A review of Solomon Islands is not included in this issue.

FIJI

Fiji seemed to come full circle in 2001. The year began with the nation nervously awaiting the outcome of a Court of Appeal hearing on the fate of the interim government installed after the 2000 coup. It ended in a similar way, with the same Court of Appeal preparing to rule on the future of the newly elected government of Laisenia Qarase. Throughout 2001, Fiji’s political course followed surprising and at times startling directions, as the country picked its way through the debris and rubble left by the crisis of 2000.

The legal challenge to the interim government had come when dairy farmer Chandrika Prasad, whose property was stolen and family terrorized after the coup in May 2000, successfully obtained a ruling in the High Court in November 2000 that declared the 1997 constitution extant and the interim government without any legal basis. The government appealed the ruling to the Court of Appeal because, as Interim Prime Minister Qarase explained, “We need confirmation so that we can progress Fiji further towards parliamentary democracy” (Post, 28 Feb 2001, 3).

The lead-up to the Court of Appeal hearing in February was marked by heightened tensions, as nationalist Fijian leaders warned of bloodshed and chaos should the ruling go against the interim government. Ema Druavesi, a spokeswoman for the former governing party (Sogosogo ni Vakavulewa ni Taukei, or svt) predicted that “if you force the Gates (High Court) judgement upon the Fijian people against their will our chances of returning to democracy will be destroyed for a long time” (Sun, 18 Jan 2001, 1). In an unusual show of unity, Fijian political parties issued a joint statement demanding the continuation of the interim government. They warned that any attempts to “derail Fijian leadership” would be strongly resisted. Meanwhile the Taukei Movement was reported to be mobilizing its supporters to oppose the reinstatement of the 1997 constitution. Provincial councils and chiefs also denounced the intervention by the courts. According to one chief: “We will die defending the President and Interim Government against rulings detrimental to us as a race” (Times, 26 Jan 2001, 3).

While a Fiji Times editorial dismissed such threats as “empty political posturing,” it pointed to the military as being the final arbiter of the interim government’s and hence nation’s future. There were indications, in an army briefing to the president leaked to the media, that the military intended to “uphold the rule of law—even if that means upholding the Gates ruling” (Times, 24 Jan 2001, 1). However, army statements also reaffirmed its “steadfast support” for the president and interim government, and the position that national security remained its “paramount concern.”
It was in this atmosphere of tension and uncertainty that the Court of Appeal began its hearing on 19 February. The interim government’s case was that the 1997 constitution had indeed been abrogated according to the doctrine of necessity—to avert further threats to peace and security; and that a new legal order was now in effective control, commanding the acceptance if not approval of a wide section of the population. The respondents (Chandrika Prasad’s lawyers) claimed that there was no necessity for the purported abrogation of the constitution—that such a step was “irrational and disproportionate.” They further argued that no new legal or political order was in place (the fact that the interim government had submitted to the courts was evidence of that). Nor was the interim government in effective control, since it lacked both legal and political legitimacy.

In a landmark ruling handed down on 1 March 2001 the Court of Appeal dismissed the interim government’s appeal. It declared that the 1997 constitution remained the supreme law of the country; that parliament was not dissolved but prorogued for six months; and that the office of president only became vacant on 15 December 2000 with the resignation of Ratu Sir Kamisese Mara. Accordingly, Ratu Josefa Iloilo was still acting in the position. The court argued that that there was no justification for abrogation of the constitution, and that the interim government had failed to demonstrate or prove effective control. One of the lawyers representing Chandrika Prasad described the court’s ruling as historic and setting a powerful precedent. “It is the first time that a court decision may restore a democratically elected parliament displaced by a coup d’état” (Post, 7 Mar 2001, 2). However, the Court of Appeal had not ruled on how the democratically elected parliament should be restored, and it was this question that confounded commentators and political parties in the immediate aftermath of the ruling.

