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Entrenching illegality¹

Democracy remains an article of faith—always. That is, it stands by the faith citizens have in themselves to arrive at proper decisions affecting their common future, and the faith they have in each other respecting that faith and its processes and outcomes. This renders democracy precarious because anyone at any time with sufficient resources can knock it over and down. All it takes is ‘bad faith.’ That is, anyone can destroy democracy by simply losing faith in what it is by its very nature.

— *Fiji Daily Post*²

However much I may sympathize with and admire worthy motives, I am an uncompromising opponent of violent methods even to serve the noblest of causes.

— Mahatma Gandhi³

To put on the garment of legitimacy is the first aim of every coup.

— Barbara W. Tuchman⁴

1 Originally appeared as ‘This process of political reconciliation: Aftermath of the 2006 Fiji Coup’, in *State, Society and Governance in Melanesia Project Discussion Paper 2* (2007), 21 pages.

2 Editorial, *Fiji Daily Post*, 21 April 2007.

3 Mahatma Gandhi, *Young India*, 11 December 1924, p. 406.

4 Barbara W. Tuchman, *A Distant Mirror: The Calamitous 14th Century* (New York, NY: Ballantine Books, 1978), p. 399.

This chapter tells the story of how Frank Bainimarama sought to entrench his coup through a variety of coercive and noncoercive means, including using well-meaning civilians and the churches to provide him with a rationale for his intervention. He began increasingly to project himself as a selfless national leader.

Commodore Josaia Voreqe (Frank) Bainimarama told Fiji on the afternoon of 5 December 2006:

We consider that Fiji has reached a crossroads and that the government and all those empowered to make decisions in our constitutional democracy are unable to make these decisions to save our people from destruction.

The military, which had ‘observed the concern and anguish of the deteriorating state of our beloved Fiji’, had, therefore, ‘taken over the government as executive authority in the running of the country’. Those fateful words ended the long-running saga of escalating tension and mounting war of words between Laisenia Qarase’s Soqosoqo Duavata ni Lewenivanua (SDL) Government and the Republic of Fiji Military Forces.⁵ The following day, President Ratu Josefa Iloilo met Commodore Bainimarama and signed a military order dissolving parliament and inaugurating a military administration. Bainimarama assumed the Office of President. A month later he was sworn in as prime minister when he restored Ratu Josefa as president.

Resuming formal executive authority on 4 January 2007, Ratu Josefa thanked Bainimarama for ‘having the courage to step in’, and for ‘handing back all my executive powers’. Noting that ‘decisive decisions needed to be made’, he added ominously (for a titular head of state), ‘in any case given the circumstances, I would have done exactly what Commodore Josaia Voreqe Bainimarama did since it was necessary to do so at the time’.⁶ This statement directly contradicted his press release of 5 December in which he ‘neither condone[d] nor support[ed] the actions of the military today, which is clearly outside the constitution, contrary to the rule of law and our democratic ideals’.⁷ Ratu Josefa’s opposing pronouncements were mystifying. Perhaps he was not the free agent the world imagined—or wished—him to be. Soon after the takeover, he was shielded from the

5 For the causes of the 2006 coup, see Chapter 17.

6 From a typescript of Ratu Josefa Iloilo’s speech circulated to the media.

7 Quoted in a Letter to the Editor, ‘President’s speech’, *Fiji Times*, 6 January 2007.

public by the military, which issued statements in his name. The president was a frail, fading figurehead, a decent man but ineffectual, a curious onlooker in the drama taking place around him—and in his name. Wittingly or unwittingly, he became the military's fount of legality and legitimacy. And so sadly he has remained.

Mandate and the doctrine of necessity

Announcing the formation of an interim administration, Iloilo outlined what he would call the 'President's Mandate'. This included upholding the constitution; facilitating legal protection and immunity from both criminal and civil offences for the military; recognising the right of the military to suspend, dismiss or remove from office anyone it thought appropriate; steadying economic growth and 'correcting the economic mismanagement' of the previous government; restructuring the Native Land Trust Board to 'ensure more benefits flow to the ordinary indigenous Fijians'; creating an anticorruption unit in the Attorney-General's Office to eradicate systematic corruption; introducing a Code of Conduct to improve 'governmental and institutional transparency'; and preparing Fiji for democratic elections 'after advanced electoral office and systems are in place and the political and economic conditions are conducive to the holding of such elections'. The astonishing scope of the mandate showed the interim administration had no intention of relinquishing power anytime soon, raising the unhappy, and once unthinkable, spectre of Fiji becoming the Pacific's version of Southeast Asia's Burma.

More troubling was the patent illegality of the president's action. The president gave, or, more accurately, was reported to have given, a mandate that was never his to give in the first place.⁸ In the Westminster system as adopted in Fiji, the president should act on the advice of the prime minister as the head of an elected government. The power that the president exercises in 'his own deliberate judgement' is carefully prescribed and limited, to be used in exceptional circumstances and then only for short periods of time. The proper course of action for

8 Section 96 (1) of the Fiji Constitution provides that:

in the exercise of his or her powers and executive authority, the President acts only on the advice of the Cabinet or a Minister or of some other body or authority prescribed by this Constitution for a particular purpose as the body or authority on whose advice the President acts in that case.

the president to authorise would have been the prompt restoration of the deposed government. But illegal and improper though it was, the military and the interim administration recited the mandate as their overarching charter—their mantra of legitimacy.

Just as the ‘President’s Mandate’ was misconceived, so, too, was the legal principle the military invoked to validate the overthrow of the Qarase Government. The coup, Bainimarama told the nation on 5 December, was justified by the ‘doctrine of necessity’. The doctrine has a long pedigree, going back to the American Revolution.⁹ In recent times, the doctrine has been confined within strict limits. In a landmark judgement of the Grenada Court of Appeal in 1986, these limits were carefully prescribed. For the ‘doctrine of necessity’ to be enforced, it said:

- i. an imperative necessity must arise because of the existence of exceptional circumstances not provided for in the Constitution, for immediate action to be taken to protect or preserve some vital function of the State;
- ii. there must be no other course of action reasonably available;
- iii. any such action must be reasonably necessary in the interest of peace, order, and good government; but it must not do more than is necessary or legislate beyond that;
- iv. it must not impair the just rights of citizens under the Constitution;
- v. it must not be one the sole effect and intention of which is to consolidate or strengthen the revolution as such.¹⁰

Clearly, then, the ‘doctrine of necessity’ only applies in cases of extreme emergencies—civil strife, a calamitous natural disaster, massive breakdown of law and order—when the duly elected government of the day is unable to govern. It is to be the last resort in the absence of any other option. In 2006, the Fijian state was under no fatal threat. The newly elected government was grappling with the normal problems governments in developing countries face: a sluggish economy; failing public infrastructure; ailing health and education services; allegations of corruption. The Qarase Government was by no means perfect: complacent about its well-advertised shortcomings; pandering to the Fijian nationalist

9 Quoted in Venkat Iyer, ‘Courts and constitutional usurpers: Some lessons from Fiji’, in *Dalhousie Law Journal* 28(1) (2005): 47–68, at p. 37.

10 Judgment of Haynes P in *Mitchell v. Director of Public Prosecutions [1986] LRC (Const)* 35, 88 in the Court of Appeal, Granada. See also Venkat Iyer, ‘Restoration constitutionalism in the South Pacific’, *Pacific Rim Law & Policy Journal* 15(1) (2006): 39–72, at p. 60.

fringe with whose support it had won the elections; quietly tolerant of widely reported cases of misdemeanours in government and statutory organisations; rewarding political loyalists with lucrative appointments to boards and diplomatic missions. All that said, many in Fiji felt the country was turning a new corner, especially after the May 2006 elections with the advent of the multiparty cabinet comprising both SDL and Fiji Labour Party (FLP) members.¹¹

Questions about the validity of the ‘doctrine of necessity’¹² led the military to modify its position by invoking the ‘doctrine of effectiveness’—that is, the military was the *de facto* government because it was effectively in control of the country. But effectiveness is more easily asserted than demonstrated. In the now famous Chandrika Prasad case,¹³ the Fiji Court of Appeal demanded a ‘high civil standard’ of proof of acquiescence on the part of the populace, requiring the regime to show that any conformity and obedience to it stemmed from ‘popular acceptance and support as distinct from tacit submission to coercion or fear of force’.¹⁴ ‘The burden of the proof of efficacy,’ the court ruled, ‘lies on the *de facto* government seeking to establish that it is firmly in control of the country with the agreement (tacit or express) of the population as a whole.’ This test the military would almost certainly have failed. Reports of interrogation at the military barracks and abuse of human rights were simply too publicly well known to ignore.

