical, moderate and multiracial. The Interim Administration regarded his appointment a foregone conclusion thinking that the Great Council of Chiefs was little more than a rubber stamp. Moreover, cultural protocol required respecting the President's choice: he was, after all, *Tui Vuda*, the paramount chief of Western Viti Levu. Confident about the outcome, the military did no prior consultation or canvassing with the chiefs. Bainimarama did not attend the meeting. Following a long-established procedure, the Great Council of Chiefs split up into three confederacies to consider the nomination. In the end, only Lau, led by Ratu Mara's son, Ratu Tevita Uluilakeba, endorsed Nailatikau. The opposition was led by Kepa who argued that the nomination, coming from an illegal Interim Administration, was illegal. Kepa pre-empted the issue: the matter was before the High Court. The Interim Administration's ineptness was part of the reason for the debacle. But Chairman Ovinu Bokini's inability or failure to orchestrate a consensus solution compounded the problem. One member of the Council stated that the Council should have kept meeting until a consensus was reached (private communication). Consensus, after all, is how the Council has always conducted its business, though it has to be said that in the strained, post-coup atmosphere, consensus might not have been possible. Hubris on one side and incompetence on the other, won the day.

The Interim Administration reacted swiftly to the Council's snub; it suspended the Great Council of Chiefs on April 12, saying that it 'will only be reconvened if, and when, the interim government sees it appropriate' ('State suspends GCC meetings'; 'The vestige of Fijian identity'). Bainimarama denounced the Council as a haven for anti-coup politicians who were manipulating it to advance their own personal and political agendas. The Council, he continued, was a 'security threat in our efforts to move the country forward' (Bainimarama, 12/04/07). The GCC's suspension caused consternation. But contrary to widespread fears, the GCC itself was not disestablished. It is a constitutionally recognised body and since the 1997 Constitution remained in force, so did the Council. One purpose

of the review of the Council's membership was to orchestrate a more pliant membership of the Council. But the power of the Minister of Fijian Affairs is limited as most of the fifty five members of the GCC are elected independently by the provincial councils. Perhaps more than seeking to influence the Council, the military was attempting to demonstrate its place in the new scheme of things, an altered political landscape where the Council did not hold its traditional sway and was indeed 'subservient' to the government.²⁵ The Council has challenged its dissolution, and the matter is before the High Court, yet again.

Beyond the legality or illegality of the issue, lie broader and more troubling questions. How permanent a damage has the military done to the status and reputation of the GCC? Will it be allowed to exercise its proper role without political interference or oversight? The Council will also have to reconsider the way it conducts its business if it is to retain its national advisory role. Considering issues of national importance on a confederacy basis effectively excludes non-Fijians from chiefly discourse. Moreover, the practice is anachronistic. Population movement and modernisation of the last half century have eroded the power of traditional institutions. Their main value is symbolic, but the symbolism of confederacy politics does not resonate in the daily life of most Fijians. The Council of Chiefs is in a bind, buffeted from within and without, and rudderless in unfamiliar waters. A *Fiji Sun* editorial on 9 December 2006 put the matter succinctly:

Commodore Bainimarama is no respecter of chiefly tradition and protocol. To commit such acts [snubbing the GCC] and get away with them will be widely seen as a massive insult. But it also represents a heavy blow to the status and standing of the chiefs and tends to undermine their relevance in a rapidly evolving society such as ours. Seldom can Fiji's highest traditional body have been so insulted in the past and, worse still, the culprit remain neither punished nor even chastised.

The Indo-Fijian community was widely, if erroneously, accused by many Fijians of instigating the coup and benefiting from it.²⁶ In Madraiwiwi's words (2007), the 'Fijian heartland' saw the 2006 overthrow as 'an Indian coup'. Some described it as a Muslim coup given the alleged association of some prominent Muslims with the Interim Administra-

²⁵ This is the assertion of Interim Fijian Affairs Minister Ratu Epeli Ganilau (See *Fiji Times*, 9/06/07).

²⁶ See 'Where to Now, Bainimarama', for a representative expression of this view.

tion.²⁷ The Muslim connection, if there was one, was more a coincidence than an established connection. Some of the most prominent opponents of the coup were also Muslim, such as Shamima Ali and Imrana Jalal. The Indo-Fijian community was divided, and still is so. There were undoubtedly those who were victims of Qarase government's race-based affirmative action policies who saw no reason to mourn its demise. Qarase's pandering to the nationalist fringe for political success disenchanted others. Abuse of public funds and public trust reported repeatedly by the Auditor-General and the government's patently indifferent response to them created widespread dismay in the country. There were some whose support for the coup was motivated by revenge and grudge. But there were also many who were genuinely confused, perplexed and undecided. They may have approved of the removal of the Qarase government, but not the method used to do it. Big business would work with any regime in power, but many small businesses suffered the brunt of the severe economic decline. They had no reason to applaud the death of the goose (political stability) which laid the golden egg (economic prosperity).

