

Appendix 1: Multiparty government in Fiji: a timeline, 1997–2006

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- 25 July 1997 The Constitution (Amendment) Act 1997 ('the Constitution') is passed by Parliament. Section 99 calls for executive power to be shared between the governing political party or coalition and other major parties in Parliament. This is achieved by requiring the Prime Minister to invite all parties holding at least 10% of the total membership of the House of Representatives (8 or more seats, if all 71 seats are occupied) to be represented in the Cabinet. The overall size of Cabinet is left to the Prime Minister, but parties accepting the invitation to be represented must be offered Cabinet seats in proportion to their numbers in the House. The Prime Minister may also invite minor parties that do not fulfil the 10% requirement (such as a coalition partner) to be represented in his or her Cabinet, but if this is done then the representatives of those parties are deemed to be representatives of the Prime Minister's party for the purpose of calculating the number of Cabinet seats that must be offered to parties that fulfil the 10% requirement.
- Section 64 of the Constitution then uses the formula from section 99 to determine the entitlement of parties holding seats in the House of Representatives to nominate Senators. 8 out of the total of 32 Senators are to be appointed on the advice of the Leader of the Opposition from among nominations made by the leaders of parties holding at least 10% of the total membership of the House of Representatives (that is, parties entitled to be offered Cabinet seats under section 99). The Leader of the Opposition must ensure that these 8 Senators comprise such number nominated by each entitled party as is proportionate to the size of their membership in the House.
- The Constitution comes into force.
- 27 July 1998 Meeting in retreat at Korolevu, leaders of the *Sogosoqo ni Vakavulewa ni Taukei* (SVT), the National Federation Party, the Fiji Labour Party (FLP), the General Voters Party, the Fijian Association Party (FAP) and the General Electors Party sign a declaration setting out various 'principles, conventions and practices' that they consider appropriate in the implementation of the new Constitution as it relates to the establishment and functioning of a multiparty Cabinet. This becomes known as the 'Korolevu Declaration'.
- 8–15 May 1999 National elections are held to elect 71 members of the House of Representatives in accordance with the new Constitution. The President is later advised of the results as follows: The FLP wins 37 seats. The FAP wins 10 seats. The SVT wins 8 seats. The Party of National Unity wins 4 seats. The Christian Democratic Unity Party, the United General Party and the Nationalist Vanua Tako Lavo win 2 seats each. The remaining 5 seats are won by independents. The High Court, sitting as the Court of Disputed Returns, later revokes the election of one of the Nationalist Vanua Tako Lavo candidates and declares a FAP candidate to be the winner of that seat.
- 19 May 1999 The President appoints the Leader of the FLP, Mahendra Chaudhry, as Prime Minister. Mr Chaudhry writes to the Leader of the SVT, Sitiveni Rabuka, inviting the SVT to be represented in a multiparty Cabinet in accordance with section 99 of the Constitution.

