

Fiji - A year on from the April 2009 Constitutional Crisis

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ON Dec 5 2006, the Republic of Fiji Military Forces took over Fiji, and their leader, Commodore Voreqe Bainimarama, appointed himself president with a caretaker prime minister. They claimed to uphold the 1997 Constitution.

In 2008, the High Court ruled in favour of the Bainimarama administration in the case of Qarase v Bainimarama. The Appeals Court in 2009 overturned this ruling. Bainimarama resigned as prime minister and was immediately re-appointed. Decrees were promulgated creating a new legal and political order. A legal quagmire was created by the purported abrogation of the constitution and subsequent dismissal of judges and magistrates.

The result of all this is lack of adequate legal protection for human rights. Militarisation is now compromising the perceived independence of law enforcement agencies and institutions. The Fiji Police Force, the Office of the Director of Public Prosecutions and the judiciary, have military officers in key positions.

Secret decrees are passed by Cabinet, then assented to by the President, often unannounced for long periods of time. My own organisation, the Citizens' Constitutional Forum (CCF), a politically-unaligned non-governmental organization that advocates good governance, human rights and multiculturalism in Fiji, has difficulty safeguarding human rights and advocating due political processes as the rules keep changing, shutting out opposition and dissent.

In Fiji, a decree is now created by employees of the interim government and is promulgated by the President. There is no parliamentary consultation or debate. Most of the population are unaware of these new decrees and their legitimacy remains questionable.

Free expression in Fiji has been under intense pressure since the imposition of the Public Emergency Regulations (PER) when the 1997 Constitution was abrogated. Newspapers, television and radio are censored. NGOs, politicians and ordinary citizens are unable to get their articles published. Several overseas journalists have been deported. The High Commissioners from Australia and New Zealand have been expelled and two former Fiji citizens have been forbidden to return to Fiji.

Increased control of the police force was attempted by requiring police officers to participate in the religious activities of the pro Bainimarama New Methodist Church. This activity was particularly discriminatory against religious minorities, and Indo-Fijian police officers following the Hindu and Muslim faiths. The New Methodist Church was also seen as an attempt to lower the number of Methodist church followers in Fiji, which accumulated considerable political power under Prime Ministers Rabuka and Qarase, from 1987 to 2006. Religion had already been politicised prior to the

December 2006 coup, but the Bainimarama government's actions have been intimidating, violating human rights.

The following articles of the UN Universal Declaration of Human Rights (1948) are affected by the current media censorship:

Article 18	Freedom of Thought, Conscience and Religion,
Article 19	Freedom of Opinion and Expression,
Article 20	Right of Peaceful Assembly and Association,
Article 30	Freedom from State or Personal Interference in the Above Rights

The importance of a free media is paramount. Without it, government processes are no longer transparent or responsive to the needs of citizens, who cannot understand what is going on and cannot participate.

The December 2006 coup and the purported abrogation of Fiji's 1997 Constitution had serious implications for other developing countries in the South Pacific and elsewhere.

The attempted civilian coup of 19 May 2000 in Fiji triggered what has been referred to as a 'copycat' attempted coup in the Solomon Islands, and may have influenced the rioting and civil unrest that took place in Tonga in November 2006. Fiji is the leading nation in the South Pacific in terms of social and economic development, hosting most of the key regional institutions' headquarters, yet is the only country in the region with a history of "coup culture" and illegitimate governments. The disproportionately large size of the army in Fiji has been blamed for Fiji's coup problems.

After the Bougainville crisis, the Biketawa Declaration was created by the Pacific Islands Forum Secretariat, setting out procedures for crisis intervention. The Biketawa declaration was successfully used by the Solomon Islands government when they requested Australian assistance after the 2000 uprising. In November 2006, Fiji's ousted Prime Minister Qarase called on Australia and New Zealand to intervene, amidst public threats of a coup by Bainimarama. Both countries declined, fearing bloodshed.

In the aftermath of the 2006 coup, CCF called on international organisations to assist Fiji in returning to sustainable electoral democracy through the processes provided under the Cotonou Agreement of the Asia, Caribbean and Pacific (ACP) countries and the Milbrook Declaration of the Commonwealth.

The Milbrook Declaration was activated after the December 2006 coup, with the European Union and the ACP countries calling on the Bainimarama regime to hold an election in Fiji by December 2008. The Fiji government agreed to elections by early 2009. However, the abrogation of the Constitution, with elections put back to 2014, means that the Bainimarama government is no longer

trusted. The Cotonou Agreement, which provides for 'informal discussions' aimed at resolving conflict and dialogue, has been ignored by Fiji.

The CCF and other non-government organisations have utilised international mechanisms to put pressure on the Fiji government to return to electoral democracy. In February 2010, Fiji was reviewed by the UN under the Universal Periodic Review (UPR). I represented the CCF at these consultations in Geneva. We called on the interim government to have elections in Fiji at the earliest possible time, ensuring an independent judiciary in Fiji, and protecting human rights.

The major attempt since December 2006 to address problems of political instability was under the aegis of the National Council for Building a Better Fiji (NCBBF), launched in October 2007. This was designed to lead to the creation of the People's Charter for Change, Peace and Progress (PCCPP). The charter's key recommendations, such as electoral reforms, were included for discussion in the mid-2008 President's Political Dialogue Forum (PPDF), with facilitators from the UN and Commonwealth Secretariat.

The process began promisingly with the dialogue process but, in April 2009, four of the major political parties were excluded and the talks collapsed. The interim government seems determined to push ahead with its own agenda regardless of whether or not it has popular or legal support. It has suggested that there will be further constitutional development in 2012.

Current restrictions (PER) must be lifted so that citizens can express their views without fear of reprisal. The Melanesian Spearhead Group, the Pacific Islands Forum and the Commonwealth Secretariat have all offered their support for a dialogue process that leads to elections. Fiji's two major political rivals, ex-PMs Qarase and Chaudhry, are working together to revive an inclusive PPDF. With the right attitude, dialogue can bring people together despite Fiji's history of ethno-political conflict.

The Rev Akuila Yabaki, a co-founder of the Pacific Islands Society of the UK and Ireland, is Chief Executive Officer of the Suva-based Citizens' Constitutional Forum, which was established in 1991 as a platform for the discussion of constitutional issues. This article is based on a talk he gave to the society several months ago and does not take into account recent developments.