An example of an Indo-Fijian-led opposition to the coup was the hard-hitting submission the Fiji Islands Council of Trade Unions (FICTU), representing 18,000 members of the total 33,000 unionised workers in Fiji, made to the UN Visiting Mission that was sent to do an independent and confidential assessment of the situation. It alerted the Mission to the abuse of human rights in the country, and the 'misery and suffering of the ordinary citizens, the working class, farmers and the under-privileged.' It proposed the removal of Commodore Bainimarama as Prime Minister to enable the President to appoint a 'qualified civilian as interim prime minister' and replacement of politicians and failed candidates in the 2006 elections in the Interim Administration by 'qualified civilians of repute.' Further, the Council urged the preservation of the 1997 Constitution and a speedy return to parliamentary democracy. The FICTU was not alone in its critical response to the coup.

The National Federation Party, representing about 10-15 percent of the Indo-Fijian population, was equally forthright in its denunciation. It told the Team that the party 'condemned the coup from day one and continues to do so' (National Federation Party, 2007). The party stated that the December coup was not a

²⁷ The list includes the Attorney General (Khayum), High Court Judge (Nazhat Shameem), Director of the Human Rights Commission (Shaista Shameem), Military's Chief Legal Advisor (Colonel Aziz), lawyer and recently appointed chairman of the Electoral Commission Dr Sahu Khan.

clean-up campaign as the military and the interim administration claim it to be. Just like the previous coups, it is about power, even if it means achieving it through the barrel of the gun. The fact that the key players in the current administration are those who either badly lost in the last general elections or came out second best is testimony to this fact.

The party urged the United Nations to work towards a speedy return to parliamentary democracy. There are many in the Indo-Fijian community, not necessarily members of supporters of the NFP, who share that thought.

Response of the Civil Society

Non-governmental organisations have played an important role in Fiji's public life in the last two decades. Some are single-issue organisations while others have a broader mandate. Soon after the coup, some NGOs attempted to form a broad-based anti-coup coalition and even sent a delegation to the military. They suggested the appointment of a representative Presidential Commission of Truth, Justice and Reconciliation to, among other things, 'clarify the Truth regarding the events of 2000 coup and mutiny' and to consider ways of ending 'this abhorrent cycle of coups and attempted coups, and to put in place concrete measures to ensure the prevention of such conflicts in the future'.²⁸ The Citizens Constitutional Forum, formed in 1993 and active for years in the defense of human rights and good governance, also condemned the coup though in decidedly (and uncharacteristically) measured tones, in marked contrast to its previous ringing denunciations of the past coups. On December 4 it said the coup would be illegal, but then in the same breath added that 'the CCF does not hold the Qarase Government blameless in this crisis either – it has a track record of illegal activities over the past six years' (CCF, 2006). It too had been singed by the ongoing conflict with the Qarase government, questioning its legality and constitutional foundation. Perhaps that bruising experience tempered its response. It preferred 'engagement' with the military and the Interim Administration to public confrontation.

By far the most vocal among the non-governmental organisations were the Fiji Women's Rights Movement, headed by Virisila Buadromo,

²⁸ The NGOs represented in the coalition included femLINKPACIFIC, Fiji Women's Rights Movement, Fiji Women's Crisis Centre, Citizens Constitutional Forum and Pacific Centre for Public Integrity.

and the Fiji Women's Crisis Centre, headed by Shamima Ali.²⁹ AusAid-funded, the Centre's primary function is to offer counselling and other practical help to women suffering from violence, abuse and harassment and to educate the public about gender issues. After the December coup, Ali became an outspoken critic of the military takeover and the ensuing violation of human rights. Ali was also a commissioner of the Fiji Human Rights Commission, publicly at odds with its director Shaista Shameem. Indeed, Ali authorised the release of an anonymous response to Shameem's report rationalising the coup.

