

Fiji's illegal government reinstalled

By Tim Joy
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Fijian President Ratu Josefa Iloilo, himself newly re-appointed by the unelected Great Council of Chiefs, has reinstalled the military-backed government of Prime Minister Laisenia Qarase, which was declared illegal by Fiji's Court of Appeal on March 1.

Iloilo has sworn in Qarase's eight-month-old cabinet of ethnic Fijian businessmen, ex-military commanders, landed chiefs and senior government bureaucrats, ostensibly as a caretaker government to continue ruling the country until parliamentary elections are held later this year. No date has been set for elections, however.

Through a series of political manoeuvres last week, the Fijian authorities formally accepted the Court of Appeal verdict and the continued operation of the 1997 Constitution—overturned by the military last year—but in practice rejected the court ruling.

First, the Great Council of Chiefs (GCC), after adjourning badly split and in disarray the previous week, unanimously accepted the 1997 Constitution as the supreme law. Then, purporting to act under that Constitution, the 52 land-owning chiefs re-appointed Iloilo as president and Ratu Jope Seniloli as vice president.

Iloilo and Seniloli are both direct beneficiaries of last year's racialist coup attempt led by businessman George Speight. The chiefs initially installed them last year after Speight's gunmen and elite military personnel seized parliament and captured the elected Peoples Coalition government of prime minister Mahendra Chaudhry. Seniloli, who has been implicated as a close supporter of Speight, is still under police investigation over his role in the hostage-taking.

Having re-affirmed Iloilo's presidency, the GCC called on him to use his "reserve powers" under the Constitution to dissolve the disbanded parliament and appoint Qarase's government as a caretaker administration to hold new elections. The chiefs also insisted that the caretaker government continue to implement its "Blueprint for Fijians and Rotumans"—a scheme of concessions and subsidies favouring ethnic Fijian businesses over those run by Indo-Fijians—and resume a constitutional review designed to further entrench ethnic Fijian privileges.

In order to clothe his actions in legality, Iloilo accepted the resignation of Qarase and his cabinet last Wednesday and on the same day appointed Ratu Tevita Momoedonu as acting prime minister. Momoedonu, Iloilo's nephew and a Labour Party minister in Chaudhry's ousted government, then formally advised Iloilo, under the Constitution, to dissolve parliament and resigned the next day to make way for Qarase's government to return as a caretaker administration.

This manoeuvre was a repeat of events after Speight's May 19 seizure of parliament. Momoedonu, who was not in parliament that day and so not taken hostage, was appointed prime minister on May 27 by then president Ratu Sir Kamisese Mara. In doing so, Mara sacked the Chaudhry government and accepted Momoedonu's advice to suspend parliament for six months. Momoedonu then resigned

immediately in order to hand executive power to Mara.

Mara, backed by the chiefs, had acceded to most of Speight's demands for stripping Indo-Fijians, who make up almost half the country's population, of basic political rights but he attempted to do so within the framework of the 1997 Constitution. When Speight and his backers demanded Mara's removal, the military, led by Commodore Frank Bainimarama ousted Mara, declared emergency rule, abrogated the constitution and installed Qarase's government, which included known Speight supporters.

After more than a month of negotiations with Speight's group, the military signed an accord with the hostage-takers, which included immunity from prosecution and the swearing in of a revamped Qarase cabinet, titled the Interim Government, which pledged to implement Speight's program, including the drafting of a new constitution and other measures to politically and economically disadvantage Indo-Fijians.

In an address to the nation last Thursday night, announcing that he had invited Qarase to form a new government, Iloilo rejected the Court of Appeal finding that Qarase's regime did not have popular support. Iloilo declared that by showing overwhelming confidence in Qarase's administration, the GCC had spoken on behalf of the entire Fijian population.

The regime has, in fact, only maintained its grip on power with the backing of the armed forces and police force and by overriding democratic rights, including a ban on all political meetings. Indo-Fijians, particularly sugar farmers and small business operators, have been subjected to racist threats and intimidation, which will no doubt continue in the leadup to elections.

Iloilo insisted that the chiefs were performing a constitutional role entrusted to them by British Queen Victoria 127 years ago when various high chiefs ceded the Fijian islands to Britain in return for the recognition of their rights, interests and authority over the Fijian people.

Moreover, he solidarised himself openly with Speight's ouster of Chaudhry's government. "I remind ourselves, too, that we cannot pretend that the attempted coup of May 19 last year never happened. It happened because Fijians came out in mass public demonstrations against a leadership and a government, which they felt were insensitive to their interests."

Iloilo stated that he had refused to appoint a national unity government, a move proposed by deposed Labour Party deputy prime minister Tupeni Baba and supported by New Zealand, because of divisions within the old parliament. "There is no cohesion among the parties and no consensus. They are weakened and torn by bids for power, leadership struggles, infighting and opposing positions."

