

## FIJI

**Until the 19 May 2000 uprising, the country was governed by a democratically elected government and the judiciary was independent. Following the uprising, on 29 May 2000 the Fiji military attempted to abolish the 1997 Constitution and began ruling by decree and through a hand-picked "interim civilian government". Fiji judges were involved in drafting military decrees immediately after the military take-over, including a decree to fundamentally alter Fiji's judicial structure. The Court of Appeal in its landmark decision on 1 March 2001 ruled that the 1997 Constitution guaranteeing equality between ethnic Fijians and Fijians of Indian descent was still in force and that the pre-coup government should be re-called.**

Fiji chiefs ceded sovereignty over these South Pacific Islands to Queen Victoria in 1874 to end territorial conquests among rival kingdoms. In 1879, the British administration began bringing Indian labourers to work on the sugar plantations. At independence in 1970, the indigenous Fijian and Indo-Fijian populations were roughly equal in population. Following 17 years of rule by the indigenous Fijian Alliance Party, the 1987 elections brought the first Indo-Fijian-led government to power. Tensions increased between the indigenous Fijians, largely heading the government and the military sector, and the Indo-Fijians, who were perceived to be dominating the economic, educational and health sectors. Backed by hard-line indigenous Fijians alarmed at the emerging political influence of the economically successful Indo-Fijians, Lieutenant Colonel Sitiveni Rabuka staged the first military coup in the Pacific area in May 1987. Rabuka declared Fiji a republic and withdrew the country from the Commonwealth. In September 1987, he mounted a second coup and repealed the Constitution. In 1990, Rabuka imposed a constitution which created a legislature composed entirely of separate indigenous Fijian and Indo-Fijian electoral constituencies, and required the Prime Minister to be an indigenous Fijian. Moreover, the Constitution guaranteed indigenous Fijians a perpetual parliamentary majority by reserving them 37 of the 70 seats in the House of Representatives.

In July 1997, the parliament unanimously passed a constitutional amendment ending the guaranteed indigenous Fijians parliamentary majority and permitting an Indo-Fijian Prime Minister. On 19 May 1999, the first elections under the new constitution resulted in Mahendra Chaudry, a Fijian of Indian descent, becoming Prime Minister.

On 19 May 2000, the first anniversary of the election of Chaudry as Fiji's first non-indigenous Prime Minister, armed indigenous Fijian supremacists led by businessman George Speight took the Prime Minister and the entire cabinet hostage. Following the coup, unrest took hold in many parts of the country, and hundreds of Indo-Fijian families suffered ethnically motivated attacks from coup supporters. Ten days later, the army intervened and President Ratu Mara was ousted in a non-violent coup to allow the declaration of Martial law. Military Commander Frank Bainimarama appointed himself Head of State, attempted to abrogate the 1997 Constitution and began to rule by decree. On 4 July 2000, governmental power was transferred by the military to an interim administration after negotiations with the indigenous Fijian Great Council of Chiefs (a traditional indigenous council).

Under the Muanikau Accord (13 July 2000), the last group of hostages including Prime Minister Chaudry was released after 56 days in captivity. The Muanikau Accord provided for amnesty for

Speight and his group, and the commitment to redraft the Constitution in favour of the indigenous population, in return for releasing the hostages. Despite the immunity provision, Speight and advisors were arrested and charged with treason on 26 July 2000, as certain provisions of the Accord had not been fulfilled.

A Constitutional Review Commission (CRC) was also established to begin the process of redrafting the Constitution, based on the "paramouncy" of indigenous Fijians. However, the CRC suspended its work in December 2000 due to a November High Court ruling that the CRC had no legal standing, as the 1997 Constitution still remained in force. The interim administration appealed the order and requested a stay. The Court of Appeal denied the request, heard the appeal, and ruled on 1 March 2001 that the 1997 Constitution was still in force and that the pre-Speight coup parliament had to be recalled.