- 20 May 1999 Mr Rabuka replies to Mr Chaudhry's letter with a list of conditions on which the SVT would be willing to accept the invitation to join a multiparty Cabinet. The conditions include that Mr Rabuka be made Deputy Prime Minister and Minister for Fijian Affairs, that 3 other portfolios be allocated to named SVT members, that 3 of the 9 Senators to be appointed by the Prime Minister be nominated by the SVT, and that all ambassadors, high commissioners, and board members of statutory and state-owned enterprises appointed by the SVT be allowed to complete their terms of office. Mr Chaudhry replies to Mr Rabuka's letter, rejecting these conditions.
- 21 May 1999 The President, acting on Mr Chaudhry's advice, appoints 18 Ministers and 5 Assistant Ministers. None are from the SVT. The President summons Parliament to meet on 14 June 1999.
- 24 May 1999 The President appoints the Deputy Leader of the SVT, Ratu Inoke Kubuabola, as Leader of the Opposition.
- 7–11 June 1999 Correspondence is exchanged between Ratu Inoke and the President regarding the 8 Senators to be appointed on the advice of the Leader of the Opposition under section 64 of the Constitution. There are conflicting interpretations of the formula for calculating the number of Senate seats that must be offered to each political party holding at least 10% of the total membership of the House of Representatives. The President writes to Ratu Inoke and Mr Chaudhry, advising that he intends to ask Cabinet to advise him to refer the question of how many Senate seats must be offered to each party under section 64 to the Supreme Court for an advisory opinion.
- 15 June 1999 Mr Chaudhry replies to the President that Cabinet has agreed to advise him to make a reference to the Supreme Court regarding the interpretation of section 64. The President formally opens the new Parliamentary session at a joint sitting of both Houses.
- 16 June 1999 Ratu Inoke commences legal action in the High Court to contest the opening of Parliament before all disputes concerning the elections have been resolved and all Senators appointed.
- 21 June 1999 The Speaker of the House of Representatives declares the seat of SVT Leader, Sitiveti Rabuka, vacant following his resignation and election as Chairman of the Bose Levu Vakaturaga (Great Council of Chiefs).
- 24 June 1999 A Presidential reference is filed in the Supreme Court concerning the interpretation of section 64.
- 6 July 1999 Ratu Inoke commences legal action in the High Court to contest the exclusion of the SVT from Cabinet.
- 24 August 1999 The President's reference to the Supreme Court is enlarged to include issues raised in Ratu Inoke's legal actions.
- 3 September 1999 The Supreme Court delivers its opinion on the enlarged President's reference (President of the Republic of Fiji Islands v Kubuabola (Tuitvaga P. Lord Cooke, Mason, Brennan and Toohey JJ, Miscellaneous Case No. 1 of 1999)).
- It holds that power sharing is a 'central purpose' of the 1997 Constitution. Sections 64 and 99 of the Constitution modify the traditional Westminster pattern so that political power is 'divided among a number of groups, persons and parties' and 'the share of each is in some way limited'. Under section 64, the Prime Minister is entitled to nominate 9 Senators only. The Prime Minister's party is not entitled to be offered additional Senate seats from among the 8 to be filled on the advice of the Leader of the Opposition. However, parties in coalition with the Prime Minister's party are not to be regarded as members of the Prime Minister's party for the purposes of sections 64 and 99. Accordingly, if such parties hold at least 10% of the total membership of the House of Representatives, they will have a separate

- entitlement to be offered seats in the Senate and in Cabinet. The time for calculating the number of Senators that each party is entitled to nominate is the date when the Leader of the Opposition advises the President of the nominations. This has not yet occurred at the date of the Court's judgment. There is one vacancy in the House of Representatives, leaving a total membership of 70. Besides the FLP, only the FAP (with 11 seats) and the SVT (with 7) hold at least 10% of this total. As a result, of the 8 Senators to be appointed on the advice of the Leader of the Opposition, the Court rules that 5 must be offered to the FAP and 3 to the SVT. Since the President must summon Parliament to meet no later than 30 days after the last day of polling in national elections (section 68 of the Constitution), this cannot be dependent on the receipt of advice from the Leader of the Opposition on Senate appointments. Accordingly, the Parliamentary session may begin before all Senate seats are filled.
- In relation to section 99, the Court holds that the Prime Minister may only withdraw his or her invitation to other parties to join the Cabinet after a reasonable time has passed for accepting or rejecting it. The Court rules that Siriveni Rabuka's response of 20 May 1999 to Mahendra Chaudhry's invitation to the SVT included conditions that Mr Chaudhry was not bound to accept. Mr Rabuka's conditional acceptance of the invitation therefore amounted to a rejection.
- 27 August – Following the May 2000 coup and the ruling of the Court of Appeal on 1 March 2001 that the 1997 Constitution remains in force, national elections are held to elect a new House of Representatives.
- 1 September 2001 The results are as follows: The Soqosoqo Duavata ni Lewenivanua (SDL) wins 32 seats. The FLP wins 27 seats. The Conservative Alliance/Matanitu Vanua (CAMV) wins 6 seats. The New Labour Unity Party (NLUP) wins 2 seats. The National Federation Party (NFP) and the United General Party (UGP) win 1 seat each and the remaining 2 seats are won by independents. The High Court, sitting as the Court of Disputed Returns, later revokes the election of the NFP candidate and declares a FLP candidate to be the winner of that seat.
- 10 September 2001 The President appoints the Leader of the SDL, Laisenia Qarase, as Prime Minister. Mr Qarase writes to the Leader of the FLP, Mahendra Chaudhry, inviting the FLP to join in a multiparty Cabinet in accordance with section 99 of the Constitution. The letter states that the policies of Mr Qarase's Cabinet would 'be based fundamentally on the policy manifesto of the [SDL]' and that 'it is simply inconceivable that we should allow a situation where we become the minority group in [Cabinet]'. Mr Chaudhry replies that the FLP accepts the invitation but its participation 'in Cabinet and in government' would be in accordance with the Korolevu Declaration, and that 'Cabinet decision making... should be on a consensus seeking basis' and 'consensus seeking mechanisms in Cabinet should include the formulation of a broadly acceptable policy framework'.
- 12 September 2001 Mr Qarase replies to Mr Chaudhry's letter, stating that the conditions on which the FLP purported to accept his invitation to join Cabinet are unacceptable.
- 18 September 2001 The President, acting on Mr Qarase's advice, appoints Ministers from the SDL, the CAMV and the NLUP. An independent and a Senator are also appointed to be Ministers. The FLP is excluded.
- 25 September 2001 Mr Chaudhry commences legal action in the High Court claiming that the FLP is entitled to be represented in Mr Qarase's Cabinet.

