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STIFLING OPPOSITION: AN ANALYSIS OF THE APPROACH OF THE FIJI GOVERNMENT AFTER THE 2006 COUP

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INTRODUCTION

A day after the military takeover of the Fiji government on 5 December 2006, Commodore Bainimarama proclaimed a nationwide state of emergency that gave wide-ranging powers to the military to enforce the new regime's agenda. These repressive powers were entrenched in the Public Emergency Regulations (PER) imposed after the 10 April 2009 abrogation of the 1997 Constitution. Early promises of elections by 2009 were not kept; instead, successive decrees were promulgated to restrict human rights, suppress freedom of expression and clip the wings of the judiciary and indigenous Fijian institutions. They were aimed at stifling the capacity and will of the people to demand a return to democracy, and at entrenching the position of Bainimarama's unelected government.¹

The allocation of key government ministries and departments to military officers,

and the winning over of specific indigenous communities by the provision of infrastructure projects have strengthened this position.

All of these actions, combined with a strategy of sidelining any political or military leader capable of replacing Bainimarama as PM or military commander, suggest that the post-April 2009 authoritarian military regime has become what Geddes terms a 'personalist' regime, (in contrast to military or single-party regimes) even if this was not an original aim of the coup. In personalist regimes 'access to office and the fruits of office depends much more on the discretion of an individual leader' (Geddes 1999:121).

But, despite the high levels of repression, the fragility of Fiji's economy poses a threat to the current government, adding to the threat imposed by those few still voicing opposition.

EARLY SIGNS OF CONTROL

On 6 December 2006, one day after announcing a military takeover of the government of Fiji — and after assuming the role of acting president — Commodore Voreqe Bainimarama, commander of the Republic of Fiji Military Forces (RFMF), stated in an address to the nation:

... it is with great reluctance that I, in the temporary capacity that I have assumed under the doctrine of necessity am proclaiming a state of emergency as provided for under section 187 of the Constitution (Bainimarama 2006).

In his address, Bainimarama justified his action by asserting that his regime was under threat of 'disruption to peace and harmony' by people who opposed the coup, or opposed his regime.

Under the state of emergency, the military-imposed government assumed extraordinary powers that enabled the disciplinary forces to arrest, question and detain people even without any complaints lodged against them, to control the movement of people by imposing curfews and roadblocks manned by police or armed soldiers, to enter and search premises, to control essential services and to control government activities.

While that particular state of emergency was lifted in May 2007, emergency regulations were sporadically in place throughout Fiji — under the pretext of 'threat from unstable elements' — until 10 April 2009, when they were replaced with the Public Emergency Regulations that have since been continuously imposed with heightened powers to suppress and control freedom of movement and expression.

The 2006 coup generated mixed reactions in Fiji and internationally. While there was opposition from the small but vocal group of citizens who had, since 1987, actively protested against coups and promoted the rule of law, democracy and equal rights, many professionals who had previously been steadfastly against coups, felt this one would be different and that Bainimarama would deliver, as he promised, beneficial reforms. Hopes for an early return to democracy were

raised when, in January 2007, the presidency was returned to Ratu Josefa Iloilo, and again, eight months later, with the launch of the People's Charter for Change and Progress. Hope was further encouraged by the fact that the National Council for Building a Better Fiji (NCBBF), launched on the same day, met regularly for more than a year to produce 'the Charter' — a key requirement of which was endorsement and implementation of its policies by an *elected* government.

Nevertheless, opposition remained in some quarters — opposition that early threats by Bainimarama (such as his statement that 'the Military will suppress very quickly any uprising against us' (Bainimarama 2006) did not succeed in dispelling. Opposition included court cases against activities of the Bainimarama government as well as vociferous criticism in the media from rights-based non-government organisations (NGOs), trade unions, Fiji Law Society, leaders of political parties, and leaders of indigenous Fijian institutions and individuals.

From the outset, opponents were concerned when, in the late afternoon of 5 December, *The Fiji Times* reported that military personnel had moved into the newsrooms of media outlets and directed that all news items would be screened by the military and that no negative comment about the commander or the takeover could be aired or published. That night, in response, Fiji TV cancelled its 10pm bulletin and *The Fiji Times* withheld publication of its edition of the following day. The responses seemed to have some effect; on 6 December, after a meeting with senior executives from four media companies and the chairman of the Fiji Media Council, Daryl Tarte, Acting Commander Esala Teleni gave an undertaking that there would be no censorship and no further interference by the military in the role of the nation's media.

But, despite this assurance, meetings of political parties, such as the Soqosoqo Dua-vata ni Lewenivanua (SDL), the Fiji Labour Party (FLP) and the National Federation Party (NFP), were required to be cancelled — and several union meetings were postponed until

it could be proven to authorities that 'political' issues were not on the agenda. Meetings of the Great Council of Chiefs (GCC) were also banned after it rejected the president's nomination of Ratu Epeli Nailatikau for the position of vice president.

In the weeks that followed the coup, the regime moved against senior civil servants, systematically removing, demoting, or sidelining those identified as supportive of the deposed Qarase government. The longest-serving permanent secretary in the prime minister's office was dismissed immediately after the takeover, and cabinet positions were reshuffled. But some civil servants lodged legal challenges, and the Airports Fiji Limited Workers Union, and the affiliates of the Confederation of Public Sector Unions — which includes the Fiji Public Service Association, the Fiji Nursing Association (FNA), the Fiji Teachers Union (FTU) and the Air Traffic Management Association of Fiji — threatened strike action over a looming five per cent pay cut. Affiliates of the Fiji Islands Council of Trade Unions (FICTU), including the Fijian Teachers Association (FTA) — the Public Employees Union, and the Viti National Union of Taukei Workers — also threatened strike action.

As it turned out, the FNA went out on strike for 12 days in July, but their grievances remained unaddressed. The FTA stopped work on 2 August, but cancelled the strike within a day after realising that the government wouldn't meet their demands.

However, not every protest could be quashed by the interim government; after many years, several compensation cases lodged after the 1987 and 2000 coups, were coming to a head. In September 2007, the High Court awarded university lecturer Dr Anirudh Singh FJD\$790,000 compensation for being abducted and tortured by soldiers in 1990. On 12 August 2008, the High Court awarded Naitasiri farmer Taito Navualaba FJD\$73,000 compensation for his 2002 humiliation and torture at gunpoint by the military. In March 2009, Senitiki Naqa, who was similarly tortured, was awarded FJD\$65,000 by the High Court. And, pending, was an estimated

half-a-million-dollar compensation lawsuit on behalf of the 34 politicians held hostage in the 2000 coup.

ABROGATION OF THE CONSTITUTION AND SUBSEQUENT DECREES

Any fear in the minds of Bainimarama and his collaborators of facing prosecution for their parts in the 2006 coup that might have been triggered by the spate of High Court findings related to the 1987 and 2000 coups, could only have been amplified by the 9 April 2009 finding of the Fiji Court of Appeal. That court found that, contrary to the October 2008 finding of the High Court, the president had not had the powers to dismiss the Qarase government in 2006 and that his actions had been invalid. The implications for the Bainimarama regime were immense, and its response proved the worst fears of many citizens in regards to how Bainimarama might react if pushed too hard.

That same evening, Bainimarama addressed the nation, appearing to accept the decision of the Court of Appeal by announcing that Fiji effectively had no prime minister, no ministers and no government in place, and that the president would make a decision soon on the Court's directive that he appoint a caretaker prime minister who was neither Qarase nor Bainimarama (Bainimarama, 2009). But the next day — Good Friday — radio stations carried the message that the constitution had been abrogated.

The range of decrees that followed the announcement created a system of presidential rule-by-decree that could not be challenged by any one, in any circumstances, in any court or tribunal. Five decrees were promulgated on Good Friday — many more were to follow.