The legality or illegality of the events of 5 December is moot, Bainimarama has said repeatedly. Everyone should accept the reality of what happened and ‘move on’. But even as the events unfolded, the military gave the impression of not being overly constricted by legality. They had the guns, they had deposed the government, and that, as far as they were concerned, was that. The military knew that its claim to be working within the ambit

11 The 1997 Constitution provides that any political party with more than 10 per cent of seats in parliament (eight seats or more) is constitutionally entitled to be invited to serve in Cabinet. Labour had significant portfolios including Agriculture, Health, Housing, Labour and Industrial Relations, Environment and Commerce and Trade.

12 Raised, among others, by Brij V. Lal in the Fiji media.

13 *The Republic of Fiji and AG vs Chandrika Prasad 2000*, The Court of Appeal, Fiji Islands on Appeal From the High Court of Fiji Islands Civil Appeal No. ABU0078/2000S. High Court Civil Action No. 217/2000, available from: www.fijihosting.com/pcgov/docs_o/chandrikaprasad_ruling_appeal.htm (accessed 4 May 2018).

14 Quoted in Iyer, ‘Courts and constitutional usurpers’, pp. 55–56. See also George Williams, ‘The case that stopped a coup? The rule of law and constitutionalism in Fiji’, *Oxford University Commonwealth Law Journal* 1(1) (2001): 73–93, doi.org/10.1080/14729342.2001.11421385.

of the 1997 Constitution was similarly fraught, but this pretension served as a useful façade and foil. In truth, the military was working not so much within the spirit of the constitution as in breach of it.

Appointment of the interim administration

The publicly stated aim of the coup was to eradicate corruption in government. It was not a coup, Bainimarama said, but a ‘clean-up’ campaign. He pleaded for help to ‘take the country forward’. Soon after taking over government, the military announced that all ministerial positions in the new interim administration would be filled by application only. The applicants would have to have at least ‘ten years’ experience in the workforce, be of sound character and must never have been declared bankrupt.¹⁵ Further, they would promise not to stand in future elections to prevent conflict of interest. Hundreds applied, including an elderly Indo-Fijian taxi driver who thought himself a suitable candidate for Minister of Transport because he knew about pot holes and corrupt transport officials, so he told me. But the most prominent members of the interim administration, such as FLP leader Mahendra Chaudhry and National Alliance Party (NAP) leader Ratu Epeli Ganilau, did not apply. Instead, they were ‘invited’ into the line-up. The much-touted show of transparency in the appointment of the interim administration turned out to be just that: a show. Bainimarama missed an important opportunity to make a fresh start with fresh faces—or to show nonpartisanship by including some SDL members.

The inclusion of Chaudhry in the ministerial line-up was one of the surprises in the interim administration, although his ceaseless hostility to the Qarase Government and lukewarm condemnation of the coup should have signalled his new political disposition.¹⁶ ‘A strange twist of destiny’ was how he described his new situation,¹⁷ although on 6 December, a day after the coup, he had promised ‘never [to] be part of an illegal set up because he believe[d] in democracy and the rule of law’.¹⁸ Such are the processes

15 These appeared in all the daily newspapers in Fiji.

16 His closest Labour ally and often his spokesman Lekhrum Vayeshnoi, Interim Minister of Youth and Sports, described the coup as a ‘Godsend’. See *fijilive*, 22 June 2007.

17 Mahendra Chaudhry, ‘A strange twist of fate’, *Fiji Times*, 10 January 2007.

18 ‘It’s illegal, Chaudhry’, *Daily Post*, 6 December 2006. See also *Fiji Sun*, 9 December 2006: ‘I will not be part of anything that is not constitutional’. Chaudhry’s supporters raise the Mara defence, ‘My country needs me’.

of political transformation in Fiji. More important, Chaudhry accepted four senior ministries for himself: finance, sugar, national planning and public enterprise.¹⁹ He had been offered the finance portfolio (along with the deputy prime ministership) by Qarase weeks before the coup but had declined. Chaudhry's membership of the interim administration gave it a multiracial face and a large, if often silent and puzzled, Indo-Fijian base.

But Chaudhry's participation in the interim administration came at a cost. Many Fijians opposed to the coup now saw it not so much as a military overthrow of a democratically elected government as much as an 'Indian'—Chaudhry's—coup against a Fijian government. The interim administration, in which Chaudhry was easily the most experienced politician, was seen as his 'handmaiden'.²⁰ Never their favourite, Chaudhry became a powerful lightning rod of the Fijian nationalists. 'Race' was once again in the picture.

Along with Chaudhry, Ratu Epeli Ganilau was another leader whose inclusion in the interim administration caused comment. A high chief, the eldest son of former President Ratu Sir Penaia Ganilau, former army commander and President of the Great Council of Chiefs (GCC), the founding leader of the NAP, a latter-day version of the original Alliance, Ganilau had a distinguished pedigree. But he was also a failed politician. His party had won only around 6 per cent of the votes in the May 2006 elections. But he, and fellow failed NAP member Manu Korovulavula, were among the ministerial line-up. Others included former Speaker of the House Ratu Epeli Nailatikau, Ganilau, a son-in-law of late President Ratu Sir Kamisese Mara, as well as the ever politically agile (not to say opportunistic) Poseci Bune, a publicly unacknowledged member of the Mara family. The Mara dynasty was widely seen as having been intimately associated with the military and the interim administration. Ratu Mara's youngest son, Tevita Uluilakeba, was Commander of the Army's Third Fiji Infantry Battalion.

In the eyes of many Fijians opposed to the coup, the military and the Mara clan morphed into one indistinguishable entity. Broadly speaking, the interim administration was made up principally of Labour and NAP figures, leading many to the cynical conclusion that those defeated at the

19 The last portfolio was taken away from him by his arch rival, former Labour Member of Parliament Poseci Bune, who expelled from the party for insubordination.

20 This is Madraiwiwi's description in a talk, 'Mythic constitutionalism: Whither Fiji's course in June 2007', delivered in Canberra at The Australian National University, 5 June 2007.

polls had entered the corridors of power under the cover of guns. Were they among the 'shadowy characters' that Police Commissioner Andrew Hughes had talked about on the eve of the coup, aiding and abetting the military's plans?²¹ Bainimarama might have enjoyed more public support for his claim to transparent governance and for his own leadership had he appointed people of genuine national stature not discredited by past failures or charges of improper behaviour. However it is looked at, the interim administration lacked lustre and vigour.

Politicisation of public institutions

For reasons already mentioned, there was muted public condemnation of the military coup of 5 December. But the reaction from and within two quarters perplexed the public. One was the Human Rights Commission, especially its director Dr Shaista Shameem. She had long been at loggerheads with the Qarase Government, which, she felt, had ignored her complaints about the unconstitutionality of some of its policies (such as the race-based affirmative action policy)²² and sought to politicise her office and thus undermine her effectiveness. By 2006, her cup of disillusionment with the government was full, and the coup provided an opportunity to retaliate.

In a wide-ranging report on the coup made on her own initiative, Shameem made a number of claims.²³ She argued that the Qarase Government was founded on an illegality. After the resolution of the 2000 coup, she asserted, the president had erred by appointing an interim administration headed by Qarase, not Chaudhry. Both the High Court of Fiji as well as the Fiji Court of Appeal had ruled, in the Chandrika Prasad case in 2001, that the purported abrogation of the 1997 Constitution was invalid, which should have restored the Labour Coalition to power. This was not done. Between the judgment of the High Court and that of the Court of Appeal, the 2001 election had taken place, bringing Qarase to power, making the issue moot. Nonetheless, Shameem argued, 'The cases are still relevant for the important constitutional principles that the courts

21 In an interview with ABC's *Lateline*, 23 November 2006.

22 As part of the Fijian 'blueprints' designed by the Qarase Government to offer assistance to indigenous Fijians lagging behind in various fields.

