

**FORUM EYES ONLY
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**FORUM EMINENT PERSONS' GROUP REPORT
FIJI**

29 JANUARY – 1 FEBRUARY 2007

ACKNOWLEDGEMENTS

We wish to thank the Forum Foreign Affairs Ministers for the opportunity to participate in this historic and important work for the Forum. We also thank the interim government of Fiji for its assistance in facilitating the arrangements for our visit and the people of Fiji for receiving the Group so warmly and for all the courtesies and hospitalities offered to us during our one week stay in Fiji.

2. Our appreciation also goes to all that we met, for giving their time to meet with and talk to the Group. We take this opportunity to wish the people of Fiji well for the future.

3. Finally, the Forum Eminent Persons Group wishes to record its gratitude to the Secretary General, Mr Greg Urwin, and his staff, for their support during the visit.

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BACKGROUND TO THE CURRENT SITUATION IN FIJI

Relations between the Soqosoqo Duavata ni Lewenivanua (SDL) Government and the Commander of the Republic of Fiji Military Forces (RFMF), Commodore Bainimarama, have been characterised by differing interpretations of the role of the RFMF in the affairs of state. In 2000, the RFMF played a critical role in the response to the Speight-led coup, Commodore Bainimarama being directly involved in the appointment of Mr Laisenia Qarase as interim Prime Minister, and in returning Fiji to a constitutional path. While they cooperated closely initially, relations began to deteriorate following the 2001 election, as those alleged to have been involved in the coup assumed positions in Government, a development to which Commodore Bainimarama took particular exception.

2. The year 2006 was dominated, politically speaking, by the SDL Government's attempt to introduce three pieces of controversial legislation: the Indigenous Claims Tribunal Bill, the Qoliqoli [Customary Fisheries] Bill and, most contentiously, The Promotion of Reconciliation, Tolerance and Unity Bill (the RTU Bill). The RTU Bill generated considerable criticism and opposition from many sections of society, and led to further friction between the Government and the RFMF. The RFMF saw these pieces of legislation as potentially destabilising for Fiji, and further evidence that the SDL Government was implementing a racially divisive agenda while tacitly condoning the events of 2000.

3. The RFMF's interpretation of its role in affairs of state hinges on its belief that its role as defined by section 94(3) of the repealed 1990 Constitution is retained under the 1997 Constitution. The relevant section of the 1990 Constitution states that "It shall be the overall responsibility of the Republic of Fiji Military Forces to ensure at all times the security, defence and well being of Fiji and its peoples." The RFMF believes the Constitution provides it with a political mandate to influence government policy in the interests of Fiji, however they may be defined. The correct interpretation of the military's role under the 1997 Constitution remains contentious, and has not been determined by the courts, although there was discussion during 2006 of a possible Presidential reference to the Supreme Court on this issue. During the first quarter of 2006, this debate over the military's role was played out in the media, and the RFMF threatened to overthrow the Government if it did not meet its key demands, namely the removal of the controversial Bills from the Parliamentary agenda. This tension was not resolved when now ousted Prime Minister Qarase announced that the October 2006 general election would be brought forward to May.

4. International observers found the 2006 election to be conducted in a credible manner, but made a number of recommendations to improve the electoral process. The SDL won 36 parliamentary seats in the election, 2 pro-SDL independents were elected, the Fiji Labour Party (FLP) won 31 seats and the United People's Party (UPP) won the remaining two seats. Mr Qarase formed a government and, as required by the Constitution, offered a proportion of Cabinet positions to the FLP. The UPP formed the

Opposition. The President, Ratu Josefa Iloilo opened Parliament on 6 June 2006, urging Fiji's first multi-party Cabinet to co-operate for the benefit of the nation.

5. Attempts were made by both the Government and RFMF to improve relations between them following the 2006 election. Meetings between the Minister for Home Affairs and the Commander of the RFMF were held in the first half of the year with a view to resolving outstanding differences, particularly with regard to the controversial pieces of legislation. The Government refused to meet all the demands of the RFMF and the impasse continued throughout 2006 although it went largely unreported in the media until the RFMF began making renewed public statements on the proposed Qoliqoli legislation.

6. Relations between the RFMF and the Government continued to deteriorate as Commodore Bainimarama refused to meet with Government Ministers unless they met all key demands. The crisis escalated when RFMF soldiers removed an arms shipment from the Suva Wharves in November 2006, placing Police Commissioner Hughes and Commodore Bainimarama at loggerheads. Prime Minister Qarase addressed the nation in mid-November and categorically stated his determination to remain Prime Minister. During the ensuing month, the RFMF took a number of staged steps with a view to pressuring Prime Minister Qarase to resign or bringing about his government's collapse. New Zealand Foreign Minister Winston Peters mediated at a meeting on 29 November between Commodore Bainimarama and Prime Minister Qarase in an eleventh-hour attempt to resolve the situation.