But not all non-governmental organisations were critically disposed to the coup.³⁰ Among the most notable was the Ecumenical Centre for Research, Education and Advocacy, founded in 1990 by Reverend Paul Niukula 'to address the social, religious, economic and political issues that confront Fiji' (ECREA website). Its current director, Fr Kevin Barr, has done pioneering work on poverty in Fiji, and was a strong critic of the Qarase government's race-based affirmative action policies. Barr asked whether a military overthrow of an elected government which was racist and discriminatory was necessarily an evil thing. If the coup in fact led to improvements in human rights and social justice, and to the alleviation of poverty and eradication of corruption and racial discrimination, should it be considered such a bad thing after all? Under the Qarase government, Barr argued, democracy was being seriously undermined:

Democracy was being manipulated in the interests of a group of extreme nationalists and rich elites. It was not working in the interests of all Fiji citizens. There was little concern for the poor, the ordinary workers, and for Indo-Fijians. There was serious mismanagement and some evidence of corruption. Hence although democratically elected by a small margin, the Qarase government was a not a democracy that worked in the interests of all the people and sought to bring about justice for all (Barr, 2007_a; 2007_b).

Justice for all, Barr continued, is of paramount importance:

The aim of democracy is surely to build a just society – the ordering of society to bring about social justice for all. If this does not happen, does that “democracy” deserve to stay in power? Yet how can it be removed particularly when it has a history of manipulating the race card and possibly tampering with the electoral

²⁹ See their website <http://www.fijiwomen.com>

³⁰ Most human rights NGOs seem to oppose the coup while those concerned with social justice seem to support it.

process? (Barr, 2007_a; 2007_b).

Barr saw promise and opportunity in Bainimarama's coup and counselled patience and understanding. His views, expressed in newspaper columns, attracted criticism from opponents and planted the suspicion that many Catholics were like-minded and supported the coup.³¹

Barr's position raises many troubling questions. Which government, except in utopian democracy, works in the interests of 'justice for all?' Which government in Fiji has ever worked 'in the interests of all the people of Fiji?' And which government has not manipulated the race card? This does not excuse the Qarase government's record, it simply puts the issue in perspective. The race based electoral system provided the incentive for ethnic manipulation, and Qarase like other leaders in the past (including Mahendra Chaudhry) played it to his advantage. Proposing solutions to deep-seated problems at gunpoint, without the support of the majority of the population, is both myopic as well as counterproductive. Military intervention exacerbates ethnic tension and hostility, and without inter-ethnic accommodation and understanding, there can be no resolution of Fiji's deep-seated problems. People's participation in formulating and resolving problems is important, within the overarching framework of parliamentary democracy. What Barr ignores is that the military has set itself up as the ultimate guardian and arbiter of the national interest, over and above everyone else. What happens if a democratically elected government fails to live up to the military's expectations in delivering social justice programs? Strengthening the basic tenets of parliamentary democracy – that is, respecting the verdict of the ballot box in free and fair elections – is a better way to resolve the country's problems than the short-cut of military intervention.

In April 2007, a group of non-governmental organizations, some interested former Fiji citizens with international public service background, and some local academics, formulated a charter to assist the government in drawing up a national plan for a better Fiji. Thoughtful and visionary *Building a Better Fiji for All: A People's Charter for Change and Progress*, outlined steps and programs necessary to 'rebuild Fiji into a non-racial, culturally-vibrant and united, well-governed, truly democratic na-

³¹ See Archbishop Petero Mataka where he expressed criticism of the Qarase government's resource policies (Mataka, 2006). See also Mataka (2007), where he urges his readers not to be 'obsessed with being politically correct' about 'the legality of this or the illegality of that,' but to ponder about 'higher goals.' For an early optimistic assessment of the coup, see Murray (2007). Murray is Senior Lecturer in Philosophy at the Catholic Institute of Sydney.

tion that seeks progress and prosperity through merit-based equality of opportunity and peace.' Six National Task Teams would look at specific areas to accomplish the overarching goal: good governance, the economy, reform of the public service, reform of financial institutions, land and land utilization, and social and community sectors. Each of the six Task Forces would be co-chaired by a representative of the Interim Administration and one from outside the government. The National Council itself would comprise forty members, twenty five from Fiji's civil society, thirteen from the Interim Administration and two co-chairs. The Charter was adopted by the Interim Government.

The vision the Charter endorses is unexceptional. There can be no argument with the view that 'the vast majority of Fiji's people aspire for and deserve a country, including a system of governance, that is characterised by stability, transparency and accountability, as well as the prevalence of law, order and peace.' In addition, no one could oppose the view that 'Fiji needs to become a more progressive and a truly democratic nation; a country in which its leaders, at all levels, emphasize national unity, racial harmony and the social and economic advancement of all communities regardless of race or ethnic origin.' The spirit of the vision enunciated by the Council is already part of the 'Compact' of the 1997 Constitution which specifies broad principles for the governance of the country. The real problem for Fiji is not the vision but the unwillingness of its leaders, both military and civilian, to respect the rule of law.