23 Doctor Shaista Shameem, Director, 'The assumption of executive authority on December 5th, 2006 by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces: Legal, Constitutional and Human Rights Issues', Report, 4 January 2007.

established'. The army was not the culprit, Shameem asserted, but the GCC and others who prevented the army from carrying out its proper national security function. But the military was neither as innocent nor as hobbled as Shameem implies. It was the army after all that had advised the president that 'as a matter of national interest we cannot afford to have Mr Chaudhry and his group back'.²⁴ For the military, preserving law and order, which might be jeopardised if Chaudhry was returned to power, took precedence over constitutionalism.

Shameem also wrote scathingly of the Qarase Government, which, she argued, did everything in its power to undermine the constitution, especially the entrenched Bill of Rights:

The Qarase Government was involved in massive violations of human rights in Fiji, constituting crimes against humanity, and made serious attempts to impose ethnic cleansing tactics in Fiji. The Commission attempted to thwart such inroads into constitutionality by a combination of persuasion and warnings, but ultimately, its funding was reduced, and even foreign government funding politicised by adverse reports on the Commission's investigations and analysis of government's abuse of human rights and fundamental freedoms.²⁵

Some of the force of her case was vitiated by the sharp rhetorical excesses of her prose. 'Ethnic cleansing' and 'crimes against humanity' do not ring true to me or correlate to reality in Fiji. Ethnic discrimination, distasteful though it always is, cannot be equated to 'ethnic cleansing' and the wrenching violence invariably associated with it (as in former Yugoslavia or Rwanda). Shameem's frustration with the stalling tactics of the Qarase Government regarding her various reports on the abuse of human rights and of the breach of the constitution itself is evident and probably coloured her diagnosis of the situation.

On legal and constitutional matters, Shameem's judgments have been questioned. A response prepared by a group of senior Fiji lawyers and released anonymously to the public (for fear of retribution by the military) accused Shameem of being innocent of fundamental constitutional

24 Quoted in Brij V. Lal, *Islands of Turmoil: Elections and Politics in Fiji* (Canberra: Asia Pacific Press, 2006), p. 220, doi.org/10.26530/OAPEN_459301.

25 Shameem, 'The assumption of executive authority on December 5th, 2006 by Commodore J.V. Bainimarama'.

principles.²⁶ They disputed her understanding of the constitutional role of the military in the public life of Fiji. Instead of being the supreme arbiter of the national interest, the military operated under civilian control. The Qarase Government was not as unresponsive to criticism and public opinion as Shameem alleged. Were the elections unfair? The lawyers argued that the general elections ‘were the most transparent and closely observed in the country’s history’. They were as robust in their response as Shameem was in her report:

What emerges from the Report is a pathological dislike of Prime Minister Qarase and his two Governments. The tragedy is that in confusing the latter with its apparent approval of the RFMF’s perspective in relation to its own actions, the Report has compromised the Fiji Human Rights Commission and Shameem’s own standing as well as set back the cause of human rights in Fiji.²⁷

That it sadly had done.

Another institution similarly embroiled in controversy after the coup was the judiciary. The causes of the division in it go back to the aftermath of George Speight’s attempted coup in May 2000. Differences arose in the judicial ranks over Chief Justice Timoci Tuivaga’s advice supporting the military’s proposal to abrogate the 1997 Constitution to resolve the impasse.²⁸ In this stance, he was reportedly supported by two other fellow judges, Michael Scott and Tuivaga’s successor as Chief Justice Daniel Fatiaki. Justices Nazhat Shameem and Anthony Gates opposed the advice. With time, coalitions formed; feelings on the bench hardened and rifts deepened. Bainimarama’s coup provided Fatiaki’s opponents, within the judiciary and outside, the opportunity to derail him. On 15 January 2007, Fatiaki was sent on enforced paid leave, pending an investigation into:

the involvement of certain members of the judiciary in the events of 2000, the subsequent politicisation of the Judicial Bench, in particular the Magistracy and numerous instances of corruption, irregularities and gross inefficiency in the Judiciary.²⁹

26 J.V. Bainimarama, ‘A Response to the Fiji Human Rights Commission Director’s Report on the assumption of executive authority by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces’, n.d., but ca mid to late January 2007.

27 The lawyers are all known to me but I am under an obligation not to reveal their identities.

28 For more discussion, see Lal, *Islands of Turmoil*, pp. 200–01.

29 Republic of Fiji Military Forces, press release, 15 January 2007.

A tribunal of competent outside judges was promised to undertake the task, but after six months nothing had happened. A speedy resolution of the chief justice's saga was the principal recommendation of a LAWASIA mission to Fiji.³⁰

The suspension of the chief justice was one issue of concern. There were others including, especially, the manner in which his successor was appointed. Sensing public disquiet and confusion, on 6 December 2006, the judges of the High Court issued a statement reassuring the public that they remained 'committed to their judicial oaths to uphold the constitution and do right to all manner of people in accordance with the law', uphold the rule of law and for all courts to remain open and accessible to the public as normal.³¹ Meanwhile, with Fatiaki on leave, the Judicial Services Commission, which appoints judges and magistrates and is chaired by the chief justice, was convened by Justice Nazhat Shameem,³² with the President of the Fiji Law Society Devenesh Sharma in attendance. They appointed Anthony Gates as acting chief justice. Criticising Gates's acceptance of the appointment as a 'breach of trust', Fatiaki said, 'They could have called me but they did not ... It does not mean that if I am on forced leave, that I cannot come in and call a meeting of the Commission'.³³ That view, perfectly reasonable, was not the point: minds had already been made up that Fatiaki should go. The matter was before the courts, though in the opinion of at least one distinguished lawyer, the appointment of Anthony Gates as acting chief justice was in breach of the constitution.³⁴

Concern was expressed about the civil service. After 5 December, a number of senior civil servants were either sacked or sent on leave because of their alleged closeness to the Qarase Government and because of doubt about their loyalty to the interim administration.³⁵ Some were sacked because of alleged mismanagement and corruption. The travel bans imposed by Australia and New Zealand were to discourage replacements from outside.

30 Report of visit to Fiji by LAWASIA Observer Mission, 25–28 March 2007.

31 This is from a media release issued on 6 December 2006.

32 Justice Shameem is Dr Shaista Shameem's younger sister.

33 See 'Gates broke trust: Fatiaki', *Fiji Times*, 18 January 2007. 'How Gates reached the top', *Fiji Sun*, 5 March 2007, reveals the contents of confidential minutes of the proceedings that led to Gates's appointment.

34 'Opinion Re Judicial Services Commission of Fiji – Recommendation for Appointment of Acting Chief Justice', by James Crawford SC, Whewell Professor International Law, University of Cambridge and Barrister, Matrix Chambers, Gray's Inn. The Opinion was issued on 20 February 2007. Other (similar) advice came from James Dingemans, QC of James Hawkins, Temple, London.

35 Among them were Jioji Kotabalavu, chief executive officer in the Prime Minister's Office, Solicitor General Nainendra Nand and the chief executive officer of the Public Service Commission, Anare Jale.

The drain of talent and experience was one problem plaguing the civil service. Another was its collapsing morale. A number of senior military personnel had recently been transferred into the service, blurring the line between the military and the civil service. Among them were Captain Esala Teleni as commissioner of police, Captain Viliame Naupoto, as head of the immigration department, Lt Col Iaone Naivalarua as commissioner of prisons and Lt Commander Elik Salusalu as manager of the Government IT Centre. Land Forces Commander Pita Driti was Fiji's new High Commissioner to Malaysia and his chief of staff, Mason Smith, was earmarked for Fiji's Mission to the United Nations. The appointment of military personnel to civil and diplomatic service was not new in Fiji. After the 1987 coups, a number of senior military personnel were appointed to the public service, some even as district commissioners.³⁶ None of them was a spectacular success. Their appointments caused bitterness and frustration among senior civil servants bypassed or sidelined and a similar crisis of confidence in the civil service.³⁷ With the departure of talent from the civil service, and from Fiji generally, the problem acquired a graver complexion.

