

Fijian High Court ruling declares military government illegal

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A Fijian High Court judge ruled on November 15 that the military-appointed Interim Government of Laisenia Qarase is illegal, heightening the volatile political situation in the Pacific island state.

The British-born Justice Anthony Gates declared that the military's abrogation of the 1997 Constitution in the wake of George Speight's May 19 coup was invalid. The ousted President Ratu Sir Kamisese Mara remained in office, Gates ruled, and should form a new "national unity" government.

Having just survived a mutiny by Speight's supporters in the military, Qarase and Fiji's military chief, Commander Frank Bainimarama, have refused to accept the ruling and instead placed the army on alert and tightened security to deal with any unrest.

Qarase said he drew authority from the military-backed President Ratu Josefa Iloilo and Fiji's traditional chiefs, the Great Council of Chiefs, and had the support of the military, the police, the judiciary, the Public Service Commission and the Civil Service. His government was committed to a new constitution to "secure the future of indigenous Fijians".

The government has applied for an immediate stay of the judgment and lodged an appeal to Fiji's Court of Appeal. This court normally comprises expatriate judges, currently including representatives from Australia, New Zealand and Papua New Guinea. The appeal process is likely to drag on until mid-2002, by which time the military-appointed administration has vowed to have a new Constitution and fresh elections.

Both the regional powers, Australia and New Zealand, immediately welcomed Gates' judgment and urged the Fijian authorities to seek a more stable coalition in order to restore law and order.

Australian Prime Minister John Howard insisted that Fiji's military abide by the court ruling. "It would only further aggravate the outside world's view of Fiji if the military were not to do so," he said. His New Zealand counterpart, Helen Clark, warned that the Fijian regime would be "an international pariah" if it did not accept the ruling and "return to constitutional democracy".

In a highly political judgment, Gates did not call for the reinstatement of deposed Prime Minister Mahendra Chaudhry's Labour Party-led Peoples Coalition government, despite declaring that Speight's coup had been "unsuccessful". Instead, Gates backed Mara's post-coup declaration of a state of emergency, by which Mara unilaterally dismissed the Chaudhry government.

Gates' judgment, in effect, seeks to fashion a compromise between the various warring factions in Fiji's elite, under Mara's supervision, in order to restore law and order after more than six months of political, social and economic turmoil.

Sitting in the northern town of Lautoka, he ordered Mara to summon parliament "as soon as practicable" and appoint a prime minister who has the confidence of the lower house. The judge specifically suggested the formation of a government of national unity, something that Chaudhry and his colleagues have been advocating.

Urging a "smooth and amicable handover of government," the judge praised both the military and the interim government but said their continued rule was not legally tenable. "The nation has much for which to be grateful to the military, and may yet have further need for its assistance to maintain stability (but) there is no constitutional foundation of legality for the interim Government."

Gates' ruling came after an evicted Indo-Fijian farmer, Chandrika Prasad, filed a writ in July claiming that the takeover of parliament, abrogation of the 1997 constitution and installation of the interim government had adversely affected him. Prasad is currently a refugee at the Lautoka Girit Centre refugee camp. An Australian constitutional lawyer, George Williams, was given leave to argue his case.

The conflict over Gates' verdict pinpoints the quandary facing the increasingly fractured military regime.

Lacking any legitimacy in the eyes of Indo-Fijians and many ethnic Fijian working people, the regime has been unable to stabilise the political and economic situation and relies upon continued emergency rule. Investment has plummeted, business and professional people are leaving

the country and the economy is disintegrating as the international powers demand a more secure administration.

The Qarase government has been attempting to gain international legitimacy, but it rests directly on Speight's coup, both politically and legally. It was initially set up under the accord struck between Speight and the military to end the parliamentary hostage crisis. Qarase is seeking to draft a new constitution that meets the demands of Speight's supporters for the barring of Indo-Fijians from high political office, and is committed to an economic blueprint that favours the elements who backed Speight—ethnic Fijian business operators, traditional landowning chiefs and senior figures in the military and government apparatus.

The government fears a violent backlash if it backs away from this agenda. Two weeks ago, Speight's supporters within the military attempted to seize the army headquarters, kill Bainimarama and stage another coup after the military decided to pursue charges against officers and soldiers who participated in the May 19 revolt. Eight soldiers were killed and 20 were injured in the battle inside the army's main barracks, with allegations of brutality and torture on both sides.

Although the mutiny was finally suppressed, it has further polarised the military. Just before the High Court ruling, Bainimarama admitted that divisions within the armed forces exist at the highest level. He confirmed that two of his most senior officers, Lieutenant Colonels Tarakinikini and Vatu, have been suspended for suspected complicity in the mutiny.

Moreover, Bainimarama accused the 1987 military coup leader and former prime minister Sitiveni Rabuka of instigating the revolt. In a lengthy interview with the *Fiji Times* on November 12, Bainimarama charged that Rabuka had arrived at the Suva barracks at its height with his army uniform in his car, ready to resume command of the armed forces.

In an interview with the *Fijian Daily Post*, Bainimarama said both his officers and the captured mutineers had pointed to Rabuka as the person who gave the order for the mutiny. Bainimarama said Rabuka had wanted to create a similar scenario to May 19, by inviting civilians to form a human shield for the mutiny. Rabuka had planned to then claim the military leadership and overthrow the government.

Rabuka has denied the accusations and is now out of the country, but still retains a key office as chairman of the Great Council of Chiefs. While Bainimarama narrowly escaped assassination, his hold over the military remains tenuous.

Similar fissures exist in the judiciary, exacerbated by Gates' judgment. Gates condemned the chief justice Sir Timoci Tuivaga and two other High Court judges for helping the military draw up the emergency decrees after the

abrogation of the 1997 Constitution. Gates accused the judges of stepping into the realm of politics, by violating the Constitution under which they were appointed and abolishing the Supreme Court, formerly Fiji's highest court.

The Qarase government went to great lengths to block Gates' judgment, creating uproar in the legal fraternity. The government demanded the transfer of the case to another judge, sitting in the east of the main island, or to the Court of Appeal. After a series of tense legal manoeuvres, involving repeated official applications for a stay on his ruling, Gates effectively defied the regime by issuing his judgment. Several days before he did so, three men mugged him on the street.

With the entire state apparatus in crisis, Chaudhry and his colleagues are trying to position themselves to make a pact with Qarase and Mara, a veteran former prime minister. Chaudhry has welcomed Gates' ruling, saying he will “meet the president recognised by the ruling” to discuss the matter. Mara is expected to make a statement this weekend when he returns from a medical checkup in New Zealand.

The deposed government has appealed for international support by condemning the Interim Government for failing to “provide stability in the country as evidenced by continuing unrest and the worrying law and order situation”. In an interview on TV One, Chaudhry indicated that if he were returned to office, he would resume his government's bid to “free up the economy” and tackle “vested interests”—a central demand of the International Monetary Fund and the Western powers.

Other leaders of the Peoples Coalition, such as Aidi Kuini Speed, the widow of the former Labour Party prime minister Timoci Bavadra, have said that the Coalition will await the Court of Appeals process. According to the Fijian media, discussions are underway within the Coalition about replacing Chaudhry as leader in order to facilitate a deal with Qarase and the military. Dumping Chaudhry, Fiji's first-ever Indo-Fijian prime minister, would be a direct concession to the nationalist and racist elements who have sought to use Speight's coup to secure business privileges.



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