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FIJI'S SHORT-LIVED EXPERIMENT IN EXECUTIVE POWER-SHARING, MAY – DECEMBER 2006

INTRODUCTION

Much of the commentary on Fiji's coup of December 2006, particularly that sympathetic to Commodore Bainimarama's intervention, pays little attention to, or grossly misrepresents, the nature of the government that he removed. Contrary to the military regime's post-coup rhetoric about the ethnically divisive policies of the Qarase Government, the period from May to December had seen an experiment in executive power-sharing in which, for the first time, the provisions of s.99 of the 1997 Constitution were fully and faithfully implemented, with Fiji's two biggest political parties, each supported by a large majority of one of Fiji's two major ethnic groups, cooperating in Cabinet. Its untimely end is now held by some commentators to be proof of the inherent unworkability of s.99. This paper seeks to test that proposition.

THE CONSTITUTION REVIEW COMMISSION: ENCOURAGING MULTI-ETHNIC POLITICS

Fiji's 1990 Constitution, which embodied the outcomes of Rabuka's 1987 coups, contained a clause providing for a review seven years after its promulgation. This review was conducted by an independent Constitution Review Commission, chaired by former New Zealand Governor General Sir Paul Reeves, which undertook very wide consultations within Fiji and examined the constitutions of a number of other countries with multi-ethnic populations that might hold lessons for Fiji.

The Commission concluded that all of Fiji's communities had "a common interest in constitutional arrangements that bring them together, rather than pull them apart", which had been the unintended effect of previous constitutions. Efforts to combine the Westminster system with communal

**MICHAEL
GREEN**

representation, a response to Fiji's multi-ethnic society, had failed to produce a political environment that encouraged political parties to seek support across ethnic community lines. The Commission recommended a package of measures to encourage the emergence of multi-ethnic governments. This included:

- maintaining the parliamentary form of government in which the Prime Minister and Cabinet members are chosen from Members of Parliament;
- recognising the role of political parties in forming governments that can command a majority in the House of Representatives;
- providing incentives for cooperation among ethnic communities in forming and supporting political parties;
- phasing out communal representation but providing assurances to all communities of continued adequate representation in Parliament; and
- providing assurances that the rights and interests of all communities would be protected under a multi-ethnic government.

A key recommendation proposed a significant change in electoral arrangements to promote cooperation across ethnic lines. The 1990 Constitution had done away with the national cross-voting seats of the independence Constitution and provided for the House to be composed solely of communal seats. The allocation of these seats among the communities was weighted disproportionately to Fijians and General Voters and against Indo-Fijians. In place of this, the Commission recommended that the House comprise a mixture of communal and "open" seats, the latter having no restriction on the ethnicity of electors or candidates. The balance between communal and open seats would be 25 to 45 in a 70 member House. As victory in communal seats alone would not ensure a majority in the House, the open seats would become the critical electoral battlegrounds.

To give incentives to ethnic communities to take a multi-ethnic approach to the open seat contests, the Commission proposed that election to open seats be effected through

fifteen heterogeneous constituencies, each returning three members. The ethnic composition of the three member tickets would be for parties to decide but there was a presumption that ethnically-mixed slates of candidates would fare better. Over time, as electors in all communities gained confidence that their needs and interests were being served through this system, the Commission envisaged the development of genuinely multi-ethnic parties and the progressive elimination of communal seats.

PARLIAMENTARY SCRUTINY AND ITS OUTCOME

These electoral recommendations proved to be too radical for the Joint Parliamentary Select Committee that considered the Commission's report. The Select Committee reversed the ratio of communal to open seats and rejected the concept of multi-member open constituencies. It agreed with the principle of encouraging the emergence of genuinely multi-ethnic government but proposed that this be achieved through a mandatory power-sharing arrangement, which emerged as s.99 of the 1997 Constitution. The Commission, which received many submissions in favour of power-sharing, had examined specific power-sharing arrangements in other countries, but concluded that voluntary agreements, not constitutional prescription, would best promote political cooperation among Fiji's ethnic communities.

In departing thus from the carefully balanced package proposed by the Commission the Select Committee did not take sufficient account of the consequences of superimposing onto a Westminster system provisions governing the formation of Cabinet that limited a Prime Minister's freedom of choice. S.99(5) of the 1997 Constitution required a Prime Minister, in establishing a Cabinet, to "invite all parties whose membership in the House of Representatives comprises at least 10 per cent of the total membership of the House to be represented in Cabinet in proportion to their numbers in the House", but the Prime Minister was expected to command a majority. There was no clear formula for deciding Cabinet allocations among qualified parties; there were no rules for the conduct of Cabinet; there was no limit

on Cabinet membership; and the processes for selecting Ministers from qualified parties were vague, apart from a requirement for the Prime Minister to consult the leaders of those parties. These issues had to be resolved in the courts after legal challenges to the manner in which Prime Ministers Chaudhry and Qarase sought to apply s.99 after the 1999 and 2001 elections.

After Mahendra Chaudhry's Fiji Labour Party (FLP) obtained an absolute majority (37 seats) in the 1999 election, it brought its coalition partners into government. Only one of these, the Fiji Association party, was entitled to participate according to s.99. The other party that qualified under s.99 was the former governing party, Rabuka's Soqosoqo Vakavulewa ni Taukei (SVT), but the courts found that it placed conditions on its participation that amounted to a rejection of Chaudhry's offer. In 2001, after his Soqosoqo Duavata Lewenivanua (SDL) party won most seats in the election, Laisenia Qarase formed a Cabinet with the Conservative Alliance Matanitu Vanua (CAMV) party, paying no attention to the power-sharing provisions of the Constitution. Challenged in the Court of Appeal and then the Supreme Court, Qarase was found in both to have acted in defiance of the law. After the decision of the Supreme Court in 2004, Qarase conformed to the letter, but not the spirit, of the law by offering the FLP token portfolios in an expanded Cabinet. The offer was rejected.

The behaviour of the two Prime Ministers in seeking to deny an effective power-sharing role to the major rival party, and the subsequent protracted legal processes, undermined confidence in s.99 and in the concept of power-sharing.¹

2006 – A POST ELECTION SURPRISE

Against this background, Qarase's decision after his party's victory in the 2006 general election to appoint a multi-party Cabinet as prescribed in s.99 of the Constitution came as a considerable surprise, not least because of the ethno-nationalist reputation of the government he had led for the past five years.

Qarase had previously made no secret of his dislike of s.99. He had publicly expressed his willingness to form a multi-ethnic Cabinet reflecting Fiji's diversity, but preferred this to be done through a voluntary coalition of willing parties rather than through a constitutional requirement which almost inevitably threw together parties that were not natural partners. A voluntary coalition was not an option in 2006 because the general election had returned only three parties to the House, one of which had only two representatives and thus was not qualified under s.99 to participate in Cabinet. Moreover, because the series of court rulings since 2001 had clarified the way in which s.99 was to be interpreted, Qarase had to accept that a multi-party Cabinet was mandatory.

Circumstances after the 2006 election made it easier for him to contemplate compliance with the Constitution than was the case in 2001. His SDL party emerged from the 2006 election with 36 of the 71 seats. He did not need to enter a coalition to command a majority. Unlike 2001 he had no need to make policy compromises to accommodate a partner in forming a multi-party Cabinet. Qarase was secure in the support of ethnic Fijians, more than 80 per cent of whom had voted for SDL. He was no longer encumbered, as SDL had been in the previous parliamentary term, by the political necessity to placate an extremist coalition partner, the CAMV party; SDL had taken several CAMV members into its own ranks and those who remained outside failed to win election. Qarase was thus able to move towards the political centre.