Decrees Related to Control over Executive Authority, the Judiciary and Rights' Advocates

Decree No. 1, the Fiji Constitution Amendment Act 1997 Revocation Decree 2009, 'wholly removed, revoked, and abrogat-

ed' Fiji's Constitution and declared that all decrees promulgated by the president were to be 'regarded as law and shall be observed and enforced'. In announcing the decree to the nation, the 88-year-old President Ratu Josefa Iloilo stated,

[T]o facilitate the holding of true democratic and parliamentary election I hereby abrogate the 1997 Constitution ... You will agree that this is the best way forward for our beloved Fiji (Iloilovatu Uluivuda 2009).

Iloilo went on to state that a further period of five years was necessary to put in place the necessary electoral reforms and processes, and that he would direct the soon-to-be-appointed 'Interim Government' to hold true democratic and parliamentary elections by September 2014 at the latest.

Iloilo then announced Decree No. 2, the Executive Authority of Fiji (Amendment) Decree 2009, under which he appointed himself President of Fiji, and thereby head of state, commander of the RFMF and head of any government appointed under that decree. The decree, promulgated on Friday, 10 April 2009, states that 'until a Parliament is elected in accordance to a Constitution yet to be adopted', the president shall have powers to: (a) appoint a prime minister by decree; (b) appoint other ministers on the advice of the prime minister; (c) make laws by decree in accordance with the advice of the prime minister and cabinet; and (d) exercise the executive authority of Fiji. The decree specifies that 'No question of the validity of this Decree or any other Decree shall be entertained by any Court of Law in Fiji'.

Power was becoming centred around the frail and aging president, the coup-leading prime minister backed by the military council, and the attorney-general, who would be responsible for churning out over a hundred more decrees during the next two and a half years.

Decree No. 3, the Fiji Existing Laws Decree 2009, declared that existing laws and decrees in force before 10 April 2009 — with the exception of the 1997 Constitution

Amendment Act 1997 (in effect, the 1997 constitution) — were to continue in force and be read with necessary modifications.

Decree No. 4, the Revocation of Judicial Appointments Decree 2009, provided that any court of law, authority or office established and any judicial appointment made under the provisions of the 1997 Constitution was to be dissolved, and appointees removed and posts declared vacant. The decree applied to the Supreme Court, Court of Appeal, High Court, Magistrates Court, and to all judges and magistrates, including the master of the High Court. Under the decree, no officer whose appointment was terminated or removed was entitled to any monetary compensation, nor were they entitled to take any action for damages for dismissal in any court.

The first four decrees effectively clipped the wings of the judiciary and prevented the use of the law to challenge the government's validity. The last of the five decrees announced on 10 April 2009 was Decree No. 5, Public Emergency Regulations 2009 (PER). The decree assumes a state of emergency exists in the country because elements planning activities to destabilise the government may exist. It curtails key civil and political rights, and is discussed later in this paper.

Attention then turned to further tightening loopholes in the decrees, further restricting 'independent' institutions and restricting the powers and freedoms of people who utilise these institutions.

Decree No. 8, Office of the Vice-President and Succession Decree 2009, promulgated on 16 April 2009, authorises the president to appoint the vice president for a term of five years, and also provides that, if neither the president nor the vice president is able to perform the function of the president, then it may be performed by the chief justice or next most senior substantive judge. Prior to this, only a person nominated by the GCC could be appointed as president or vice president of Fiji. The day after Decree No. 8 was promulgated, Ratu Epeli Nailatikau — earlier rejected for the position by the GCC — was sworn in as vice president of Fiji to fill the vacancy that had been created when former

vice president Ratu Joni Madraiwiwi resigned in protest after the 2006 coup.

On 28 July, the Executive Authority of Fiji (Amendment) Decree 2009 (Decree No. 28) was promulgated; it authorises the chief justice to appoint the president on the advice of the cabinet. Prior to this, only a vice president who had been appointed after nomination by the GCC, could become president. The amendment further curtails the powers of the GCC and increases the chance of a commoner and non-indigenous person being appointed president. On the same day, Bainimarama announced the retirement of Iloilo; the president was to go on leave on 30 July and not return to office. Vice President Nailatikau became the acting president and, on 5 November, was appointed president of Fiji by Chief Justice Anthony Gates at a swearing-in ceremony at Government House.

The reason for the earlier decrees amending executive authority had finally become clear — they enabled the Bainimarama regime to appoint a president (and ministers) of its choice and so enabled continued presidential rule-by-decree.

Meanwhile, the dismissal of judicial officers in accordance with Decree No. 4 had created chaos, with all scheduled court cases being delayed for at least a month (Fijilive 15/4/2009). On 16 April, the Administration of Justice Decree 2009 (Decree No. 9) was promulgated; it enabled re-establishment of the judiciary. Deemed as coming into force on 10 April, the decree gives power to the President to make all initial appointments to judicial office positions, including the positions of judges of various courts and magistrates. A section on 'Transition' reiterates the revocation of all judicial appointments made under the 1997 constitution, but provides for all proceedings in the Courts that had commenced prior to the abrogation, to continue. The decree also requires the termination of any proceeding that had commenced prior to the abrogation of the Constitution but that had not yet been determined, if it challenged: 'the validity or legality of any Promulgations, Decrees and Declarations made between 5 December 2006 to 9 April 2009'; any decision of the president or any minister during

that period; any decision by the ministry or Immigration Department to remove a person from Fiji during that period; any presidential or government decision to terminate any employment (whether in public office or not) between 5 December 2006 and 7 January 2007; any decision made by the Judicial Service Commission (JSC) between 7 January 2007 and 9 April 2009; and, any government decision made between 5 December 2006 and 9 April 2009, on the grounds of inconsistency with the 1997 constitution.

By way of this decree, the government gained control of the judiciary, terminated all court actions launched against it, and prevented the launch of any further court actions against its decrees or any other decisions, including civil servants' employment issues.

The decree claims that all courts and judges 'are independent of the executive branch of Government or any other authority, in the exercise of its judicial functions'. Such 'independence', however, must be severely challenged by the fact that the decree requires the chief justice and the president of the Court of Appeal to be appointed by the president following consultation with the prime minister and the attorney-general; and the judges of the Supreme Court, the justices of appeal and the puisne judges of the High Court to be appointed by the president on the recommendation of the JSC following consultation by the JSC with the attorney-general.

The JSC is itself compromised in that, under the decree, it consists of the chief justice (as chairperson); the president of the Court of Appeal; a legal practitioner appointed by the president on the advice of the attorney-general, and a person who is not a legal practitioner, also appointed by the president on the advice of the attorney-general. The attorney-general is tasked with the appointment of all four members of the JSC. A quorum for the JSC is reduced to the chairperson and one other member.

Under the decree, no court has the jurisdiction to accept, hear or determine any challenges to the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 or any other

decree. Furthermore, the courts do not have jurisdiction to hear any challenge on 'the validity or legality of any Decrees made by the President from 10 April 2009'.

Thus did the government curtail the powers of the judiciary and the ability of citizens to challenge in the courts any of its past or future actions.

A Law and Justice Report for the period April 2009 to April 2010 produced by the Citizens' Constitutional Forum (CCF) notes that 40 judicial officers were dismissed on 10 April 2009 but only eight reappointed (CCF 2010(a)). A former military lawyer was placed in both the Magistrates Court and the High Court, and, until June 2010, the chief registrar was Ana Rokomokoti, a military lawyer. The report also notes that, as of April 2010, seven magistrates and three judges had been brought in from Sri Lanka.

In July 2009, a magistrate was dismissed, allegedly over a dispute with the chief registrar. In January 2010, three more magistrates were dismissed, allegedly for not supporting the Fiji Independent Commission Against Corruption (FICAC) proceedings. In early 2010, the acting director of public prosecutions, John Rabuku, was replaced by former military lawyer Aca Rayawa. With judicial officers facing termination at the apparent whim of the government, Fiji's judiciary was coming under increasing strain. The appointment of military officers to the judiciary further heightened concern about its impartiality.