As a way of buying time and perhaps legitimacy, the acting president and interim government announced that they would seek guidance from the Great Council of Chiefs before making their next move. Although pledging publicly to abide by the court’s ruling, the interim government showed no immediate sign of relinquishing power (much to the Labour Party’s chagrin). When the Great Council of Chiefs convened it was presented with two starkly opposing “road maps.” One was prepared by the interim government and its legal advisors and proposed a quasi-constitutional approach: that the Great Council of Chiefs accept the court ruling; that it legitimize Ratu Iloilo’s appointment as president; that it accept that the president has “reserved powers” to dissolve parliament and call fresh elections; and that the interim government continue to govern in a caretaker capacity until elections are held. The second was prepared by a group of indigenous Fijian lawyers led by the General Manager of the Native Land Trust Board. This rejected the constitutional approach entirely and instead called on the Great Council of Chiefs “to resume its sovereignty granted to them by the Deed of Cession,” which could be used to empower the interim govern-
ment. The interim government should continue to rule by decree and a “new legal order” should be created through the adoption of a new constitution. Moreover all those charged with treason (such as George Speight) should be granted immediate and unconditional amnesty (*Sunday Times*, 11 Mar 2001, 2).

As the Great Council of Chiefs deliberated on these momentous issues, the deposed People’s Coalition government struggled (and failed) to reach a consensus on its preferred course of action. Former Deputy Prime Minister Tupeni Baba led a faction that supported the reconvening of parliament and the formation of a government of national unity, to govern for two or three years during which time issues such as land and the constitution would be addressed. Former Prime Minister Mahendra Chaudhry led another faction strongly opposed to the creation of a government of national unity. Although initially calling for the reinstatement of his government, Chaudhry subsequently recommended to the acting president that parliament be dissolved, fresh elections held, and in the meantime a caretaker government be appointed comprising members of the dissolved parliament.

Chaudhry’s advice gave the acting president the opportunity to implement the resolutions agreed to by the Great Council of Chiefs, which essentially followed the quasi-constitutional path advocated by the interim government and supported by the military. On 14 March the acting president dismissed Chaudhry as prime minister on the grounds that he no longer commanded the support of the House (since he had recommended the dissolution of parliament). The acting president then swore in former Labour parliamentarian Ratu Tevita Momoedonu as prime minister (to regularize the appointments of the president and vice president as well as to recommend the dissolution of parliament). Ratu Tevita had stood in as prime minister once before (following the takeover of parliament in May 2000). Once his prime ministerial duties were completed, Ratu Tevita immediately tendered his resignation and that of “his government,” paving the way for the president to appoint a caretaker government. The following day, having tendered their own resignations, the interim government was again sworn in as a caretaker government to lead the country into elections later in the year.

Not surprisingly, this outcome satisfied some but shocked others. It was described by a military spokesman as the “least worst option” to return the country to parliamentary rule within the shortest time. The business community described the move as “decisive but conciliatory.” On the other hand, the Labour Party, the National Federation Party, and the trade union movement condemned the outcome as “unconstitutional and unlawful.” A civil society group, the Citizens Constitutional Forum, filed a motion in the High Court seeking to annul the president’s decision to dissolve parliament. Meanwhile the international community welcomed the decision to go to the polls, although political and economic sanctions on Fiji remained in place pending the outcome of the elections.

As the country moved into election
mode, the political landscape was transformed. Political parties fragmented and new alignments were forged. Within the Labour Party, the rupture over the Court of Appeal ruling proved irreparable, and a breakaway group led by Tupeni Baba formed their own party, named the New Labour Unity Party (NLUP). This joined with so-called moderate political parties in a loose political alliance. The major Fijian parties (SVT, Fijian Association Party, Nationalist Party, Party of National Unity, and Veitokani Ni Lewenivanua Vakarisito) also splintered along provincial, policy, and personal lines. Two new parties emerged that would command the majority of Fijian support. One was the Conservative Alliance / Matanitu Vonna (CAMV), based in the north of the country, which attracted hard-core supporters of the 2000 coup perpetrators and included in its election lineup the coup “leader” George Speight (still held in custody). The other party was created by caretaker Prime Minister Laisenia Qarase and included in its lineup most of the members of the interim government. Named the Soqo-soqo ni Duaavata ni Lewenivanua (SDL) or United Fiji Party, it was launched with much fanfare on 9 May 2001.