7. By this point, Commodore Bainimarama's demands (reflecting political developments of the previous month) had expanded, and included: a public declaration by the Government that the coup events of 2000 were illegal and that all those associated with them must be removed from office; withdrawal of the three contentious Bills; suspension of investigations into the Commander and the RFMF; termination of Police Commissioner Hughes' contract; no foreign military/police intervention; a review of the role of the Police Tactical Response Unit; a review of the commercial arm and role of the Native Lands Trust Board; the Ministry of Home Affairs to respond to RFMF concerns about Force Structure, allowances and promotions; and the Government to address good governance concerns. Immediately after his return from New Zealand, Mr Qarase issued a press statement outlining what he claimed had been agreed on these points. This was immediately repudiated by Commodore Bainimarama.

8. On 5 December 2006, Commodore Bainimarama announced that he had assumed executive power, that he had dismissed the elected government of Fiji and declared a State of Emergency, justifying his actions principally by reference to the Doctrine of Necessity. Mr Qarase was obliged to withdraw to his home island of Vanuabalavu. Following three days of meetings, on 22 December, the Great Council of Chiefs (GCC) issued a statement which reaffirmed its view that President Ratu Josefa Iloilo and Vice President Ratu Joni Madraiwiwi were illegally removed by the military and therefore still held their positions under the 1997 Constitution. The GCC also reaffirmed its support for the rule of law and parliamentary democracy. Commodore Bainimarama rejected its

statement, saying that the GCC had failed to see and understand the reality of the situation on the ground. Commodore Bainimarama subsequently announced that under the State of Emergency provisions, he would not allow any further meetings of the GCC to proceed unless expressly authorised by the RFMF. Ratu Joni has since announced his resignation from the position of Vice-President, and the GCC Chair announced in mid-January 2007 that it would appoint a new Vice-President at an upcoming meeting, while not confirming any date for that meeting.

9. Statements condemning the seizure of power in Fiji by the military were issued by the UN Security Council, the UN Secretary-General, the Presidency of the EU, the Commonwealth, Norway, Japan, Singapore, Australia, New Zealand, Papua New Guinea, Samoa and Vanuatu and the Pacific Islands Forum; and Fiji has been suspended from the Councils of the Commonwealth. Various additional measures have been adopted by Australia, New Zealand, the United Kingdom, and the United States. The EU is considering its position in light of the provisions of the Cotonou Agreement.

10. On 4 January 2007, Commodore Bainimarama returned executive authority to President Iloilo, who then appointed Bainimarama as interim Prime Minister. Other members of an interim government have subsequently been sworn in, including former Labour Prime Minister Mahendra Chaudhry. The interim government has entrenched itself gradually, and it would appear that many citizens have accepted, with varying degrees of enthusiasm or reluctance, the reality of what has happened. It has been widely reported however that human rights abuses have been perpetrated by the military against critics of the Commander and the RFMF.

11. Commodore Bainimarama set out a broad agenda, although lacking significantly in detail, for his interim government following his appointment by President Iloilo on 4 January. The key issues outlined by the Commander include commitment to upholding the Constitution, validating the legality of the military's actions (i.e. granting immunity to the perpetrators of the events), an enquiry into the Judiciary, investigations into alleged corruption by the ousted government (including plans to establish an anti-corruption commission), and the conduct of a census and the undertaking of electoral reforms, to precede the holding of a democratic election in an as yet unspecified timeframe.

Establishment and Work of the EPG

12. In the context of the escalating tension in Fiji, a meeting of Pacific Islands Forum Foreign Affairs Ministers (FFAMM) was held in Sydney, Australia on 1 December 2006 which agreed to convene urgently an Eminent Persons Group (EPG) to visit Fiji to meet all the relevant parties to the impasse, and to make recommendations for a way forward. On 15 December, following consultations with the Chair, the Secretary General of the Pacific Islands Forum wrote to Heads of Government seeking their agreement to suspend the Prime Minister of Fiji's position as Forum Chair given his practical inability to fulfill his duties. Leaders agreed to this. As events had overtaken the agreed decisions of the FFAMM, new EPG Terms of Reference (See Annex A) were drafted and circulated to Forum Foreign Ministers.