- 2 October 2001 The President formally opens the new Parliamentary session at a joint sitting of both Houses.
- 19 October 2001 Acting on the advice of the Leader of the Opposition, Prem Singh, the President appoints 4 FLP nominees and 1 each from the CAMV, NFP, NLUP and UGP as Senators. This is done despite a difference of opinion between Mr Singh and Mr Chaudhry as to the FLP's entitlement to be offered seats in the Senate. Mr Chaudhry has earlier declined the President's offer to appoint him as Leader of the Opposition.
- 29 November 2001 The High Court poses a series of legal questions arising from Mr Chaudhry's claim that the FLP is entitled to be represented in Cabinet, in the form of a Case Stated for decision by the Court of Appeal.
- 15 February 2002 The Court of Appeal decides the Case Stated (*Chaudhry v Qarase* (Eichelbaum, Ward, Handley, Smellie and Keith JJA, Miscellaneous No. 1/2001)).
- It holds that section 99 of the Constitution does not enable the Prime Minister to impose any conditions on the offer of Cabinet seats to parties holding at least 10% of the total membership of the House of Representatives. The invitation to join Cabinet must be unconditional. The Court rules that Mr Qarase's letter to Mr Chaudhry of 10 September 2001 did contain an invitation in accordance with section 99, and the inclusion of information as to how he intended the affairs of Cabinet to be conducted did not amount to a condition. Mr Chaudhry's response of the same day accepted this invitation, and the inclusion of information concerning how the FLP would participate likewise did not amount to a condition. Accordingly, while Mr Qarase retains a discretion as to the overall size of Cabinet, he is required to advise the President to appoint a Cabinet in which the FLP is represented in proportion to its numbers in the House of Representatives. In selecting members of the FLP to become Ministers, Mr Qarase must consult Mr Chaudhry. The Court concludes that, in failing to appoint any FLP Ministers, Mr Qarase has breached, and is presently in breach, of a constitutional duty. The Supreme Court decides a Presidential reference dated 6 February 2002, concerning the appointment of Senators under section 64 of the Constitution (In the matter of section 123 of the Constitution Amendment Act 1997 (Tuivaga P, Tikaram, Eichelbaum, Amet and Sapolu JJ, Miscellaneous Case No. 1 of 2002S)).
- 15 March 2002 The issue in dispute is the distribution of the 8 Senate appointments made on the advice of the Leader of the Opposition. The Court holds that only parties holding at least 10% of the total membership of the House of Representatives, other than the Prime Minister's party, are entitled to nominate Senators to fill these 8 seats. Nominations are made by the leaders of entitled parties, but the nominees need not be members of those parties. It is clear from the Supreme Court's opinion on the 1999 Kubaobola reference that each entitled party must be offered that number of Senate seats from among the 8 which bears the same proportion to the total as the number of seats in the House of Representatives held by that party bears to the total number of seats in the House held by all entitled parties. This may be expressed mathematically as:
- SEP =8
HREP HRAEP
- where 'SEP' means Senate seats that must be offered to each entitled party, 'HREP' means seats in the House of Representatives held by

that entitled party and 'HRAEP' means the total number of seats in the House held by all entitled parties. Following the 2001 national elections, only one party, namely the FLP, is entitled to be offered Senate seats from among the 8 to be appointed on the advice of the Leader of the Opposition. Upholding its earlier opinion, the Court rules that, where there is only one entitled party, that party must be offered all 8 Senate seats. Accordingly, the FLP is entitled to nominate 8 Senators. In addition, the Court suggests that the President should decline to act on advice which he or she considers is not in accordance with the Constitution. The President may obtain independent legal advice on such matters.