As if these restrictions on the judiciary were not enough, on 12 May, an amendment to the decree was promulgated — the Administration of Justice (Amendment) Decree (Decree No. 9) 2009). It was deemed to be in force from 10 April. This decree strengthened the prohibition against challenges to the decree abrogating the constitution, and to all other decrees, by providing for the termination of any such challenges. Importantly, under the amending decree, any proceeding, claim, dispute or grievance purporting 'to challenge any decision made by the Government or the Public Service Commission between 5 December 2006 and 9 April 2009 in relation to the terms and conditions of employment of public officers, including any changes to the

remuneration of public officers, shall wholly terminate immediately'.

By this decree, the government removed the possibility of legal recourse for public servants and their trade unions pertaining to public service terms and conditions. Soon after, a second amendment to the Administration of Justice Decree increased the powers of the chief registrar by providing that a certificate issued by a chief registrar or tribunal for proceedings in a court or tribunal is conclusive of matters stated in the certificate, and the decision of either to issue a certificate cannot be challenged in any court or tribunal. This gave powers to the chief registrar or tribunal to terminate even court proceedings underway before a judge or magistrate, making the chief registrar more powerful than the highest court in the land (CCF 2009).

A third amendment to the Administration of Justice Decree tightened the screws on government employees yet further. Promulgated in February 2010, but in force retrospectively from 10 April 2009, it provides that 'all decisions of Government or any Government entity relating to restructure, terms of conditions of employment or remuneration cannot be challenged' (CCF 2009).

After curtailing the powers of the judiciary and public servants and their unions, the government turned its attention to other independent bodies who utilise the judiciary for fulfillment of rights. The Fiji Human Rights Commission (FHRC), with the independent powers bestowed upon it as a statutory body under the 1997 Constitution, had become a sore thumb for the government. Its director, Dr Shaista Shameem, had long been a vocal advocate against human rights violations, and had fought for justice for those who suffered during the 2000 coup.

Nevertheless, in January 2007, Dr Shameem controversially justified Bainimarama's 2006 coup as an act of righting the wrongs that had occurred in the aftermath of the 2000 coup, when the lawful government of the then prime minister, Mahendra Chaudhry, was not returned to power — making all subsequent governments 'unconstitutional' (Shameem 2007). Although appearing to be supportive

of the Bainimarama regime, Dr Shameem advocated retention of the 1997 constitution under any circumstances. The successful litigation of a few human rights violations cases by the FHRC was a reminder that the body had independent powers that could be used to litigate against the regime. Dr Shameem's position was automatically terminated when the FHRC ceased to exist after the abrogation of the constitution. The FHRC was re-established with weakened powers under a new decree that turned it into a 'toothless tiger'.

The Human Rights Commission Decree 2009 (Decree No. 11), promulgated on 12 May 2009, provides for the chairperson and two other members of the commission to be appointed by the president in consultation with the prime minister. Exercising a now-familiar technique to circumvent challenge, various sections of the decree prohibit the commission from receiving complaints against, or investigating, questioning or challenging, the legality or validity of the Fiji Constitution Amendment Act 1997 Revocation Decree 2009, or such other decrees made or as may be made by the president. It also prohibits the FHRC from investigating (but not commenting on) any decision by a court of law; and from investigating any third party complaints against the 1997 Constitution Revocation Decree 2009, or other decrees made by the president.

The lawyers were tackled next, with their ability to take court action against certain government activities being curtailed. The Legal Practitioners Decree (Decree No. 16), promulgated on 22 May 2009, diluted previously existing powers of the Fiji Law Society (FLS). Under the decree, the chief justice admits a person as a legal practitioner, while the Registrar issues the certificate to practice — previously a responsibility of the FLS. Legal practitioners have to reapply to the registrar for their certificate every year. The registrar also has the powers to cancel or suspend a certificate. The decree provides for the establishment of an Independent Legal Services Commission (ILSC), presided over by a commissioner appointed by the president on the advice of the attorney-general. The commission must

act in accordance with ministerial guidelines, and has the power to order a fine or penalty not exceeding \$500,000 for specified misdemeanours by legal practitioners. While the commissioner and his/her employees cannot be taken to court, all orders made can be appealed. The chief registrar can receive and investigate complaints, investigate without complaints, commence disciplinary proceedings against a legal practitioner or a law firm, obtain unresolved complaints from the FLS, and acquire associated information and documents through entering premises and other measures. Failure to comply with the decree can incur a penalty of up to \$5,000 or up to five years' imprisonment or both.

Many senior lawyers, including Dorsami Naidu, Hamendra Nagin, Akuila Naco, Haroon Ali Shah, Abhay Singh, Sheikh Hussein Shah and Nilesh Lajendra, were tried for various misdemeanours by the ILSC, and received fines and penalties. The intimidatory force of the decree 'worked': vocal legal critics appear to have been 'silenced'. After winning a case against FICAC in late 2010, lawyer Imrana Jalal, fearing persecution, resigned and relocated permanently to the Philippines; former FLS president Graham Leung, fearing persecution for his criticism of the regime in international conferences, had taken up employment overseas in late 2008; vocal critic of the regime Richard Naidu, who had been abducted and tortured prior to the events of April 2009, had, by that time, visibly quietened; and as a warning to other law firms contemplating anti-government cases, his employer, law firm Munro and Leys, was denied jobs by the government.

To further protect the post-2006 coup government — and further stifling the potential for citizens to challenge its actions — the Limitation of Liability for Prescribed Political Events Decree 2010 (Decree No. 18) was gazetted in April, giving unconditional immunity to prescribed persons in relation to the events of 2000 and leading up to the abrogation of the constitution in April 2009. The decree covers the now-late president, Ratu Josefa Iloilo, Commodore Voreqe Bainimarama, former caretaker prime minister, the now-

late Jona Senilagakali, anyone who acted under persons covered under the decree, and members of the military, police and Fiji Prisons Service. Immunity does not extend to those already found guilty by a court or tribunal. Under the decree, no compensation shall be payable by the state to any person in respect of any claim, damage or injury arising from any prescribed political event for which immunity has been granted to the persons covered. In justifying the decree, Attorney-General Aiyaz Sayed-Khaiyum referred to similar immunities established following the 1987 and the 2000 coups.

Of even greater concern to civil society was a new criminal code, comprising the Criminal Procedure (Amendment) Decree, the Crimes (Amendment) Decree and the Sentencing and Penalties Decree, which came into effect on 1 February 2010. Alarming, under a broad interpretation of the code, harsh criticism of the government could be defined as seditious or inciteful behaviour, and provide an excuse for the government to prosecute civil society members and individuals.

Under the new Crimes Decree, the penalty for treason resulting in the death or imprisonment of the prime minister or president, or acts that collude with an armed invasion or war, is imprisonment for life. But the penalty for a person who commits treason but can justify that they were acting in 'good faith' or that their action was necessary, is less than 15 years; in some cases the person could go free. And while the penalty for mutiny has been reduced to 15 years' imprisonment, the penalty for minor misdemeanours has been increased to up to five years' imprisonment. Failure to report knowledge of treason can incur life imprisonment, and offences that are seditious can incur up to seven years' imprisonment. Urging overturning the constitution or overthrowing the government can incur a sentence of up to 15 years' imprisonment.

Not surprisingly, these penalties, combined with media censorship, resulted in a dramatic drop in public criticism of the government by 2010.

The reduction of penalties for coups and treasons committed in 'good faith' was greet-

ed with apprehension by NGOs and anti-coup advocates. The CCF opined that it could lead to greater acceptance of these crimes, do nothing to help end the cycle of coups, and ran counter to the recommendations on 'Ending the Coup Culture' included in the People's Charter (CCF 2010(b)).

The reason for the changed provisions relating to overthrow of a government and treason would appear to be twofold: firstly, they could be used to facilitate conviction of anyone planning to overthrow or incite action against the Bainimarama government; and, secondly, they could be used to protect — on the grounds of 'good faith' — those involved in the Bainimarama coup, were they ever to face court.

The Crimes Decree and the associated elements of the new criminal code had been foreshadowed by FICAC, established by the Bainimarama regime in April 2007 as part of the post-coup 'Clean Up Campaign'. (A Prevention of Bribery Decree was promulgated at the same time.) The reach of FICAC was expanded when, in 2010, the new Criminal Procedure Decree expanded its powers to allow it to commence and litigate any criminal charges.