Baba, who had sought to appease the Fijian elite and racists by breaking with Chaudhry, Fiji's first Indo-Fijian prime minister, reacted by refusing to vacate his government office and threatening to

file a number of legal challenges. Claiming to have the backing of the Peoples Coalition parliamentarians, Baba urged Iloilo to accept a petition by 40 MPs demanding the recall of parliament.

Chaudhry also warned of possible legal action, describing Iloilo's actions as unconstitutional and illegal. Chaudhry said he had not vacated the prime ministership, Momoedonu had not been nominated by the Peoples Coalition and Momoedonu's position had not been tested on the floor of parliament. Furthermore, the Constitution stipulated that the prime minister must be a member of the House of Representatives, disqualifying Qarase, who is merely a Senator, nominated by the GCC.

By reappointing Qarase, the Fijian authorities have, in part at least, thumbed their noses at the capitalist powers—Australia, New Zealand, the United States and the European Union—which have insisted the regime abide by the court decision. Interim attorney general Alipate Qetaki bluntly stated that the court ruling was unworkable, making extra-legal moves necessary. “[T]o enable it to be fully implemented, you need to take certain decisions outside of the constitution,” he said.

Fijian and Indo-Fijian business leaders have made similar remarks. The Textile Clothing and Footwear Council and the Fiji Chamber of Commerce and Industry backed Qarase's appointment, with Chamber of Commerce chairman Natwarlal Vahr calling on the public to accept it. “This is not a time of splitting hairs on the legality of things,” he said. “The economy of Fiji depends on the stability and vision to establish a firm foundation upon which we can build a prosperous Fiji.”

This theme was echoed in the Fijian media. The Rupert Murdoch-owned *Fiji Times* commented: “There may be some reservations about the strict legality of this course of action. No doubt whole rooms of lawyers could argue the case back and forth for months. But the country doesn't have months... To recall the House of Representatives now would be to risk wholesale chaos.”

The Fijian Political Parties Forum, representing the five main ethnic Fijian parties, also backed the caretaker government. At a joint press conference, representatives of the Soqosoqo ni Vakavulewa ni Taukei (SVT), Christian Democratic Association, Fijian Association Party, New Nationalist Party and the Nationalist Vanua Tako Lavo party declared their support for Iloilo's actions.

By side-stepping the legal ruling, while claiming to uphold it, the Fijian elite is, in effect, continuing its eight-month-old attempt to straddle between entrenching the interests of the ethnic Fijian landowners and businessmen and meeting the demands of the Western powers to fully open the economy to investment.

The regional powers initially reacted cautiously. Australian Foreign Minister Alexander Downer welcomed the GCC's acceptance of the court decision and described Iloilo's moves as being “in the right direction”. Nevertheless, he questioned the legality of the measures and stated that sanctions would remain until there was a clear return to the “rule of law”.

“There are questions as to whether President Iloilo's action is strictly in accordance with the 1997 Constitution which the Fiji Court of Appeal recently reaffirmed. That is a matter for the people of Fiji to resolve, including through the courts if necessary,” he said

The Australian Broadcasting Corporation reported that the United States had expressed disappointment with the reinstatement of Qarase's government. The report cited a US spokesman stating that ignoring the court decision appeared to be illegal and that Chaudhry's sacking could be unconstitutional.

Throughout the Fijian crisis, the Western powers have demanded a

regime that can restore law and order. While paying lip service to democracy, they have made it plain that they do not support Chaudhry's return. Downer's comments indicate that, despite reservations, Iloilo and Qarase may be accepted if they can deliver stability.

Fresh legal complications may arise, however. Iloilo's order that the Constitutional Review Commission resume work was halted when a High Court injunction was extended on Friday. Justice Anthony Gates, who ruled last November that the interim regime was illegal, is due to hand down a decision in a case brought by the Labour Party and other groups arguing that the review breaches the Constitution.

In addition, parts of the government's program cannot be carried out legally without recalling parliament. Qarase has admitted that the “Blueprint for Fijians and Rotumans” requires an act of parliament. The same problem applies to the regime's plans to further benefit the chiefs by transferring sections of Crown land to the Native Land Trust Board, which is effectively controlled by the GCC.

Expressing the concerns of Australian and international investors, an article in *the Australian Financial Review* cast doubt on the legality of all decisions made by the military and the Qarase government since last May, as well as related business transactions favouring ethnic Fijian enterprises. It quoted a Suva law firm warning that, without clear validating legislation passed by parliament, “the courts may be required to decide on their validity”.

Qarase has also made public his opposition to the prosecution of Speight, whom the military last year arrested and charged with treason following demands by the Western powers. At last week's meeting, the GCC heard submissions that all those charged with treason be granted an immediate pardon. The prosecution case against Speight's group has been on the verge of collapse due to mismanagement and alleged sabotage by police and government officials.

Whether the caretaker government can remain in power will substantially depend on the response of the major powers, foreign investors and the state of the economy. Because of sanctions, the withdrawal of investment and the flight of Indo-Fijian capital and professional people, Fiji's output fell by 8 percent last year and thousands of workers—ethnic Fijian and Indo-Fijian alike—have been retrenched, particularly in tourism and textiles.

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