Following this decision of the Court of Appeal, the House of Representatives was dissolved by President Iloilo on 14 March 2001. On 15 March 2001, Laisenia Qarase, the Prime Minister of the Interim Civilian Government resigned and the new President, under Section 109 of the 1997 Constitution, dismissed Chaudhry and re-appointed Qarase as the caretaker Prime Minister in order to open the way for new elections.

On May 2001, the first anniversary of the May 2000 coup, the caretaker Prime Minister Qarase stated that he would like to find "a compromise between democracy and traditional village government" and that "only indigenous Fijians should be prime minister at this stage of Fiji's history".

Elections took place between 27 August and 1 September 2001. The interim government permitted foreign observers from the United Nations Commonwealth Secretariat and the European Union to monitor the national elections. Qarase's Fijian People's Party (SDL) won 31 of 71 parliamentary seats, while Chaudhry's Labour Party won 27 seats. The Conservative Alliance, which counts jailed coup plotter George Speight as a parliamentary member, gained six seats. On 10 September 2001, President Iloilo swore in Qarase as the new Prime Minister. He is required to achieve a coalition deal with the other parties, as the SDL failed to secure an outright majority. Under Article 99, para.5 of the 1997 Fijian Constitution, the Prime Minister, in establishing the cabinet, was obliged to invite the participation of the main opposition party gathering more than ten per cent of the votes, whose members are also entitled to ministerial posts. Qarase invited Chaudhry to join the new government, but at the same time appealed to the Indian-Fijian leader not to accept any posts, asserting that a mixed government would not be "workable". Chaudhry firmly declared his decision to join the Government rather than lead the Opposition. However, Qarase disregarded the requirement of the Constitution that he offer a proportional number of seats in his cabinet to the Labour Party. Chaudhry is expected to file a petition to the High Court over the cabinet exclusion, alleging it is illegal.

Fiji's suspension from the Commonwealth remains in force and the return of Fiji to the Commonwealth will depend on compliance with the outcome of the elections.

## **BACKGROUND**

### *Type and structure of government*

The 1997 Constitution provides for the separation of powers (Chapter 6, 7 and 9). Legislative power is vested in the bicameral parliament consisting of an elected House of Representatives (Vale) and a nominated Senate (Seniti). The 1997 amendment giving equal rights for the first time to indigenous Fijians and Indian Fijians - though discriminatory provisions remain - created a 71-seat Parliament House with 25 seats open to all races, 23 for indigenous Fijians, 19 for Indo-Fijians, three for "general electors" (mainly ethnic Chinese, those of European descent and other Pacific islanders) and one for Rotuma island. The amendments also required the largest party in Parliament to invite parties whose membership in the House of Representatives comprises at least 10 per cent of the total membership to be represented in cabinet in proportion to their total numbers in the House, thus creating a multi-racial government where political parties are race-based. The Senate under the 1997 Constitution is reduced from 34 to 32 members, of whom 14 are appointed by the President on the advice of the Great Council of Chiefs, nine are appointed by the President on the advice of the Opposition, and one is appointed by the President on the advice of the Council of Rotuma. According to Section 47 of the 1997 Constitution, all Bills originate in the House of Representatives and are then sent to the Senate. The Senate's legislative powers are equal to those of the House of Representatives except that it can not introduce or amend bills that authorise expenditure for the ordinary annual services of the government or that impose taxation.

The executive authority, under Section 85, is vested in the President who is the Head of State and symbolises its unity. The President is appointed by the Great Council of Chiefs after consultation by the Council with the Prime Minister. The President acts only on the advice of the Cabinet or a Minister when exercising executive authority. However, the President acts in his/her own judgement, when appointing as Prime Minister the member of the House of Representatives who can form a government that has the confidence of the House.