The legitimacy of FICAC had earlier been questioned by the Fiji Law Society President, at that time Devanesh Sharma, and by lawyers such as Graham Leung. On 31 May 2007, Fijivillage.com reported well-known Suva lawyer Mehboob Raza describing FICAC's prosecuting powers as 'draconian'.

By July 2007, FICAC already had a track record of revealing and sensationalising allegations of corruption prior to the completion of investigations or prosecution. In comparison, the police and the Office of the Director of Public Prosecutions had been successful in prosecuting corruption-related cases — suggesting that the establishment of FICAC was an unnecessary duplication, undertaken to prove the existence of the alleged corruption in government prior to the military takeover.

While some FICAC cases appeared genuine, others seemed more a case of trying to create charges against a particular person. Ratu SakiusaTuisolia, for example, former Airports Fiji Limited (AFL) chief

executive and formerly a member of staff in prime minister Qarase's office, was charged in February 2008 with abuse and false pretense for allegedly using the AFL's credit card to purchase \$30,000 worth of personal items and other items during overseas trips (*The Fiji Times Online* (hereafter *TFOL*) 12/2/08). After more than two and a half years, the trial commenced in the High Court; a month later, Tuisolia was acquitted (*TFOL* 2/11/10).

In the period between being charged and being cleared of this offence, in December 2009, other charges were laid by FICAC in the Magistrate's Court against Tuisolia and his wife, human rights lawyer Imrana Jalal. These related to operating a restaurant without a license and providing false information to a civil servant — an offence normally dealt with by the Suva City Council fining the offender FJD\$20. The inappropriateness of the case, which had no element of corruption, being taken on by FICAC prompted Jalal to vigorously defend against the charges. FICAC expanded the charges and moved the case to the High Court. In July 2010, amidst huge international publicity surrounding the case, the High Court granted a stay order on six of the charges against Tuisolia and Jalal, noting that the time period under which a case relating to non-payment of fine can be started had lapsed long before the case had been instigated (*TFOL* 20/7/10). Later that month, the High Court granted a permanent stay on a remaining charge against Jalal and only one charge remained against Tuisolia (*Fijivillage.com* 30/7/10). Although a stay on the charges was granted, it appears the battle was too demanding for Jalal, who moved to the Philippines, where she was joined by her husband following his acquittal in November.

The Public Emergency Regulations

The eight-page PER was the last of five decrees promulgated by the president on the day the 1997 constitution was abrogated. The PER and the 2010 Media Decree were aimed specifically at stifling the voices of anti-regime critics and isolating opponents of the government.

At the 8th Asia-Pacific Institute for Broadcasting Development conference in Nadi in July 2009, Commodore Bainimarama explained that the PER was necessary for the government to achieve a truly united Fiji, with sustainable development, where corrupt practices and poverty were negligible, and where opportunities were equally available to the different ethnic groups (*Lasaqa* 21/7/09). He said that the PER was a temporary measure to provide a stable socio-political platform conducive for implementing nation-building initiatives.

Under the PER, the police and local district officers have wide-ranging powers. They can prohibit absolutely or place conditions on 'any procession, meeting or assembly in any place, or building whether public or private' unless a permit has been granted. Even if a permit has been granted, authorities, including members of the armed forces, have the power, after giving due warning, to disperse such a gathering, if in their 'opinion such action is necessary for public safety'; they may use necessary force, including arms. Organising a gathering contrary to the provisions of the PER, and inciting someone to be part of such a gathering, are offences. Any police officer or member of the armed forces can enter any non-residential building to ascertain that the law regarding meetings is being observed. The PER gives authorities power to regulate or close off any road, street, path or waterway or any public place, and to impose curfews in any area. It empowers them to control the movement of people who are deemed likely to provoke a breach of the peace, and to prevent entry and exit of persons from anywhere in Fiji. It has extensive provisions to regulate use of firearms, restrict the use of loudspeakers, and detain or search persons entering 'protected places and areas'. A person suspected of acting, or being about to act, to breach public safety or peace, can be detained for 24 hours, and for a further 48 hours if authority has been received from a police officer or magistrate. A police officer or magistrate can direct such persons to be detained for a further seven days.

Under the PER, the president can suspend the use or sale of uniforms, and those wearing uniforms of disciplined forces unlawfully are regarded as committing an offence. The regulation allows armed forces personnel to perform the duties of a prison officer or police officer.

The PER empowers the permanent secretary for information to prohibit the broadcast or publication of such material that may give rise to disorder causing undue demands on the disciplined forces, or which 'may result in breach of peace or promote disaffection or public alarm or undermine the Government and State of Fiji'. All broadcasters and publishers must submit all material for broadcast or publication to the permanent secretary; failure to comply with this provision could result in orders to cease all activities and operations. A person violating the PER can be fined \$1000 and/or imprisoned for two years.

All existing permits for public meetings and gatherings were revoked when the constitution was abrogated. Some organisations working in the areas of democracy and human rights faced additional restrictions. The CCF, for example, had to apply for permits to conduct its one-day educational workshops on human rights, good governance and citizenship, and for its two-day Grassroots Budgetary Workshops. To receive the permit, the CCF also had to remove the words 'democracy' and 'constitution' from its slogan, and remove the module on Fiji's 1997 constitution from its workshops.²

Despite holding a permit, the National Farmers Union was prevented from holding its AGM by the police as they felt 'it was not safe for people to gather in big numbers as anything could happen' (Fijivillage.com 17/5/09). The permit given to the Fiji Institute of Accountants (FIA) 37th Congress was cancelled a day before the congress, but restored a few hours later by the commissioner of police after the first session had been cut from the proceedings (TFOL 11/6/09). That session had featured a talk by Professor Brij Lal on 'Fiji and the international community' and a talk by Graham Leung on 'An experiment in nation building'.

The permit for Fiji Law Society's 2009 AGM was cancelled by authorities without reason (Fijivillage.com 6/9/09). Even the Fiji Rugby Union was forced to cancel a meeting in October 2009 after its permit application was declined and its officials were threatened with incarceration if the meeting went ahead (Fijivillage.com 24/10/09).

More than a year later, the National Command Centre cancelled a permit granted to the NGO 'Coalition on Human Rights', for a march to commemorate International Human Rights Day. The permit was cancelled for 'security reasons'. The permit granted to the Transport Workers Union for the meeting of Pacific Sun union members of 23 December 2010, was cancelled on the day of the meeting (TFOL 24/12/10).

The first two people arrested and detained under the PER were Fiji One Television journalist Edwin Nand and President of the Fiji Law Society Dorsami Naidu (Fijivillage.com 15/4/09). Nand spent two nights in jail, and Naidu one night; both were released without charges on 15 April.

A month later, the former Methodist Church of Fiji president, Reverend Manasa Lasaro, was arrested in relation to politically related statements by the church, and the then church president Reverend Ame Tugaue awaited questioning (Fijivillage.com 14/5/09). Reverend Lasaro had actively supported the 1987 coup and was a known supporter of SDL, as well as a vocal critic of the Bainimarama government. A subsequent meeting between Bainimarama, Tugaue and the General Secretary of the Methodist Church, Reverend Tui-kilakilaWaqairatu, failed to resolve the issue after Bainimarama's request to the church to reconsider their stand on the government and remove politics and instigators from within the church was refused (TFOL 4/6/09). A few weeks later, on 23 July, Rewa province High Chief Ro TeimumuKepa, appeared in the Suva Magistrates Court, together with Reverend Waqairatu and Rev Tugaue, on charges relating to breach of the PER.