The church, the chiefs and the Indians

While the December coup was no surprise, it elicited different responses from the two major communities. Among Fijians, there was much confusion and puzzlement. How could this crisis have come to pass, they asked. One senior Fijian civil servant had talked to me optimistically about the '60:40 solution' to Fiji's political problem.³⁸ In the very near future, Fijians would constitute around 60 per cent of the total population and Indo-Fijians around 40 per cent. Fijian numerical preponderance would then translate into permanent political domination, ending the decades-long Fijian fear of 'Indian domination'. But, just when the prize was within reach, the coup jolted that dream. Fijians were puzzled and confused and divided in their response to the coup. Many, it would seem, opposed it, but there were also some (such as some members of the Kadavu Council,

36 For instance, Colonels Kacisolomone, Lomaloma and Kaukimoce. Isekia Savua was posted as Fiji's representative to the United Nations.

37 See 'Militarising our police or policing the military', *Daily Post*, 13 June 2007. The collapsing morale in the civil service was the subject of Jioji Kotabalavu in his address in Canberra at The Australian National University, 5 June 2007.

38 In fact, various projections put the Indo-Fijian population at around 37 per cent—and declining.

for instance) who supported it, along with elements of the Fijian middle class and those who had had independent careers, as well as Fijians living abroad. However, no clear-cut pattern of response emerged from the Fijian community, especially from those on Bainimarama's side.

One reason for this was the paralysis of the most important institutions of Fijian society, the Methodist Church and the GCC. In 1987, and to a lesser extent in 2000, the Methodist Church had rallied its supporters behind the coups, promising to make Fiji a Christian state complete with the enforced observance of the Sabbath. Since over 80 per cent of Fijians are Methodists, the power and reach of the church was considerable. The church's task was easier then because the 'other' was visibly different: non-Fijian and non-Christian. Soon after the December coup, the Methodists pledged support to the military, more in hope than conviction that the military intervention might bring better times.³⁹ Then the church leadership went quiet as the military imposed its hold on the country. Six months later, the church was beginning to assert its views. In June, the Methodist Church and the Association of Christian Churches said, 'The nation and our people have suffered enough. It's only proper that the nation be returned to democratic rule of law at an early opportunity.'⁴⁰ The Methodist Church was likely to have taken a harder line against the interim administration as it strove to regain its pride of place in Fijian cultural hierarchy.

Like the Methodist Church, the GCC too vacillated in the early days of the coup, giving the military the benefit of the doubt.⁴¹ 'We need to work hand in hand and move forward as a country so we can rebuild this nation,' said council chair Ratu Ovini Bokini.⁴² 'The council fully supports the interim ministerial appointments.' But, with time, dissension surfaced. Some resentment arose from the disrespectful manner in which Commodore Bainimarama had treated the council, telling the chiefs to refrain from meddling in politics, to relax and drink homebrew under a tree.⁴³ Such symbolic humiliation and disrespect for the highest umbrella organisation of Fijians was unprecedented. Some members of the council

39 'Methodists pledge support', *Fiji Sun*, 11 Jan 2007.

40 'Churches want early return to democracy', *fijilive*, 13 June 2007.

41 An overarching consideration of the GCC is in Robert Norton, 'The Great Council of Chiefs in Fiji's era of crisis and reform', manuscript in my possession.

42 'Chiefs approve', *Fiji Sun*, 11 January 2007. Several chiefs from Western Viti Levu trooped up to the Queen Elizabeth Barracks to show their 'appreciation' to the military.

43 Bainimarama himself is a chief though he does not use the honorific chiefly title 'Ratu'.

were also part of the deposed Qarase Government. The most vocal among them was Ro Teimumu Kepa, the Roko Tui Dreketi and former Minister of Education. A Fijian nationalist and a silent supporter of Speight's coup, she, along with many others, was now a transformed and principled democrat opposed to Bainimarama's coup.⁴⁴

The impasse between the military and a palpably hobbled and humiliated Council of Chiefs came to a head over the appointment of the vice-president, following Ratu Joni Madraiwiwi's resignation soon after the coup when he refused to facilitate the military's plans. The issue was pressing in view of the president's indifferent health and his need for regular medical check-ups overseas. Normally, the vice-president and, in his absence, the Speaker of the House of Representatives, would act as head of state. But since the parliament was dissolved, there was no speaker. The chief justice, next in line, was not a citizen. The interim administration nominated former Speaker of the House and current Minister of Foreign Affairs Ratu Epeli Nailatikau for the position, regarding his appointment a foregone conclusion. Moreover, cultural protocol required respecting the president's choice: he was, after all, Tui Vuda, the paramount chief of Western Viti Levu. Confident about the outcome, the military did no prior canvassing with the chiefs. Bainimarama did not attend the meeting.

In the end, only Lau, led by Ratu Mara's son, Ratu Tevita Uluilakeba, endorsed Nailatikau. The opposition was led by Kepa who argued that the nomination, coming from an illegal interim administration, was illegal. Kepa preempted the issue, which was before the High Court. The interim administration's ineptness was part of the reason for the debacle. But Chairman Ovini Bokini's inability or failure to orchestrate a consensus solution compounded the problem. One member of the council told me that council should have kept meeting until a consensus was reached. Consensus, after all, is how the council has always conducted its business, though it has to be said that in the strained, postcoup atmosphere, consensus might not have been possible. Hubris on one side and incompetence on the other won the day.

44 She was not alone in her newfound respect for law and order and the rule of parliamentary democracy. Among the more astonishing examples was Mere Samisoni, a SDL Member of Parliament and a prominent Speight sympathiser.

The interim administration reacted swiftly to the council's snub, suspending the GCC on 12 April, saying that it 'will only be reconvened if, and when, the interim government sees it appropriate'.⁴⁵ Bainimarama denounced the council as a haven for anticoup politicians who were manipulating it to advance their own personal and political agendas. 'The council,' he continued, 'was a security threat in our efforts to move the country forward.'⁴⁶ The GCC's suspension caused consternation. But contrary to widespread fears, the GCC itself was not disestablished. It is a constitutionally recognised body and since the 1997 Constitution remained in force, so did the council. One purpose of the review of the council's membership was to orchestrate a more pliant membership of the council. But the power of the Minister of Fijian Affairs was limited as most of the 55 members of the GCC were elected independently by the provincial councils. Perhaps more than seeking to influence the council, the military was attempting to demonstrate its place in the new scheme of things, an altered political landscape where the council did not hold its traditional sway and was indeed 'subservient' to the government.⁴⁷

Beyond the legality or illegality of the issue lay broader, more troubling questions. How much permanent damage had the military done to the status and reputation of the GCC? The council was in a bind, buffeted from within and without, and rudderless in unfamiliar waters. A *Fiji Sun* editorial put the matter succinctly:

Commodore Bainimarama is no respecter of chiefly tradition and protocol. To commit such acts [snubbing the GCC] and get away with them will be widely seen as a massive insult. But it also represents a heavy blow to the status and standing of the chiefs and tends to undermine their relevance in a rapidly evolving society such as ours. Seldom can Fiji's highest traditional body have been so insulted in the past and, worse still, the culprit remain neither punished nor even chastised.⁴⁸

45 'State suspends GCC meetings', *Fiji Times*, 13 April 2007. See also 'The vestige of Fijian identity', *Fiji Daily Post*, 15 April 2007.

46 'Address by the Interim Prime Minister Commodore Voreqe Bainimarama', 12 April 2007, on the Republic of Fiji Military Forces website, 31 May 2007.

47 This is the assertion of Interim Fijian Affairs Minister Ratu Epeli Ganilau. See 'Chiefs subservient to State: Minister', *Fiji Times*, 9 June 2007.

48 'A blow to tradition', *Fiji Sun*, 9 December 2006.