13. On the basis of these revised TORs, the EPG visited Fiji from 29 January to 1 February 2007. It comprised Hon. Sato Kilman, Deputy Prime Minister and Foreign Affairs Minister of Vanuatu as Chair, Hon. Faumuina Liuga, Samoa's Minister for Natural Resources and Environment, Sir Arnold Amet, retired Chief Justice of Papua New Guinea and General Peter Cosgrove, retired Chief of the Australian Defence Force. The EPG met with a wide range of stakeholders including the President, the former Vice President (by teleconference), the interim Prime Minister, members of the interim government, the Great Council of Chiefs, the ousted Prime Minister, members from the ousted government and other Members of Parliament, the suspended Chief Justice and other members of the Judiciary, the Fiji Human Rights Commission (FHRC), the business community, representatives from NGO's, Churches, the Media, Trade Unions, Suva based Forum representatives and Post Forum Dialogue partners. Wide ranging discussions were held around the four terms of reference and are reflected in the report.

Section One: Assessment of the underlying causes and the nature of the overthrow of the Government of Fiji by the RFMF

14. The EPG recognises that political issues in Fiji are complex and have a long history. It has restricted its report to the key events immediately leading up, or directly relevant to, the events of 5 December 2006 and since.

SDL attempts to pardon Coup Perpetrators of 2000

15. The EPG understands from its discussions with all interlocutors that the causes of the impasse between the RFMF and the Qarase government date back to the events of 2000 when a civilian-led coup was attempted by George Speight. After the RFMF had negotiated the release of hostages held by Speight in July 2000, the head of the RFMF, Commodore Bainimarama installed an interim civilian Government with Mr Qarase as Interim Prime Minister. Relations between the interim civilian government and the RFMF began to deteriorate when, following the 2001 election, the SDL formed the Government with the Conservative Alliance Matanitu Vanua (CAMV) whose members were strong advocates for pardoning the 2000 coup perpetrators. The EPG was informed that some of the SDL's support base included traditional chiefs, parliamentarians and other high office holders who were complicit in the events of 2000. At least one member of the Cabinet had been sentenced and served an eight month term for his actions during the 2000 coup. Several other individuals involved in the events of 2000 were released from prison early under compulsory supervision orders. This caused a deep rift between the new Government and Commodore Bainimarama who was personally determined to see those responsible for the coup face the legal consequences of their actions.

16. In 2005, the Government introduced into Parliament the RTU Bill. The Bill proposed the establishment of a Reconciliation and Unity Commission to investigate the 2000 coup, award compensation to victims, and grant amnesty to perpetrators. The amnesty provision in particular provoked widespread criticism within the community. The EPG understands that the RFMF, although opposed to a blanket amnesty, requested immunity for its actions in 2000 when the Commander abrogated the Constitution and removed the President from office. The Government adopted the position that if one section of the community (ie the RFMF) was pardoned for illegal political acts, then as a rule this should be extended to the wider community. This proposal for blanket amnesty coverage in the RTU Bill was widely regarded as being a principal factor in the RFMF's decision to overthrow the Government. The EPG noted that in response to demands from the RFMF, the Qarase government had made significant amendments to the Bill and was planning to review it prior to the takeover of 5 December.

Attempts to remove Commodore Bainimarama from Office and Review of the RFMF

17. The EPG was advised that since 2001, Mr Qarase and his Ministers made several attempts to have the Commander removed from office, and to reduce the role of the RFMF in political affairs. The most recent attempt to do so occurred on 31 October 2006. The President signed the order, but Commodore Bainimarama's intended

replacement declined to accept the appointment on the grounds that he did not command the support of other senior military officers. The EPG heard that the last attempt to remove Commodore Bainimarama signaled the complete breakdown in relations between the two sides, and hardened the resolve of the RFMF to take over government.

18. The EPG heard that the Qarase government also commissioned a Review of the RFMF in 2005 which recommended the downsizing of the force, and its restructure, to more appropriately meet the needs of Fiji. The EPG was informed that this review was received poorly by the RFMF leadership which already regarded itself as being cut out of the national security decision making process by its exclusion from National Security Council meetings. The EPG understands that another factor influencing the military's decision to take over the Government was that in late 2006, the Police, under the direction of Commissioner Hughes, had been conducting investigations of Commodore Bainimarama relating to sedition and his alleged role in the deaths of four Counter Revolutionary Warfare soldiers in 2000.