The preponderance of civil society representation in the National Council posed a problem. The National Council idea was civil society inspired and supported principally by the Citizen's Constitutional Forum among the NGOs. But did it have to be civil society dominated as well? The inevitable question would be asked about the mandate of the civil society organisations to propose far-reaching changes to the governance of Fiji. Neither the SDL (which has declined to participate) nor the National Federation Party, was invited to participate when the Charter was first circulated. Their absence from the Council detracted from its credibility and legitimacy as a broad-based group. The Methodist Church, with around two hundred and fifty thousand members, rejected the idea of an unelected National Council and wanted its implementation 'immediately stopped,' and Fiji returned to democratic rule 'at an early opportunity' ('Regime's plan illegal; and Raicola, 2007).

The Council proposed to act as a moral watchdog over the policies and performance of the government. But what would be the role of the parliament or political parties in that case? And what if the policies of the elected government of the day were at variance with those espoused by

the National Council? Idealistic and utopian, the Charter effectively sought to remove the practice of politics in the processes of governance. Ratu Joni Madraiwiwi's questions were asked by many: 'Is this a genuine effort at drawing the people of Fiji together? Or is it merely an attempt by the Interim Government and its cohorts to cloak them in some mantle of popular acclaim?' (Madraiwiwi, 2007).

There was a further question: Did an Interim Administration have the constitutional authority to promulgate policies of far reaching significance? In an important ruling in 2001 concerning the legitimacy of the Asesela Ravuvu Constitution Review Committee appointed by the Qarase-led Interim Administration, Justice Anthony Gates wrote:

Unusual programmes of expenditure or reformist projects are the prerogative of an elected government. A lawful government needs to be buttressed by holding the confidence of the House of Representatives, and by acting within the Constitution with the two other bodies of parliament, namely, the Senate and the President. Moving in advance of the will of Parliament in reformist fields, however well-intentioned, is not an act which the courts will validate under the necessity doctrine. The authorisation for the expenditure of public funds for such reform work is similarly outside the permitted scope of work of a caretaker Cabinet. Such authorisation is unlawful (as quoted in Iyer, 2005: 65).

Justice Gates' judgment is as relevant to the case of the People's Charter promoted by the Interim Administration as it was in stopping the work of the Ravuvu Constitution Review Committee in 2001.

External Response

The military did not expect the kind of uproar it provoked among Fiji's neighbours and international trading partners when it executed the coup. After all, its rationale for the intervention was good governance, and the promotion of a 'corrupt-free' society. The military had not conducted a coup, it had started a 'clean up campaign.' It was doing precisely what the aid agencies and neighbouring countries had wanted from the island governments all along.

But the reaction particularly from Australia, New Zealand but also from the United States and the European Union, was sharp and unequivocal. Whether Australia and New Zealand could have done more to prevent the crisis remains an open question, though susceptible to doubt given Bainimarama's disposition. Nonetheless, one observer remarked

that 'Canberra appeared more intent on stopping a military intervention than addressing the causes of the deepening volatility,' with John Howard's 'repeated support for his Fijian counterpart [giving] no incentive for Qarase to modify his domestic agenda' (Herr, 2007). New Zealand's reaction was probably coloured by Bainimarama's renegeing on a truce it had brokered between him and Laisenia Qarase in late November, 2006.

Both Australia and New Zealand condemned the military takeover in ringing terms, imposing travel bans on members of the Interim Administration, their families and all who accepted appointments from it or were identified as its sympathisers and supporters. The military's place was in the barracks, Australian Foreign Affairs Minister Alexander Downer told Bainimarama firmly, not in the political arena ('Downer shares views on Fiji'). New Zealand banned all ministerial level talks with Fiji, tightened travel restrictions on military personnel and civil servants appointed by the Interim Administration, froze Fiji out of the new Seasonal Employer Scheme (which would have provided Fiji workers temporary visas to work in New Zealand), cancelled training for Fiji soldiers, stopped new development assistance schemes and suspended training programs for Fiji's public sector under the regional governance programs ('Fiji loses foreign friends'). A new low in diplomatic relations between Fiji and New Zealand was reached in mid-June 2007, when Fiji expelled New Zealand High Commissioner Michael Green for 'being in our face' since the coup, according to Commodore Bainimarama. Green was, by wide consensus, an exemplary diplomat, unobtrusive and informed and accessible to the public. The Interim Administration, citing the Geneva Convention, refused to elaborate.³² As the *Fiji Times* editorialised (15/06/07): 'The military and the interim Government must have known that their actions were not going to be greeted with joy by much of the rest of the world. They must have known and expected criticism. Maybe it has been a harder road than they anticipated'³³.