The Indo-Fijian community was widely, if erroneously, accused by many Fijians of instigating the coup and benefiting from it.⁴⁹ In Madraiwiwi's words, the 'Fijian heartland' saw the 2006 overthrow as 'an Indian coup'.⁵⁰ Some described it as a Muslim coup, given the alleged association of some prominent Muslims with the interim administration.⁵¹ The Muslim connection, if there was one, was more a coincidence than an established connection. Some of the most prominent opponents of the coup were also Muslim, such as Shameema Ali and Imrana Jalal. The Indo-Fijian community was divided. There were undoubtedly those who were victims of the Qarase Government's race-based affirmative action policies who therefore saw no reason to mourn its demise. Qarase's pandering to the nationalist fringe disenchanted others. There were some whose support for the coup was motivated by revenge and grudge: 'Thank God', 'And about time'. The boot was on the other foot. But there were also many who were genuinely confused, perplexed and undecided. They may have approved of the removal of the Qarase Government, but not the method used to do it.

An example of an Indo-Fijian-led opposition to the coup was the hard-hitting submission the Fiji Islands Council of Trade Unions (FICTU), representing 18,000 members of the total 33,000 unionised workers in Fiji, made to the UN Visiting Mission.⁵² It alerted the mission to the abuse of human rights in the country, and the 'misery and suffering of the ordinary citizens, the working class, farmers and the under-privileged'. It proposed the removal of Bainimarama as prime minister to enable the president to appoint a 'qualified civilian as interim prime minister' and the replacement of politicians and failed candidates in the 2006 elections in the interim administration by 'qualified civilians of repute'. Further, the council urged the preservation of the 1997 Constitution and a speedy return to parliamentary democracy. The FICTU was not alone in its critical response to the coup.

49 'Where to Now, Bainimarama?' *Daily Post*, 13 June 2007 for a representative expression of this view.

50 In his address in Canberra at The Australian National University, 5 June 2007.

51 The list includes the Attorney-General (Khayyum), a controversial High Court Judge (Nazhat Shameem), Director of the Human Rights Commission (Shaista Shameem), Military's Chief Legal Advisor (Colonel Aziz), lawyer and recently appointed chairman of the Electoral Commission (Dr Sahu Khan).

52 Fiji Islands Council of Trade Unions, *Submission to the UN Mission*, 27 April 2007. The mission was sent to make an independent and confidential assessment of the situation in Fiji.

The National Federation Party, representing about 15–20 per cent of the Indo-Fijian population, was equally forthright in its denunciation. The party ‘condemned the coup from day one and continues to do so’, it told the UN Visiting Mission.⁵³ The party said the December coup was not a:

clean-up campaign as the military and the interim administration claim it to be. Just like the previous coups, it is about power, even if it means achieving it through the barrel of the gun. The fact that the key players in the current administration are those who either badly lost in the last general elections or came out second best is testimony to this fact.

It urged the United Nations to work towards a speedy return to parliamentary democracy in Fiji. There were many in the Indo-Fijian community who shared that thought.

Response of civil society

Soon after the coup, some nongovernmental organisations (NGOs) attempted to form a broadbased anticoup coalition and even sent a delegation to the military. They suggested the appointment of a representative Presidential Commission of Truth, Justice and Reconciliation to, among other things, ‘clarify the Truth regarding the events of 2000 coup and mutiny’ and to consider ways of ending ‘this abhorrent cycle of coups and attempted coups, and to put in place concrete measures to ensure the prevention of such conflicts in the future’.⁵⁴ The Citizens Constitutional Forum (CCF), formed in 1993 and active for years in the defence of human rights and good governance, also condemned the coup, though in decidedly (and uncharacteristically) measured tones, in marked contrast to its previous ringing denunciations of the past coups. On 4 December it called the coup illegal, but in the same breath added that ‘the CCF does not hold the Qarase Government blameless in this crisis either—it has a track record of illegal activities over the past six years’.⁵⁵ It too had been

53 National Federation Party, *Submission to the United Nations Fact Finding Mission*, 24 April 2007.

54 From a draft of press release. The NGOs represented in the coalition included FemLINKPACIFIC, Fiji Women’s Rights Movement, Fiji Women’s Crisis Centre, Citizens Constitutional Forum and Pacific Centre for Public Integrity.

55 See Citizen’s Constitutional Forum, *Towards a Sustainable Constitutional Democracy*, 4 December 2006, available from: www.ccf.org.fj (accessed 6 April 2018).

singed by the ongoing conflict with the Qarase Government, questioning its legality and constitutional foundation. Perhaps that bruising experience tempered its response. It preferred 'engagement' with the military and the interim administration to public confrontation.

But not all NGOs were critical of the coup.⁵⁶ Among the most notable was the Ecumenical Centre for Research, Education and Advocacy, founded in 1990 by the Reverend Paula Niukula 'to address the social, religious, economic and political issues that confront Fiji'.⁵⁷ Its current director Fr Kevin Barr asked whether a military overthrow of an elected government that was racist and discriminatory was necessarily an evil thing. If the coup in fact led to improvements in human rights and social justice, and to the alleviation of poverty and eradication of corruption and racial discrimination, should it be considered such a bad thing after all? Under the Qarase Government, Barr argued, democracy was being seriously undermined.

Democracy was being manipulated in the interests of a group of extreme nationalists and rich elites. It was not working in the interests of all Fiji citizens. There was little concern for the poor, the ordinary workers, and for Indo-Fijians. There was serious mismanagement and some evidence of corruption. Hence although democratically elected by a small margin, the Qarase government was not a democracy that worked in the interests of all the people and sought to bring about justice for all.⁵⁸

The last, Barr continued, is of paramount importance.

The aim of democracy is surely to build a just society—the ordering of society to bring about social justice for all. If this does not happen, does that 'democracy' deserve to stay in power? Yet how can it be removed particularly when it has a history of manipulating the race card and possibly tampering with the electoral process?

56 Most human rights NGOs seem to oppose the coup while those concerned with social justice seem to support it.

57 See Ecumenical Centre for Research, Education and Advocacy's (ECEA's) website, available from: www.ecea.org.fj (accessed 6 April 2018).

58 Kevin Barr, 'A flawed democracy', *Fiji Times*, 9 April 2007; see also his 'Does democracy benefit people', *Fiji Sun*, 3 April 2007.

Barr saw promise and opportunity in Bainimarama's coup and counselled patience and understanding. His views, expressed in newspaper columns, attracted criticism from opponents and planted the suspicion that many Catholics were like-minded and supported the coup.⁵⁹

Barr's position raised many troubling questions. Which government, except in utopian democracy, works in the interests of 'justice for all'? Which government in Fiji has ever worked 'in the interests of all the people of Fiji'? And which government has not manipulated the race card? These questions did not excuse the Qarase Government's record, they simply put the issue in perspective. The race-based electoral system provided the incentive for ethnic manipulation, and Qarase, like other leaders in the past, including Chaudhry, played it to his advantage. Proposing solutions to deep-seated problems at gunpoint, without the support of the majority of the population, was both myopic as well as counterproductive. Military intervention exacerbated ethnic tension and hostility, and without interethnic accommodation and understanding, there could be no resolution of Fiji's deep-seated problems. People's participation in formulating and resolving problems were important, within the overarching framework of parliamentary democracy. What Barr ignored was that the military had set itself up as the ultimate guardian and arbiter of the national interest, over and above everyone else. What would happen if a democratically elected government failed to live up to the military's expectations in delivering social justice programs? Strengthening the basic tenets of parliamentary democracy, respecting the verdict of the ballot box in free and fair elections, would be a better way of resolving the country's problems than the short-cut of military intervention.

In April 2007, a group of NGOs and some interested former Fiji citizens, with an international public service background, formulated a charter to assist the government in drawing up a national plan for a better Fiji. Thoughtful and visionary, *Building a Better Fiji for All: A People's Charter for Change and Progress* outlined steps and programs necessary to 'rebuild Fiji into a nonracial, culturally vibrant and united, well governed, truly

59 See Archbishop Petero Mataka, 'Let's put common good first', *Fiji Times*, 29 September 2006 where he expressed criticism of the Qarase Government's resource policies. See also his 'Reflections on democracy', *Fiji Times*, 3 July 2007, where he urges his readers not to be 'obsessed with being politically correct' about 'the legality of this or the illegality of that', but to ponder about 'higher goals'. For an early optimistic assessment of the coup, see Andrew Murray, 'Observations on the current situation in Fiji', 26 January 2007, typescript sent to the author. Murray is a Senior Lecturer in Philosophy at the Catholic Institute of Sydney.

democratic nation that seeks progress and prosperity through merit-based equality of opportunity and peace'.⁶⁰ The National Council itself would comprise 40 members, 25 from Fiji's civil society, 13 from the interim administration and two co-chairs.