24 April 2002

The High Court makes a declaration giving effect to the Court of Appeal's decision on 15 February 2002 in the Case Stated.

24 May 2002

The Court of Appeal dismisses an appeal by Mr Qarase against the High Court's declaration, but grants leave for an appeal to the Supreme Court.

18 July 2003

The Supreme Court decides Mr Qarase's appeal (*Qarase v Chaudhry (Fatiaki P, Spiegelman, Gault, Mason and French JJ, Civil Appeal No. GBV 0004 of 2002S)*).

It holds that section 99 requires the Prime Minister to establish a multiparty Cabinet. This represents a modification of the traditional Westminster model, and may require some corresponding modification of Cabinet conventions. However, multiparty Cabinet can be achieved consistently with other requirements of the Constitution, including collective responsibility of the Cabinet to Parliament (section 102 of the Constitution) and the doctrine of Cabinet solidarity, which collective responsibility implies. 'It is not to be expected, at this early stage of the implementation of the 1997 Constitution, that there will be settled conventions to cover all contingencies or difficulties'. Likewise, a multiparty Cabinet is not to be rejected as unworkable only because it may be more difficult to manage than a Cabinet whose members belong to the same party or a coalition that has worked out some consensus before its formation. There will no doubt need to be negotiations as to which members of parties other than the Prime Minister's own will be appointed as Ministers, and which portfolios will be allocated to them. While the Prime Minister retains the authority to decide these questions, he or she must conduct the negotiations in good faith. It may even be necessary for such negotiations to take place during the formation of coalitions, before the Prime Minister is appointed. The Court also holds that 'the obligation to establish a multiparty Cabinet carries with it an obligation to maintain a multiparty Cabinet. This latter obligation may arise in connection with ministerial resignations, by-elections or changes in the size of the Cabinet.' Accordingly, the appeal is dismissed and Mr Qarase is ordered to pay Mr Chaudhry's costs.

9 July 2004

After unsuccessful negotiations between Mr Qarase and Mr Chaudhry concerning the number of Cabinet seats that should be offered to the FLP, the Supreme Court decides a Presidential reference on the question (In the matter of section 123 of the Constitution Amendment Act 1997 (*Fatiaki P, Gault, Mason, French and Weinberg JJ, Miscellaneous Case No. 1 of 2003*)).

Upholding its opinions on the 1999 and 2002 references, the Court holds that parties entitled to be offered Cabinet seats under section 99 of the Constitution are to be identified by dividing the number of seats in the House of Representatives which each party holds by the total membership of the House. If the result is equal to or greater than 10% then the party in question is entitled to be offered Cabinet seats.

While the Prime Minister is free to choose the overall size of his or her Cabinet, entitled parties must be offered proportionate representation in it. The Court holds that each entitled party must be offered a number of Cabinet seats which bears the same proportion to the number to be held by the Prime Minister's party as the number of seats in the House of Representatives held by the entitled party bears to the number of seats in the House held by the Prime Minister's party. This may be expressed mathematically as:

$$\begin{array}{l} \text{CEP} \\ \text{HREP} \end{array} = \frac{\text{CPM}}{\text{HRPM}}$$

where 'CEP' means Cabinet seats that must be offered to each entitled party, 'HREP' means seats in the House of Representatives held by that entitled party, 'CPM' means Cabinet seats to be held by the Prime Minister's party and 'HRPM' means seats in the House of Representatives held by the Prime Minister's party. So, for example, in the present case, the SDL holds 32 seats in the House of Representatives and the FLP holds 28. The number of Cabinet seats to be offered to the FLP must therefore be equal to $28/32$ or seven-eighths of the number to be held by the SDL. If the Prime Minister chooses to invite a coalition partner that does not hold at least 10% of the total membership of the House of Representatives to join the Cabinet, then any seats to be held by that non-entitled party will be counted as being held by the Prime Minister's party. The proportion of Cabinet seats to which all parties are entitled must be re-calculated from time to time as the composition of the House of Representatives changes.

However, section 99 is silent on the appointment as Cabinet Ministers of members of the House of Representatives who are independent of any political party or of Senators who are not members of a party represented in the House. The Court holds (with Gault J dissenting on this point) that the Prime Minister may appoint such independents or Senators to the Cabinet at his or her discretion, and any seats filled by them will not be counted in calculating the number of seats that must be offered to entitled parties. Accordingly, Cabinet seats to be held by such independents or Senators will be in addition to the entitlement of the Prime Minister's party under section 99.