Compared to the 1990 Constitution, the 1997 Constitution Amendment is simpler in structure and more coherent. It is the first Constitution of Fiji to establish a set of non-discriminatory principles to guide the government. Although the principle of merit and equal opportunity is enshrined in the Constitution, there is a pro-indigenous Fijians clause concerning the composition of state services at all levels "to reflect as closely as possible the ethnic composition of the population, taking account when appropriate of occupational preferences". It is also stated that "the paramouncy of Fijian interests as a protective principle continues to apply, so as to ensure that the interests of the Fijian community are not subordinated to the interests of other communities." The 1997 Constitution still provides for the application of customary laws in dispute resolution and in cases concerning traditional land ownership. The Great Council of Chiefs (*Bose Levu Vakaturaga*) created by the Fijian Affairs Act, has been granted important powers by the 1997 Fiji Constitution, as it selects, under Section 64, 14 of the 32 members of the Senate, and under Section 90, the President.

The 1997 Constitution, under Section 42, established a Human Rights Commission to educate the public about the content of the Bill of Rights and to make recommendations to the Government about matters affecting compliance with human rights.

### *The Prasad Case*

On 4 July 2000, Chandrika Prasad, an Indo-Fijian farmer whose house had been looted and his crops destroyed following the unrest in the wake of the Speight coup, sought a court order declaring that the attempt to abrogate the Constitution was illegal. The case was heard before the Lautoka High Court by Justice Anthony Gates, on 24 August 2000. On 15 November 2000, the Court held that the Constitution was still in force and that the Parliament, as constituted prior to the

events of May 2000 still held office. The interim civilian government appealed against the judgement of Justice Gates. The Court of Appeal denied the request of stay and the full Court of Appeal heard the case in February 2001. In a judgment delivered on 1 March 2001, the Court of Appeal first questioned the Court's jurisdiction to rule on whether the Constitution has been abrogated and, giving a positive answer, declared that the constitutional doctrine of necessity could not in this case justify the abrogation of the Constitution nor validate the interim civilian government.

The Court then examined whether the interim government was exercising control over the state with the acquiescence of the people. The Court concluded that the interim civilian government had not proved that it had the acquiescence of the Fiji people. The 1997 Constitution remained the supreme law of the Fiji Islands, the Parliament had not been dissolved and therefore its functions had been suspended on 27 May 2000 for six months. The office of the President had become vacant when Ratu Mara resigned on 15 December 2000.

The International Bar Association (IBA) observed the trial (19-22 February 2000) and reported the proceedings to be open, fair and independent.

The interim civilian government stated to the Court of Appeal before its decision that it "would accept the decision of the Court on whether the 1997 Constitution is still in existence". The lawful course, following the Court of Appeal decision should be that the Fiji parliament elected in May 1999 be recalled as soon as possible with the task of forming a government and choosing a Prime Minister. Otherwise, it should be dissolved and elections should be held. In the event, the pre-coup Parliament was not recalled, but was dissolved and Mr. Qarase appointed a "caretaker" Prime Minister. Many challenge the constitutionality of the method used by President Iloilo, as he dissolved the Parliament without providing an opportunity to form a government and choose a Prime Minister. A challenge to the decision by the Citizens Constitutional Forum was largely rejected by the High Court (see below).

## **HUMAN RIGHTS ISSUES**

Fiji is a state party to the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women, and the UN Convention on the Rights of the Child.

In May 2001, the Fiji Human Rights Commission stated that there had been a dramatic increase in the number of complaints lodged with it since the coup of the preceding year.

### *Political, extrajudicial killings and police abuse: impunity*

Following the May 2000 coup, military Commander Bainimarama declared martial law, invoking the 1998 Emergency Powers Act, and attempted to abrogate the 1997 constitution. Since then, military and prison authorities have been involved in violations of fundamental human rights guaranteed in the military decrees.

On 2 November 2000, members of the Counter Revolutionary Warfare Unit (CRW) mutinied at the Queen Elizabeth Barracks in Suva. According to Amnesty International, some 30 people were injured and when regular army forces regained control of the barracks 8 CRW soldiers were beaten to death. Injured CRW soldiers have been denied family visits and international observers have not been granted access to the detained rebel soldiers. Representatives of the ICRC began visiting

detained CRW members only on 11 April 2001, and according to local media reports, they raised the issue of detention conditions.