The vision the charter endorses is unexceptionable. There can be no argument with the view that:

the vast majority of Fiji's people aspire for and deserve a country, including a system of governance, that is characterised by stability, transparency and accountability, as well as the prevalence of law, order and peace.

Nor could one argue that:

Fiji needs to become a more progressive and a truly democratic nation; a country in which its leaders, at all levels, emphasise national unity, racial harmony and the social and economic advancement of all communities regardless of race or ethnic origin.

The spirit of the vision enunciated by the council was already part of the 'compact' of the 1997 Constitution, which specified broad principles for the governance of the country. The real problem for Fiji was not the vision but the willingness of its leaders, both military and civilian, to respect the rule of law.

The council proposed to act as a moral watchdog over the policies and performance of the government. But what would be the role of the parliament or political parties in that case? And what if the policies of the elected government of the day were at variance with those espoused by the national council? Idealistic and utopian, the charter effectively sought to remove the practice of politics in the processes of governance. Madraiwiwi's questions were asked by many. 'Is this a genuine effort at drawing the people of Fiji together? Or is it merely an attempt by the Interim Government and its cohorts to cloak them in some mantle of popular acclaim?'⁶¹

60 The document was initially for restricted circulation but later posted on different websites, including *fjilive*.

61 Address in Canberra at The Australian National University, 5 June 2007.

There was a further question. Did an interim administration have the constitutional authority to promulgate policies of far-reaching significance? In an important ruling in 2001 concerning the legitimacy of the Asesela Ravuvu Constitution Review Committee appointed by the Qarase-led interim administration, Justice Anthony Gates wrote:

Unusual programmes of expenditure or reformist projects are the prerogative of an elected government. A lawful government needs to be buttressed by holding the confidence of the House of Representatives, and by acting within the Constitution with the two other bodies of Parliament, namely, the Senate and the President. Moving in advance of the will of Parliament in reformist fields, however well-intentioned, is not an act which the courts will validate under the necessity doctrine. The authorisation for the expenditure of public funds for such reform work is similarly outside the permitted scope of work of a caretaker Cabinet. Such authorisation is unlawful.⁶²

Justice Gates's views are as relevant to the case of the People's Charter promoted by the interim administration as they were in stopping the work of the Asesela Constitution Review Committee in 2001.

External response

The military had not expected the kind of uproar it provoked among Fiji's neighbours and international trading partners when it executed the coup. After all, its rationale for the military intervention was good governance, and the promotion of a 'corrupt-free' society. The military had not conducted a coup; it had started a 'clean-up' campaign. It was doing precisely what the aid agencies and neighbouring countries had wanted from the island governments all along. The reaction, particularly from Australia, New Zealand but also from the United States and the European Union, was sharp and unequivocal. Whether Australia and New Zealand could have done more to prevent the crisis remains an open question, though susceptible to doubt, given Bainimarama's disposition. Nonetheless, one observer remarked that 'Canberra appeared more intent on stopping a military intervention than addressing the causes of the deepening volatility', with John Howard's 'repeated support for

62 Quoted in Iyer, 'Courts and constitutional usurpers', 65.

his Fijian counterpart [giving] no incentive for Qarase to modify his domestic agenda'.⁶³ New Zealand's reaction was probably coloured by Bainimarama's renegeing on a truce it had brokered between him and Qarase in late November 2006.

Both Australia and New Zealand condemned the military takeover in ringing terms, imposing travel bans on members of the interim administration, their families and all who accepted appointments from it or were identified as its sympathisers and supporters. The military's place was in the barracks, Australian Foreign Affairs Minister Alexander Downer told Bainimarama firmly, not in the political arena.⁶⁴ New Zealand banned all ministerial level talks with Fiji, tightened travel restrictions on military personnel and civil servants appointed by the interim administration, froze the new Recognised Seasonal Employer Scheme that would have provided Fiji workers temporary visas to work in New Zealand, cancelled training for Fiji soldiers, stopped new development assistance schemes and suspended training programs for Fiji's public sector under the regional governance programs.⁶⁵ A new low in diplomatic relations between Fiji and New Zealand was reached in mid-June 2007 when Fiji expelled New Zealand High Commissioner Michael Green for 'being in our face' since the coup, according to Bainimarama. Green was, by wide consensus, an exemplary diplomat, unobtrusive and informed and accessible to the public. The interim administration, citing the Geneva Convention, refused to elaborate.⁶⁶ As the *Fiji Times* put it:

The military and the interim Government must have known that their actions were not going to be greeted with joy by much of the rest of the world. They must have known and expected criticism. Maybe it has been a harder road than they anticipated.⁶⁷

It had.

63 Richard Herr, 'External influences and the 2006 Fiji Military Coup', unpublished paper. See also Steven Ratuva, 'Coups and international reaction', posted on *fjilive*.

64 'Downer shares views on Fiji', *Fiji Times*, 22 June 2007.

65 'Fiji loses foreign friends', *Fiji Sun*, 12 December 2006.

66 In April 2007, Bainimarama refused to see a visiting senior US State Department official and threatened to open up Loftus Street (where the American embassy is located) to the public, only to retract his threat when the enormity of the consequences of his action dawned upon him. So the threat of reprisal against foreign embassies was not new.

67 Editorial, *Fiji Times*, 15 June 2007; Bainimarama's reaction is reported in the *Fiji Times*, 19 June 2007.

The travel bans had an immediate and decisive effect. Many qualified people in Fiji had refused appointment from the interim administration for fear of being banned from travelling to the countries where many had close families. Many senior civil servants and police vied for lucrative jobs in international organisations and security contracts with international security services that they did not wish to risk. Labour mobility was a fact of life in Fiji and the diasporic dimension of the crisis was real. Travel bans had similarly discouraged foreign nationals from accepting positions in administrations that their own countries regard as illegal. This created a conundrum. Australia and New Zealand wanted to promote good governance and a speedy return to parliamentary democracy and yet their (perfectly understandable) policies and reactions hindered the outcome they desired. On the Fijian side, a military that had overthrown a democratically elected government professed puzzlement at the reaction of the international community to its extralegal action despite its planned promotion of good governance, even if it was under the cover of guns. Was there room for a middle course between indignation and engagement, between the legitimate defence of fundamental principles on the one hand and a pragmatic appreciation of the realities on the ground on the other? A 'slowly recuperating constitutional convalescent' needed all the help it could get.⁶⁸

The countries of the Pacific Islands reacted cautiously to the coup in the beginning. A meeting of the Melanesian Spearhead Group's Ministers of Foreign Affairs in Honiara in mid-January 2007 saw the Fiji crisis as essentially an 'internal matter' to be resolved by the people of Fiji itself, warning against any foreign intervention.⁶⁹ Its response was probably coloured by the Melanesian countries' criticism of Australia's policy in the region, especially its mounting confrontation with the Solomon Island Sogovare Government and a diplomatic rift with Papua New Guinea. But their limited and vague support was short-lived when it dawned on them that Fiji's sickness was bad for regional cooperation generally. The hard line adopted by Australia and New Zealand might also have shifted their thinking. On 1 December 2006, the Forum Foreign Affairs Ministers met in Sydney to discuss the impending crisis and resolved to send an Eminent Persons Group (EPG) to Fiji to assess the underlying causes and the nature of the overthrow of the Qarase Government, and

68 These apposite words are Rod Alley's, Private communication, 20 June 2007.

69 MSG Ministers of Foreign Affairs Meeting: Outcome Statement, 13 January 2007; Also *Radio New Zealand International*, 15 January 2007.