He could have responded in a tokenistic way, as in 2004, but he did not. There had been signs during the election campaign that Qarase aspired to broaden his political base. He had tried hard, albeit with limited success, to increase support for SDL among Indo-Fijians. People who knew him well said he realised that a broader vision of Fiji's future was needed to bolster confidence in his leadership. Having accepted this, he also saw that advantages would flow from early and decisive action to demonstrate a change in attitude.²

The uniformly positive public reactions to his 19 May announcement of an offer to the FLP leader suggested that he had read the

national mood accurately. Representatives of political parties, NGOs, and community organisations from both major communities welcomed the intention to implement s.99, and looked forward to a new spirit in politics that might mark a break from the divisions and controversies of the recent past. Even the Commander of the Republic of Fiji Military Forces (RFMF) expressed approval, although he had been a public critic of Qarase's government during its previous term and had aligned himself during the election campaign with the coalition of opposition parties, the Fiji Labour Party (FLP), the National Alliance Party (NAP) and the United Peoples Party (UPP), going so far as to send RFMF civic action teams to conduct an anti-government "campaign of truth" in rural areas.³

FORMATION OF THE GOVERNMENT

On 18 May, after being sworn in as Prime Minister, Qarase wrote to the FLP leader, offering portfolios to seven FLP representatives, and inviting Chaudhry to submit twelve names from among whom Qarase would choose Ministers. The portfolios offered to Labour were substantial: Agriculture; Commerce and Industry; Energy and Mineral Resources; Environment; Health; Local Government; and Labour and Industrial Relations. Qarase publicised the offer at a press conference the next day, and said he was contemplating a Cabinet comprising ten from SDL, seven from the FLP, two Independents and a small number of Senators. He wanted the Cabinet sworn in by 22 May.

Qarase quickly secured the support of the two Independents, Jioji Konrote and Robin Irwin, which increased his support in the House to 38 but Chaudhry tried to set conditions for FLP participation. After the close election result he had attempted to form a governing coalition led by the FLP with support from Independents and the UPP, but failed. At the first post-election meeting of the FLP Parliamentary caucus, he pressed for a decision against acceptance of Qarase's offer but caucus members overwhelmingly supported participation in Cabinet. Accepting the Prime Minister's offer in principle, Chaudhry was reported as

saying that ground rules for the operation of multi-party government would have to be agreed first, and that there would have to be prior agreement on a code of conduct for the leadership, on the size of the civil service, and on the "intent and spirit" of power-sharing. He also claimed that the FLP was entitled to eight, rather than seven Cabinet posts. He ruled out accepting a Cabinet appointment for himself.⁴

Qarase conceded the additional Cabinet seat, acknowledging that his initial calculation understated the FLP entitlement, and subsequently offered the FLP a ninth Cabinet place. He declined to accept any preconditions, noting that this was not a voluntary coalition that required a prior agreement on fundamental policies. In adopting this stance he had a 2003 Supreme Court judgement on his side. Chaudhry was placed in a difficult position. The widespread public approval of Qarase's initiative meant that rejection by the FLP would be politically damaging to the party. The Parliamentary caucus meeting had shown a strong faction within the FLP to be responsive to the public mood and keen to participate in the Cabinet, implicitly challenging Chaudhry's leadership and FLP unity.

Chaudhry grudgingly submitted his list of nominees for Cabinet – and they were his nominees rather than the product of discussions within the FLP leadership. He complained that the portfolios offered to the FLP were those that SDL had "messed up" during the previous parliamentary term. He criticised the Prime Minister's decision to appoint to Cabinet individuals nominated to serve in the Senate, on the grounds that the Senate had not yet met. He claimed that three of the nominated Senators were SDL supporters and, according to court rulings, should be counted among the Prime Minister's share of Cabinet appointments. Simultaneously, FLP President Jokapeci Koro'i complained of election rigging and wrote to the Election Commission alleging irregularities in the conduct of the May 2006 polls. After Qarase assigned three of the FLP nominees to portfolios different from what Chaudhry wanted for them, the FLP leader accused the Prime Minister of bad faith and convened an emergency caucus meeting, saying the FLP would have to reconsider its participation. Qarase insisted, correctly, that

it was his prerogative, as Prime Minister, to appoint Ministers and to allocate portfolios.

The FLP was still considering its position on 23 May when the SDL and Independent Ministers were sworn in by the President. The absence of FLP Ministers from the ceremony dampened the sense of occasion but shortly afterwards, still outnumbered within his party, Chaudhry confirmed that the FLP would join the government “because Fiji’s people expected it”. The nine FLP Ministers took their oaths of office on 24 May.⁵

Qarase’s acceptance of nine rather than seven FLP Ministers led him to increase the size of the Cabinet to twenty-four in order to respect the proportionality of the parties, maintain an SDL majority of two, and reflect ethnic and geographical balances. As part of this adjustment he created twelve positions of State Minister outside Cabinet, making the total Ministry thirty-six. Editorial comment was highly critical of the Cabinet’s size.

That Chaudhry was reluctant to accept FLP participation in Cabinet was confirmed by his subsequent attempt to have himself appointed Leader of the Opposition, the post he had held in the previous Parliament. While there were legitimate concerns about sustaining an effective Opposition in a House in which virtually all members would be part of the government, allowing Chaudhry to hold this post when his party was represented in Cabinet was not a solution that had any logic or much appeal. It was, moreover, inconsistent with the Korolevu Declaration, a 1999 agreement between party leaders to which Chaudhry had been a signatory and which laid down “principles, conventions and practices...in the implementation of the provisions of the new Constitution...as it relates to the establishment and functioning of a multi-party Cabinet”. Section 3(b) of the Declaration stated that “any party which participates in a Cabinet position is deemed not to be in the Opposition”. Mick Beddoes, leader of the United Peoples Party whose two members had not joined the government, was appointed Leader of the Opposition but, in accordance with a Court ruling after the 1999 election, accepted that Chaudhry should select the nominees for appointment as Senators that s.64 of the Constitution reserved to the Leader of the Opposition.⁶

POLITICAL MANAGEMENT IN THE MULTI-PARTY CABINET

The Cabinet met for the first time on 25 May. The only public comment after the meeting about ways of managing controversial issues indicated that these would be dealt with in Cabinet sub-committees in which both SDL and the FLP would be represented. Qarase amplified this point two days later in a speech to the Fiji Law Society explaining his approach to the multi-party Cabinet. He noted his former scepticism about the concept and acknowledged the public desire for a different approach. He said that other attempts to bridge Fiji’s racial divide had not been successful, and committed himself to making this one work. He emphasised that consensus decision-making would be the over-riding objective. He expressed confidence that internal differences would be infrequent and manageable because he saw a high degree of convergence between the election manifestos of the parties in government.⁷

In his speech opening Parliament on 6 June President Iloilovatu urged all members of both chambers to do their best to make the multi-party Cabinet work but had nothing to say about political management processes that might achieve this. A sign of the challenges ahead came two weeks later when an FLP Minister, Lekh Ram Vayeshnoi, told the House that the government should withdraw all affirmative action bills, enact a code of conduct, and consult the FLP on all controversial legislation. Vayeshnoi’s speech was directed at Qarase’s intention, flagged in his first post-election press conference and confirmed in President Iloilovatu’s address, to introduce as a matter of priority bills on qoliqoli (customary fishing areas), national reconciliation, and establishment of an indigenous land claims tribunal, all measures perceived by a significant body of citizens to be holdovers from the ethno-nationalist agenda of the previous government.

Because Vayeshnoi was known to be close to Chaudhry, and because his comments echoed the conditions Chaudhry had sought to impose when the FLP was invited to join the government, this was seen as a challenge to the operations of the multi-party government. Other FLP Ministers publicly

disagreed with the implicit premise that the FLP manifesto had to have primacy for FLP Ministers. Chaudhry, defending Vayeshnoi's comments as an exercise of the democratic right of freedom of speech, said the FLP National Council would consider ground rules for the multi-party Cabinet.⁸

This episode apart, there was almost no public comment on the importance of having clear and agreed ground rules for the new government or on the principles that should govern their formulation. Popular interest in the subject was negligible. None of the political party leaders saw fit to encourage public discussion of the options, either for educational purposes or to build support for their preferred approach, although Qarase, Chaudhry and Krishna Datt in their contributions to the House debate on the President's address foreshadowed the positions they would subsequently advocate. Out of the public eye all three put forward detailed proposals which reflected significantly different perspectives on power-sharing. These proposals throw light on the political dynamics which helped to undermine the multi-party Cabinet.

CHAUDHRY'S VIEW: PARTY IS PARAMOUNT

Chaudhry presented a paper to the FLP National Council meeting on 24 June. It began by noting that a number of issues arising since the formation of the multi-party Cabinet made it imperative to draw up "firm guidelines and ground rules", and went on to say:

"Central to the whole issue is the question of loyalty and obligation to the Party. It all boils down to a single question: Do FLP parliamentarians who are now members of the Qarase Cabinet owe their primary allegiance to the Party or is their allegiance now solely to the SDL Cabinet?"