The SDL party soon alienated most other Fijian parties. While condemned by some for undermining Fijian political unity, the main grievance against it seemed to be the party’s use of political office for its own advantage—mobilizing state resources to secure support within the Fijian electorate. Among the initiatives taken in the lead-up to the election was approval for a F$52.8 million compensation payment to landowners at the Mona-savu dam, Viti Levu’s main source of hydropower. The caretaker government also agreed to pay landowners at Nadi Airport F$1.2 million in compensation after protests threatened the operations of the airport. (Both payments were subsequently put on hold after court action was taken by opposing landowners and by the Native Land Trust Board.) But it was mainly the caretaker government’s use of agricultural assistance funds that drew the ire of its political opponents. Prominent SVT politician, Jim Ah Koy—who would lose his Kadavu seat to the SDL party—lashed out at the Qarase government: “What has this government done in its one year? All they have done is spend the money that the SVT government put in place. Look at the number of knives, forks and outboard engines they have given out as bait for this election!” (Post, 7 Aug 2001, 1)

The members of the caretaker government were branded as hypocrites and opportunists—for capitalizing on the fruits of office while those who helped put them there (George Speight and his group) languished on the prison island of Nukulau. Although a number of Fijian politicians (and the CAMV party) called for an amnesty for the rebel group, neither the caretaker government nor the military seemed inclined to “interfere” in the court proceedings, which limped along from one adjournment to another. The case was finally moved to the High Court in July after the conclusion of committal proceedings in the Magistrate Court to determine evidence to support treason charges. Barring any further delays (such as George Speight’s periodic firing of counsel), the case was set to begin in February 2002.

The lack of progress in the Speight
group prosecution, together with the failure to identify others involved in the takeover of parliament, overshadowed efforts (such as community events organized by the police) to promote reconciliation and heal the wounds of 2000. On the anniversary of the 19 May takeover, the Fiji Times condemned the failure to bring those responsible to justice. “The identities of those faceless cowards who instigated the hostage taking and supported Speight throughout are still a mystery.” Revelations by a senior army officer on the eve of his resignation from the Fiji military forces pointed to the possibility that such individuals were protected because of their powerful and prominent positions. He alleged that seven plotters were still at large, including prominent business people and a senior military figure. These allegations, which stirred much controversy and speculation, were given some credence when Police Commissioner Isikia Savua and high chief (and Fiji’s High Commissioner to Malaysia) Adi Samanunu Talakuli were cleared of any wrongdoing, despite their well-publicized support for the hostage-takers in parliament. Meanwhile the caretaker government passed a decree granting immunity to soldiers involved in the revenge killings that followed the mutiny of November 2000. This decree was labeled a “travesty of justice” by the Fiji Times, on the grounds that it allowed murder to go unpunished.

On 11 July the High Court removed the final legal hurdle to the August elections when it dismissed a motion brought by the Citizens Constitutional Forum seeking to annul the president’s dissolution of parliament. In his ruling, Justice Michael Scott argued that while the president did act in a manner inconsistent with the constitution when he failed to summon parliament (after the Court of Appeal ruling), such action was justified on the grounds of necessity. To reconvene parliament and return the Chaudhry government to office would have created “a wholly unacceptable risk to the peace and welfare of the nation” as well as a “legal and administrative nightmare” (Times, 12 July 2001, 12, 14).