‘to recommend steps towards the restoration of democratic government, within the boundaries of the Constitution and the rule of law’.⁷⁰ The four-person EPG was chaired by Vanuatu’s Foreign Affairs Minister and Deputy Prime Minister Sato Kilman and comprised Faumuina Liuga, Samoa’s Minister for Natural Resources and Environment, Sir Arnold Amet, retired Chief Justice of Papua New Guinea, and General Peter Cosgrove, retired Chief of the Australian Defence Force.

The EPG report was blunt. The military takeover of the Qarase Government was ‘unconstitutional and unacceptable’, it said. The military should retreat to the barracks and civilian rule be restored as soon as possible, Bainimarama should vacate the position of interim prime minister and the state of emergency should be lifted. Further, the EPG report called on the military to continue to uphold the constitution, respect Fiji’s domestic and international obligations, cease interference in the work of the judiciary and other accountable institutions and to end all abuse of human rights. The interim administration was asked to adopt a ‘roadmap with measurable milestones, which included holding general elections between eighteen months to two years, if not sooner’, and delink the military’s ‘clean-up campaign from a national time-table for elections except in those areas directly related to the electoral process’.⁷¹

The interim administration’s response to the EPG report was measured,⁷² with the Forum Foreign Affairs Ministers meeting in Vila on 6 March 2007 recommending that the forum maintain a ‘staged process of engagement with the interim administration’.⁷³ To that end, the ministers set up a ‘Pacific Islands Forum–Fiji Joint Working Group on the situation in Fiji’ among whose task it was to assess whether an election could be held based on the current boundaries and registered within the time frame

70 This formed the core of the EPG’s Terms of Reference. The report, marked for ‘Forum Eyes Only: Confidential’, was leaked to the media and published on the internet the moment it was printed and long before it was formally submitted to the Forum Ministers’ meeting for their deliberation. Such is the reach and power of the internet.

71 I have a copy in my possession. It should also be available in the National Archives in Suva. I was brought over from Canberra to meet with the Eminent Persons Group in Suva.

72 Although the Fijian wing of the Fiji Labour Party described the EPG report as ‘a piece of rubbish’, its spokesperson, Maika Moroca, said: ‘The so-called Forum Persons Group can go to hell with their report because it does not hold recommendations that are constructive enough to enable Fiji’s economic recovery and return to democratic rule without corruption’ (*Fiji Times*, 20 February 2007). It is highly unlikely that this statement could have been released without the tacit approval of the party hierarchy.

73 Forum Foreign Affairs Ministers’ Meeting, 16 March 2007, Port Vila, ‘Outcome Statement’, PIFS (07) FFAMM.3.

specified by the EPG.⁷⁴ The group reported in May that ‘from a technical point of view’, parliamentary elections could be held in the first quarter of 2009, or even earlier (November 2008) if the Bureau of Statistics was able to conduct an earlier census. The second major recommendation was for ‘minimal changes to the current electoral provisions and procedures before the next election’. Only those changes designed to reduce or eliminate abuse in the campaign and the voting process to ‘reflect the voter’s clear intention’ were to be contemplated.

The group’s recommendation conflicted with the interim administration’s own Road Map for the Return to Parliamentary Democracy.⁷⁵ According to that document, Fiji would be ready for general elections and full restoration of parliamentary democracy only in 2010 (or possibly later), after the country’s finances were stabilised, the economy resuscitated and electoral boundaries drawn up after a new census. The interim administration also envisaged a review of the constitution to rid it of ‘provisions that facilitate and exacerbate the politics of race’. But these fundamental changes, desirable though they might be, could not legitimately be undertaken by the interim administration—that was the responsibility of an elected parliament. Whatever else may be the case, the next general elections in Fiji would have to be held under the 1997 Constitution.

After weeks of silence, Bainimarama issued a confusing series of statements in mid-June. First, he rejected any externally imposed timeframe for holding the next general election.⁷⁶ Fiji, and not the international community, would decide when the elections were to be held, he said. Two days later, he told a news conference that elections would be held after the ‘President’s Mandate’ (see above) had been fulfilled and the objectives of December 2006 accomplished.⁷⁷ A day later, he agreed, ‘in principle’ that general elections could be held within the time frame specified by the EPG provided the international community lent Fiji a helping hand.

74 The Group was chaired by Papua New Guinea’s High Commissioner to Fiji. The Expert Group was co-chaired by Dr Paul Harris (NZ) and Barrie Sweetman (Fiji). Its two other members were Dr Kesaia Seniloli (Fiji) and Bruce Hatch (Canada). Titled ‘Report of the Independent Assessment of the Electoral Process in Fiji, 14–25 May 2007’, it is available on *fijilive* and other websites, though this document, like many others cited in this essay, was sent to me by email.

75 Described in a speech by Commodore Bainimarama at the Queen Elizabeth Barracks on 20 February 2007.

76 ‘We will say when elections to be held, says interim PM’, *Fiji Times*, 17 June 2007.

77 Interview on *FijiVillage.com*, 19 June 2007.

Whether this was a genuine commitment or a tactical ploy to deflect public criticism remains to be seen. Australia and New Zealand remained unconvinced. The *Fiji Times* wrote:

It is very likely now that Australia, New Zealand and other democratic countries that deal with us will take a much closer look at the situation and withdraw even further, taking with them more of their aid money and their trade.

...

Where they will differ from the views held by Commodore Bainimarama is that they will see a former democratic country now ruled by the gun, no matter what 'shopfront' the regime puts up. Military men are in most of the key positions of power in the civil service and the interim Cabinet cannot be seen as independent.⁷⁸

The timing of the general election was crucial in the context of Fiji's ongoing aid negotiations with the EU, which matters to Fiji. Fiji sells sugar to it under a preferential agreement, and its aid to Fiji's ailing sugar industry is estimated at around FJ\$400 million.⁷⁹ In April 2007, when a Fiji delegation led by Foreign Affairs Minister Ratu Epeli Nailatikau (and comprising Finance Minister Mahendra Chaudhry and Attorney-General Aiyaz Saiyed-Khayium) went to Brussels, the EU reiterated Article 9 of the African, Caribbean, Pacific – European Community (ACP–EC) Cotonou Agreement that 'Respect for human rights, democratic principles and the rule of law constitute the essential elements of the Partnership Agreement'.⁸⁰ The EU undertook to 'continue and deepen the political dialogue with Fiji' provided certain conditions were met. These included respect for democratic principles, including holding parliamentary elections by March 2009, consulting widely within Fiji before adopting major legislative changes, respecting the rule of law and protecting human rights and the fundamental freedoms of its citizens, and protecting the independence and integrity of the judiciary, among other similar undertakings. Any derogation from the undertaking Fiji had given would jeopardise future aid to Fiji. This fear haunted the nation—the loss of aid for an industry whose collapse would cripple the country. The EU (and Australia and New Zealand for that matter) would not relax

78 Editorial, *Fiji Times*, 18 June 2007.

79 See *Fiji Sun*, 10 May 2007.

80 This comes from 'Opening of Consultations with the Republic of Fiji Islands under Article 96 of the Cotonou Agreement (Brussels), 18 April 2007'.

sanctions until Fiji went beyond the ‘in-principle’ undertaking it had given to returning Fiji to parliamentary democracy within the specified time frame. The EU’s Commissioner for External Relations Benita Ferrero-Waldner had said that the ‘most important thing is to see whether the commitment will materialise’.⁸¹ Frustrated with outside pressure to meet the deadlines and honour its undertakings, Bainimarama threatened to postpone elections indefinitely.⁸² That would compound Fiji’s already considerable economic problems, and corrode its vital relationship with its powerful neighbours.

Warfare in cyberspace

The reaction to the 2006 coup was different from responses to previous coups in many ways, but one is novel: the intervention of cyberspace. In 1987, the latest invention was the facsimile machine, which allowed the military effectively to shut down Fiji’s contact with the outside. In 2000, the national boundaries were more porous with the advent of email, transmitting massive amounts of information in real time. In 2006, the most notable innovation was the emergence of ‘blogsites’, enabling ordinary people with access to the internet worldwide opportunities to exchange news, ideas, information and comments about political developments in Fiji without the mediation of state licensing or the authorisation of the gatekeepers and agenda-setters of the mass media.⁸³ The speed of cyber communication was astounding—and confounding.