The travel bans have had an immediate and decisive effect. Many qualified people have refused appointment from the Interim Administration for fear of being banned from traveling to these countries, where many have close families. Many senior civil servants and police vie for lucrative jobs in international organisations and security contracts with in-

³² In April, Commodore Bainimarama refused to see a visiting senior US State Department official and threatened to open up Loftus street (where the American embassy is located) to the public, only to retract his threat when the enormity of the consequences of his action dawned upon him. So the threat of reprisal against foreign embassies was not new.

³³ Bainimarama's reaction is reported in the *Fiji Times*, 19 June 2007

ternational security services which they would not wish to risk. Labour mobility is a fact of life in Fiji and the diasporic dimension of the crisis is real. Travel bans have also discouraged foreign nationals from accepting positions in an administration their own countries regard as illegal. There is a conundrum here. Australia and New Zealand want to promote good governance and a speedy return to parliamentary democracy and yet their, perfectly understandable, policies and reactions hinder the outcome they desire. On the Fijian side, a military which has overthrown a democratically elected government professes puzzlement at the reaction of the international community to its extra-legal action despite its plans to promote good governance, even if it is under the cover of guns. Is there room for a middle course between indignation and engagement, between the legitimate defense of fundamental principles on the one hand and a pragmatic appreciation of the realities on the ground on the other? A 'slowly recuperating constitutional convalescent' needs all the help it can get.³⁴

The Pacific government's reacted cautiously to the coup in the beginning. A meeting of the Melanesian Spearhead Group's Ministers of Foreign Affairs in Honiara in mid-January 2007 saw the Fiji crisis as essentially an 'internal matter' to be resolved by the people of Fiji itself, warning against any foreign intervention (MSG Ministers of Foreign Affairs, 2007). Its response was probably coloured by the Melanesian countries' criticism of Australia's policy in the region, especially its mounting confrontation with the Solomon Islands (Sogovare) government and a diplomatic rift with Papua New Guinea. But their limited and vague support was short-lived when it dawned on them that Fiji's sickness was bad for regional cooperation generally. The hardline adopted by Australia and New Zealand might also have shifted their thinking. On 1 December 2006, the Forum Foreign Affairs Ministers met in Sydney to discuss the impending crisis and resolved to send an Eminent Persons Group (EPG) to Fiji to assess the underlying causes and the nature of the overthrow of the Qarase government, and 'to recommend steps towards the restoration of democratic government, within the boundaries of the Constitution and the rule of law.'³⁵ The four-person EPG was chaired by Vanuatu's Foreign Affairs Minister and Deputy Prime Minister Sato Kilman and comprised Faumuina Liuga, Samoa's Minister for Natural Resources and En-

³⁴ These apposite words are Rod Alley's, private communication, 20 June 2007

³⁵ This formed the core of the EPG's Terms of Reference. The report, marked for 'Forum Eyes Only: Confidential' was leaked to the media and published on the internet the moment it was printed and long before it was formally submitted to the Forum Ministers meeting for their deliberation.

vironment, Sir Arnold Amet, retired Chief Justice of Papua New Guinea and General Peter Cosgrove, retired Chief of the Australian Defense Force.

The EPG report was blunt. The military takeover of the Qarase government was ‘unconstitutional and unacceptable,’ it said. The military should retreat to the barracks and civilian rule restored as soon as possible; Bainimarama should vacate the position of Interim Prime Minister and the State of Emergency should be lifted. Further, the EPG report called on the military to continue to uphold the constitution, respect Fiji’s domestic and international obligations, cease interference in the work of the judiciary and other accountable institutions and to end all abuse of human rights. The Interim Administration was asked to adopt a ‘roadmap with measurable milestones, which included holding general elections between eighteen months to two years, if not sooner,’ and de-linking the military’s ‘clean-up campaign from a national time-table for elections ‘except in those areas directly related to the electoral process.’