After citing the Party Constitution, specifically Article 7 on Discipline, Chaudhry's paper answered this question categorically:

"The interest of the Party must remain paramount. No member whether an MP or a Cabinet Minister is above the Party".

Chaudhry then asked: "Are Labour members of the Cabinet bound by Party principles and policies?" His answer, citing Article 4 of the Party Constitution, was categorical:

"we must be guided by party policies and principles in conducting ourselves as MPs and Cabinet Ministers. The FLP Manifesto thus becomes the supreme policy document for the Labour Party...Labour's key policies are clearly stated in the party's 2006 Election Manifesto, and these must govern our conduct and regulate our actions."

Chaudhry acknowledged that this would create a dilemma for FLP members of the Cabinet if conflicts arose between SDL and FLP policies, and asked: "What happens to the concept of collective Cabinet responsibility in such a situation?" His answer was:

"it is quite in order for a Labour member of Cabinet, and backbenchers, in the context of a multi-party Cabinet to express opinions and adhere to policies that may be in conflict with that of the ruling party."

In support of this proposition the paper cited the experience of Chaudhry's People's Coalition Government in which:

"members of other parties in Coalition with us, and in the multi-party Cabinet, backbenchers in particular, were free to express their views on issues and legislation without restriction. And this happened frequently. There was absolutely no gagging."

More to the point, the paper cited the July 2003 Supreme Court judgement, quoting extensively from paragraphs 102-3, 110-112 and 129 to underline the argument that:

"the Labour Party is entitled, indeed required, to go into Cabinet with its own policies and agenda. And it has a right to demand that its policies be given cognition and fruition – albeit, this process may require 'discussion, negotiation and compromise'."

After some exhortations against being dragged into "business as usual in the SDL style", reminders that "Labour's *raison d'être* for joining Cabinet was to provide a new direction in the governance of our nation",

and a re-statement of key Labour policies, the paper asserted that:

“It must not be multi-party Cabinet at any cost!...The concept of collective Cabinet responsibility is fine as far as it goes...but Labour’s stand must prevail on key national issues such as: ALTA; the enactment of a Code of Conduct legislation and measures to deal with corrupt practices...; amendments to the Constitution; racial discrimination; amnesty provisions of the PRTU Bill; and other controversial legislation such as the proposed Qoliqoli Bill and legislation on the Land Claims Tribunal. On any of these key issues all FLP Members of Parliament, including our Ministers, must be bound to vote along Party lines.”

The paper concluded with a proposal that the National Council approve a “minimum common programme of action to be presented to the government with a definite timeline for implementation”. This would include legislation on a Code of Conduct, an anti-corruption commission, and freedom of information, along with the removal of racial discrimination from government policies and affirmative action programmes.

“Yes, the nation wants the arrangement to work. But it wants Labour to go in there and make a difference to the governance of the nation – not to itself become part of a corrupt and self-serving apparatus”.⁹

Despite the reservations of their leader, and despite Chaudhry’s domination of the FLP National Council, the mood at the 24 June meeting was strongly in favour of the multi-party Cabinet. Having seen and disagreed with Chaudhry’s paper, FLP founding member Krishna Datt pulled together and circulated some notes arguing the case for FLP participation in accordance with the national Constitution. He and Chaudhry put their respective cases to the meeting but there was no discussion of them. Chaudhry said that the purpose of his paper was to initiate some further reflection within the FLP. Evidently, he did not consider the time ripe for debate or decision. Neither did he take the opportunities provided by a range of subsequent Party meetings to air the differences between himself and Datt or to establish an agreed FLP position.¹⁰

Differences within the FLP leadership soon became public. The issue was not FLP participation in the government but the nomination of FLP representatives to the Senate. Five senior party members, including Ministers Datt and Bune, challenged the list Chaudhry wanted Beddoes, as Leader of the Opposition, to forward to the President. They claimed that Chaudhry had broken a pre-election agreement to nominate to the Senate a candidate who had stood aside in a safe Lower House seat. They asked Beddoes not to send the list to the President and called an emergency meeting of the FLP Management Board, disregarding objections by the Party President. This controversy rumbled on into July, with media reports that disciplinary action would be initiated against the five and that the FLP’s Nasinu Branch would suspend Datt, their own MP, for orchestrating a campaign to discredit Chaudhry.¹¹

QARASE’S VIEW: THE CABINET MANUAL MODIFIED

The Prime Minister had given little public indication of his views beyond the emphasis in his address to the Law Society on consensus decision-making and the use of sub-committees to bridge differences within Cabinet, but on 4 July he sent Chaudhry a detailed paper entitled “Multi-party Government in Fiji: Operational Ground Rules”.¹²

The paper was in seven sections. The Introduction explained the purpose of the paper: “to agree on the formation of ground rules which can facilitate the successful operation of this novel concept”. The second, Background to the SDL/FLP multi-party Cabinet, outlined the principles and processes on which the Cabinet had been formed, referring as appropriate to the relevant clauses of the Constitution. This section touched upon policy formulation by noting that:

“...the Prime Minister informed all Ministers that the SDL manifesto would provide the base document of the Government’s Strategic Development Plan...[H]e also made it clear

that where there are major differences in the SDL Manifesto and the FLP manifesto, there would be full discussions on a case by case basis, and the Prime Minister will chair a Cabinet sub-committee to develop agreed common positions.” (2.1 vi)

The third section, Formation of future multi-party Cabinets, began by differentiating the multi-party Cabinet from a coalition government, highlighting the point, recognised in s.99 of the Constitution, that:

“...the Prime Minister and his party do not need the support of the entitled party (or parties) in the House to maintain their leadership in Government and in Parliament.”

That said,

“Fiji’s need for a multi-party Cabinet and Government is strongly reinforced by political reality. This reality is that under current circumstances this is the only way available under the Constitution to bring about a Cabinet and Government that is fully representative of our multi-ethnic and multi-cultural society...” (3.0)

The remainder of the third section re-stated the Prime Minister’s authority and obligations under s.99 and s.103 of the Constitution, re-affirmed that the SDL manifesto was the base policy document, and repeated the assurances of consultation through a Cabinet sub-committee where policy differences arose.

The fourth section, Operation of Cabinet, laid down and elaborated a set of principles governing behaviour of Ministers: decision-making by consensus; wide consultation by Ministers on their policy recommendations to facilitate consensus and unanimity in Cabinet; processes for addressing disagreements; collective responsibility of Ministers; Cabinet solidarity in public and in the House; and procedures to be followed if Ministers could not support a Cabinet decision (including replacement of a Minister from the entitled party who resigned or was dismissed). The fact that most of these guidelines and ground rules were already prescribed in the Cabinet Manual was explicitly noted in paragraph 4.12 of this section.

In addressing the principle of collective responsibility and Cabinet confidentiality, this section exposed very clearly the difference from Chaudhry’s approach:

“The commitment by all political parties (and Independents) represented in the multi-party Cabinet to this principle of collective solidarity and responsibility is also important in underscoring their acceptance to be in Cabinet without any preconditions.” (4.4)

On the confidentiality of Cabinet papers and proceedings, the paper said:

“...all Ministers in Cabinet are bound to observe this confidentiality and to safeguard the security of Cabinet documents. They are not permitted to disclose how decisions were arrived at, or differences expressed in Cabinet, and the identity of Ministers concerned. Not even to members of their own Party outside Cabinet.” (4.8)

The fifth section, Operation of the House of Representatives and the Senate, dealt with the “direct consequential impact on how both the House of Representatives and the Senate conduct their proceedings”. It emphasised that all parties represented in the multi-party Cabinet became part of the government. Government back-benchers would no longer be confined to the Prime Minister’s party.

“Those members from an entitled party who are not appointed as Ministers will also be regarded as backbenchers of the Government side. They will be bound by the collective responsibility of all Government Ministers to support Government policies and Bills, as decided by the multi-party Cabinet” (5.3. i)

The same applied to Senators appointed on the nomination of the Leader of the Opposition who would have to regard themselves, along with the Prime Minister’s appointees, “as generally being bound by the multi-party government’s position in the House of Representatives” (5.3.ii).