On 14 November 2000, the Chair of the Fiji Human Rights Commission announced the Commission's intention to inquire about the CRW soldiers' death during the mutiny at Queen Elizabeth barracks. However, no judicial action has so far been taken against the soldiers involved in the incident. In April 2001, the police criminal investigation Department announced that all investigations related to the May 2000 coup would be completed before the August elections. Moreover, police abuse against detainees and suspects is common and it is believed that excessive force was used in the arrest of the Speight rebel group.

By April 2001, only a few coup supporters remained in prison awaiting trial, while charges against others were dismissed when prosecutors failed to appear in court or to produce sufficient evidence. The government has been unwilling to prosecute many of the persons responsible for coup-related human rights abuses.

### *The Speight trial*

On 12 June 2001, the treason trial of Fiji coup leader George Speight was delayed for a third time after his new US-based "lawyer", Navin Naidu was refused admission to the Fiji Bar on the grounds that he was "patently unqualified". Speight announced on 5 June 2001 at the preliminary inquiry proceedings at the Suva Magistrates Court that he would be represented by Mr. Naidu, after his Fijian lawyer, Rabo Matebalavu withdrew. The University of London, from which Naidu claims he received his law degree in 1987, denied that Naidu has graduated with a law degree. Thereafter, Navin Naidu was remanded in custody and on 15 June 2001 appeared in court in Suva charged with "uttering a false document and perverting the course of justice". The prosecution has accused Speight of adopting delaying tactics. Following Chief Magistrate Temo's warning that the case would go ahead whether or not he had legal representation, Speight announced that local lawyer Kitone Vuetaki would represent him.

At the hearing, expected to last four months, prosecutors will present evidence supporting treason charges against Speight and his 12 followers. When the evidence has been heard, Chief Magistrate Temo will decide whether to send the men for a High Court treason trial, at which they could be sentenced to death by hanging if convicted. Capital punishment has not been carried out in Fiji since 1970.

Hearings against the Speight group were set to begin on 31 August 2001, but were again adjourned. Legal teams representing the government, Mr. Speight and his co-defendants agreed to bypass the pre-trial hearing of evidence. The defendants' lawyers apparently intend to challenge the withdrawal of the amnesty that was originally granted to the Speight group in exchange for the release of the hostages.

There is widespread speculation that the case will collapse due to a shortage of prosecution resources and a lack of political will to carry out prosecution. Magistrates' courts around the country have been giving extremely lenient bail terms for those charged with crimes associated with the May 2000 take-over of the Parliament and the government. In many cases, bails have ranged from 50 USD to 100 USD. Reportedly, the Chief Magistrate Salesi Temo failed to declare that one of the persons charged with George Speight was related to him (Salesi Temo), and he withdrew from the case only upon objection from the prosecution. However, Temo continues to hear other related Magistrates' Court charges against the Speight group.

On July 2001, Speight and his co-suspect Ratu Timoci Silatolu lodged their nomination applications for the August 2001 elections. On 27 July 2001, the Suva High Court ruled that an order authorising the release of the two rebel suspects to process their candidature for elections at the Nausori region was invalid, as they were still facing treason charges in the High Court. There are concerns that the case will not come for full trial until the beginning of 2002, when Speight could be a member of the Parliament and could thus be granted immunity.

### *Displacements and Land issues*

According to local media reports, there has been an increase in outward migration from Fiji, mainly to Australia. Since the political crisis in May 2000, at least 15 doctors and more than 3,000 teachers have left the islands. It is mainly Fijians of Indian origin that are emigrating, as ethnic Indian families continue to be harassed, especially those living in rural areas.

Ethnically motivated social violence stems from land problems and usually leads to abuses including looting and destruction of property. Eighty-three percent of land is owned by ethnic Fijians and the state holds another eight percent. Indo-Fijians lease land from the ethnic Fijian landowners through the Native Land Trust Board.

