

Fijian government declared illegal but refuses to resign

Tim Joy, Mike Head
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Despite being declared illegal by Fiji's Court of Appeal on March 1, the country's military-installed Interim Government has refused to step aside and its leaders have indicated that they may try to cling on to office. Far from resolving the political crisis created by last May 19's seizure of parliament by elite army units and racist gunmen led by George Speight, the court's verdict has sparked a new power struggle within Fiji's ruling elite.

Instead of resigning, Interim Prime Minister Laisenia Qarase declared that his cabinet would remain in place, consider legal advice and confer with Acting President Ratu Josefa Iloilo—who was himself appointed by the military last year with Speight's support. Iloilo announced that, beginning on March 8, he would consult the Great Council of Chiefs, an unelected assembly of traditional land-owning chiefs that backed the military's ouster of Prime Minister Mahendra Chaudhry's Labour Party-led government and the installation of Qarase.

The case was one of series of legal challenges, which were supported by Chaudhry and the Labour and trade union leaders, to the military's scrapping of the 1997 Constitution. After three months of preparation, a week-long hearing and five days' consideration, the judgment in one of these cases was delivered live on national television at 2.15 pm last Thursday.

The five judges declared that the Interim Government “cannot be recognised as the legal government”. The 1997 Constitution remained the supreme law of the country and had not been lawfully abrogated by the military when it seized power last May 29, 10 days after Speight's parliamentary hostage-taking.

The court also ruled that the elected parliament, violently dispersed by Speight, had not been dissolved, merely prorogued. The ruling differed, however, from that of High Court Justice Gates, who originally ruled the regime illegal last November. Unlike Gates, the court did not propose the reconvening of parliament and the formation of a government—possibly an all-party coalition—with a parliamentary majority.

Rather, it declared that Iloilo could lawfully remain President until March 15, three months after the formal resignation of his predecessor, Ratu Sir Kamisese Mara. Under the 1997 Constitution, Iloilo, as President, can dissolve the elected parliament and call new elections. According to a legal opinion provided by the lawyers who conducted the case against the government, British barrister Geoffrey Robertson and Australian law professor George Williams, the President has the same “reserve powers” as the Governor-General of Australia—the powers used to dismiss the Whitlam Labor government in 1975.

The Court of Appeal is a peculiar hangover from Britain's 100-year

colonial rule over Fiji. The five judges, headed by New Zealand's Sir Maurice Casey, are drawn from the two major regional powers—Australia and New Zealand—and other former British colonies, in this case, Papua New Guinea and Tonga. Its ruling appears to be an attempt to satisfy the demands of the Western powers for a return to constitutional rule, while not insisting on Chaudhry's reinstatement. Specifically, the decision allows Qarase, Iloilo and the military to remain in office for at least a further two weeks while they try to put together a new government, possibly in partnership with some of Chaudhry's ministers.

While claiming to be ruling only on questions of law, the court based itself on two highly political conclusions. The most critical was that Qarase's regime had failed to establish firm control over the population. “The interim civilian government has not proved it has the acquiescence generally of the people of Fiji,” the court concluded. It referred to “suppression of public demonstrations of dissent,” numerous affidavits expressing disapproval of the government and the declared readiness of Chaudhry's government to resume office.

Secondly, the court declared the 1997 Constitution to be “a reliable expression of the hopes and aspirations of the whole population”. In particular, the judges stated that the Constitution provided “extensive safeguards” of the rights and interests of indigenous Fijians. This Constitution is routinely presented by the regional powers and the mass media as providing for the restoration of democracy in Fiji after a decade of dictatorial and ethnic Fijian chauvinist rule under military strongman, Major General Sitiveni Rabuka.

Rabuka adopted the 1997 Constitution, under pressure from, and with the direct involvement of, Australia and New Zealand. While it removed some of the racially-based political privileges afforded to ethnic Fijian leaders by Rabuka after his 1987 coup, thus weakening their grip over the political system and sections of the economy, it retained key concessions, including the right of the Great Council of Chiefs to select the President and Vice President. Indo-Fijians, who make up nearly half the country's 840,000 people, were still discriminated against, with parliamentary seats set aside for indigenous politicians.

Conflicting responses

Australia, New Zealand and the United States immediately welcomed the Court of Appeal's ruling. Australian Foreign Minister Alexander Downer called for a “positive response” from the Interim Government and undertook to review economic and sporting sanctions imposed on Fiji, if the ruling were to be adhered to. The US Ambassador to Fiji, Osman Siddique called on Qarase's government to “implement the court's findings without delay”.

New Zealand Prime Minister Helen Clark made it clear that the

Western powers were not calling for the return of the democratically elected government, or even for new elections. She said she expected the Interim Government to “begin today a process of consultation with other political forces in Fiji”. Fresh elections might be the best way forward for Fiji, but “on the other hand, there may be other routes, like a government of national unity, which would be acceptable”.