Introduction of alleged Racially Divisive Legislation and the RFMF's role in Politics

19. The re-elected Qarase Government of 2006 announced that a revised version of the RTU Bill would be introduced in the new Parliament along with the Qoliqoli Bill and the Indigenous Claims Tribunal Bill, consistent with its election promises. The EPG was informed that the SDL policy specifically targeted the support of ethnic Fijians, before, during and after the 2006 election. Commordore Bainimarama cited the divisive character of this legislation, and the dire consequences it would have for social stability in Fiji as one of the reasons for his actions on 5 December. The EPG understands that in the view of the RFMF, passage of these Bills would have strengthened Fijian nationalism, led to disputes between provinces and among ethnic Fijians, created ethnic tension and undermined the rule of law in the country. The EPG heard that in response to the Commander's demands of early November 2006, in a meeting in late November in New Zealand brokered by Foreign Minister Peters, Mr Qarase agreed to suspend action on these Bills pending legal review, and made substantial concessions on the remainder of the RFMF's points. By this stage however, the RFMF appeared to have already decided on its course of action. Others noted that the inability of Commodore Bainimarama and the Government to resolve their differing interpretations of the correct role of the RFMF as defined by the Constitution, heightened tensions throughout 2006.

Issues relating to the Conduct of the 2006 Election and alleged widespread corruption

20. A national election was held in May 2006. The SDL received over 80 percent of the votes of indigenous Fijians, and the FLP over 80 percent of the votes of ethnic Indians. The EPG heard that controversy was renewed when Commordore Bainimarama publicly denounced the SDL's election policies as racially divisive, conducted an RFMF voter awareness campaign, and instructed his soldiers not to vote for the SDL. The EPG was also advised that several parties were sceptical about the integrity of the election claiming widespread electoral irregularities and vote rigging. The EPG was however advised that of the 71 seats contested, the outcomes of only two seats were taken up with

the Court of Disputed Returns. Indeed, international election observers found the election to be credible. The SDL formed a multi party government comprising those parties that had secured more than 10 percent of the vote, as required by the Constitution.

21. The EPG heard that the RFMF has received the support of the Labour Party and the National Alliance Party (NAP) for its actions on 5 December (and that representatives from these parties are now members of the interim government). The Labour Party failed to secure a majority at the 2006 election, although it did participate in the multi-party Cabinet. The NAP failed to win a seat. The EPG understands that a significant justification offered by the military for its actions of 5 December stems from its belief that the Qarase Government was engaged in widespread corruption. While the EPG did not discount this possibility it noted that only anecdotal evidence of this was provided during the visit, and also noted the view expressed by some groups that allegations of corruption were not of themselves sufficient ground to move against a democratically elected government.

The Nature of the Overthrow: Legal Issues

22. Upon seizing executive authority on 5 December, Commodore Bainimarama asserted the legality of his actions, referring principally to the legal doctrine of necessity, and citing one particular judicial decision (of several) arising from Fiji's 2000 coup. The legality of the 2006 takeover and subsequent events has been the topic of much discussion and analysis, and while the legal issues are complex, it is agreed that the question rests principally on the applicability of the doctrine of necessity.

23. The legality issue was raised with the EPG by several interlocutors, both legal experts and lay persons. While some agreed with the Commander's claim that his actions were justified under the doctrine of necessity, the majority of those with whom the EPG spoke were not convinced that the extra-Constitutional actions of the Commander (and subsequently the President) could be upheld on this ground. The legal difficulty arises in particular because the actions taken were in fulfillment of threats to the public order made by the RFMF itself, a situation which excludes the applicability of the necessity doctrine. The EPG understands that the prevailing legal view is therefore that the Commander's action in seizing power on 5 December was illegal.

24. The EPG recognises that the legality of the recent events must ultimately be determined by properly constituted Fiji courts of law, and does not presume to pre-empt such decisions. The ultimate outcome of any court proceedings may be influenced by a number of factors including events occurring between now and then. The EPG is aware that ousted Prime Minister Qarase has announced his intention to challenge the takeover in the courts, and other court cases may also be filed in due course.

Section Two: Assessment of the prospects for appropriate resolution of the present situation in Fiji in the short and medium term, and obstacles to such a resolution

25. The EPG understands that the prospect of an appropriate resolution of the present situation in Fiji in the short term is unlikely owing in large part to the diversity of positions held within the community, the firm stand adopted by the RFMF and the interim government, and the fact that key institutions central to an appropriate resolution may already have been compromised. In the medium term, a political solution which commits the interim government to a road map leading to an election may be possible.

26. The EPG noted that the interim government has progressively entrenched itself (with the full support of the RFMF). A Cabinet has been appointed which includes members of the National Alliance Party and the Fiji Labour Party. That body has taken the view that parliamentary democracy cannot be restored before an election is held. The EPG was told that the interim government's position is informed by the view that national security is the paramount issue of the day, and takes precedence over a return to civilian led parliamentary democracy. The interim Prime Minister and the Cabinet are reluctant to commit to a timeframe for an election, stating only that these would be held once the interim government has completed the implementation of the mandate provided by President Iloilo. The EPG understands that the interim government is looking at a timeframe of at least three years and possibly up to five years.