## **THE JUDICIARY**

The principle of the independence of the judiciary is clearly prescribed in the 1997 Constitution under Section 118, which states that "The Judges of the state are independent of the legislative and the executive branches of the government." According to Section 117 of the 1997 Constitution, the judicial power is vested in the High Court, the Court of Appeal, the Supreme Court and in such other courts as are created by law.

The Supreme Court is the final appellate Court in civil and criminal matters. It has exclusive jurisdiction to hear and determine appeals of all final judgements of the Court of Appeal, with leave of the Court of Appeal or special leave of the Supreme Court. The Supreme Court also has advisory jurisdiction.

The Court of Appeal has jurisdiction to hear and determine appeals from judgements of the High Court in matters arising under the Constitution or involving its interpretation, the interpretation of the *Judicature Act* 1988 or the fundamental rights provisions of the Constitution. A person who has been convicted on trial before the High Court may appeal to the Court of Appeal against conviction on any ground involving only a question of law, with leave of the Court of Appeal.

Under Section 120, the High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings. It has also original jurisdiction in any matter arising under the Constitution or involving its interpretation. The High Court has appellate jurisdiction concerning decisions of magistrate courts. The High Court consists of the Chief Justice and of a number of puisne judges that is not less than 10.

Magistrates courts are divided into three classes and have limited civil and criminal jurisdiction. They may refer any question of law to the High Court.

### *Appointment and security of tenure*

The Chief Justice is appointed by the President on the advice of the Prime Minister following consultation with the leader of the Opposition. The judges of the Supreme Court, the Justices of Appeal (including the President of the Court of Appeal) and the puisne judges are appointed by the President on the recommendation of the Judicial Service Commission following consultation with the Minister and the sector standing committee of the House of Representatives responsible for the administration of justice.

The Judicial Service Commission, under Section 131 of the Constitution, consists of the Chief Justice, who serves as the chairperson, the chairperson of the Public Service Commission and the President of the Fiji Law Society.

Section 134 of the Constitution prescribes that "the composition of the judiciary should, as far as practical, reflect the ethnic and gender balance of the community", imposing discriminatory practices against a judge on the grounds of race or national origin. The criteria for appointment to judicial office as prescribed in Section 134 fulfil the requirements of Article 10 of the United Nations Basic Principles on the Independence of the Judiciary, which states that "In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory".

Section 137 of the Constitution guarantees to judges security of tenure. The term of office of judges expires upon their reaching the age of 70. Judges may also be removed for incapacity or for misbehaviour. In such cases, the President appoints a medical board or a tribunal to enquire into the matter. If the medical board or the tribunal advises the President that the judge should be removed, the President may remove the judge from office, under Section 138. Section 136 also states that the remuneration of judges must not be reduced during their terms of office.

#### *Post-coup developments*

Following the 19 May 2000 coup, the military Commander Bainimarama assumed executive authority and began to rule by decree. Apparently, the Chief Justice, Sir Timoci Tuivaga was involved in drafting the Administration of Justice Decree No.5 of 2000. The Fiji Law Society received information about the Chief Justice's offering advice to the military government and wrote on June 9 2000 to the Chief Justice to express its concern. In his response, Sir Timoci Tuivaga confirmed his involvement in drafting the Decree and justified his actions by arguing that he "took the opportunity that had presented itself to ensure that the Administration of Justice Decrees of the military government took cognisance of the freedom and independence of the courts to maintain a system of law and order and justice in the country". The Chief Justice also stated that this was his pragmatic approach to the fact that "the 1997 Constitution has been unable to provide a solution to the current political and constitutional morass in the country."

It seems that most lawyers in Fiji are still deeply dismayed at the Chief Justice's conduct. However, certain judges have supported the Chief Justice. Justice Michael Scott of the Suva High Court wrote individually to the Law Society in response to the Society's letter stating that there is no possible justification for the Law Society's "nasty, cliché-ridden, and almost hysterical" protest letter. Justice Scott went so far as to refuse to allow Ramesh Prakash, a senior lawyer, to appear before him in order to argue a case for a client. Apparently, Justice Scott's refusal is linked to the fact that Prakash was one of the eight members of the Law Society that endorsed the letter to the

Chief Justice. Justice Daniel Fatiaki criticised the Society's letter saying that it was "needlessly provocative, blatantly discourteous and unduly censorious".