Probably the most bizarre use of the PER by the government was against its vocal critic

and known supporter of the SDL, Fiji Rugby Union chairman Viliame Gavoka. Gavoka was detained by police for 24 hours for spreading destabilising rumours and emails about a prophesy that an earthquake would strike Fiji. He was released on 22 October 2010, a day before the date predicted for the earthquake, together with Pastor Laione Lutumaimuri Nacevamaca, who had also predicted that an earthquake and tsunami would strike Fiji and cause major damage (Fiji Broadcasting Corporation (hereafter FBC) 22/6/10). The two were re-arrested after the prophesy did not eventuate and have been appearing in court under the Public Order Act on charges of allegedly making false statements that fostered public alarm and public anxiety (Fijivillage.com 15/7/10). Interestingly, the charges against Gavoka were dropped in June 2011, following the marriage of his daughter, Ela Gavoka, to Attorney General Aiyaz Sayed-Khaiyum in March 2011.

The PER is being broadly interpreted in order to allow control over other areas of life. In September 2010, it was reported that state authorities had invoked provisions of the PER to restrict unnecessary use of water in the drought-afflicted Western Division. The police, it was reported, would monitor water use and decide how to deal with people found wasting it (Fijivillage.com 17/9/10).

In effect, the PER has provided the government with the means of stifling the free expression of people in secure gatherings. It has prevented those opposed to any policies or actions of the government from conveying their criticism to the general public. Few statements critical of the government are seen in the media. Politicians, lawyers, the media, NGOs, academics, unionists and members of the public have all been effectively silenced by the PER, which has been repeatedly extended for 30 consecutive days since 10 April 2009; it was extended for the twentieth time in November 2010, and extensions have continued in 2011.

The government had promised to lift the PER after a decree related to the media came into force; the Media Industry Development Decree was promulgated on 25 June 2010 — but the PER **remained** in force. In his New

Year's message, Bainimarama announced that the PER would cease on Saturday, 7 January 2012 (Fijivillage.com 2/1/12). Although the PER was lifted, a new Public Order Decree 2012 was imposed under which all restrictions imposed under the PER have been retained and the powers of arresting and detaining people were increased. The only restriction not carried forward from the PER was media censorship.

Media Industry Decrees

The government's apparent fear of the media and its subsequent need to control it has been attributed to the events of 2000, when a hate-campaign against the then Prime Minister, Mahendra Chaudhry, by *The Fiji Times* led to inflammation of anti-Indian sentiments among ethno-nationalist Fijians, culminating in the volatile *iTaukei* march of 19 May 2000, and the civilian takeover of the Chaudhry government.

Fear that the events of 2000 could be repeated is likely to have weighed heavily in the government's determination to control the media. After the abrogation of the constitution, the government began sending police officers to newsrooms. All stories critical of the government, military or the current status-quo were ordered to be removed. In May 2009, Fijilive reporters Dionesia Turagabeci and Shelvin Chand were arrested and detained in relation to a news item covering CCF criticism of the government for releasing eight soldiers and a policeman convicted of manslaughter, only two months into a sentence of four years and four months (Radio New Zealand International (hereafter RNZI) 10/5/09).

But control of the media extended beyond the newsrooms and news organisations. The Regulation of National Spectrum Decree 2009 was promulgated on 13 November. By this decree, all power to issue or revoke the licenses for telecommunications, radio and television broadcasters, was vested in the minister responsible for communications — the Attorney-General Aiyaz Sayed-Khaiyum. All existing licences were made temporary pending a review by Khaiyum. There was no compensation for licensees whose licenses were cancelled, and the attorney-general's

decision could not be challenged in any court, tribunal, judicial or adjudicating body. Breaches of the provisions could incur a fine of up to \$100,000 or up to five years' imprisonment.

The June 2010 Media Industry Development Decree 2010 provides for the establishment of the Media Industry Development Authority of Fiji to encourage, promote and facilitate the development of media organisations and services in Fiji, make recommendations relating to the media to the minister, ensure high standards; ensure that no media content is against public or national interest, promote local content; and refer complaints to the media tribunal established under the decree.

To ensure authors can be identified, every article of 50 words or more must have a byline, and a breach of the decree can result in a fine of up to \$100,000 for a media organisation, and up to \$25,000 and/or a two-year jail term for a publisher or editor. The authority can investigate and require persons to produce a document or information, or explain why it can't be produced. A breach can incur a fine of \$10,000 or two years' imprisonment. Destroying or falsifying documents, providing false or misleading information and obstructing officers, can also incur a \$10,000 fine or two years' imprisonment.

Furthermore, positions of power in media organisations must be held by citizens permanently residing in Fiji, and 90 per cent of beneficial ownership must accrue to such citizens. This section of the decree forced the sale of *The Fiji Times* — a wholly foreign-owned subsidiary company of Rupert Murdoch's News Limited, which had been critical of the government since the 2006 coup — to the local Motibhai Group.

The media tribunal has authority to investigate any media organisation. Media organisations contravening orders of the tribunal — members of which are appointed by the president and the attorney-general — can incur fines of \$100,000. Failure to print correcting statements incurs a \$10,000 (person) or a \$100,000 (company) fine or two years' imprisonment. There are numerous other fines for other infringements.

Duplicating the PER, under the media decree, the minister may prohibit broadcast or publication, 'If information can give rise to disorder, cause undue demand on security agencies, breach peace, promote disaffection or public alarm, or undermine the Government and State of Fiji'. Media organisations must submit all material to the minister or cease activities and operations. Any other offence under this decree incurs fine of \$10,000 or two years' imprisonment. The validity of the decree and of decisions by the minister cannot be challenged, and only a fine of more than \$50,000 can be appealed in court.

In effect, the Media Decree has forced the media to engage in self-censorship. As a result, citizens, especially those living in rural areas of Fiji and with limited communications technology, have access only to government-approved stories in the newspapers, or on radio or television. The government further spreads its propaganda by publishing a roughly 20-page supplement in Saturday's *Fiji Sun* every week, and by broadcasting twice on a Mai TV daily news programme, *Fiji Today*, which is produced by the Ministry of Information.

Inevitably, numerous blogs, such as Matavavalu, Solivakasama, Coup 4.5, Loyal Fijian, Solivakasama Worldwide Movement for Democracy in Fiji, and Raw Fiji News, have emerged to air the views of Fijians who, under the current repressive laws, cannot express themselves in the news media. These blogs tend to carry 'hate speech' and derogatory comments, and much of the 'news' cannot be verified. However, the blogs have become very attractive alternative news sites in news-starved Fiji.

The joint impact of the PER and Media Decree has been to block criticism of the government and make it possible for the regime to implement its agenda without having to deal with criticism and calls for transparency and accountability. The decrees also aim to prevent people from relaying messages in order to create alliances against the regime.

CONTROLLING INDIGENOUS FIJIAN INSTITUTIONS

One of the main justifications given by Bainimarama for the coup was the need to promote equality and end racial discrimination. After April 2009, the government embarked on a systematic reform of all indigenous Fijian institutions (since the promulgation of the Fijian Affairs (Amendment) Decree 2010, the term Fijian (meaning indigenous Fijian) has been changed to *iTaukei*).

Under Decree No. 8, the privilege of the GCC to appoint the president or vice president was done away with. Subsequently, the Fijians Trust Fund (Amendment) (No. 2) Decree 2009, which dilutes the power of the GCC by removing the need for the minister for indigenous affairs to consult with it when appointing the chairperson of the Fijians Trust Fund, was promulgated.

Under the Native Lands Trust Act (Amendment) Decree 2009 the Minister, rather than, as was the case before, the GCC, appoints the five indigenous members to the Native Lands Trust Board (NLTB). The Native Lands Trust (Amendment) Decree 2010 makes further substantial changes to decision-making with regards to land. It makes the minister for indigenous affairs the chairman of the NLTB, and gives the minister, rather than the president, the power to set aside land as native reserve and to appoint members. Under this decree, Bainimarama, being the minister for indigenous affairs, now has the authority to decide who takes part in deliberations on native land and what happens to native land.

The underground Fiji Democracy and Freedom Movement, on the blog 'Indigenous Peoples Issues', pointed out on 7 July 2010 that, amongst other things, the amendment removes a major reason for the continued existence of the GCC.