Acknowledging that “Good governance requires a strong Opposition in Parliament to keep Government accountable” and that the official Opposition was confined to a small minority party, the paper addressed “new

ways of strengthening scrutiny of Government legislation and other measures". The core proposal was to make full use of Sector Committees, Standing Committees and Ad Hoc Committees, involving backbenchers from both parties in government as well as the official Opposition, to encourage bi-partisan consultation and constructive dialogue. The Government undertook to use committees for detailed scrutiny of all major legislative initiatives, with Ministers required to respond to committee invitations to give briefings and presentations. (5.4, 5,5)

In the House, all parties represented in the Cabinet were bound to support Government policy and legislative initiatives but would be free to contribute to discussion of issues and policies presented in the House by the Government and would be encouraged to make constructive recommendations and suggestions, "particularly where they differ from the position of Cabinet and Government". Regular caucus consultations would be essential to ensure "unanimity and solidarity on Government business" and to hear and deal with dissent from backbenchers. The Prime Minister would convene consultation meetings with the leader of the entitled party and the Leader of the Opposition to "fully inform his political colleagues on Government's thinking behind particular policies or legislative proposals". Ministers would be expected to "make regular use of ministerial statements in the House and in the Senate to amplify and explain Government's stand on particular issues and situations" (5.6 i-vi)

The final two sections addressed the Civil Service and Media Relations, the latter encouraging Ministers actively to explain policies within their portfolios to the media and to respond quickly to media enquiries, preferably in writing.¹³

DATT'S VIEW: SUSTAINING A GOOD FAITH RELATIONSHIP IN A MULTI-PARTY CABINET

Krishna Datt turned his notes from the 24 June meeting into a paper entitled "Fiji Multi-party Ground Rules" which he submitted

for discussion at the 19 August National Council meeting. He described it in the introductory paragraph as a critical analysis of the proposals made by the Prime Minister and Chaudhry which recommended "a progressive way forward to sustain the good faith relationship in the multi-party Cabinet". (1.1)

Datt's paper began with a succinct summary of Qarase's proposals. It then addressed Chaudhry's, saying that the FLP leader:

"...is contending the view suggested by the PM, maintaining that he needs to be consulted and that FLP members in Cabinet are still under the FLP control and expected not to compromise its policy stand on contentious issues...He still advocates a confrontational and adversarial approach to conflict resolution rather than through good faith that is based on respect, mutual trust, consensus building and fair dealings. He expects everyone in the FLP to operate in confrontational mode, rather than empowering his trust on the FLP members in Cabinet to advocate for the FLP positions through the current mechanisms." (3.1, 3.2)

Datt went on to state that the FLP Management Board and Parliamentary Caucus had approved of participation in the multi-party Cabinet but action had been delayed by Chaudhry's insistence on formalising the decision at a National Council meeting. In Datt's words, this amounted to "being hijacked by bad faith on technicalities". (4.1)

Turning to Chaudhry's belief that FLP members of Cabinet owed their primary allegiance to the Party and not the Cabinet, Datt challenged the constitutional argument his leader had advanced. The FLP Constitution, he noted, pre-dated the 1997 Constitution and assumed that a Westminster system operated in Fiji. The FLP Constitution, including Article 7 on which Chaudhry had relied, needed "urgent changes to include and facilitate good faith multi-party Cabinet". (4.2 – 4.4)

On Chaudhry's insistence that all FLP members of Cabinet were bound by Party policies and principles, Datt again observed that Chaudhry's recourse to Article 4 of the

Party Constitution was out-dated. He went on to say:

“The stand by Hon Chaudhry that Party loyalty is superior to national loyalty in Government smacks of political fundamentalism that fuels confrontation without compromise for the national good. This stand does nothing to reform the adversarial culture of conflict resolution in favour of mutual dialogue minimising the need for judicial intervention.” (4.9)

Datt next addressed the handling of conflicting policies within the Cabinet. He pointed first to the 2003 Supreme Court judgement, which was “very clear on the conventions of collective responsibility and Cabinet confidentiality”. He accepted that Cabinet sub-committees and Parliamentary committees could be, and were already being, used effectively to resolve differences across party lines. In this situation:

“...the main challenge for the FLP is to lobby its stand through the art of engaged dialogue, discussion, negotiation, persuasion, compromise and developing mutual trust... This means that the FLP is going into Cabinet with its own policies and national agenda just like any party. [Its] approach in settling the differences will have to be in good faith rather than the current adversarial and confrontational approach that destroys the multi-party arrangement...In the context of the multi-party Cabinet, the Fiji Constitution is the supreme law of the land and not the FLP Constitution or the SDL Constitution or the UPP Constitution or any Party's constitution. Whilst all parties will have their own Constitutions, Manifestos and policies, common sense should tell us that national governance supersedes party governance in a multi-party Government.” (4.10 - 4.13)

Datt challenged the “misconceived” idea that the FLP risked losing its identity in a multi-party arrangement; this “has the element of mistrust on the capabilities and talents of FLP members in Cabinet [and] is bad faith on the part of FLP leadership”. Fiji's people had overwhelmingly supported the multi-party arrangement and FLP members should be “change agents from inside the political system and not a bystander with expertise only in opposing and going to courts and international bodies for sanction...” (4.16 – 4.17). This comment reflected a longer term

dissatisfaction with FLP litigation against Qarase's government since 2001 and with simultaneous FLP appeals to supranational organisations to exert pressure on that government.

As for Chaudhry's Key Policies and Minimum Common Programme, Datt said most of them were high priorities for the government. The areas of difference were small, albeit significant and challenging. The multi-party Cabinet system was capable of resolving them, including issues such as ALTA and land tenure, the qoliqooli and reconciliation legislation, and affirmative action programmes. (5.1 – 5.2)

Datt's paper concluded with a set of recommendations for an FLP approach to the multi-party Cabinet closer to Qarase's conception than to Chaudhry's. The final recommendation called for Fiji to learn from New Zealand's experience of multi-party government.¹⁴

SEEKING AGREEMENT

According to an SDL source, much of the discussion on ground rules was conducted in telephone conversations between Qarase and Chaudhry. They met on 7 July but did not reach agreement. As the differences within the FLP were still unresolved and were attracting a good deal of media attention, this was not surprising. In publicly acknowledging the existence of a split Chaudhry said it would be dealt with at a forthcoming FLP National Council meeting. For him, the challenge to his leadership was the priority. In the period before the National Council meeting, which was scheduled for 19 August, the FLP President announced that disciplinary charges against the five dissenters would be heard there. After protracted manoeuvring between the two sides, including recourse to the courts, the five walked out of the National Council. No discussion of Datt's paper or of the ground rules issue more generally took place during the meeting.¹⁵

On 30 August the Prime Minister and Chaudhry met again to discuss ground rules. They subsequently exchanged letters from which the main elements of their discussions can be reconstructed. On the ground rules,

the letters addressed mainly process issues. Chaudhry advised the Prime Minister that he had circulated Qarase's paper widely within the FLP and that it would be considered at the annual Delegates Conference on 23 September. He also advised that the FLP National Council wanted the matter finalised between the leaders of parties represented in the multi-party Cabinet. In reply, the Prime Minister noted the information about the Delegates Conference and disagreed with Chaudhry's proposal to limit decision-making on the ground rules to SDL and FLP, saying that the Leader of the Opposition should also participate. Qarase also observed that his request for a copy of Chaudhry's paper on ground rules had not been answered. Chaudhry wrote back re-stating his objection to the inclusion of Beddoes, and sent his draft on ground rules, commenting that it was not yet in final form because it would also be considered by the Delegates Conference.