Threats of unrest should the Labour Party win the elections and reports of divisions in the military circulated in the weeks before the poll. But despite the tense atmosphere, public opinion surveys indicated that voters were primarily concerned about economic issues. This underscored the precarious state of the economy in the wake of the political crisis of 2000. A number of garment factories closed their operations in early 2001, leaving more than a thousand workers unemployed. Uncertainty of land tenure was causing a drastic drop in cane production, while the expiry and non-renewal of land leases left many farmers homeless and destitute. Tourism arrivals had also declined significantly, leading to the loss of some two thousand jobs in the industry (Sun, 23 Mar 2001, 5). While political parties promised to address these concerns, there were indications that voters remained skeptical of what a new government would deliver. According to one evicted cane farmer: “It seems these politicians get into parliament to serve themselves and forget the difficulties the poor people face everyday” (Times, 9 Aug 2001, 3).

Under the scrutiny of Commonwealth and United Nations observers,
the election took place without incident in late August. Despite predictions of a divided and fragmented Fijian vote, the result was an almost sweeping victory for Qarase’s SDL party (in Fijian constituencies). The only other serious contender was the CAMV party. No other Fijian party won a seat. Meanwhile, the Labour Party swept to victory in all the Indo-Fijian constituencies. The final tally gave SDL 31 seats, CAMV 6 (including George Speight), Labour 27, New Labour Unity Party 2, the United General Party 1, the National Federation Party (NFP) 1, and independents (subsequently aligned to the SDL) 2 seats.

Analyses of the vote revealed that Labour increased its share of Indo-Fijian voters compared to the National Federation Party, and this was attributed to a combination of its record in office and Chaudhry’s “bold leadership.” Meanwhile SDL’s success was due in no small measure to its largesse during the election (especially its distribution of agricultural assistance funds—a “ scam” that would come back to haunt the SDL in the new year), as well as to the endorsement of the Methodist Church establishment. SDL policies, which included legislating a twenty-year blueprint of affirmative action programs for Fijians, revising the 1997 constitution to entrench Fijian leadership, and reverting to the Native Land Trust Act, also appealed to and appeased (nationalist) Fijian sensitivities and aspirations stirred up by the events of 2000. In this way it was able to neutralize much of its competition.

The conclusion of the vote count was followed by five days of tense negotiations and brinkmanship. With the single largest party in parliament, Qarase appeared the most likely candidate for prime minister. But to form a majority government in the seventy-one-seat parliament, he needed to create a coalition with several of the smaller parties. Moreover, under the constitution, all parties with at least 10 percent of the seats (seven seats or more) were entitled to places in cabinet in proportion to their seats in parliament. This posed a dilemma for Qarase, who had made it clear he would not work with Chaudhry in government. There was also the possibility that if Qarase joined forces with minor parties, he would need to give them places in cabinet that would dilute SDL’s majority. Labour could therefore end up with more places in cabinet than SDL—an unacceptable prospect. On 10 September, and still without any resolution to his political conundrum, Qarase was sworn in as prime minister. He immediately issued an invitation to Chaudhry to be part of his government, which Chaudhry duly accepted. But Qarase did not follow up, and Chaudhry was not consulted further on the makeup of cabinet.

Initially SDL seemed to favor an alliance with the so-called moderate parties (NLUP, United General Party, and National Federation Party) rather than the CAMV party. The latter had insisted, as a condition of any partnership, that the detainees on Nukualau (including George Speight) be released and granted immunity. But talks with the “moderates” proved inconclusive and a breakthrough with the CAMV party came after they agreed to drop their demand for
immunity for the rebels (reportedly after George Speight and his fellow detainees gave the party the go-ahead). On the night of 11 September, the SDL and CAMV parties signed a memorandum of agreement that specifically excluded any reference to immunity. A memorandum was also signed with one of the NLUP members of parliament (although this was later denounced by his party). The next day, as word of the horrific terrorist attacks on the United States reached Fiji, the new cabinet was sworn in. It comprised twenty ministers and eight assistant ministers. Qarase rewarded his minority allies (CAMV, NLUP, and independents) with a total of five cabinet posts.