The Interim Administration’s response to the EPG report was measured³⁶, with the Forum Foreign Ministers meeting in Vila on 6 March 2007, recommending that Forum maintain a ‘staged process of engagement with the interim administration’ (Forum Foreign Affairs Ministers, 2007). To that end, the Ministers set up a ‘Pacific Islands Forum-Fiji Joint Working Group on the Situation in Fiji’ among whose tasks was to assess whether an election could be held based on the current boundaries and register within the time frame specified by the EPG.³⁷ The Group reported in May that ‘from a technical point of view,’ parliamentary elections could be held in the first quarter of 2009, or even earlier (November 2008) if the Bureau of Statistics were able to conduct an earlier census. The second major recommendation was for ‘minimal changes to the current electoral provisions and procedures before the next election.’ Only

³⁶ One exception is the response of the Fijian Wing of the Fiji Labour Party, which described the EPG report as ‘a piece of rubbish. Its spokesperson, Maika Moroca, stated: ‘The so-called Forum Persons Group can go to hell with their report because it does not hold recommendations that are constructive enough to enable Fiji’s economic recovery and return to democratic rule without corruption’ (*Fiji Times*, 20 February 2007). It is highly unlikely that this statement could have been released without the tacit approval of the party hierarchy.

³⁷ The Group was chaired by Papua New Guinea’s High Commissioner to Fiji. The Expert Group was co-chaired by Dr Paul Harris (NZ) and Barrie Sweetman (Fiji). Its two other members were Dr Kesaia Seniloli (Fiji) and Bruce Hatch (Canada). Titled ‘Report of the Independent Assessment of the Electoral Process in Fiji, 14-25 May 2007’ is available on *fijilive.com* and other websites.

those changes designed to reduce or eliminate abuse in the campaign and the voting process to ‘reflect the voter’s clear intention’ were to be contemplated.

The Group’s recommendation conflicted with the Interim Administration’s own *Road Map for the Return to Parliamentary Democracy*.³⁸ According to that document, Fiji would be ready for general elections and full restoration of parliamentary democracy only in 2010 (or possibly later), after the country’s finances were stabilised, the economy resuscitated, and electoral boundaries drawn up after a new census. The Interim Administration also envisaged a review of the Constitution to rid it of ‘provisions that facilitate and exacerbate the politics of race.’ But these fundamental changes, desirable though they might be, could not legitimately be undertaken by the Interim Administration; that was the responsibility of an elected parliament. Whatever else may be the case, the next general elections would have to be held under the 1997 Constitution.

After weeks of silence, Commodore Bainimarama issued a confusing series of statements in mid-June. First, he rejected any externally imposed timeframe for holding the next general election (‘We will say when...’). Fiji, and not the international community, would decide when the elections are held, he said. Two days later, he told a news conference that elections would be held after the President’s Mandate had been fulfilled and the objectives of December 2006 accomplished (Bainimarama, *Fijilive*). A day later, he agreed ‘in principle’ that general elections could be held within the time frame specified by the EPG provided the international community lent Fiji a helping hand.

Whether this was a genuine commitment or a tactical ploy to deflect public criticism remains to be seen. Australia and New Zealand remained unconvinced. ‘It is very likely now that Australia, New Zealand and other democratic countries that deal with us will take a much closer look at the situation and withdraw even further, taking with them more of their aid money and their trade,’ editorialised the *Fiji Times* on 18 June 2007. It continued:

Where they will differ from the views held by Commodore Bainimarama is that they will see a former democratic country now ruled by the gun, no matter what “shopfront” the regime puts up. Military men are in most of the key positions of power in the civil service and the interim Cabinet cannot be seen as independent.

³⁸ This was given in a speech by Commodore Bainimarama at the Queen Elizabeth Barracks on 20 February 2007.