The letters also show that Chaudhry had succeeded in widening the discussions to include sugar industry restructuring, amendments to the Constitution, the economy, agricultural land use, and proposed legislation on qoliqoli and an indigenous land claims tribunal. While not explicitly linked to FLP agreement on ground rules, their inclusion in the correspondence nevertheless provided a hook for later bargaining.¹⁶

On 5 October the Prime Minister and Chaudhry met again. Afterwards they issued a joint statement announcing that they had held consultations with their respective party caucuses and had agreed to continue discussions on ground rules in a joint committee of SDL and FLP representatives. They agreed that the objective should be agreement "with urgency to facilitate legislative proceedings in the House of Representatives". The statement mentioned discussions having taken place on land issues and changes to the Constitution. The joint committee seems never to have been established.¹⁷

FUNCTIONING OF THE CABINET

Those who participated in the multi-party Cabinet during its short life considered that it worked effectively. Most of the FLP Ministers observed the spirit of Datt's paper, taking

the position that, while ground rules were important, nothing should be done to prevent the functioning of the Cabinet under existing principles and conventions so long as these applied equally to all Ministers. Datt himself believed that, because demographic trends were turning sharply against Indo-Fijians, making a success of the multi-party Cabinet was essential to guarantee them a continuing role in governing their country. So FLP Ministers took their Ministerial obligations very seriously and, in most cases, accepted that they were accountable to the Prime Minister. Qarase commented warmly and often, both publicly and privately, on the capabilities and contributions of FLP Ministers. Since the more senior of them brought long experience of politics and public service to their portfolios, it was no surprise that they performed as well as, or better than, their counterparts from Qarase's own party. For his part, the Prime Minister respected the conception of the ground rules presented in his paper by ensuring that FLP Ministers were represented in Cabinet sub-committees on policy, legislation and budget, and using these and other sub-committees to facilitate consultation and consensus. He allowed them freely to express their views, including on the controversial draft legislation.¹⁸

The sub-committee on social services, with FLP participation, considered affirmative action policies, a key plank of the previous government, and agreed to review them, taking into account a report by a Kenyan constitutional lawyer, Yash Ghai, who had longstanding familiarity with Fiji. The draft legislation on qoliqoli and on a land claims tribunal were discussed in the full Cabinet, where very frank exchanges took place without reaching a decision point requiring FLP Ministers to support them. These two Bills were introduced into the House on 8 August and referred for committee scrutiny with a reporting deadline in the November/December session of Parliament. In both cases there was a degree of confidence in the ability of a Parliamentary Sector Committee to deal appropriately with the drafts.¹⁹

This confidence in Parliamentary processes perhaps arose from the fate of the controversial Promotion of Reconciliation, Tolerance and Unity (PRTU) Bill in the previous Parliament. Since the proposed revival of this legislation was among the justifications

for the 2006 coup, a brief recapitulation of its history is appropriate. When introduced into the House in May 2005, the PRTU Bill was widely regarded as a device to expedite the pardoning of people convicted of crimes during the Speight coup of 2000 and the early release of those among them who had been imprisoned. This interpretation was reinforced by the presence in Cabinet of members of the ethno-nationalist CAMV Party, and by government actions, such as early release of the convicted former Vice President, which seemed to demonstrate that the government's sympathies lay with the coup perpetrators rather than its victims. The RFMF was strongly opposed because it had put down the coup, at considerable cost to internal unity and to its relations with sections of the public. Rather than seek reconciliation, the RFMF Commander wanted to see more thorough and more expeditious investigations into those who had encouraged and financed the coup.

During 2005 the controversy over the PRTU Bill provoked public activism on a scale rarely seen in Fiji, in the face of which the Government gradually retreated from the original concept. A mortal blow was dealt to the Bill by the report of the Joint Parliamentary Sector Committee on Justice, Law and Order to which the draft legislation was referred. Even though this committee was chaired by a CAMV representative and boycotted by the FLP, its report declared the Bill to be thoroughly flawed in conception and recommended that it be withdrawn. Considerable effort went into revising the Bill before Parliament was prorogued for the 2006 general election, but no revised text was ever made public. In statements after his 2006 election victory Qarase undertook to bring a revised PRTU Bill back to Parliament, provoking the RFMF Commander to increasingly hostile public criticism of the government and its leader, but Ministers had not seen a text by mid-November when the presentation of the Budget raised in stark form the difficulties of multi-party government without agreed rules.²⁰

THE BUDGET CRISIS

FLP Ministers were involved in the preparation of the Budget but, following the Westminster convention, were not told

of revenue-generating measures until the Finance Minister briefed Cabinet on the morning the Budget was to be presented. Among the new measures was a VAT increase of 2.5 percent. Chaudhry, seizing upon this, denounced the Budget as "anti-poor" and directed FLP members of Parliament, Ministers included, to vote against it. He insisted that a vote against the Budget would not be a vote against the multi-party Cabinet. Two FLP Ministers, Vayeshnoi and Ragho Nand, said they would follow the Party directive.²¹

Krishna Datt made it clear that he disapproved of the VAT measure, knew it would be badly received in communities important to him, and would resign if there was to be any further increase in future but said he believed that he could soften the impact more effectively from inside the Cabinet than from outside. He contrasted this stance with Chaudhry's taking "the easy path" of opposition from without; if the FLP was truly pro-poor, Datt said, it should engage whole-heartedly in the multi-party Cabinet. He revealed that Chaudhry had told the FLP caucus of the Prime Minister's recent offer to appoint him Deputy Prime Minister which Chaudhry had declined because the Budget made it hard for him to accept. Datt said he found this response incomprehensible, given the scope the post offered to influence policy, and wondered aloud about Chaudhry's motives. Datt also challenged Chaudhry's directive to FLP members, vigorously defended the principle of Cabinet solidarity, and accused the FLP leader of trying to impose conditions on FLP participation in Cabinet despite having unconditionally accepted Qarase's offer of Cabinet places.²²

The Prime Minister gave no public indication of a willingness to bend the Cabinet rules as he saw them, because he had a majority without the FLP votes. But he was keen to preserve the multi-party Cabinet and met again with Chaudhry on 20 November to try and resolve the impasse over ground rules. He also wrote to Chaudhry offering FLP Ministers the option of abstaining on the Budget vote. In private he expected at least five FLP Ministers to abstain if allowed to do so. Qarase was also willing to see Chaudhry nominate replacements for any FLP Ministers who resigned or were dismissed over the Budget vote. Chaudhry's answer came in

his contribution to the Budget debate, an extended attack on the manner in which multi-party government had been managed: he said it had made no difference to the quality of governance; had not introduced an new era of partnership; had not seen proper consultation between the partners; and had lacked "fundamental values of trust, honesty and integrity".²³

In his speech on 22 November the Prime Minister described the vote on the Budget as a vote on the multi-party Cabinet and its future because an appropriations bill was a confidence matter. He recalled the principle of collective responsibility. He acknowledged that FLP Ministers were in a difficult situation because of their party's directive. Voting against the Budget would mean resignation or dismissal; voting for the Budget would risk expulsion from their party. In the circumstances, he said, he would accept an abstention by the FLP Ministers.

"An abstention will enable the Labour Ministers to safeguard their integrity and preserve their loyalty to Fiji's supreme law, the Constitution...[M]y decision on this is a reflection of my commitment to the Multi-Party Cabinet and its continuation. It is an indication of the value I attach to the contribution to the Government of the Labour Minister. It is also a statement of my loyalty to those who are loyal to me."

He appealed to Chaudhry to reconsider the FLP directive on voting "in the national interest and in the interest of multi-ethnic cooperation represented by the Multi-Party Cabinet".

In a vote later that day on the second reading of the Budget Bill, twenty-six members voted against, including four FLP Ministers and all FLP backbenchers. Five other FLP Ministers were absent from the House. The two UPP members and the two Independents were among the forty who supported the Budget. Chaudhry threatened disciplinary action against the absentee FLP Ministers. At the same time he argued against resignation of the four FLP Ministers who had opposed the Budget on the basis that the Prime Minister could have been more accommodating in the absence of agreement on ground rules.²⁴

The Prime Minister deferred action against the four, hoping that he might trade off this inaction for similar treatment by Chaudhry of the five absentee Ministers. This hope evaporated on 2 December when Datt and Bune were expelled from the FLP. They remained in Parliament and in Cabinet pending appeals but by then the Government's conflict with the RFMF was coming to a head and the multi-party Cabinet, already seriously weakened, had only days left.

WHAT WENT WRONG?

