

Fijian military government defies another High Court order

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A Fijian High Court Judge has denied an application by the military-appointed Interim Government for an order staying his earlier ruling that the government is illegal. The latest decision by Justice Anthony Gates, handed down on December 20, has widened the split between the regime and sections of the judiciary and deepened political uncertainty in Fiji.

The military's government had applied for Gates' ruling to be stayed while it appealed to the Court of Appeal, presently the country's highest court. By rejecting that application, Gates has made it clear that the regime holds power without any legal or constitutional foundation.

Gates ruled in November that the armed forces high command acted illegally on May 29 in abrogating the 1997 Constitution in the wake of the May 19 seizure of parliament by a group of soldiers and thugs led by George Speight. He emphasised that Ratu Sir Kamisese Mara, whom the military removed, in fact remained President. Gates called on Mara to recall the disbanded parliament, paving the way for the formation of a government of national unity.

In his latest decision Gates said the High Court had no power to grant a stay order since to do so would be to suspend the Constitution. "The court would appear to have no jurisdiction conferred upon it ... to take such a draconian step, namely to suspend the supreme law," he said.

The judge repeated his call for Mara to appoint a new Prime Minister as soon as possible. He acknowledged the Interim Government's objection that his verdict would cause disruption to the affairs of the state, but he warned that greater disruption would lie in not upholding the law. "The discomfiture of the State should not weigh too heavily for at issue are fundamental rights and the supreme law of the land, the

dislocation of which could not be in the wider interest of the general public for whom the State stands."

Interim Prime Minister Laisenia Qarase's government, backed by the military and the police, refused to accept the original High Court decision and again defied the court. Qarase stated that since the government had the right to appeal to the Court of Appeal, Gates' ruling was "simply a further stage in the continuing legal process". He said that as far as his government was concerned, the 1997 Constitution had been abrogated and would not be reinstated.

Qarase's Interim Attorney-General Alipate Qetaki went one step further by declaring that he would lodge a formal complaint with the regime's Judicial Service Commission against Gates for unspecified "misbehaviour" and "misconduct". Any move to remove Gates would heighten tensions with the judiciary and legal profession, already inflamed by the military's post-coup abolition of the Supreme Court—formerly Fiji's highest court.

In an effort to gain political legitimacy, the Interim Government is still attempting to clothe itself in legality. It has announced that it will seek a new stay order from the Court of Appeal, which is expected to hear the government's case in January or February.

The outcome of the appeal is highly uncertain, however, given that the three judges who will sit on the panel are not Fijians. The judges—Sir Maurice Casey from New Zealand, Kenneth Handley from Australia and Papua New Guinea's Deputy Chief Justice, Sir Mari Kapi—are drawn from the two main regional powers and Australia's former colony in PNG.

On November 7, when the Court of Appeal sat for the first time since the May coup, it issued a brief statement that it did not accept or endorse "official acts" carried out since its last session. The judges refused to

comment on the Interim Government's legality without a full hearing.

On the day Gates made his latest ruling, Qarase also sought legitimacy by issuing a brief statement that Mara had officially resigned as president, effective from May 29. Mara had declared a state of emergency and dismissed the elected government of Prime Minister Mahendra Chaudhry after Speight's coup but had stepped aside when he was unable to resolve the parliamentary hostage crisis. It was then that armed forces chief Commodore Frank Bainimarama declared martial law.

The belated announcement of Mara's resignation, backdated to the formation of the military government, is a clumsy bid to nullify Gates' rulings. It is designed to rule out any challenge to the position of Interim President Josefa Iloilo, who was installed by the military with Speight's blessing. Iloilo has urged the public to remain calm in response to Gates' latest verdict.

Politically as well as legally, the Qarase government rests on Speight's overthrow of Chaudhry's government. Qarase's cabinet was formed as the result of the Maunikau Accord between Speight and the military. Speight claimed to be defending the interests of indigenous Fijians and, as part of the Accord, the government promised to replace the 1997 Constitution with one that bolstered the economic and political power of ethnic Fijians as opposed to the Fijian Indian population. In response to Gates' ruling, Qarase reiterated that commitment by announcing that a new constitution would be promulgated during 2001.

Despite the interim government's defiance of the court decision, the Australian and New Zealand governments have not resiled from their willingness to work with the regime. In early December, they publicly sidelined Chaudhry by announcing that they were not seeking his reinstatement. Australia then announced an extension to the Import Credit Scheme, which is crucial to Fiji's garment employers.

At that time, NZ Foreign Minister Phil Goff said the Interim Government should see Gates' decision “not as a threat but as an opportunity, an opportunity to get Fiji back on constitutional processes”. His Australian counterpart, Alexander Downer, claimed that Australia was committed to “due constitutional process” but added: “All sorts of things can be done under the 1997

Constitution.”

Both Canberra and Wellington are, in effect, urging Qarase's regime to explore ways to achieve its ends within the Constitution. Their primary interests lie in working with the military to maintain order, while pressuring Qarase to fully open the economy to foreign capital.

The United States shares this position. On December 20, the Carter Centre—established by former US president Jimmy Carter—announced the results of a fact-finding mission. It called for “dialogue and efforts by the key parties, the Great Council of Chiefs, Interim Administration and the deposed government ... to reach a working arrangement that will give Fiji stability and hope”. It suggested building “a form of democracy that is suited to Fiji”.

These formulations would allow the military-backed regime to remain in office, possibly in a power-sharing national unity government with members of Chaudhry's government. Chaudhry and his Deputy Prime Minister, Tupeni Baba, have called on President Iloilo to implement Gates' ruling by commissioning such a government in the New Year. To put further pressure on Qarase and the military, Chaudhry announced that he was convening the deposed cabinet this week as a government-in-exile.

Any move by Qarase to reinstate the 1997 Constitution, however, would alienate the social base of his regime among ethnic Fijians who backed Speight's coup, leading to new tensions and conflicts.



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