The exclusion of the Labour Party was immediately branded as unconstitutional by observers both locally and abroad. But the SDL remained defiant. According to a party spokesman, to bring Labour in would be “an unworkable coalition” because of fundamental differences between the parties (Post, 18 Sept 2001, 3). Qarase meanwhile claimed that Chaudhry had put certain conditions on his participation in government that were unacceptable. But Chaudhry denied this, claiming that it was Qarase who had set down conditions for Labour’s inclusion—namely that it agree to support SDL’s policies on the affirmative action blueprint, among other things. At the end of September the Labour Party filed legal objections against its exclusion from cabinet in the High Court (a move welcomed by Qarase as a way to resolve constitutional issues). The presiding judge moved to “fast-track” the case because “it raised issues of law that should be referred immediately to the Court of Appeal” (Times, 29 Sept 2001, 1). The case was set down for hearing in February 2002.

Yet another legal wrangle erupted as a direct consequence of this court action. It concerned the appointment of eight senators nominated on the advice of the leader of the opposition. When the president offered the position of leader of the opposition, Chaudhry refused it (so as to await the Court of Appeal ruling). In order to fill this position, the president eventually appointed the lone NFP member. According to the constitution, the leader of the opposition’s senate nominees should comprise the nominees of parties in the House of Representatives that were entitled to participate in cabinet. Thus the Labour Party eventually presented the leader of the opposition with their list of eight nominees. However, before handing this list to the president, opposition leader Prem Singh took it on himself to amend the list (dropping four of Labour’s nominees and including four of his own). These nominees were sworn in, but the president’s office subsequently decided to seek Supreme Court clarification on whether this action was “lawful and constitutionally sound” (Times, 23 Oct 2001, 1). In the meantime, Labour senators boycotted the remaining sessions of parliament.

Despite these constitutional disputes, the international community moved to normalize relations with Fiji in the wake of the elections. In early October, Australia announced it was lifting all aid and other sanctions, and a visit by Foreign Minister Alexander Downer followed in December.
ever, a request from Australia that Fiji participate in the so-called “Pacific solution” to the burgeoning refugee problem was withdrawn after a public and political outcry in Fiji. Also in December, the Commonwealth Ministerial Action Group lifted Fiji’s suspension from the Commonwealth Councils, paving the way for Fiji to attend the next Commonwealth Heads of Government Meeting. New Zealand and Britain then announced the resumption of full relations with Fiji. Only the European Union continued its aid sanctions on the country, to be reviewed once the constitutionality of the government had been resolved.

As the year drew to a close, the nation’s fate was again in the hands of the Court of Appeal. Although the election was a major step forward and its outcome was seen to reflect the “will of the people,” Fiji’s return to democratic rule was far from complete or secure. In its first months in office the (elected) Qarase administration confronted a legal challenge that had the potential to force a change of government. It also confronted a political challenge (a F$25 million farming assistance scandal) and a security challenge (a plot to kidnap and assassinate members of government in order to force the release of George Speight and his companions on Nukulau). The repercussions of these were still unfolding in early 2002, but they threatened further instability and unrest. Fiji remained on a political knife-edge, balanced precariously between the forces of racial extremism on the one hand and democracy on the other.

Nowhere was this more evident than in the debate in parliament in December over the Qarase government’s proposed legislation to provide affirmative action programs for indigenous Fijians. As critics attacked the legislation for being “racially discriminatory” and unconstitutional, its defenders (including the prime minister) described the bill as necessary for peace and stability, in other words, national security (Sun, 17 Dec 2001, 1). But such attempts to “buy” stability by removing “barriers to Fijian advancement” had failed in the past to avert political crises and had instead fostered massive corruption and abuse of public funds (the farming assistance scheme being only the latest example). The vicious cycle of political instability, racial policies, and economic mismanagement thus looked set to continue. In such a situation it was perhaps no wonder that so much seemed to depend (however unrealistically) on the rulings of the courts.

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References


NEW CALEDONIA

As France continued to delegate administrative and fiscal responsibilities to the territory in compliance with the 1998 Noumea Accord, the March 2001 municipal elections, challenges in forming the executive council of the Congress, and senatorial elections in