The multi-party government was brought down by the intervention of the armed forces. Commodore Bainimarama's mid-2006 plaudits for the new arrangement proved to be short-lived. Within four months of the formation of the Cabinet he and his spokesmen were publicly at loggerheads with the Prime Minister over policy issues, especially the proposed legislation on qoliqoli, national reconciliation, and the indigenous land claims tribunal. Their exchanges confirmed that the two sides interpreted very differently the Constitution's provisions on the role of the armed forces in Fiji's polity. The government considered that the 1997 Constitution subordinated the RFMF to the civil authority; the Commander insisted that its special status in the 1990 Constitution had been carried forward, making the RFMF an equal party and the guarantor of the political, economic and social order. The Commander did not respond to government offers to seek a binding opinion from the Supreme Court.

In October the RFMF began to call on the government to resign, saying the RFMF had lost confidence in it. The government responded by convening meetings of the National Security Council to which the Commander was not invited on the grounds that he was the principal source of insecurity. At the end of October, while Bainimarama was out of the country visiting Fijian troops in the Middle East, the government sought to remove him from command of the RFMF, nominating another officer as Commander on an acting basis. The appointee declined to take the post and the senior RFMF leadership pressed for implementation to be deferred until Bainimarama returned. Civil/military relations deteriorated quickly thereafter.

An implicit theme of the RFMF critique of the government was that the second Qarase administration was no different from the first. This view – that Qarase led a divisive government bent on pursuit of racist policies – has been propagated assiduously by the post-coup regime and has found a surprisingly receptive audience inside Fiji and beyond. Its ready acceptance is explained by antipathies and resentments arising from the undoubtedly divisive policies of the SDL/CAMV government. In the brief period before the RFMF turned against the multi-party government Qarase was unable to convince Fiji's citizens, especially those in the Indo-Fijian community, that his change of heart was genuine. His attempts to rally public support as the RFMF ratcheted up the pressure elicited only feeble responses, even from an organisation like the Citizens' Constitutional Forum, which had been established for the express purpose of explaining and defending the 1997 Constitution.

By giving a high priority to the controversial Bills, Qarase provided leverage for both Chaudhry and Bainimarama against the government. Tactically, he might have achieved more by holding them back until the multi-party Cabinet was well established, with achievements in other fields to its credit. But he did not. Despite Chaudhry's objection on procedural grounds to their introduction, and his suggestion that they be deferred until the September sitting, the indigenous land claims tribunal and qoliqoli Bills were sent to the House as the eleventh and twelfth pieces of draft legislation submitted for consideration.²⁵

The explanation lies partly in political factors and partly in personality. Qarase, a commoner from the eastern islands, depended on the big provinces of Viti Levu for his core support and was bound to take account of the interests and concerns of their chiefs and peoples. For many of them customary fishing and historical land grievances were important issues. Qarase may have over-estimated the influence of extremists but, as a nationalist himself, he was personally sympathetic to this agenda and saw his government delivering long desired (and, in the qoliqoli case, long promised) objectives of his core supporters. Opposition to these measures made him more determined, not least because he had given his Cabinet colleagues the opportunity

to comment on them. He was not disposed to see that having the numbers in the House to pass the Bills without the votes of the FLP was only one of the considerations to be weighed in a power-sharing political system. Nor did he understand that Chaudhry, who was sceptical of Qarase's conversion and commitment to the multi-party Cabinet, saw giving priority to these Bills as an attempt to engineer its collapse in a way that would see the blame attributed to the FLP.²⁶

Chaudhry's decision not to join the Cabinet cast a shadow over it from the outset. As Vice President Ratu Joni Madraiwiwi commented at the time, this placed Chaudhry in a strategic position to destroy the multi-party government.²⁷ Chaudhry's unwillingness to take a Ministerial portfolio, his attempt to reclaim the post of Leader of the Opposition, his elevation of the FLP Constitution above the national Constitution, and his treatment of FLP dissidents all indicated a reluctance to see success achieved in this first serious attempt to implement the power-sharing provisions of the 1997 Constitution. He must bear a large share of the responsibility for its failure.

The inability to agree on ground rules before the Cabinet was operational, or at least early in its life, inhibited the building of trust in the multi-party experiment, both within and beyond the Cabinet. Speaking about three weeks before the coup, Leader of the Opposition Mick Beddoes described this as a failure of leadership:

“We have failed to establish acceptable rules of engagement to enable the multi-party Cabinet to develop and strengthen, to promote power-sharing and greater national unity among all our people, and this inaction will put at risk the very thing we want to succeed.”²⁸

Despite the thought that went into Qarase's paper on the ground rules, there was no sense of urgency about the efforts to secure agreement on implementing them or some negotiated variant. Without that agreed platform the Prime Minister could not meet the political challenge posed by RFMF insubordination with strong demonstrations of Cabinet unity in defence of the principle that the civil authority is supreme. Nor could he counter effectively Chaudhry's corrosive

manoeuvring against Cabinet solidarity and collective responsibility. Qarase was slow to appreciate these dangers, perhaps because things appeared to be working satisfactorily for some time, and then was unable to find effective counter-measures. This left him hostage to Chaudhry's willingness to engage in serious negotiation in circumstances disadvantageous to the Prime Minister. During the Budget crisis he found himself having to offer compromises to save the Cabinet that Chaudhry had no intention of accepting.

In retrospect, the Prime Minister took too much of the load on himself. He carried virtually all of the public explanations and defence of the government's actions and intentions. Few other Ministers or members of Parliament were involved in the task of persuading Fiji's citizens that the multi-party Cabinet marked a new direction in the country's politics. Although the Prime Minister on occasion spoke eloquently about the multi-party government, he did not put in place a positive communications strategy to drive the message home effectively. Neither was there a considered strategy to counter the anti-government campaign mounted by the RFMF. Out of the public eye the Minister of Home Affairs, to whom the RFMF Commander was formally subordinate, engaged in extensive correspondence with the Commander, robustly contesting RFMF demands for policy changes and its right to make such demands. But he had little to say in public. The absence of other defenders of the government from within its ranks allowed the media to depict a dispute that raised serious constitutional issues as a soap opera about personality conflict: Bainimarama versus Qarase.

Personal antipathy between the two ran deep. Qarase displayed patience and forbearance far beyond what Bainimarama's behaviour warranted but only rarely held the initiative. The Commodore had an unerring instinct for the Prime Minister's weaknesses and an ability to command the media spotlight, allied to contempt for inconvenient facts or for consistency of argument. Since the coup he has presented himself as the advocate of "genuine democracy" for Fiji but throughout his campaign against Qarase he showed little respect for, or understanding of, the principles of democratic government and

was hostile towards essential elements of working democracies, such as the contest of ideas, negotiation, and compromise. Whether or not Bainimarama acted in concert with Chaudhry, as some allege and Chaudhry has denied, their interests and objectives coincided. Between them, they destroyed the multi-party government.

WAS S. 99 INHERENTLY UNWORKABLE?

The multi-party government's life was so short that a definitive answer to this question is not possible. External factors, notably the pressure from the RFMF, were instrumental in its collapse. But the robustness of the power-sharing model was not really tested. Although the multi-party Cabinet was considered, especially by participants, to have worked well, that judgement must be qualified by the observation that Cabinet avoided most of the sterner tests by leaving it to Parliament to deal with controversial issues, such as the qoliqoli legislation. This approach was in keeping with the Prime Minister's paper on the ground rules, the only one that addressed the consequences for the conduct of business in the House of Representatives and the Senate arising from the formation of a multi-party Cabinet. (Datt's paper acknowledged this but did not elaborate the point as Qarase's did.)