The sites differed in the depth and range of coverage and commentary, but all condemned the coup to varying degrees. Many carried opinions and information in the Fijian language, which suggests that they were run by indigenous Fijians or others intimately familiar with Fiji language, culture and protocol. As with cyberspace generally,⁸⁴ some of what passed for accurate information or analysis was petty prejudiced and partial,

81 ‘EU/Australia agree on sanctions’, *fijilive*, 26 June 2007.

82 ‘Critics put elections in limbo: Bainimarama’, *fijilive*, 3 July 2007.

83 These are too numerous to mention but among the more prominent ones are: *Why Fiji is Crying, Rere Vaka Na Kalou Ka doka Na Tui, Intelligentsya, Name and Shame, Discombobulated*.

84 An introduction to some of the complex issues raised by the use of cyberspace is in Steven Gan, James Gomez and Uwe Johannsen (eds), *Asian Cyberactivism: Freedom of Expression and Media Censorship* (Bangkok: Friederic Naumann Foundation, 2004).

sometimes defamatory, frequently vituperative, always provocative, on occasions treasonous.⁸⁵ One website, on 20 June 2007, advised its readers thus:

Destabilize the country. Make it ungovernable. Every act of resistance you engage in makes it difficult for the regime to govern and stay in control. The government is economically unstable, so your objective should be to completely destabilize that economic fulcrum.⁸⁶

Attack businesses that make money for the regime, the site encouraged its readers. 'Attack their assets.' A few days later, the same website encouraged its readers to attack tourists to bring that industry to its knees. Other sites named and shamed people that they thought had supported the coup. Yet others sought to foster dissent in the ranks of the military. The enemy was identified, targeted, vilified, judged and hanged. It was verbal warfare at its most brutal and visceral.

When they first appeared, most sites condemned the coup as the work of a power-crazed 'military junta'. But with time, and especially after Madraiwiwi's address in early June 2007, a new interpretation began to emerge, insidiously portraying the military overthrow as an 'Indian' coup against the Fijian people. Chaudhry was identified as the villain of the piece and he became the object of vitriolic anger of the anticoup bloggers. In the minds of most anticoup bloggers, Chaudhry's connection to the coup had been irrevocably established. The blogsites seemed to reflect a wider, developing Fijian view of the coup as being fundamentally anti-Fijian as opposed to being anti the Qarase Government. Bainimarama's derisive treatment of the GCC touched a raw nerve and inflamed passions, which may have proved difficult to subdue in the short term. A potentially dangerous chasm, with grave implications for future interethnic accommodation, seemed to be opening.

85 And witty and humorous too. Thus: 'Machiavelli Chaudhry', 'Bainimahendra', 'Komanda Bai Karaik', 'Commodore Frankenstein' (Bainimarama), 'Rebel without a clue' (military spokesman Major Leweni Neumi), RFMF: 'Ratu Frank's Military Force', 'Pusi': Helen Clark, 'Big Moma Bernie': Bernadette Rounds-Ganilau, Laufitu 'Zsa Zsa Gabor' Malani, and others too impolite to repeat.

86 This site from which this quote was taken has since been disestablished, but similar views were common on most anticoup websites.

Where to now?

With the lifting of the Public Emergency Regulation on 1 June 2007, the first phase of the crisis came to an end. In that period, there were violations of human rights that brought condemnation from local activists as well as international organisations. There was evident tension in the vital organs of the state, as well as fear and uncertainty in the public sector as people were fired or sent on leave pending investigation. Prosecutions were still pending. The violent deaths of young Fijian men in either military or police custody—Nimilote Varebasaga, Sakiusa Rabaka and Tevita Malasabe—aroused profound public anger and anguish about the ‘stunning sounds of silence from top-down’,⁸⁷ and about the slow pace of investigation into the tragedies. The blame was laid at the door of the interim administration. The state of law and order was critical to its future.

There were other challenges as well. For a start, a number of cases contesting the legality of the military takeover were to come before the courts in the next few months. On the face of it, the verdict looked certain. How could it be otherwise? But whether the military would respect the ruling was another matter. Bainimarama had made it abundantly clear that ‘Qarase will not come back’, while the deposed prime minister was determined to remain in political harness, convinced, with justification, that he had the support of the silent Fijian majority. Whether the verdict of the courts would unravel the initiatives instigated by the interim administration (such as the Fiji Independent Commission Against Corruption) and order the status quo reinstated, or whether the military would simply abrogate the constitution to legalise the revolution it began, remained questions to be watched closely. Equally closely watched were to be the interim administration’s various commitments to donor organisations, such as the EU, particularly about returning Fiji to early parliamentary democracy. The international community was not likely to let up on Fiji anytime soon. Neither was it lulled into complacency by insincere promises.

If returning the country to parliamentary democracy is one major challenge for the interim administration and for the people of Fiji as a whole, another is to revive the economy. The ailing state of Fiji’s sugar industry, requiring regular and massive infusion of funds, is too well known to require mention. A lot would depend on Fiji abiding by the

⁸⁷ Editorial, *Daily Post*, 13 June 2007.

undertaking it had given to the EU. The severe downturn in the tourism industry, expected after the coup, dented Fiji's economic prospects, though it would bounce back with political stability. The Governor of the Reserve Bank of Fiji, Savenaca Narube, identified three other major challenges to the Fijian economy.⁸⁸ The first was the low rate of growth at around 2.4 per cent over the previous five years, whereas double that rate would be needed to absorb the school-leaving population. The second challenge was to raise the investment in the economy to over 25 per cent of the gross domestic product, and to promote more local investment. And the third was to narrow the widening gap between import and export. None of these problems was insurmountable, but the atmosphere of uncertainty and anxiety about the country's future, the deepening unemployment and poverty levels in the country (around 34 per cent in 2002–03 from around 29 per cent in 1991)⁸⁹ would make their resolution difficult. With talks of retaliatory trade and aid bans in the air, wrote the *Fiji Times*:

the nation watches as the economy continues to slump and more families feel the effects of redundancies, reduced working hours, pay cuts and the reduction of financial assistance meant for the poor and the underprivileged.⁹⁰

Fiji subsequently experienced an emotional rollercoaster ride for 12 months. First there were the general elections conducted, by wide consensus, in a free and fair manner. Then there was the euphoria caused by the advent of the multiparty Cabinet. Genuine multiethnic reconciliation seemed within reach. But then came the coup and with it a drastically altered landscape. The interim administration made a strenuous, but ultimately failed, attempt to entrench itself in the public consciousness as an instrument for the good of the country. Some of its leading lights were too tainted by chequered pasts or private ambitions for power and glory to have any chance of winning public affection or esteem. Important institutions of the state were politicised, their impartiality impaired, their effectiveness undermined. A third of the nation lived in poverty. Squatter settlements mushroomed. An escalating war of words between

88 'Economic crisis looms', *Fiji Sun*, 12 May 2007.

89 Wadan Narsey, 'Truth behind our poverty', *Fiji Times*, 10 June 2007. For a more extensive treatment, see Satish Chand, 'Poverty and redistributive politics in post-independence Fiji: 50/50 by 2020', manuscript in my possession, courtesy of the author.

90 Editorial, 'Keeping a promise', *Fiji Times*, 21 June 2007. For a brief survey of postcoup economic trends, see Biman C. Prasad, 'Fiji's economy in the doldrums: Possibilities for a way forward?' presented to the Pacific Cooperation Foundation, Wellington, Seminar, Fiji at the Crossroads – Again? 8 June 2007.

the interim administration's supporters and opponents filled the air (and cyberspace) about whether the coup was the best or the worst thing that could have happened to Fiji: whether Bainimarama was the saviour of the nation or its destroyer; whether, from the ashes of the coup, the phoenix would eventually rise in the form of a truly representative democracy unencumbered by the politics of race and ethnicity; whether, in the end, the coup was worth all the pain and suffering it caused. Time would tell. In the meantime, half of the Fiji population, disaffected, disenchanted and disapproving of the unfolding events, watched in sullen silence.

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