The Land Use Decree 2010 ensures that leases are for a minimum of 99 years, and gives the prime minister the authority to designate the lands of native landowners to the Land Use Unit. The aim of the decree is 'to utilize designated native lands in a manner that is in the best interest of native land own-

ers and to utilize designated crown land with a view of achieving optimal returns for the state'. In a clause that is tediously repeated in the growing list of decrees, no court, tribunal, commission or any other adjudicating body can hear any challenge to the validity of the decree, to the decisions of any minister or state authority, or to the conditions of leases or validity of cancellation of leases, licenses or other instruments.

A former president of Fiji's Tourism Resource Owners Association, Ratu Osea Gavidi, expressed concern that the land bank could alienate people from their own resource and remove their freedom to decide on how their land could be used (RNZI 10/8/10).

Early in 2011, the government announced income from leased land would, in future, be distributed equally among all *mataqali* members, with no chief or titleholder receiving larger shares.

SUPPORT BASES FOR THE COUP

The government's control over the civil and political rights of the people of Fiji, particularly since the abrogation of the constitution has, due to the new legal restrictions on the media, judiciary, lawyers, and indigenous Fijian institutions, been overpowering. The suppression of the rights of the people to meet and express political opinions, and to challenge government decisions has caused discontent amongst some sections of Fiji's society. However, there are many who have publicly supported the coup. These include loyalist soldiers, some academics, politicians, some civil society advocates and, of late, those indigenous Fijian communities benefiting from local infrastructure projects. The 2006 coup has divided public opinion in Fiji, with a large section of Fiji's community opposing it, and another large section either fully supporting it or willing to give the coup regime the same benefits of the doubt as those extended to an elected government. While the opposition's voice has been effectively suppressed through repressive laws, the supporters' views are actively aired in the public arenas.

The Military

After the 2006 coup, the Bainimarama regime retained civilians in many key ministerial and senior government portfolios. However, after April 2009, a systematic militarisation of the government took place; this ran parallel with the PER and the numerous decrees as both a means of maintaining control over the public service and influential agencies, and a means of rewarding and retaining the support of military officers. Loyalist military officers were given promotions, whereas dissenting soldiers were penalised, persecuted and sidelined.

Despite Commodore Bainimarama's early statements that there would be no army officers in any new interim government and that 'no military officer should and will benefit from the interim administration', by November 2010, CCF's Reverend Akuila Yabaki noted:

To date it is known that 67 per cent of Fiji's government ministries have military personnel in senior positions, where senior is defined as the Minister, or head of unit with second in charge decision making authority below the Minister; 32 serving military personnel have been appointed to the cabinet and civil service; 16 military appointments have been made to Statutory Boards and Government or Quasi Government Institutions; and 55 per cent of the national budget is under the authority of a military minister. This represents known appointments only, however, given that military titles are no longer being used in the government gazettes, the actual extent of militarization of the government and civil service may be greater ... Of the total 21 Ministries, only eight currently have no known military presence in a senior decision making capacity. The sanctions imposed by Australia and New Zealand on civilians taking up positions within the current government have no doubt contributed to the high number of military appointments.

Bainimarama has gone one step further by allocating all the key ministerial portfolios to himself and the Attorney-General Aiyaz Sayed-Khaiyum; all the repressive decrees now fall under the portfolios of either Bainimarama or Aiyaz.

Bainimarama, serving commander of the RFMF, has been the interim prime minister since January 2007 and, prime minister since 10 April 2009. Ratu Epeli Nailatikau, a former military commander was appointed president in November 2009. Captain Timoci Natuva is the minister for public utilities, works and transport. Colonel Samuela Saumataua is the minister for local government, urban development, housing and environment. Former military officer Netani Sukanaivalu is the minister for lands and mineral resources. Former military commander Ratu Epeli Ganilau was the minister for defence, national security and immigration, but he resigned from all ministerial positions while he was acting PM in November 2010. As of February 2011, there are three military ministers in the government. Five permanent secretary (PS) positions are held by military officers: Lieutenant Colonel Pio Tikoduadua (prime minister's office); Lieutenant Colonel Mason Smith (Department of Agriculture); Commander Viliame Naupoto (fisheries and forests); and Lieutenant Colonel Manasa Vanigi (provincial development, multi-ethnic affairs and sugar). In August 2011, Commander of the Navy Francis Kean, who was also head of government shipping services, became acting permanent secretary for the Ministry of Works, Transport and Public Utilities, and was confirmed as permanent secretary in October. Kean, Bainimarama's brother-in-law, had recently served time in gaol for manslaughter. The deputy permanent secretaries of the Fijian Affairs Board, and for provincial development are also military officers. The four divisional commissioner positions are held by military officers. Even Fiji's national sport — rugby — was not spared from military control. On 7 May 2011, Fijilive reported that Colonel Mosese Tikoitoga had been appointed chairman of the Fiji Rugby Union board.

In 2007, Deputy Commander EsalaTeleni was promoted to the rank of commodore and headed the Anti-Corruption Unit, before becoming deputy commissioner of FICAC. Later, in September 2007, he was appointed police commissioner, and, in late 2010, he was made ambassador to China. After the coup, Lieutenant Colonel Neumi Leweni was appointed permanent secretary for information, then, in 2010, he was made permanent secretary for lands; however, he was recalled to the army barracks at the end of 2010. Commander Viliame Naupoto was made the director of immigration but was later replaced by Major Nemani Vuniwaqa. Colonel Timoci Natuva was made minister for transport after the 2009 abrogation. Lieutenant Colonel George Langman was appointed deputy commissioner of FICAC in 2007. After the resignation of Teleni from the position of police commissioner in August 2010, he was replaced by Brigadier General Iowane Naivalurua, who retained the position of commissioner of prisons (FBC 17/9/10). Major Ana Rokomokoti was sworn in as a magistrate in May 2007, and in April 2009, appointed chief registrar; however, in June 2010, it was reported that she had been recalled to the army barracks (TFOL 26/6/10). The director of fisheries, director of government ITC services, director of foreign affairs, director of government pharmaceuticals, assistant director for disaster management centre, director of national planning, and the head of the film and television unit at the Ministry of Information are all military officers. Former military officer Isikeli Mataitoga is Fiji's ambassador to Brussels.

Land Force Commander Brigadier-General Pita Driti had been a key public figure, speaking on behalf of the RFMF in the media on many occasions, defending the military's actions and warned those criticising the government's actions of reprisals. Another influential person in the RFMF was the commanding officer of the Third Fiji Infantry Regiment Lieutenant Colonel Roko Tevita Uluilakeba Mara. Both Driti and Mara had been anonymously identified by some people who had been abused at the military barracks,

as giving the orders for the rounding up, ill-treatment or intimidation at the army camp, of critics of the Bainimarama government after the December 2006 takeover. After wild speculations on anti-government blogs that they had been suspended from the RFMF for allegedly planning to assassinate Bainimarama, it was finally revealed by Bainimarama in October 2010, that they were not suspended, but on leave as they had accumulated substantial leave over the years. All officers were subsequently ordered to use up their leave and not accumulate it, as had been the practice in the past (FBC 25/10/10). Bainimarama revealed that Lieutenant Colonel Mara had accumulated 10 months of leave. On 4 May 2011, however, Driti and Mara appeared in court charged with uttering seditious comments; Driti was also charged with inciting mutiny (Fijilive 4/5/11). An amusing twist occurred when Mara escaped to Tonga two weeks later, claiming he was picked up by a Tongan patrol boat when he ran into difficulties during a fishing trip (Radio Australia 20/5/2011).

Another key public figure for the RFMF was Brigadier Mohammed Aziz, who is the military lawyer and has also acted as deputy army commander. In January 2011, Brigadier Aziz resigned from his positions on the Boards of Fijian Holdings Limited and Merchant Finance. No reason was provided to Fiji's censored media, however, unofficial sources cited Brigadier Aziz's attempts to gain personal benefit from these positions as a reason for his resignation.