Analysis of comments by politicians during debates in the House reveals few signs of understanding that Parliament should play a different role under a multi-party power-sharing arrangement. Although many speakers saw the need for changed attitudes and behaviours, few of them mentioned adaptation of parliamentary processes or re-balancing of the powers of executive and legislature. By far the most sophisticated commentary on the implications for Parliament came from SDL's Mere Samisoni. She saw clearly that it would fall to standing committees to "clarify issues, ask the hard questions, and complete tasks in good faith and cooperation...as a kind of second stage bipartisan legislative review". She highlighted some uncertainties and ambiguities, not least where the role of the Opposition would reside, which she considered to show that:

"...not enough thought and planning has gone into the operational level of political and constitutional guidance for governing Fiji...This is all ivory tower stuff and it is now left to Parliament to find the substance necessary to make it all work".²⁹

Fiji's delegates to the 28th Australia and Pacific Regional Conference of Commonwealth Parliamentarians, held in Wellington in August, presented a short paper on "Parliamentary Practice and the Multi-Party Government System in Fiji". It did little more than identify a need to develop and better resource parliamentary committees and to ensure the maintenance of strong accountability mechanisms, and said candidly:

"For the moment there are no definite answers as to how these issues are going to be resolved."³⁰

In their report to the House in September the delegates drew attention to the increased role and importance of committees in New Zealand's Parliament following the adoption of the Mixed Member Proportional electoral system, which tends to produce multi-party coalition governments, and observed that this held many lessons for Fiji. An offer to study New Zealand's experience had been made by the New Zealand government in June but, despite considerable discussion about the timing of a study visit and the nature of other possible assistance, no formal response was received from Qarase, Chaudhry or Beddoes.³¹

In fewer than fifty sitting days during the life of the government, the House of Representatives had limited opportunities to re-cast its procedures to play the larger role envisaged in the Qarase ground rules and Samisoni's analysis. Of eighteen Bills introduced, twelve had been passed by the House before the coup, and six were still under scrutiny in House or Joint Committees. Six of those passed were appropriations or money bills, and were not referred to committees. Most of the others were not contentious; committee scrutiny produced helpful clarifications and drafting amendments but did not generate much partisan heat.³²

In the two cases where Bills were clearly controversial the evidence is ambiguous. The Indigenous Claims Tribunal Bill and the Qoliqoli Bill were referred on 9 August to the Joint Sector Standing Committee (JSSC) on Natural Resources and Economic Services for report back to the November-December session of the House. On 27 November the JSSC chairman presented an oral interim report on consideration of the two Bills, advising that the task was not complete and asking for an extension of time until February 2007 because of the huge public interest and the constraints on the committee's times for hearings. His remarks went beyond the strictly procedural purpose to include observations about the poor understanding of the issues displayed in submissions from people on both sides of the debate. In relation to the Qoliqoli Bill specifically, he offered an interpretation of public opinion, claiming that there was "general support for the purpose and intent" but "concerns about legal, economic and social aspects of implementation and policy". Chaudhry immediately objected that FLP members of the JSSC had not discussed this report, a claim backed up by an FLP committee member, Felix Anthony. SDL's Samisoni countered that the committee had discussed an extension of time. Chaudhry then objected to the inclusion of matters of substance in the report, leading the Speaker to invite committee members to sort out their differences. Two days later a revised oral report, stripped of comments on substance, was brought back to the House, which agreed to the extension.³³

This example raises questions about the ability of parliamentary committees faced with controversial legislation to rise to the challenge but the specific circumstances are not conducive to firm judgements. The interim report by the JSSC chair was delivered only four days after the adoption of the Budget. Emotions were still running high because of the FLP directive and its consequences. The future of FLP Ministers was still unresolved, and optimism about the multi-party experiment severely dented. The Budget vote had dealt a body blow to hopes for more accommodative politics under a multi-party system.

That said, agreement to extend the JSSC's deadline was not an indicator of agreement on the substance of the Bills. FLP opposition

to them was strong from the outset. The FLP objectors to the oral report did not comment on the progress, if any, made in the JSSC. Committee records are not available. A well-placed SDL source claims that the JSSC was satisfied with government explanations on the indigenous claims tribunal draft but still had major problems with the qoliqoli Bill. This was the focus of public opposition to the two Bills. The divide was sharp, with most Fijians on one side and the tourist industry, many Indo-Fijian organisations, and the Police Commissioner on the other. But there was nothing like the broad-based 2005 campaign against the PRTU Bill to influence the JSSC deliberations on the qoliqoli Bill.

CONCLUSIONS

Because a mandatory power-sharing requirement was introduced into the 1997 Constitution without regard to its impact on other aspects of the carefully balanced package presented by the Constitution Review Commission, numerous uncertainties and ambiguities had to be clarified through the courts. The judgements dealt mainly with issues relating to the formation of Cabinet. As a result, numerical entitlements were established quite smoothly in 2006, and the controversies after the 1999 and 2001 elections were not repeated.

Once the Cabinet was formed, neither the Constitution nor court decisions provided any guidance to political actors on making multi-party government work effectively. The architects of s.99 had overlooked the impact of power-sharing on institutions other than Cabinet and on the wider political process. The crisis, when it came, was a parliamentary event, a confidence vote, and not an issue within Cabinet, although it created an unenviable dilemma for FLP Ministers, as their speeches in the Budget debate testify.³⁴

Whether this crisis would have ended differently had agreed ground rules been operational is a matter for conjecture. Effective power-sharing requires confidence and trust between the cooperating parties. A mandatory constitutional provision cannot guarantee attitudinal changes by political

actors. Agreed ground rules might have provided an essential framework within which to build the necessary confidence and trust but this would have taken more time than Qarase's multi-party government was allowed.

AUTHOR NOTES

Michael Green has been a career diplomat for more than 30 years. He has served in New Zealand posts in Thailand; at the United Nations in New York; in China; in Indonesia, where he was Ambassador from 1997 until 2001; and in Fiji, where he was High Commissioner (accredited also to Nauru and Tuvalu) from 2004 until 2007. In Wellington he has worked in a number of divisions in the Ministry of Foreign Affairs and Trade, and was for six years (1988-94) Director of the External Assessments Bureau in the Department of Prime Minister and Cabinet. Between October 2001 and November 2004 he was Deputy Secretary of Foreign Affairs and Trade responsible for Political and Security Affairs. He again served in Deputy Secretary posts after returning from Fiji, initially with responsibility for Australia, the Middle East and Africa, the Pacific and Public Affairs, and subsequently for South Asia and Latin America. The opinions expressed in this paper are his own.

ENDNOTES

1. This summary of the recommendations of the Constitution Review Commission and the Joint Parliamentary Select Committee draws upon the Commission's report, *The Fiji Islands: Towards a United Future*, Fiji Parliamentary Paper No 34 of 1996, and the Report of the Joint Parliamentary Select Committee on the Report of the Fiji Constitution Review Commission, Fiji Parliamentary Paper No 17 of 1997. I have also drawn on Lal (1998) and on Fraenkel (2006).

2. This section draws on my observations as New Zealand High Commissioner from December 2004 until June 2007 and on recent correspondence with Ministers and officials who served under Qarase whose identities I have agreed to protect. One of the few who anticipated Qarase's initiative was the Vice President, Ratu Joni Madraiwiwi. I was among the audience at USP's annual Rev. Paula Niukula Lecture in March 2006 when Ratu Joni said he would not be surprised if a re-elected Qarase adopted a different stance because he understood that being Prime Minister of the Fijians was not enough. See also Qarase, L (2007).
3. Fiji Government Press Release No 146, 19 May, 2006 for Qarase's announcement. For RFMF support see *PACNews*, 25 May, 2006; *The Fiji Times*, 28 July 2006, and *Mataivalu News*, July/August 2006.
4. *The Fiji Times*, 19 May 2006; personal communication (anonymous) on the FLP caucus and on Chaudhry's attempts to form a government.
5. *The Fiji Times*, 20-24 May, 2006; Willoughby (2007); personal communication (anonymous).
6. Korolevu Declaration by Parliamentary Political Leaders in the Fiji Islands, 26 January 1999, subsequently published as a Parliamentary Paper. One SDL source told me that Chaudhry's formal proposals for ground rules were based on the Korolevu Declaration by which the Prime Minister did not consider himself bound because SDL, not having been founded in 1999, was not a signatory; personal communication (anonymous).
7. Prime Minister's Speech to the Fiji Law Society Conference, 27 May, 2006.
8. Parliament of Fiji, House of Representatives, *Daily Hansard*, 8 June (Chaudhry, Datt), 13 June (Vayeshnoi) and 16 June (Qarase), 2006. (All subsequent Daily Hansard references are to House of Representatives meetings.) Most speakers in the debate on the President's Address referred to the establishment of the multi-party Cabinet, usually (but not invariably) in optimistic terms. A handful of members apart from the three already named, offered more detailed analyses eg M. Samisoni (15 June) and Q. Bale (16 June)
9. 'Discussion Paper on the Multi-Party Cabinet', M.P Chaudhry for FLP National Council Meeting, 24 June, 2006 (copy in author's possession). Although its contents reflected the position Chaudhry took in negotiations with Qarase on ground rules, this was an FLP internal document, not an inter-party negotiating text. The ALTA cited in the penultimate quotation from the paper was the Agricultural Landlord and Tenant Act, a 1976 law governing the leasing of Fijian land. Expiry of leases under ALTA made adoption of revised legislation a major and controversial political issue. The PRTU Bill, mentioned in the same quotation, was the Promotion of Reconciliation, Tolerance and Unity Bill, introduced into Parliament by the SDL/CAMV government in 2005, provoking unprecedented public controversy. This incident is summarised in the section of this paper entitled "Functioning of the Cabinet".
10. Personal communication (anonymous)
11. "Labour leaders at crisis point", *The Fiji Times*, 28 June, 2006; Maika Bolataki, 'Multi-party Cabinet Supports PM', *Fiji Sun*, 6 July, 2006. One sign of the emotions generated by the split in the FLP was an incident in Nasinu, Krishna Datt's electorate, where he was burned in effigy.
12. According to SDL sources, this paper was the product of an SDL caucus committee chaired by Attorney General Qoriniasi Bale. Personal communications (anonymous).
13. 'Multi-Party Government in Fiji: Operational Ground Rules', Laisenia Qarase, Prime Minister, 29 June 2006 (copy in author's possession).
14. 'Discussion Paper: Fiji Multiparty Ground Rules', Hon Krishna Datt, 19 August, 2006 (copy in author's possession).
15. Personal communication (anonymous) on the reliance on telephone conversations. The same source said Chaudhry put very little in writing and there were no written records of points of agreement between the two leaders. For the internal problems of the FLP, *The Fiji Times*, 28 June and 11 July, 2006; *Fijilive*, 6 July, 2006; *Fijivillage*, 28 June, 14 July and 21 August, 2006; and personal communication (anonymous).