The timing of the general election is crucial in the context of Fiji's ongoing aid negotiations with the European Union. The EU matters to Fiji. Fiji sells sugar to it under a preferential agreement, and its aid to Fiji's ailing sugar industry is estimated at around \$400 million. In April 2007, when a Fiji delegation led by Foreign Affairs Minister Ratu Epeli Nailatikau (and including Finance Minister Mahendra Chaudhry and Attorney General Aiyaz Saiyed-Khaiyum) went to Brussels, the EU reiterated Article 9 of the ACP-EC Cotonou Agreement that '[r]espect for human rights, democratic principles and the rule of law constitute the essential elements of the Partnership Agreement' (EU, 2007). The EU undertook to 'continue and deepen the political dialogue with Fiji' provided certain conditions were met. These included respect for democratic principles, including holding parliamentary elections by March 2009, consulting widely within Fiji before adopting major legislative changes, respecting the rule of law and protecting human rights and fundamental freedoms of its citizens, and protecting the independence and integrity of the judiciary, among other similar undertakings. Any derogation from the undertaking Fiji has given will jeopardize future aid to Fiji. This fear haunts the nation: the loss of aid for an industry whose collapse would cripple the country. The EU (and Australia and New Zealand for that matter) will not relax sanctions until Fiji goes beyond the 'in-principle' undertaking it has given to returning Fiji to parliamentary democracy in the specified time frame. EU's Commissioner for External Relations, Benita Ferrero-Waldner, has said that the 'most important thing is to see whether the commitment will materialise' ('EU/Australia agree on sanctions'). Frustrated with outside pressure to meet the deadlines and honour its undertakings, Commodore Bainimarama has threatened to postpone elections indefinitely ('Critics put elections in limbo...'). That will compound Fiji's already considerable economic problems, and corrode its vital relationship with its powerful neighbours.

Warfare in Cyberspace

The reaction to the 2006 coup is different from responses to previous coups in many ways but one is novel: the intervention of the cyberspace. In 1987, the latest invention was the facsimile machine, which allowed the military effectively to shut down Fiji's contact with the outside world. In 2000, the national boundaries were more porous with the advent of the e-mail, transmitting massive amounts of information in real time. In 2007, the most notable innovation was the emergence of 'blogsites,' enabling ordinary people with access to the internet worldwide opportuni-

ties to exchange news, ideas, information, and comments about political developments in Fiji without the mediation of state licensing or the authorization of gate keepers and agenda-setters of the mass media.³⁹

The sites differ in the depth and range of coverage and commentary, but all condemn the coup to varying degrees. Many carry opinions and information in the Fijian language which suggests that they are run by indigenous Fijians or others intimately familiar with Fijian language, culture and protocol. As with cyberspace generally,⁴⁰ some of what passes for accurate information or analysis is petty prejudice and partiality, sometimes defamatory, frequently vituperative, always provocative, on occasions treasonous.⁴¹ One website, on 20 June 2007, advised its readers thus: '*Destabilize the country. Make it ungovernable. Every act of resistance you engage in makes it difficult for the regime to govern and stay in control. The government is economically unstable, so your objective should be to completely destabilize that economic fulcrum.*' Attack businesses that make money for the regime, the site encouraged its readers. '*Attack their assets*'. A few days later, the same website encouraged its readers to attack tourists to bring that industry to its knees. Other sites name and shame people that they think support the coup. Yet others seek to foster dissent in the ranks of the military. The enemy is identified, targeted, vilified, judged and hanged. It is verbal warfare at its most brutal and visceral.

When they first appeared, most sites condemned the coup as the work of a power crazed 'military junta.' But with time and especially after Madraiwiwi's address in early June 2007, a new interpretation began to emerge, insidiously portraying the military overthrow as an 'Indian' coup against the Fijian people. Mahendra Chaudhry was identified as the villain of the piece and he became the object of vitriolic anger of the anti-coup bloggers. In the minds of most anti-coup bloggers, Chaudhry's con-

³⁹ On this coup, these are too numerous to mention but among the more prominent ones are: *whyfijiscrying*; *hyde. n. ceek*, *Rere Vaka Na Kalou Ka doka Na Tui*, *Intelligentsya*, *Name and Shame*, *discombobulated*. In 2000, there was only one anti-interim regime website, the <http://www.pcgov.org.fj>, now archived at <http://www.fijihosting.com/pcgov>.

⁴⁰ An introduction to some of the complex issues raised by the use of cyberspace is in Gan, et.al. (2004).

⁴¹ And witty and humorous too; thus: 'Machiavelli Chaudhry,' 'Bainimahendra,' 'Komanda Bai Karaik,' 'Commodore Frankenstein' (Bainimarama),' 'Rebel without a Clue,' (military spokesman Major Leweni Neumi); RFMF: Ratu Frank's Military Force,' 'Pusi': Helen Clark, 'Big Moma Bernie,' Bernadette Rounds-Ganilau, Laufitu 'Zsa Zsa Gabor' Malani, and others too impolite to repeat.

nection to the coup has been irrevocably established. The blogsites seem to reflect a wider, developing Fijian view of the coup as being fundamentally anti-Fijian as opposed to being anti-Qarase government. Bainimarama's derisive treatment of the Great Council of Chiefs has touched a raw nerve and inflamed passions which may be difficult to subdue in the short term. A potentially dangerous chasm, with grave implications for future inter-ethnic accommodation, seems to be opening.