These actions, the recall to barracks of army officers Leweni and Rokomokoti, and the reshuffling of civil service and military portfolios held by soldiers, suggest that Bainimarama and his advisors may be wary of soldiers becoming too powerful, and so posing a challenge to Bainimarama's rule. Such actions resonate with the literature on 'personalist' military regimes: 'If they choose, personalist leaders can select low skilled individuals who are less likely to unseat them ... Personalist dictators also ensure that no individuals get too powerful through frequent rotations and purges' (Frantz &

Ezrow 2011, Ch. 2). The relationship between Bainimarama and Attorney-General Aiyaz-Khaiyum has thus been sustained, as Khaiyum does not enjoy the support of the military council or the major political parties. Khaiyum had also not been received with affection at an earlier Pacific leaders meeting. With no support base, he poses no threat to Bainimarama's power.

Over the years since the coup, lower rank soldiers have been given roles in non-military agencies, such as assisting the Public Works Department with road building and repair work, managing natural disaster mitigation and relief works, and assisting the Land Transport Authority. They have also been working with the police to apprehend escaped prisoners and, since the coup, vehicles with the signage 'Military Police' have emerged. Soldiers accompany Bainimarama on his official trips to the interior, such as Namosi, Tailevu and Ra. In such ways, soldiers are made to feel they have an important role in Fiji's society that is normally beyond that of the military and ordinary citizens.

To implement the coup and to maintain the morale and loyalty of soldiers, between 2005 and 2009 the government increased its expenditure on the military by FJD\$25.3 million. Government statistics reveal that expenditure on general public services by the Bainimarama government generally decreased after the coup (except in 2009), while expenditure on defence, public order and safety increased. The military drastically overspent its 2007 budget. Former finance minister Mahendra Chaudhry admitted that the RFMF did so without following proper procedures. Chaudhry, however, justified the overspending on the grounds that 'following threats of overseas invasion after the December 2006 takeover, safety and security measures were put in place by the military which required more money than what was in their budgetary allocation' (FBC 26/11/08).

Fiji government's yearly budgets show about 77 per cent of the government's expenditure is utilised to maintain the public service machinery, and about one-tenth of this is on the military. The large size of Fiji's military is a concern as, not only is

it a potential threat to the nation's political stability, but, more importantly, it also chews up a major portion of Fiji's budget — money that the country desperately needs for infrastructure and anti-poverty projects. The higher un-budgeted expenditure each year on the military has been analysed by economists such as Wadan Narsey. There is serious concern amongst civil society that there may have been shifts in expenditure to military-driven projects that remain invisible due to the fact that government expenditure cannot be monitored because no auditor-general's report has been tabled since the 2006 coup, and due to the non-existence of a parliament. Geddes has noted that, among many things highly valued by professional soldiers are budgets sufficient to attract high-quality recruits and buy state-of-the-art weapons, and that the '... continued existence of lucrative opportunities for officers may depend on the survival of the military as an effective organisation' (Geddes 1999:126). On this basis, retaining substantive expenditure on the military has been essential to the survival of Bainimarama's coup regime.

Impact of Infrastructure and Poverty Reduction Strategies

One of the main aims of the Bainimarama-led coup in 2006 was the alleviation of poverty through infrastructure projects, the ending of racism and the eradication of corruption; these goals have become more significant as the centrality of others, including upholding the Constitution and electoral reform, seem to have diminished.

After December 2006, many civil society supporters of the government, such as Father Kevin Barr and academic Satendra Nandan, were convinced that the government would resolve the squatter problem, provide minimum wages and provide infrastructure, such as roads, water and electricity in rural areas. Their conviction was strengthened when, immediately after the coup, Interim Finance Minister Chaudhry announced that the increase in VAT to 15 per cent announced by the deposed government would be rescinded in order to reduce the burden on the poor. Projects were announced to build low-cost

Table 1: Expenditure on Defence and Public Safety: 2005–2009 (FJD\$ '000)

Province	2005	2006	2007	2008	2009
General Public Services	99,047	147,782	65,738	65,711	99,649
Defence	72,933	93,625	121,731	85,431	98,243
Public Order and Safety	84,129	96,558	99,977	108,541	108,093

Source: *Fiji Islands Bureau of Statistics, Key Statistics*, June 2010.

housing, and complete major road works, such as the Kings highway.

The need for economic improvement was made clear in *Fiji: The State of the Nation and the Economy Report*, a comprehensive report on Fiji's economic situation since independence produced by the Secretariat of the NCBBF to assist in the formulation of a 'charter' for Fiji, which stated (NCBBF 2008:9) that increasing government debt and associated high interest payments had drained funds for necessary infrastructure. The report revealed that Fiji's economic growth had been on a slow downward curve since 1970.

In Fiji, infrastructure development since independence has relied heavily on aid and development loans. The Rewa Bridge in Suva, for example, was made possible by a FJD\$24 million aid grant from the European Union and, in 2005, the Asian Development Bank, World Bank and the Exim Bank of Japan co-funded road improvement projects worth FJD\$118 million.

Since the 2006 coup, the sources of aid have shifted as traditional lenders have demonstrated reluctance to support the non-democratically elected government, and funds have been sought and received from lenders less concerned with what they regard as internal politics. For example, in 2010, China donated FJD\$10 million for the implementation of the Somosomo Hydro Scheme, which will see the electrification of the island of Taveuni completed (Radio Fiji 5/9/10). An FJD\$80 million upgrade of the Sigatoka to Rakiraki Road, funded by the Exim Bank of Malaysia, is expected to be completed in 2011 (FBC 11/8/10).

If comments by provincial leaders are anything to go by, Bainimarama's strategy of obtaining local community acceptance of his government through the delivery of local infrastructure may be working. In September 2010, a delegation of chiefs from 16 districts of Naitasiri Province — a province known to be opposed to Bainimarama's coup — visited Bainimarama's residence in Muanikau to present a traditional apology for past indiscretions and to pledge support to the current prime minister and government (Fijivillage.com 3/9/10). The traditional presentation of a *tabua* (whale's tooth) for a *matanigasau* ceremony to seek forgiveness, was made on behalf of its high chief, the Qaranivalu Ratu InokeTakiveikata, who is currently serving a prison sentence for attempting to assassinate Bainimarama, and on behalf of the province. The delegation included Ratu Inoke's wife, Adi Lagamu Takiveikata.

Speaking on behalf of the *vanua* of Vuda, Ratu Tevita Momoedonu said they were indebted for the infrastructure development in Ba Province that eventuated during Bainimarama's term in office (FBC 4/9/10).

The people of Tovata Confederacy, in September 2010, expressed support for Bainimarama's efforts to make development, and not elections, a priority (FBC 5/9/10). In August 2010, similar sentiments were relayed by the people of Bua, Cakaudrove and Macuata in Vanua Levu. Speaking on behalf of Lau people, the Turaga Tui Ono Waisea Davuiqalita from Ono-i-Lau Island expressed satisfaction that Fiji was back on track, that promises by government had been fulfilled and that projects that had

been in the pipeline for four years were completed (Radio Fiji 18/8/10).

Interestingly, Bainimarama's apparent strategy of providing local infrastructure and services in exchange for support seem to be directed at the indigenous Fijian community. There is little evidence to show that the Bainimarama government is doing anything similar for communities of other ethnic groups.

Notwithstanding these local examples of what could be seen as infrastructure-bought political acceptance, the overall economy of Fiji has not improved since the 2006 coup. An analysis of the government's financial aims in the 2011 budget, undertaken by economist Dr Wadan Narsey, revealed that the Bainimarama government has failed to: raise investment levels to 25 per cent of GDP, grow the economy by 5 per cent annually, reduce the rate of poverty to a negligible level, and maintain average annual inflation to around 2–3 per cent — all of which were put forward as aims of the regime following the coup (Narsey 2010).

The analysis reveals that, on the contrary, fiscal deficits and government debt, have both drastically increased since December 2006.

CONCLUDING COMMENTS

On 6 June 2011, the attorney-general was reported on Fijilive as saying 'We have brought in about 70 new laws within one year'. The previous month, on 11 May 2011, the solicitor general had been quoted on Radio Fiji as saying 'Fiji passed 55 laws last year — and more will be passed this year ...'.