27. The EPG was informed that before an election is held, the interim government plans to embark on an anti-corruption exercise which has been termed a clean up campaign, to conduct a census with a view to revising electoral boundaries, and to undertake voter education programmes. The EPG was also advised by interim Ministers that an election could not be held until the socio-economic conditions in Fiji were conducive to a credible election, which the EPG took to mean when the clean up campaign was completed. The EPG understands that the purpose of the interim government's agenda is to promote a multicultural polity which does not elevate indigenous rights above those of other citizens. The EPG noted that Commodore Bainimarama is unwilling to de-link the election timetable from the clean up campaign. The implication of this is that an election may not be held for another five years.

28. In contrast to the interim government's position, the EPG heard that there are many in the community who have condemned the events of 5 December. Some have demanded an immediate return to parliamentary democracy, stated that the office of Prime Minister should be held by a civilian, and called for the military to return to barracks and for a new election. The EPG noted that many groups felt that even if all of the electoral reforms proposed by the interim government were carried out, an election could still be held within a period ranging from fifteen months to two years.

29. The EPG also noted that ousted Prime Minister Qarase proposes to challenge the legality of the military's actions in court. If the courts find in favour of Mr Qarase, the interim government will be faced with the choice of either following the courts' directions, thereby upholding the rule of law, or proceeding with its own agenda. The

latter course of action is likely to further divide public opinion and undermine prospects for a political solution underpinned by a national consensus.

30. The EPG heard the view that the Judiciary, the Police, Government Departments and the Human Rights Commission have been compromised since the events of 5 December. The circumstances surrounding the standing aside of Chief Justice Fatiaki, the appointment of Justice Gates as acting Chief Justice, and the suspension of the Chief Magistrate have all been questioned. The EPG understands that while the interim government believes that due process was followed in the appointment of Justice Gates and the suspension of Chief Justice Fatiaki, it is not a view shared by many in the Fiji legal community. The EPG was told that the Judiciary has become politicised and divided. Justice Fatiaki plans to appeal his suspension through the courts. The EPG was also advised that the Court of Appeal and the Supreme Court may confront an operational crisis by mid year as offshore judges may not seek re-appointment or refuse to sit in protest against the events of 5 December and since. The EPG was advised that due process was not followed in the termination of contracts for most government CEOs. It was also suggested that new appointments to the interim administration have been characterised by nepotism. The Police are yet to resume their proper role as the only law enforcement institution of Fiji.

31. The EPG also heard that the Human Rights Commission's ability to fulfill its mandate had been undermined by internal disputes and politicisation. Citizens subjected to human rights abuses were reluctant to report their experiences to the Human Rights Commission. The EPG also understands that New Zealand has suspended its funding for the Human Rights Commission. As a result the FHRC will be entirely dependent on the state to sustain its operational commitments, a situation which opens up the possibility of political interference.

32. The EPG heard that a wide cross section of the community feel that the continuing State of Emergency in Fiji is unwarranted, and is a major obstacle to a return to normality and the resumption of the rule of law. The EPG heard that a Presidential decree was issued purporting to grant immunity to soldiers for their actions up until 5 January 2007. The EPG noted during its visit that armed soldiers remained in place at checkpoints throughout Suva, and understood that there were numerous cases of citizens being denied their Constitutional rights including through subjection to intimidation, harassment and physical abuse at the Queen Elizabeth Barracks. The EPG was told that the interim government has also placed overseas travel bans on some citizens from the NGO and business community. The EPG heard that many people were unclear about what the State of Emergency permitted and prohibited them from saying and doing. The EPG understands that this has created an atmosphere in which people feel unable to express their views, and members of the media have been subjected to threats and intimidation in situations where stories unsympathetic to the interim government's position have been run. Additionally, citizens were now reluctant to speak with the media for fear of retributive acts against them and their families. The EPG noted that this has led to some self-censorship by the media.

33. The EPG heard conflicting opinions on the level of support for the interim government and the ousted government. While many in the community are reticent about expressing their opinions publicly, support for the ousted government among indigenous Fijians reportedly remains strong while the interim government seems to have gained support among other communities. Polarisation of support for the interim government and the ousted Government will further complicate the situation.