After further negotiations with Mr Qarase concerning which FLP members would be appointed as Ministers and which portfolios would be allocated to them, Mr Chaudhry announces in Parliament that the FLP has decided to reject Mr Qarase's offer to join his Cabinet and that it will instead assume the Opposition benches.

National elections are held to elect a new House of Representatives.

The results are as follows: The SDL wins 36 seats. The FLP wins 31 seats. The United Peoples Party (UPP – formerly the United General Party) wins 2 seats. The remaining 2 seats are won by independents.

The President appoints the Leader of the SDL, Laisenia Qarase, as Prime Minister. Mr Qarase writes to the Leader of the FLP, Mahendra Chaudhry, inviting the FLP to join in a multiparty Cabinet in accordance with section 99 of the Constitution. According to a press release the following day, the letter identifies 7 portfolios to be allocated to the FLP, should it accept the invitation, and asks Mr Chaudhry to nominate 12 FLP members as candidates from among whom Mr Qarase may choose the 7 Ministers.

Mr Qarase reveals in a press conference that he is contemplating a multiparty Cabinet consisting of 10 members of his own SDL, 7

24 November 2004

6–13 May 2006

18 May 2006

19 May 2006

members of the FLP, 2 independents and a small number of Senators who are not members of any political party represented in the House of Representatives. Mr Chaudhry meets with Mr Qarase, and reportedly accepts 'in principle' his offer to the FLP to join the Cabinet, while at the same time seeking certain clarifications. Several days of negotiations follow, during which Mr Qarase increases the number of Cabinet seats he is willing to allocate to the FLP from 7 to 9, Mr Chaudhry announces that the FLP will join the Cabinet, but he personally will remain outside it, and the FLP provides Mr Qarase with a list of its nominees.

The President, acting on Mr Qarase's advice, appoints as Ministers: 10 SDL members (besides Mr Qarase himself); 1 independent; and 3 of Mr Qarase's nominees to the Senate. The FLP nominees to the Cabinet do not attend the swearing-in ceremony. This follows an emergency meeting of the FLP caucus the night before at which the members are reportedly unable to accept last-minute changes made by Mr Qarase to the Cabinet portfolios allocated to their nominees. After the swearing-in ceremony, Mr Chaudhry tells the media that he doubts the legality of appointing as Ministers nominees to the Senate who have not yet been appointed as Senators. He also alleges that the 3 Senate nominees are not independent, but aligned with the SDL. Later the same day, the FLP announces that it has accepted the changes made by Mr Qarase to the portfolios allocated to its nominees.

The President, acting on Mr Qarase's advice, appoints 9 FLP members as Ministers. For the first time in Fiji's history, a multiparty Cabinet is formed that includes all the major political parties of the day. The total number of Cabinet Ministers is 24.

Looming questions include:

- whether Mr Chaudhry is eligible for appointment as Leader of the Opposition now that members of his party have joined the Cabinet;
- how the FLP will apply its party rules and discipline to the 9 members who, as members of Mr Qarase's Cabinet, are also bound by the doctrine of Cabinet solidarity; and
- what 'ground rules' can be agreed between the SDL and the FLP to guide the functioning of the Cabinet.

In the absence of ground rules agreed between the two parties represented in Cabinet, 4 of the 9 FLP Ministers vote against the SDL's proposed national budget for 2007 in the House of Representatives. The other 5 FLP Ministers are absent when the vote is called. Due to the SDL's majority, the budget is passed anyway. Previously, Mr Qarase has demanded unanimous support for the budget from all of his Ministers, while Mr Chaudhry has demanded that FLP Ministers vote along party lines, and therefore oppose the budget. After the vote, Mr Qarase threatens to dismiss the 4 Ministers who broke Cabinet solidarity, but he later offers to refrain from doing so if Mr Chaudhry agrees not to discipline the 5 FLP Ministers who absented themselves.

The FLP expels 2 of its representatives in the Cabinet (along with 3 other party members) after a disciplinary hearing by its national council. The expulsions are the result of a dispute between the FLP's management board and Mr Chaudhry over the selection of nominees to the Senate.

The Commander of the Republic of Fiji Military Forces, Commodore Voreqe (Frank) Bainimarama, leads a military takeover, announcing that he has assumed the executive authority of the State and removed Mr Qarase and all members of the multiparty Cabinet from office.

23 May 2006

24 May 2006

22 November 2006

28 November 2006

5 December 2006