

# Fiji: High Court rejects former prime minister's legal challenge to military junta

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In a ruling issued on October 9, Fiji's High Court has effectively whitewashed the 2006 military coup that ousted the former Prime Minister Laisenia Qarase. While not directly ruling on the army's actions, the court legitimised the decision of President Josefa Iloilo in appointing coup leader and military commander Commodore Frank Bainimarama as Qarase's replacement.

British-born acting Chief Justice Anthony Gates delivered the ruling against Qarase in Suva. The court's 49-page ruling rejected Qarase's argument that President Ratu Josefa Iloilo had violated the country's constitution by illegitimately exercising his prerogative powers to appoint Bainimarama interim prime minister on January 6, 2007, a month after the military seized power, and to award amnesty to all those involved in the coup.

After ousting Qarase, Bainimarama initially proclaimed himself president and appointed military doctor Jona Baravilala Senilagakali interim prime minister. But he subsequently reinstalled President Iloilo and took the prime ministerial post himself. These manoeuvres were bound up with the military's desperate efforts to maintain that its actions were not in violation of Fiji's 1997 constitution.

At the outset of their deliberations, the judges stated that, "the court has not been asked to approve the acts of the military in taking over the executive (Presidency), in removing the Prime Minister and the Cabinet, or in ordering the dissolution of Parliament." Nevertheless, the High Court delivered its anti-democratic and highly political ruling based on arguments that recalled the pretexts advanced by Bainimarama to defend the coup.

The events of December 2006 were the culmination of a protracted internecine struggle within the Fijian ruling elite. Qarase had initially been installed as prime minister by Bainimarama in 2000 amid an attempted coup against the Labour government led by Indo-Fijian Prime Minister Mahendra Chaudhry. As gunmen led by Fiji communalist George Speight held Chaudhry and his colleagues hostage in the parliament, Bainimarama intervened by unilaterally dissolving the government and preventing Chaudhry's return to power after the military suppressed Speight's attempted takeover.

The military-installed Qarase government soon came to rest upon the same elements of the ethnic Fijian elite who had backed Speight. Qarase promoted several communalist pieces of legislation, including a proposed amnesty for all those involved in the 2000 coup as well as "land rights" laws granting chiefs greater control over foreshore areas. These measures cut across the interests of rival sections of the ethnic Fijian and Indo-Fijian elite, particularly those connected to the major hotel and tourist operators whose interests were directly threatened by Qarase's land rights and "affirmative action" proposals.

In the lead up to December 2006, Bainimarama repeatedly warned the Qarase government to withdraw the contentious legislation, and openly threatened a coup if his demands were not met. But the prime minister refused to back down. Qarase also refused to halt a police investigation into Bainimarama's actions during the 2000 coup, a process that the military chief feared would result in his arrest and prosecution.

Describing the relationship between the military and the former Qarase government as "hostile and acrimonious", the High Court provided a detailed chronology of the lead up to the 2006 coup, including an assessment of the contentious legislation. The justices' sympathies clearly lay with the military. Their judgement included long passages where Chief Justice Gates quoted, without comment, Bainimarama's public denunciations of Qarase's program.

The court ruled that President Iloilo correctly used his prerogative powers in January 2007 after the military takeover because: "The President assessed that Fiji was at a crossroads and had reached a grave crisis. A military intervention had already occurred at the end of a long tunnel of civil strife." The judgment quoted one of Iloilo's speeches after he assumed the presidency: "I fully endorse the actions of the Commander of the RFMF [Republic of Fiji Military Forces] in acting in the interest of the nation and most importantly in upholding the constitution."

The court was scathing of Qarase, describing his submitted affidavit as "at times argumentative, hearsay or otherwise inadmissible." A major point of contention was the former prime minister's claim that he had not invited the Australian military to intervene in late 2006 as part of a desperate attempt to forestall the military coup. The court cited a damning media

report shortly after the coup which quoted Qarase acknowledging that he had hoped the Australian government would deploy forces to prop up his government, as well as the public statements of former Australian Prime Minister John Howard who said he had declined the request because he feared armed clashes with the Fijian military.

### **Canberra's role condemned**

The High Court sharply condemned Canberra's highly provocative role in the lead up to the military coup and said the Australian government's actions exacerbated the crisis, thereby justifying President Iloilo's exercise of his prerogative powers. No section of the Australian media reported these sections of the judgement.

In late November 2006, former Australian Prime Minister John Howard stationed three Australian warships, with at least 100 soldiers on board, inside Fijian waters. A number of men, possibly SAS troops, were stationed in the Australian High Commission in Suva after secretly entering the country on November 3 with a cache of communications gear. Howard also convened a meeting of Pacific Islands Forum foreign ministers to adopt the so-called Biketawa Declaration authorising a potential Australian-led intervention. This measure—backed by the then opposition Australian Labor Party—played a central role in destabilising the Fijian government by heightening the antagonisms between Qarase and Bainimarama. Fiji's police commissioner at the time, Australian national Andrew Hughes, similarly inflamed the situation by threatening to arrest Bainimarama.

After detailing these developments at considerable length, the High Court quoted the military's claim that its overriding concern was the existence of a "threat to Fiji's national and economic security".

Chief Justice Gates continued: "[T]he history of the nation with its four coups, the ultimatums and the disputes between the Qarase government and the military, the constant strife, the presence of Australian warships in Fiji waters, and the occurrence of the military takeover a month previous, all would have forced the President's hand to use such [prerogative] powers."

The court invoked a series of legal precedents deriving from the absolutist powers of the English monarchs in medieval times, which grant the sovereign the right to contravene whatever law he sees fit in order to "preserve the State from civil strife". The justices argued that this prerogative passed to the colonial rulers of Fiji and remains today in the position of president.

The Justices cited twentieth century precedents of prerogative powers being exercised in a series of colonial and post-colonial

countries including India, Burma, Malaysia, Pakistan, Canada, Cyprus and Grenada. They concluded that after the Fijian military coup: "Exceptional circumstances existed ... the stability of the State was endangered. We also find that no other course of action was reasonably available, and that such action as taken by the President was reasonably necessary in the interests of peace, order and good government."

Unsurprisingly, supporters of the military coup welcomed the High Court decision. Fiji Labour Party leader Mahendra Chaudhry, who joined the junta along with other Labour ministers, said it confirmed that governments must be held accountable to the people. "Qarase could have averted the takeover had he chosen to engage with and respond to the military on issues of governance," he told the media. Fiji Chamber of Commerce President Swani Maharaj said the court's decision would boost business confidence.

Bainimarama has invited all political parties to meet and discuss the way forward towards "sustainable democratic governance". But he has refused to hold elections in March 2009, as he previously indicated to Pacific Island Forum leaders, and says the junta must first stabilise the economy. Bainimarama has indicated his willingness to integrate favoured establishment parties into the junta.

Interim Attorney-General Aiyaz Sayed-Khaiyum called on foreign powers to drop their opposition to the regime and cease sanctions. "I think the message should be to everybody, inside and outside Fiji, that we actually have to move ahead with the government that is in place," he said. The US and Australia have already announced that sanctions will stay in place and continue to insist that Bainimarama hold elections next year.

Canberra and Washington are not concerned with the democratic rights of ordinary Fijians but with protecting their interests in the South Pacific. The small Fijian economy, which was already in sharp decline, will inevitably be hit hard by the global financial turmoil. In Canberra, there is mounting concern that the Australian ruling elite's regional hegemony will be further eroded as Bainimarama relies even more directly on aid and investment offered by rival powers, especially China.



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