It was also revealed that the Chief Justice interfered in the judicial process of a case with a constitutional dimension, in which he was one of the respondents. The applicant in this case was challenging the appointment of Justice Prakash to the bench of the High Court. The Chief Justice directed that the case be removed from Justice Antony Gates of the Lautoka High Court to a specific judge in Suva that the Chief Justice had nominated. This judge was Justice Michael Scott, one of the main supporters of Sir Timoci Tuivaga. Justice Antony Gates ignored the Chief Justice's direction as unlawful and even published his highly critical judgement of the Chief Justice's efforts to have the case removed to a judge of his choice in Suva.

The Chief Justice's actions after the 19 May 2001 events seem to be inconsistent with his response after the coup of May 1987, when he upheld the constitution and the rule of law. His position is characterised as even more contradictory, especially after the 1 May 2001 decision of the Court of Appeal that the 1997 Constitution remained the supreme law of the Fiji island.

#### *The Administration of Justice Decree No.5 of 2000*

The main features of the Chief Justice's Decree were the abolition of the Supreme Court, the declaration of the Court of Appeal as the final appellate court, the appointment of the Chief Justice to the Court of Appeal, and a 5-year extension of the Chief Justice's retiring age from 70 to 75 (the Chief Justice turns 70 in October 2001). Decree No.5 was replaced by the Judicature Decree, when the interim civilian government took over from the military government. The above-mentioned provisions remained in the later decree.

#### *Resignations of Judges*

Justice **Jai Ram Reddy**, the President of the Court of Appeal, resigned shortly after the promulgation of the above-mentioned Decree, as he could not uphold the abrogation of the 1997 Constitution, in the drafting of which he had played a significant role as a past Leader of the Opposition. Justice Reddy is setting up in private practice.

Justice **Ratu Jone Madraiwiwi**, a High Court judge and a known human rights advocate, also resigned from the bench of the High Court, as he considered the modus operandi and the involvement of the Chief Justice Timoci in drafting military decrees "unacceptable". Justice Ladarwiwi has joined a private law firm.

Adish Narayan, in his paper on the profession and the bench in Fiji after 19 May 2000 presented at a conference of POLA (Presidents of Lawyer's Associations of Asia and the Pacific) in October 2000, stated that two other magistrates have also resigned.

Since November 2000, the Fijian human rights group, Coalition on Human Rights, has urged President Iloilo to suspend three High Court judges and investigate them for alleged misconduct. The group claimed that the Chief Justice Timoci Tuivaga and Justices John Fatiaki and William Scott had violated the independence, impartiality and the integrity of the judiciary, since they wrongfully advised the then President, Ratu Sir Kamisese Mara on the abrogation of the 1997 Constitution following the Speight coup.

The response of the President's office was to the effect that no action would be taken on the complaint until after the election. The Chief Justice has reportedly declared, in a front-page report in the Fiji Daily Post dated 1 September 2001, that his critics were welcome to ask the President to constitute a tribunal of judges to investigate his actions. This is in fact what Section 138 of the Constitution prescribes in the case of allegations of judicial misbehaviour.

### *A divided judiciary*

On 19 March 2001, 152 members of the Fiji Law Society voted on whether to stay possible action against the Chief Justice for his alleged involvement in advising the President on matters which led to the dissolution of the Parliament and the dismissal of the Prime Minister. Responding to the mandate given to the Fiji Law Society's executive council to proceed "with appropriate action" against him, Sir Timoci said he had no regrets about his actions. He said he would resign once a full Parliament has been appointed after the general elections in August 2001. He said this decision has not been influenced by the Law Society. However, there is widespread doubt that he will follow this course. In the front-page Fiji Daily Post article of 1 September 2001 referred to above, he is reported to have said "I have got five years to go before I retire", but that an earlier retirement will be dependent "on the situation of the country and how soon they can get my replacement...I am looking at June next year". In the same article he described himself as "a fair, balanced judge and doing the best for the country though people don't agree with the way I conducted my role". In the same article, Sir Timoci was reported as "strongly believing" that the Constitution needs changes. Sir Timoci has not denied or otherwise commented on the report.

