

**OFFICE OF THE ATTORNEY
GENERAL**

FIJI REPORT

Pacific Islands Law
Officers' Network
2008

1.0 INTRODUCTION

1.1 The Republic of the Fiji Islands is governed by the Interim Government which came into power after the events of 5 December 2006. During the intervening period, there have been many legal battles challenging the status and authority of the Interim Government. Whilst many of those legal challenges are still pending, a number of significant cases have been determined in favour of the Interim Government this year. At the same time, the Interim Government has had the opportunity to implement some of its plans over the past 24 months. They include initiatives targeted at streamlining Government institutions, moving Fiji forward and returning the country to democratic rule.

2.0 OFFICE OF THE ATTORNEY GENERAL

2.1 The Office of the Attorney-General serves the public of Fiji by providing essential legal services and support to the Government. It contributes to the accomplishment of Government's overall strategic objective of *"Rebuilding Confidence for Stability and Growth for a Peaceful and Prosperous Fiji."*

2.2 The Attorney-General is the chief legal adviser to the Government and is appointed in accordance with the Constitution of Fiji of 1998. He is assisted in that role by the Solicitor-General who is also a Constitutional appointee and functions as the chief executive officer of the Ministry.

2.3 The Office comprises of various Divisions which administer various statutes assigned to the Attorney-General. These include the Attorney-General's Chambers, Fiji Law Reform Commission, Law Revision Commission, Legal Aid Commission, Commission on the Prerogative of Mercy, Copyright Tribunal, Hotel & Guest Houses Licensing Board, Central Liquor Board, Board of Legal Education, and Costs Review Committee.

2.4 The Attorney-General's Chambers provide services such as litigation, advocacy, legislative drafting and legal advisory services to the Executive, Parliament, Government Ministries and Departments and other statutory bodies in all areas of law, save for criminal prosecutions.

- 2.5 There are currently 23 lawyers in Chambers, including the Attorney-General and Solicitor General.
- 2.6 The restructure within Chambers that began in 2007 saw the retrenching of legal officers seconded to different Ministries. All Government legal officers are now based in Chambers and provide their services from one central location. This year, 4 new legal officers were recruited.
- 2.7 Further restructuring is likely to take place in the near future that will see the merger of the law revision, law reform, and legislative drafting divisions.
- 2.7 In August this year, the Public Service Commission granted approval for the creation of 3 new senior positions in the Chambers. They include a new and additional post of Deputy Solicitor-General and 2 Deputy State Solicitor posts. The objective of such a restructure is to create a less pyramid-shaped organization and provide a better career path for aspiring legal officers.
- 2.8 Whilst only one Deputy State Solicitor post remains to be filled with substantive appointments having been made for 2 of them during the month of November, the DSG post remains vacant despite applications having been processed over the past 6 weeks.

3.0 MOVING FIJI FORWARD

- 3.1 As part of its commitment to returning Fiji to democracy, the Interim Government has established the National Council for Building a Better Fiji (NCBBF). The primary objective of the NCBBF is to make recommendations for changes to legislation which would address issues of ethnic, religious or other forms of discrimination, and in the process resolve the identity debate for all Fiji citizens.

To assist with this task the council has established a Peoples Charter for Change, Peace and Progress, commonly known as the “People’s Charter”.

The overarching objective of the Peoples Charter is “*to rebuild Fiji into a non-racial, culturally vibrant and united, well-governed, truly democratic nation; a nation that seeks progress and prosperity through merit-based equality of opportunity and peace.*”

The vision for rebuilding Fiji that underpins this overarching objective is guided by the following key principles:

- A just and fair society;
- Achieve unity and national identity;
- Merit-based equality of opportunity for all Fiji citizens;
- Transparent and accountable government;
- Uplifting of the disadvantage in all communities;
- Mainstreaming of the indigenous Fijian in a modern, progressive Fiji; and
- Sharing spiritualities and interfaith dialogue.

4.0 JUDICIARY

4.1 This year, 9 new judges and 2 new magistrates were appointed to the Judiciary. These new appointments were made to bolster the Judicial Department’s strength and to cater for the increasing number of Court cases as well as to reduce the present backlog.

4.2 In addition to the departure of judges last year, 3 High Court judges and 2 Magistrates also left the judiciary this year.

5.0 FIJI LAW SOCIETY

5.1 The Fiji Law Society has a newly elected President in Mr. Dorsami Naidu after Mr. Isireli Fa was voted out. In his acceptance speech, Mr Naidu, said:

“One of my reasons for contesting the elections was that for FLS to engage with the Interim Regime in matters affecting members and the judiciary as provided for under the Constitution and the Legal Practitioners Act. That could initially include our participation in the JSC, CLE board, and Legal Aid board.”

