

Fiji's High Court intervenes to prevent Speight's release

Tim Joy
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The High Court of Fiji has ordered a magistrate not to rule on treason charges against coup leader George Speight and 11 other detainees, preventing their release. The court's intervention points to divisions within the judiciary as the military-backed interim government struggles to assert its legitimacy and win stronger backing from the Western powers.

Chief Magistrate Salesi Temo was due to rule in a preliminary hearing on Speight's case on September 4 but that morning High Court Justice Peter Surman wrote to Temo, ordering him not to proceed. "Magistrates' courts in Fiji are hereby directed to refrain from making any further orders relating to the purported immunity of persons from prosecution in connection with the immunity decree," Surman stated.

Speight's lawyers had originally sought a ruling from the High Court as to whether the decree applied to the charges of treason but Temo had declared that he had the power to make the decision. The government could appeal if it disagreed, he stated, indicating that he would free Speight.

Speight's case will now have to wait for a High Court ruling on the immunity decree. He and his jailed associates are challenging their detention on the grounds that the military granted them an amnesty under the July 9 Maunikau Accord signed between Speight and armed forces chief Frank Bainimarama, which ended the 56-day parliamentary hostage crisis.

If Temo had ruled that the defendants were covered by the immunity decree they would have faced only minor charges and could have been freed on bail that day. Speight and his co-defendants were so confident of their release from a prison island that they had come to the court with their suitcases.

On September 8, in a further legal twist, High Court Justice Daniel Fatiaki adjourned until September 22 a

separate application by Speight for habeas corpus. A habeas corpus writ requires the release of a prisoner held without trial or lawful charge.

Fatiaki told defence lawyers in camera that he could not make a ruling on the immunity decree while Justice Surman was hearing the issue. Surman is this week due to consider an appeal against Temo's decision in August to discharge Isoa Karava, a Speight supporter, under the immunity pact. Karava had been held on charges of carrying firearms and three counts of attempted murder relating to the death of Corporal Filipino Seavula and the shooting of two soldiers and a journalist.

Having granted all participants in Speight's coup immunity, the military only arrested Speight's group under intense international pressure. Then, when it appeared that Speight would be released on bail because of the minor character of the charges laid against him, the regime brought treason charges, which carry the death penalty.

The High Court's unusual intervention indicates that this pressure is still being exerted. Normal legal procedure would have been for Magistrate Temo to deliver a verdict and for the government to appeal, as in the Karava case.

In seeking to keep Speight behind bars, the military-appointed "interim" government of Prime Minister Laisenia Qarase faces a dilemma. The government's economic blueprint provides for discrimination in favour of ethnic-Fijians, as demanded by Speight and supported by sections of the local elite.

If Speight is not charged with treason, however, the government faces a backlash from the major capitalist powers, which are demanding measures to prevent the return of the crony capitalism and corruption that emerged after the 1987 military coup led by Sitiveni

Rabuka. The BBC last week predicted: “If the treason charges are dropped Fiji will again be on a collision course with the international community.”

In an attempt to abandon its deal with Speight, the Qarase government has argued that the Maunika Accord was signed under duress. The prosecuting authorities have also altered the treason charges to include actions from May 1—two weeks before the coup—and therefore outside the terms of the Accord.

Yet both the government and the High Court rest on the coup and the Accord with Speight for their political and legal legitimacy. Qarase was handpicked by the military, with Speight's agreement, as a direct result of the armed forces' abrogation of the 1997 Constitution in the wake of Speight's takeover of the parliamentary complex.

The Chief Justice of the High Court, Sir Timoci Tuivaga, who has backed the government, is under challenge from within the legal profession because he and two fellow judges, Daniel Fatiaki and Michael Scott, helped draft the army's decrees nullifying the Constitution, which all judges had sworn oaths to uphold. By another decree, Tuivaga extended his own retirement age from 70 to 75.

A group of lawyers within the Law Society have called on the three judges to stand down. A number of other judges have resigned in protest at the abrogation of the Constitution.

Tuivaga is also a defendant in a writ issued by members of the deposed People's Coalition government that alleges he, the military and the military's appointee as President, Ratu Josefa Iloilo, acted illegally in scrapping the Constitution.

Despite being sued, Tuivaga is heading a three-man tribunal investigating the role of suspended Police Commissioner Isikia Savua, who has been implicated in the coup. In an attempt to contain any damaging publicity, Tuivaga ruled last week that all evidence would be taken behind closed doors.

The external pressure on the regime mounted after it announced the terms of reference and composition of a Constitutional Review Commission, which will draft a new racially-biased constitution designed to entrench the power of the Fijian chiefs and bar Indo-Fijians from high office. The US Embassy declared: “The proposed Commission contains individuals associated with the attempted overthrow of the elected constitutional

government as well as supporters of the abortive, self-appointed Taukei Civilian Government [of George Speight].”

On a brief visit to Fiji, New Zealand Foreign Minister Geoff Goff declared that his country refused to recognise the interim government as constitutional. Qarase's government could not “condemn Speight for treasonous actions while being content to remain the beneficiary of what he has done”.

The European Parliament has adopted a resolution calling for “appropriate targeted measures” against the Fijian government if there is no “real progress” toward restoring the constitutionally elected government by the end of November. European sanctions would seriously affect the Fijian elite, because the EU provides some \$US100 million in aid each year and buys \$85 million worth of Fijian sugar at inflated prices.

Despite their concerns, the major powers appear willing to work with the interim government. None have called for the restoration of Prime Minister Mahendra Chaudhry. But this support could quickly evaporate if the military regime does not stabilise the political situation and deliver the economic requirements of global investors.



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