Section Three: Steps that the parties in Fiji may take to move swiftly and peacefully toward the restoration of democratic government, within the boundaries of Fiji's Constitution and the rule of law

34. The EPG understands that while there is a diversity of opinion on the appropriate next steps to restore Fiji to democratic government, they can be grouped into three broad categories.

35. The EPG heard that the interim government and the RFMF intend to restore parliamentary democracy at an as yet undisclosed time, but plan to carry out a number of steps beforehand. The first of these include a national census. The EPG understands that the interim government believes this is important because the last election was conducted before the scheduled census and this caused many to question the validity of the rolls of voters and the integrity of constituency boundaries. Following a census the interim government intends to revise the boundaries for each constituency based on the data provided by the census. When the new constituencies are determined, voter registration will be undertaken nationwide and electronic registration introduced. The EPG was advised that election observer groups of 2006 noted that this was an area that required significant improvement. Finally, the interim government intends to conduct nationwide voter education programmes with a view to ensuring that voters are not disenfranchised by their inability to understand the electoral system. The EPG understands that the interim government believes it will take between three and five years to complete all these steps.

36. The EPG heard that during this period, the interim government also intends to carry out what it terms a clean up campaign to eradicate alleged corruption within the public service, Judiciary, and political parties. As an initial step, the interim government has called for an anti-corruption commission to be established to investigate what it claims is widespread corruption at all levels of government, and has already commenced establishing an anti-corruption taskforce. The EPG understands that the interim government's reluctance to de-link the electoral process from the clean up campaign stems from its view that for a free and fair election to be conducted, the correct socio-economic conditions must exist. Furthermore, Commodore Bainimarama has said the RFMF holds the view that it does not have confidence in any civilian authority to conduct this exercise unsupervised, and as a result, Commodore Bainimarama will retain his position as interim Prime Minister.

37. Many stakeholders in the community hold a quite different perspective on how a return to democracy should be achieved. The EPG understands from several non-interim government interlocutors that an alternative model presented by some groups would be for the key stakeholders including the President, the Vice President, the ousted Prime Minister, the RFMF, political parties and Great Council of Chiefs to enter into discussions to work constructively toward finding a legal solution to the resumption of democracy. The mandate of this group would be to negotiate and reach agreement on the terms and conditions to facilitate the resignation of the Qarase government (ousted Prime Minister Qarase has not submitted his resignation). The EPG noted that following these

steps, it was proposed that the President would appoint a new interim government to return Fiji to an early election within a stipulated timeframe. An advisory council would be established by the President to assist him in the appointment of this interim government. The advisory council would include representatives from all political parties and the RFMF. The composition of the interim government would be chosen from the current members of Parliament following the resignation of the military-backed interim government. The EPG heard that in this scenario, the new interim government would have a mandate to hold a general election within two years. The EPG was advised that the ousted government would welcome the establishment of a Commission of Enquiry into allegations of corruption but sees no need to link this to an election timetable.

38. The EPG also noted that in contrast to these first two roadmaps, some groups felt there should be an immediate and unqualified return to parliamentary democracy. The EPG understands that this formulation would involve full restoration of parliament and a full resumption of power by the duly elected Qarase government, which would act as a caretaker government to prepare Fiji for a national election in a period of no more than six months. This view does not accommodate anti-corruption exercises, nor does it incorporate a census and revision of electoral boundaries. The EPG noted that those who put forward this position also acknowledged that the interim government was unlikely to acquiesce.

39. The EPG recognises that any legal and constitutional resolution of the current political situation will require an independent and untainted Judiciary. The EPG noted the view within the community that the Judiciary, government departments and other institutions of government had been compromised. Specifically, there is serious concern that due constitutional process was not followed in the suspension of Chief Justice Fatiaki and the appointment of Justice Gates as Acting Chief Justice. The EPG noted that there is a considerable danger that the Judiciary will not be able to carry out its Constitutional role. The EPG was advised that at some point, Fiji might need to seek international assistance to restore confidence to the judicial system.

40. The EPG noted that most stakeholders believe that in the interim period before an election is held, a number of other steps can be taken to place Fiji back on the path toward the restoration of democratic government. First, the EPG heard that many stakeholders felt that the military should remove its armed presence throughout Fiji and return to barracks. Accompanying this step, the State of Emergency should be lifted. Furthermore, there should be an immediate cessation of human rights abuses, and confidence should be restored to the human rights machinery, and a civilian Prime Minister should be appointed.

Section Four: The role of the Forum and its members in assisting Fiji achieve the restoration of democratic government

41. The EPG noted significant differences of opinion between the interim government and its supporters, and the remainder of the community, on the role of the Forum and its members in achieving the restoration of democracy in Fiji. There was however a consensus that the EPG, or some variant, should remain constituted to monitor developments in Fiji and make recommendations to Forum Leaders.