- In one of Chaudhry's few public acknowledgements of Datt's critique he said that Datt's call for changes to the FLP Constitution "plainly stink of self-interest".
16. Chaudhry to Prime Minister, 11 September, 2006; Prime Minister to Chaudhry, 14 September, 2006; Chaudhry to Prime Minister, 15 September, 2006 (copies in author's possession). Beddoes, who took the Korolevu Declaration as the basis of the ground rules, was aware that Chaudhry wanted to exclude him from the discussions and any decisions flowing from them.
 17. "Prime Minister and Labour Leader Make Further Progress", Joint Statement signed by Hon. Laisenia Qarase and Hon. Mahendra Chaudhry, 5 October, 2006. Personal communication (anonymous) on non-establishment of the joint committee.
 18. This section draws on my conversations at the time, as New Zealand High Commissioner, with the Prime Minister and other Ministers, as well as on more recent correspondence with former Ministers and public servants familiar with the workings of the government. Two of my sources told me that FLP Minister Lekh Ram Vayeshnoi disregarded Cabinet confidentiality by briefing Chaudhry. A third source told me that Qarase cautioned Vayeshnoi about respecting Cabinet rules; personal communications (anonymous). Krishna Datt made the comments about the implications of demography at an EU-sponsored seminar assessing lessons of the 2006 elections which I attended. Other Cabinet sub-committees dealt with land; equal opportunities and human rights; constitutional change and review; and public enterprises and public sector reform – see Fiji Sun, 20 July, 2006.
 19. Daily Hansard, 9 August, 2006; personal communications (anonymous). The late Gyani Nand, Minister of Agriculture and FLP member, told me in August 2006 that Ministers had successfully negotiated the qoliqoli and land claims tribunal bills into a form suitable for introduction into the House. He commented that this showed that the multi-party concept worked.
 20. On the matter of confidence in Parliamentary processes to deal with controversial issues, see Qarase's speech on 22 November during the Budget debate. He defended the controversial Bills by placing considerable weight on scrutiny by Sector Committees to deal with concerns expressed about them by interest groups and members of the public. The 2005 controversy over the three Bills has been covered extensively in publicly available articles. I have drawn on several of these, notably Mosmi Bhim, 'The Impact of the Promotion of Reconciliation, Tolerance and Unity Bill on the 2006 Election' in Fraenkel and Firth, *From Election to Coup in Fiji*, and on my own recollections as a Suva-based observer in the New Zealand High Commission.
 21. SDL's P. Ralulu told the House that three FLP Ministers participated in the Budget sub-committee of Cabinet which met regularly between May and October; see Daily Hansard, 20 November, 2006. Vayeshnoi announced his intentions to vote against the VAT increase in his Budget debate speech; see Daily Hansard, 14 November, 2006.
 22. Daily Hansard, 14 November, 2006. Datt's revelation that Chaudhry and Qarase had discussed the latter's joining Cabinet led both party leaders to give their versions of events during the Budget debate. The two accounts differed in important respects. There is no doubt that the offer was made but the timing, probably just before the Budget debate, is uncertain; personal communication (anonymous).
 23. Daily Hansard, 22 November, 2006. The Prime Minister's estimate of likely abstentions was made in a conversation with me on 17 November, 2006.
 24. Daily Hansard, 22 November, 2006 for Qarase's speech and the vote on the second reading. The Budget passed its third reading on 23 November.
 25. Daily Hansard, 8 August, 2006 for Chaudhry's objection and the first reading of these Bills.
 26. The clearest expression of Chaudhry's view that the multi-party Cabinet was being used by SDL to advance an ethno-nationalist agenda or to break FLP solidarity was his speech in the Budget debate; see Daily Hansard, 22

November, 2006. Some SDL members publicly advanced the notion that the FLP, in joining the Cabinet, had agreed to subordinate itself to the SDL; see the speech of M. Bulanauca, Daily Hansard, 16 June, 2006.

27. Fijilive, 24 June, 2006.
28. Daily Hansard, 13 November, 2006.
29. Daily Hansard, 15 June 2006.
30. Hon. Simione Kaitani, "Parliamentary Practice and the Multi-Party Government System in Fiji", Commonwealth Parliamentary Association, 28th Australian and Pacific Regional Conference, Wellington, August, 2006.
31. Daily Hansard, 11 September, 2006, for the report of the delegation. As New Zealand High Commissioner, I was the conduit for the New Zealand offer and had a number of discussions about the shape and timing of a visit, as well as other possible forms of assistance. Informally, Qarase and Chaudhry were keen to see a study tour go ahead.
32. Eleven of the Bills became law after being passed by the Senate. Of the less contentious draft legislation, the Employment Relations Bill (No 8/06) had the greatest potential for partisan differences in the House that might have tested the multi-party arrangement. In fact, it went through reasonably expeditiously, although it was among the last Bills approved by the Senate. The reason for the smooth passage lay partly in its long gestation. A version of the Bill

had been introduced in 1996, and there had been a great deal of consultation with stakeholders before Bill No. 8/06 was introduced into the House on 22 June, 2006.

33. Daily Hansard, 27 and 29 November, 2006.
34. See, for example the speeches of Udit Narayan (Minister of Primary and Preventative Health) and Chaitanya Lakshman (Minister for Local Government and Urban Development). Daily Hansard, 20 November, 2006.

REFERENCES

- Fraenkel, J. 2006. 'Power Sharing in Fiji and New Caledonia', in Firth, S. (ed), *Globalisation and Governance in the Pacific Islands*, Canberra, ANU E Press.
- Lal, B.V. 1998. *Another Way: The politics of constitutional reform in post-coup Fiji*. Canberra, Asia Pacific Press.
- Qarase, L. 2007. 'Fiji's system of elections and government: where to from here?', in J. Fraenkel & S. Firth (eds), *From Election to Coup in Fiji: The 2006 Campaign and its Aftermath*. Canberra, ANU E Press.
- Willoughby, P. 2007. 'Multiparty government in Fiji: a timeline, 1997-2006', in J. Fraenkel, & S. Firth (eds), *From Election to Coup in Fiji: The 2006 Campaign and its Aftermath*. Canberra, ANU E Press.

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State, Society and Governance in Melanesia
Research School of Pacific and Asian Studies
ANU College of Asia and the Pacific
Australian National University

Contact:
Telephone: +61 2 6125 8394 Fax: +61 2 6125 5525 Email: ssgm@anu.edu.au
<http://rspas.anu.edu.au/melanesia>