Where to Now?

With the lifting of the Public Emergency Regulation on 1 June 2007, the first phase of the crisis came to an end. In that period, there were violations of human rights which brought condemnation from local activists as well as international organisations. There was evident tension in the vital organs of the state, as well as fear and uncertainty in the public sector as people were fired or sent on leave pending investigations. The prosecutions are still pending. The violent deaths of young Fijian men in either military or police custody – Nihilote Varebasaga, Sakiusa Rabaka and Tevita Malasabe – aroused profound public anger and anguish about the 'stunning sounds of silence from top-down' (*Daily Post*, editorial, 13/06/07), and about the slow pace of investigation into these tragedies. The blame was laid at the door of the Interim Administration. The state of law and order is critical to its future.

There are other challenges as well. For a start, a number of cases contesting the legality of the military takeover will come before the courts during the remaining months of this year. On the face of it, the verdict looks certain; how could it be otherwise? But whether the military will respect it is another matter. Bainimarama has made it abundantly clear that 'Qarase will not come back,' while the deposed Prime Minister is determined to remain in political harness, convinced, with justification, that he has the support of the silent Fijian majority. Whether the verdict of the courts will unravel the initiatives instigated by the Interim Administration (such as the Fiji Independent Commission Against Corruption) and order the status quo reinstated, or whether the military will simply abrogate the Constitution to legalise the revolution it began, main issues that are to be watched closely. Equally closely watched will be the Interim Administration's various commitments to donor organisations, such as the European Union, particularly about returning Fiji to early parliamentary democracy. The international community is not likely to let up on Fiji anytime soon, nor be lulled into complacency by insincere promises.

If returning the country to parliamentary democracy is one major

challenge for the Interim Administration and for the people of Fiji as a whole, another is to revive the economy. The ailing state of Fiji's sugar industry, requiring regular and massive infusion of funds, is too well known to require mention. A lot here will depend on Fiji abiding by the undertaking it has given to the European Union. The severe downturn in the tourism industry, expected, after the coup, has dented Fiji's economic prospects, though it will bounce back when political stability returns. The Governor of the Reserve Bank of Fiji, Savenaca Narube, has identified three other major challenges to the Fijian economy ('Economic crisis looms'). The first is the low rate of growth at around 2.4 percent over the past five years, whereas double that rate is needed to absorb the school leaving population. The second challenge is to raise the investment in the economy to over 25 percent of the Gross Domestic Product, and to promote more local investment. And the third is to narrow the widening gap between imports and exports. None of these problems are insurmountable, but the current atmosphere of uncertainty and anxiety about the country's future, the deepening unemployment and poverty levels in the country (around 34 percent in 2002-03 from around 29 percent in 1991 [Narsey, 2007]⁴²) will make their resolution difficult. With talks of retaliatory trade and aid bans in the air, wrote the *Fiji Times* on 21 June 2007, 'the nation watches as the economy continues to slump and more families feel the effects of redundancies, reduced working hours, pay cuts and the reduction of financial assistance meant for the poor and the underprivileged.'⁴³

Fiji has experienced an emotional roller coaster ride over the last twelve months. First there were the general elections conducted, it is widely agreed, in a free and fair manner. Then there was the euphoria caused by the advent of the multi-party cabinet. Genuine multi-ethnic reconciliation seemed within reach. But then came the coup and with it a drastically altered landscape. Over the past six months, the Interim Administration has made a strenuous, but ultimately failing, attempt to entrench itself in the public consciousness as an instrument for the good of the country. Some of its leading lights are too tainted by chequered pasts or private ambitions for power and glory to have any chance of winning public affection or esteem. Important institutions of the state have been politicised, their impartiality impaired, their effectiveness undermined. A third of the nation is living in poverty. Squatter settlements are mushrooming. An escalating war of words between the Interim Administra-

⁴² For a more extensive treatment, see Chand (in press).

⁴³ For a brief survey of post-coup economic trends, see Prasad (2007).

tion's supporters and opponents is filling the air (and the cyberspace) about whether the coup is the best or the worst thing that could have happened to Fiji; whether Commodore Bainimarama is the saviour of the nation or its destroyer; whether from the ashes of the coup the phoenix will eventually rise in the form of a truly representative democracy unencumbered by the politics of race and ethnicity; whether, in the end, the coup was worth all the pain and suffering it caused. Time will tell. In the meanwhile, half of the Fiji population, disaffected, disenchanted and disapproving of the unfolding events, watches in sullen silence. Brooding.

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