42. The EPG noted the interim government's call for Forum members to engage with the interim government to acquire a better understanding of the particular circumstances in Fiji. The interim government has also called for the removal of all sanctions commencing with the travel bans imposed on military personnel, interim Ministers, civil servants and their families. The interim government registered its concern that the travel bans were making it difficult to recruit members of the public to serve in the interim administration, undermining its attempts to govern effectively. The interim government has linked this matter to a timetable for an election on the basis that preparations could not occur without suitably qualified people. On this note, the interim government called on Australia and New Zealand to consider a package of assistance to facilitate the implementation of the steps leading to a democratic election. The interim government noted that if assistance was provided, especially in the establishment of an anti-corruption commission, the remainder of the electoral timetable could be accelerated.

43. A range of other interlocutors also called for an active and unified Forum role in the resolution of the current situation, although their emphases varied. Many stakeholders supported the Forum's stand condemning the military takeover. Forum members were urged by various stakeholders to use sanctions and other measures to pressure the interim government to commit to a clearly defined roadmap to parliamentary democracy, with clear timeframes and verifiable milestones, and that this roadmap should be set out within three months of the EPG visit. Groups with whom the EPG spoke suggested a number of key milestones relating to the electoral timetable, role of the RFMF, return to civilian control and respect for the rule of law.

44. Many groups suggested that if the interim government begins taking some of these steps, the Forum should consider a phased process of increasing engagement with the new administration and that Forum Members consider gradually reducing punitive measures against the interim government, as these milestones are achieved. For example, the EPG noted that some groups with which they spoke argued that Forum financial and technical assistance for a credible and independent anti-corruption commission may expedite the timeframe before an election and should therefore be considered as a matter of urgency. However, this assistance should be conditional on the interim government de-linking its clean up campaign from the election timetable so as to ensure the minimum necessary delay in the return to democracy. The EPG noted that the steps outlined by the interim government to date do not constitute a time bound roadmap, but rather a set of objectives.

Conclusions

45. Despite the views expressed by the RFMF, the interim government and some organisations, and notwithstanding the absence of any court ruling, it seems that the events of 5 December and what followed are widely viewed as having no justification in law. Following our discussions and analysis of the legal precedents in relation to the doctrine of necessity, the EPG is persuaded by the majority view that the RFMF's takeover of government was unlawful. Based on this view, the immediate next step would be to reconvene Parliament and restore Constitutional government drawn from the elected Parliament. The EPG believes that, regrettably, this is unlikely to occur.

46. The new regime has established day to day control, but its statement that it enjoys widespread support is not supported by the views of the majority of individuals and organisations we consulted. The interim government appears firm in its intention to rule without reconvening Parliament, and not to hold an election for a protracted period (up to five years). Some members of the interim government expressed the view that election preparations would take at least three years. The EPG thought that this timeframe was excessive. The majority of people with whom the EPG spoke preferred an earlier return to parliamentary democracy and indicated election time frames ranging from eighteen months to two years.

47. Many interlocutors expressed the view that Commodore Bainimarama should relinquish his role as interim Prime Minister in order to separate the role of the RFMF from that of Head of Government. Commodore Bainimarama indicated that he would retain both positions to ensure that the interim government's mandate was properly implemented. Leaving aside the question of its legal validity, the requirement for an ongoing State of Emergency seems to be questionable, and has provided the pretext for a disturbing number of human rights abuses. The State of Emergency has also had an impact on the flow of information to the public, and this has reduced the scope for the public debate that needs to occur.

48. The continuing independent functioning of the Judiciary has been compromised by the process and manner in which the Chief Justice was requested to take leave and then suspended and an acting Chief Justice appointed. The Court of Appeal and Supreme Court may not be able to function beyond September with the prospect of non-resident Judges refusing to sit. Ample comment was made that due process under the Constitution had not been applied in the termination of contracts of public office holders. The integrity of the Fiji Human Rights Commission is in question as a result of internal disputes and some politicisation.

49. All interlocutors encouraged close engagement by the Pacific Islands Forum. They encouraged the Forum to remain unified in its approach to encouraging Fiji to overcome its current difficulties. Some Post Forum Dialogue partners urged the Forum to quickly decide on what measures were to be taken to assist other members of the international community calibrate their positions. Most stakeholders – even those that felt there was no significant degree of corruption – felt that a credible and independent anti-corruption commission, and assistance for the electoral process, should be supported

if this hastens the return to democracy and an election. Some stakeholders expressed the view that this should be dependent on Fiji committing to a firm election timetable.