In a national address on the evening of March 1, however, Iloilo refused to commit himself to accepting the court's verdict. “Our task now is to ensure that the pathway we choose to rebuild our country is in accordance with that law. At the same time, however, we must also take account of the wider national interests in terms of the welfare of the people, and peace, security, order and stability in our society.”

Speaking after Iloilo, Qarase went further, ruling out any early implementation of the judgment. “I am sure the Judges will appreciate that we must now manage our way carefully through a most delicate stage of transition to ensure implementation. This is not going to happen overnight... Many social and political questions must be considered.”

Qarase went on to denounce the major powers for interfering in Fiji's affairs. “At times, it has seemed as though we are the victims of a new form of colonialism, with external pressure and threats coming in many forms. It is, apparently, acceptable to bully and threaten a small nation.”

Qarase's criticisms are a deliberate appeal to the social layers who were whipped up by Speight and directed against Indo-Fijian farmers, workers, shopkeepers and small business people. His cabinet, which was appointed with Speight's agreement, is committed to delivering political and economic privileges for the ethnic Fijian business establishment and chiefs. Qarase recently stated that if Chaudhry were reinstated, there would be “more violence than on May 19”.

At the same time, he is desperate to reach an accommodation with Australia, New Zealand and other powers that have been putting his government under intense diplomatic, economic and financial pressure to restore the semblance of constitutional legitimacy and fully open up the economy to global capital.

International sanctions and the withdrawal of investment are having a devastating impact. In its recently released December quarterly review, the Reserve Bank of Fiji revealed that the economy contracted by 8.2 percent during 2000, compared with 8 percent growth in 1999. Despite various investment incentives in last year's budget, indicators “continue to confirm the persistent low levels of investment in the economy,” the bank reported. Just days before the court verdict, two garment factories shut their doors, eliminating nearly 600 jobs and bringing total post-coup job losses to more than 7,000.

Under these conditions, deep rifts have opened up in the country's state apparatus, most visibly in the judiciary and the armed forces. In the days before the Court of Appeal decision, three High Court judges made it known that they would resign if the government won the case. The military high command, having been forced by international pressure to arrest Speight and charge him with treason, was shaken by an attempted armed takeover by elite troops—Speight supporters—only three months ago on November 2.

The armed forces chief, Commodore Frank Bainimarama, has remained publicly silent since the court verdict. It was left to the military's Director of Legal Services to state that the army would await Iloilo's consultations and provide security in the meantime. During the court hearing, Bainimarama filed three successive affidavits, each taking a different position on whether the military would abide by the court's decision. As the court deliberated, the

military stepped up its state of emergency, maintaining curfews and banning all public processions and meetings—even a planned television forum.

Chaudhry, who was in India holding talks with the Vajpayee government when the court handed down its judgment, declared that the outcome meant he was still Prime Minister. He called for parliament to be reconvened and his government reinstated, as a precondition for the formation of a government of national unity. Anxious to regain the support of the major powers, he repeated his claims that only such a course could restore stability for investors.

The Western powers have for months made it plain, however, that they do not support Chaudhry's return to office and would prefer an alliance between the main political parties, including those which fomented last year's coup. The main Fijian chauvinist party, Soqosoqo ni Vakavulewa ni Taukei (SVT) has said it will not accept the reinstatement of Chaudhry, the country's first Indo-Fijian prime minister. Its leader, Ratu Inoke Kumbumbola, is the Interim Government's Information Minister.

Labour Party leaders have moved to appease the Western governments, and the Fijian racialists, by indicating they may ditch Chaudhry in favour of an ethnic Fijian, possibly deposed Deputy Prime Minister Tupeni Baba. Last month, Baba unsuccessfully attempted to oust Chaudhry as Labour leader at a caucus meeting. Labour MPs voted instead to reconsider the leadership issue after the court decision.

While welcoming the court ruling, Baba has called for cooperation with Iloilo. “We will collaborate with the president to ensure that the court's decision is upheld and democracy and peace is maintained,” he said. For months, Baba has been the foremost advocate of forming a government of national unity, which would essentially be a coalition between Qarase's administration and the ousted government.

Baba is not the only politician putting himself forward to lead such an alliance. Rabuka, now chairman of the Great Council of Chiefs, has proposed himself as a possibility to resume the prime ministership, which he held before being defeated by Chaudhry's Peoples Coalition in the 1999 election. Rabuka, currently in Australia, is still under suspicion for his role in the failed November 2 army mutiny, during which he went to the military barracks with his old uniform, apparently ready to resume command after Bainimarama was assassinated.

The Labour leaders along with Rabuka, Qarase and others are all jostling for position to gain the support of various business interests, landed cliques and the major powers for a government that will satisfy the requirements of international investors. Whatever the short-term outcome of these manoeuvres, the splits and divisions within Fiji's ruling strata will only fester and lead to further political instability.



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