6.0 ELECTORAL REFORM

- 6.1 A new Supervisor of Elections, Ms. Felicity Heffernan, from New Zealand, was appointed earlier this year and has taken up office.
- 6.2 One of the objectives of the Peoples Charter is to propose changes to the electoral system, which would entail amendment of the Constitution. While there is great scepticism and even a civil suit taken against this proposed electoral reform, there is a need to realise that at this stage the Peoples Charter is only a proposal and is in draft form.
- 6.3 The Interim Government had announced recently that the general elections initially scheduled for March of 2009 will no longer proceed as planned.

7.0 FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

- 7.1 FICAC was established last year and is empowered to prosecute in its own name offences under the FICAC Promulgation and also under the Prevention of Bribery Promulgation.
- 7.2 This year FICAC faced a set back when a High Court decision halted them from prosecuting in the High Court.
- *Fiji Independent Commission Against Corruption v Devo* [2008] FJHC 132

Inoke Devo challenged the Constitutionality of FICAC and sought declarations that FICAC did not have the power or authority to prosecute. The High Court held that while FICAC did have the authority to prosecute, it should do so only in the Magistrates Court until the validity of the promulgations were determined by the High Court in the Qarase case. Pending that decision, all FICAC cases to be prosecuted in the High Court were to be referred to the Office of the Director of Public Prosecution.

- 7.3 Following the determination of the Qarase Case (see below), FICAC has resumed its prosecutions in the High Court.

8.0 CONSTITUTIONAL CASES

8.1 *Laisenia Qarase & Ors. v Voreqe Bainimarama Ors*

In this case the Deposed Prime Minister, Mr. Laisenia Qarase, challenged the legality of the Military takeover, the President's decisions and the actions taken thereafter by the Interim Government.

All constitutional cases before the judiciary were put on hold pending the outcome of this case.

In a judgment delivered on 9 October 2008 on the eve of Fiji's 38th Anniversary of being an Independent State, a three member panel of High Court Judges held, *inter alia*, that “*the President's decision to make and promulgate legislation in the interest of peace, order and good government in the intervening period prior to a new parliament is upheld as valid and lawful*”, effectively dismissing the plaintiff's claim.

The plaintiffs have since filed an appeal against the decision of the High Court to the Fiji Court of Appeal.

8.2 *Laisenia Qarase & SDL v Ratu Josefa Iliovula Uluivuda & 4 Ors.* (NCBBF case)

This action was brought by the deposed prime minister, Mr. Laisenia Qarase in his personal capacity and as the leader of the Soqosoqo Duavata ni Lewe ni Vanua political party (SDL). The plaintiffs sought, amongst other reliefs, a declaration and order that the defendants do not have the power or lawful authority to promulgate any laws, decrees, orders or doing or recommending amendments to the Constitution of Fiji.

In an *ex parte* summons filed on the same day, the plaintiffs sought an interim injunction to restrain the defendants from doing anything in relation to the Peoples Charter until the determination of the case.

On 14 November 2008, the High Court granted the interim injunction and held “... *that a serious issue has been raised and that the balance of convenience favours the*

plaintiff requiring that the status quo be maintained until the final decision is made after hearing the plaintiffs' Originating Summons."

On the same afternoon, the defendants made an application to a single judge of the Court of Appeal and were granted a stay of execution and proceedings against the High Court order pending determination of the appeal.

8.3 *Fiji Law Society v Judicial Services Commission & 4 Ors* – JR 8 of 2007

The Fiji Law Society is seeking a judicial review of the legality of appointing the Acting Chief Justice, Justice Anthony Gates, after the suspension of the Chief Justice Daniel Fatiaki, pending an inquiry into the Judiciary.

The respondents in the case are the Judicial Services Commission, the President Ratu Josefa Iloilo, Public Service Commission chairman Rishi Ram, Justice Nazhat Shameem and Interim Attorney-General Aiyaz Sayed-Khaiyum.

On Thursday, 27/11/08, the High Court granted leave for judicial review to the Fiji Law Society. That ruling effectively allows the Applicant to present further evidence before the Court on its contention that the appointment of the Acting Chief Justice was inconsistent with the Constitution and therefore unlawful. The hearing however will take place in 2009 on a date yet to be scheduled.

8.4 *Hon. Daniel Fatiaki v Josia Voreqe Bainimarama & 17 Ors*

In 2007, the Chief Justice, Mr. Justice Daniel Fatiaki challenged his suspension from the Judiciary as well as all appointments made to the Bench thereafter. The case is still pending in the High Court and will continue in the new year.

9.0 CONCLUSION

The reinforcement of numbers of legal professional staff within Chambers and the recent recruitment of senior lawyers has put our Office in a very good position to more effectively discharge its functions. Given the volume of cases and other legal work that was encountered this year and the fact that that trend is likely to continue or increase in the coming year, the additions to our manpower resource is greatly welcomed.

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