In May 2001, the lobby group Citizens Constitutional Forum (CCF) filed a petition challenging the legality of Ratu Iloilo's decision to ignore the March 2001 Court of Appeal decision and instead appoint a caretaker government. The CCF was seeking a High Court ruling declaring the decision of the President illegal and stipulating that the announced August 2001 elections should be revoked.

On 14 May 2001, the CCF's lawyer, Sir Vijay Singh, issued a petition seeking the removal of Justice Fatiaki from hearing the case. Justices Nazat Shameem and John Byrne gave evidence against Justice Fatiaki, who was furious at the affidavits sworn by the two Justices. He called their action "a clumsy, unworthy attempt" to undermine him. Judge Fatiaki suppressed a key court document published by Agence France Presse, submitted as evidence before him, saying "it was not a document to be found in the gutter". This document was written three days after the Speight coup by the Chief Justice and Justices Fatiaki and Michael Scott and advised the President that "it was evident as the events continue to unfold that there will not be a return to the status quo ante and that the 1997 Constitution may have to be amended". Justice Fatiaki stopped the media from publishing details of this document. On 24 May 2001, Justice Fatiaki refused the forum's application to disqualify himself on the grounds of possible bias, but said he had decided to hand the case over to another judge because it was urgent and he would not be able to hear it until September or October 2001. He then took the unusual step of referring the file to the Chief Justice to reassign the case to another judge. On 25 May 2001, the CCF's lawyer wrote to the Court saying there would be no further attempt to disqualify certain judges from hearing its application and that the judge to be appointed replacing Judge Fatiaki should dispose of the case expeditiously. The CCF was aiming to achieve a quick resolution to its case, the result of which could have canceled the August 2001 elections.

On 11 July 2001, Justice Michael Scott, to whom the case was passed by the Chief Justice, largely dismissed the application of the CCF and supported actions taken by the President Iloilo calling for

elections and appointing a caretaker government. Justice Scott gave the go-ahead for the August 2001 elections, despite acknowledging serious constitutional flaws in the way they had been called. The judge upheld arguments presented by the CCF that the country's president, who was installed by the military in the aftermath of the coup, did not have the right to dissolve parliament and call the elections. Nevertheless, Justice Scott argued that President Iloilo's actions were justified under the doctrine of necessity, and that the alternative would have been a serious breakdown of law and order. It should be mentioned that only Justice Scott and Justice Fatiaki have been appointed to hear constitutional cases.

The court battle comes against the background of a worsening civil war within the High Court. The Chief Justice reportedly has refused to listen to lawyers of the Fiji Law Society who signed a petition seeking his removal over his advice to the government during the coup. Ms Florence Fenton, a member of the Fiji Law Society Council and a partner in a private law firm, has begun court proceedings against the Chief Justice over his action in barring her from appearing in his court. The Chief Justice had barred all but two Fiji Law Society Council members from appearing before him. This action followed the Fiji Law Society's public call for the resignation of the Chief Justice for his involvement in drafting the Administration of Justice Decree and his interference in constitutional cases. Ms Fenton says the decision was unconstitutional and that "in all circumstances, the decision is so unreasonable that no reasonable holder of the office of Chief Justice could have come to it."

## CASES

**Lord Cooke, Sir Gerard Brennan, Sir Moti Tikaram, Sir Anthony Mason and Justice Toohey {Judges of the Supreme Court}**: They have all been summarily dismissed upon the abolition of the Supreme Court by a military decree in June 2000.