Recommendations

50. From the discussions in the foregoing chapters the EPG makes the following recommendations to Forum Foreign Ministers:

- i. A firm restatement be made that, in the Forum's view, the takeover of Government by the RFMF on 5 December was unconstitutional and unacceptable;
- ii. The RFMF should be called on to take immediate steps to withdraw from its involvement in the interim government with a view to restoring civilian rule as soon as possible, these steps to include the following:
 - the RFMF should return to barracks;
 - the Commander of the RFMF should vacate the position of interim Prime Minister and a civilian should be appointed to the post;
 - the State of Emergency should be lifted.
- iii. The interim government should be called on to restrict its activities as follows:
 - the interim government should uphold the 1997 Constitution and interim decrees should be restricted in purpose and scope to matters necessary to meet the basic requirements of the community;
 - the interim government should respect and uphold Fiji's domestic and international obligations and, bearing in mind the regional implications of recent events, take full account of the views of Fiji's regional neighbours and the wider international community on the importance of Parliamentary Democracy and Constitutionality;
 - the interim government (and the RFMF) should immediately cease all interference with the Judiciary and accountable institutions, the Chief Justice should be reinstated to office;
 - the interim government (and the RFMF) should ensure citizens are free to seek legal redress in the courts in relation to the events on and following 5 December, and should be prepared to comply with any decisions of the courts in this regard.

- iv. The interim government should be called on to commit without delay to a roadmap with measurable milestones which includes the following:
 - the interim government should commit to a firm timeframe for a national election (in the EPG's view this should be between eighteen months and two years, if not sooner);
 - the interim government should de-link the election timetable from its clean up campaign except in those areas directly related to the electoral process;
- v. The Forum should call on the interim government and the RFMF to immediately cease human rights abuses.
- vi. On the basis of commitments made by the interim government in regard to a roadmap and cessation of human rights abuses, the Forum should consider a phased package of assistance including:
 - financial and technical support for the electoral process;
 - financial and technical assistance for the establishment of a credible and independent anti-corruption commission;
 - assistance to restore the independence of the Judiciary.
- vii. If the interim government chooses not to commit to a roadmap along these lines, and take the suggested steps, the Forum should consider further options.
- viii. Judging from the reception given the EPG, and the overtures made for the Forum to engage in substantive dialogue to assist in the return to democracy, the EPG or a variant thereof, should remain in being and continue further dialogue in a closely engaged and phased manner.
- ix. The next democratically elected government of Fiji should be encouraged to examine the roots of Fiji's 'coup culture' and the steps that need to be taken to eradicate it.

**FORUM EMINENT PERSONS' GROUP TO FIJI
TERMS OF REFERENCE**

On 1 December 2006, at the Forum Foreign Ministers' Meeting held in Sydney, Ministers asked the Secretary General, in consultation with the Government of Fiji, "to convene urgently an Eminent Persons' Group to visit Fiji to meet all the relevant parties to the impasse, and to make recommendations for a way forward".

Events in Fiji have now partially overtaken that mandate. In order to ensure the relevance of the Eminent Persons' Group (EPG) in current circumstances, it is suggested that the mandate be understood as referring to all the relevant parties to the current crisis.

The Terms of Reference for the EPG are as follows:

- To assess the underlying causes and the nature of the overthrow of the Government of Fiji by the RFMF;
- To assess the prospects for appropriate resolution of the present situation in Fiji in the short and medium term, and obstacles to such a resolution;
- To identify steps that the parties in Fiji may take to move swiftly and peacefully toward the restoration of democratic government, within the boundaries of Fiji's Constitution and the rule of law;
- To consider the role the Forum and its members might most usefully play in assisting Fiji achieve this outcome.

In carrying out its mission the Group is asked to:

- Meet with persons or organisations the Group considers relevant or potentially useful in understanding and resolving the situation, including but not limited to:
 - the Commander of the Republic of Fiji Military Forces (RFMF);
 - The RFMF-installed interim Prime Minister and/or other representatives of the RFMF's Military Council and interim administration;
 - representatives of the ousted Government and Parliament;
 - ousted President Ratu Josefa Iloilo;
 - ousted Vice President Ratu Joni Madraiwiwi;
 - the Chairman of the Bose Levu Vakaturaga (Great Council of Chiefs);
 - the Fiji Human Rights Commission;
 - representatives of the business community;
 - representatives of civil society including unions, NGOs and churches;
 - representatives of Forum member countries in Fiji.
- Prepare a report addressing the Terms of Reference above, which will be presented to Forum Foreign Ministers.

15 December 2006