In the early period after the abrogation of the constitution, decrees were systematically announced, gazetted and published on the government website immediately upon promulgation. But within a few months, the public was learning only about those decrees that the government chose to announce in the media. Not all decrees were announced upon promulgation and some were not announced at all. In late 2009, the government stopped publishing decrees on its website. As a result, many people in Fiji could not access information on significant changes in the law, and the

reports in the media were their only source of information. However, in mid-2011, the government uploaded all the decrees onto its website, although many citizens remain unaware of this development.

Certainly, the Bainimarama regime has neither been democratic nor transparent in law-making. However, the promulgation of over a hundred decrees since the 2006 coup suggests the coup was implemented in a markedly different manner to previous coups. The minor changes in legislation entrenched executive control over decision-making. Some new pieces of legislation, such as the Crimes Decree, anti-corruption decrees, Media Decree and PER, have significantly changed the legal scenario in Fiji as they enabled the Bainimarama regime to entrench repression. However, the regime also created support for its agenda through some 'good governance' laws, such as those focusing on anti-corruption, criminalisation of domestic violence, the neutralising of chiefly control, decriminalisation of homosexual relationships, and anti-racism. There have been mixed reactions amongst people, with many opposed to repressive laws but still managing some praise for the regime's 'good governance' laws.

The repressive laws introduced — and propaganda distributed via a controlled media — particularly since April 2009, have had the effect of stifling criticism and conveying the impression that the regime enjoys significant grassroots support. At the same time, decrees protecting the regime from prosecution, and a strategy of keeping the military loyal and strong through rewarding loyal officers with good positions, sidelining or removing from office those posing a threat, and ensuring a healthy budget for the disciplinary services has further entrenched Bainimarama's position. And, of late, the apparent acceptance of the regime by those indigenous communities who have benefited from infrastructure projects, may add to Bainimarama's sense of, or actual, security.

The 'short periods of military rule followed by the consolidation of power by a single officer and the political marginalisation of much of the rest of the officer corps', seen

by Geddes as a characteristic of a personalist regime, usefully describes the situation in post 2006 coup Fiji, in which the officers of the early established military council were given prominent government roles immediately following the coup, but, in later years, were moved, sidelined or reshuffled, until only Bainimarama remained as a key leader without any apparent military successor.

The repressive laws have, so far, succeeded in stifling the free will of the people. However, having studied 163 authoritarian regimes, Geddes notes that, 'All kinds of authoritarian regimes were eventually affected by the economic crisis, as populations plunging into poverty blamed their governments and gradually took the risk of demanding change' (Geddes 1999:138).

Five years after the Bainimarama-led coup, despite government claims to the contrary, and despite winning over some indigenous communities with the provision of relatively small local infrastructure projects, the economy of Fiji has worsened. Recent court cases on 'seditious comments' sprayed on billboards in the Suva-Nausori corridor, and prominent trade union leader Daniel Urai being charged with urging political violence suggest that repression is not working, and that Bainimarama remains afraid of people in Fiji who do not support the activities of the government. Earlier this year, major donors refused to release aid to Fiji unless genuine steps are taken towards free elections. This resulted in the regime making public reassurances that elections will happen in 2014, and consultations for a new constitution will begin by September 2012. The lifting of the PER in January 2012 still left intact repressive laws including those curtailing the powers of the judiciary and the media.

The Bainimarama regime clearly does not want any uprising against its rule and, in fact, is fearful of any such action by the citizens of Fiji. There remains hope in Fiji that good sense will prevail and that democratic elections will be permitted soon, because a failure to return to democracy may result in the worsening economic situation driving the silent majority to join the smaller group of critics to agitate for self-government.

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ENDNOTES

1. The Bainimarama administration has been known as Fiji's 'Interim Government' or 'Caretaker Government' since 5 December 2006, due to its unelected status. Since 10 April 2009, when it was re-sworn-in, it has generally been accepted locally and internationally that the regime will stay in power for many years. Furthermore, due to censorship after 10 April 2009, the local media became obliged to refer to the regime as the 'Fiji government'. Thus, in this paper, the government prior to 10 April 2009 is referred to as the 'Interim Government' and the one appointed after 10 April 2009 is referred to as the government.
2. The author was employed at CCF between January 2007 and February 2011 and witnessed these events.

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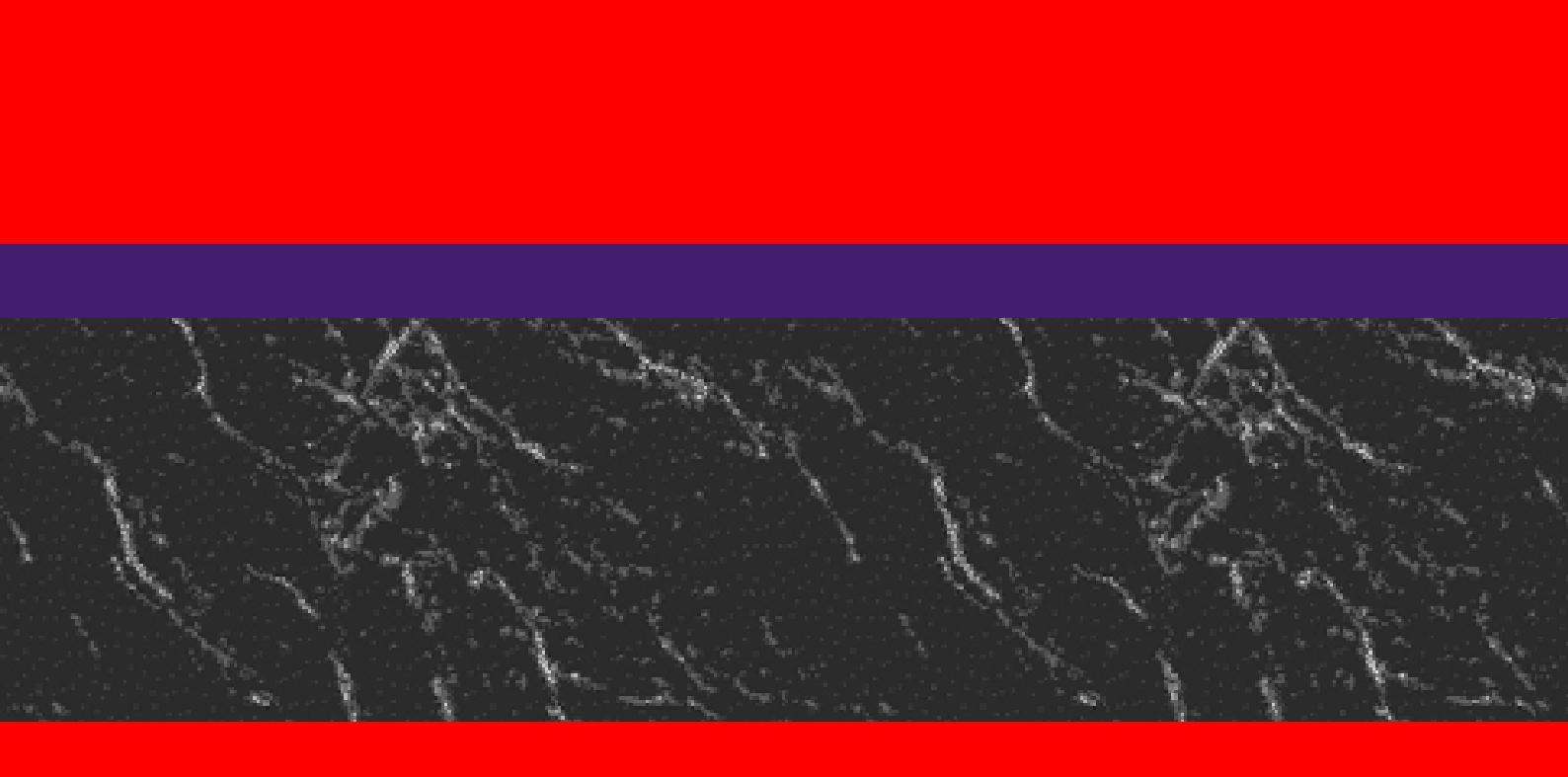
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