

**Statement of the Chief Justice upon the return
of the judges to office Friday 22nd May 2009
Suva, Fiji**

On 10th April 2009 H.E. The President by promulgation abrogated the Constitution and dismissed Fiji's judiciary. Since then we have seen the re-appointment of the majority of the magistrates. Those judicial officers have returned under a new legal order and taken an oath accordingly. Now four judges have returned and been similarly sworn. All appointments have been made by His Excellency the President. More will follow. For the most part I wish to make no comment on the possible legal significance of these steps.

Fiji has undergone five coups now. More properly they might be referred to as five major occurrences of extra-constitutionality. The people of Fiji well understand the traumatic effect each one of such events has upon their lives and institutions. Governments come and go. Some people take little interest in who governs and notice even less change to their lives. But Fiji's institutions must provide continuity and demonstrate impartiality and their independence of government.

The task ahead for those judicial officers who have agreed to serve again will not be easy. They are to be commended for their courage and for their determination to continue to provide judicial services to the people of Fiji. For those who will not be serving, I thank them for their past valued works and wish them well in their next endeavours. I know that others will come forward to serve as judges, indeed some have already so offered. In time the judiciary will prosper and an adequate number of judges will be available and appointed. Some will come from Fiji and some from overseas.

There is no doubt in my mind that the judiciary must continue. Academic commentators may expatiate on the indelicacies of our situation, the constitutional dislocation itself, the present impossibility of constitutional compliance over appointments and many other niceties. What is of far greater significance is that the judges must act as judges. They need no other command. They must do the right thing. Few if any judges throughout the world will ever have to face the dilemmas we shall face; to be intellectually honest and yet to be efficacious.

Some neighbouring commentators have boldly advised that no member of their Bars should offer their services to Fiji's judiciary. However others have suggested that the Fiji Bar should continue to represent their clients in court, and to have input into the selection of judges. The suggestion therefore that no-one should volunteer their services as a judge is frankly absurd and illogical. Without judges there will be no courts and therefore no remedies will be available for clients, no justice for the victims of serious crimes. Even for a mere 5 weeks with the doors of the High Court firmly closed, with civil and criminal cases stalled, it has been a shocking eye opener to the Bar and Bench alike as well as to the police and public. It is the justice system at its broadest that is the institution that must be saved and perpetuated. The lawyers need to do their job and the judges to do theirs. For normality will return and with it the fullest safeguards of a modern democratic society.

Those who deny the possibility of effective courts and therefore valid decisions forget that Fiji has faced such a dilemma before. Following the 2nd coup of 1987 and Colonel Rabuka's unilateral declaration of a Republic, judicial appointments were made and cases proceeded through the courts. We did not hear then, nor later, that the decisions of those courts were not to be recognised. Nor were the years of dislocation then considered a valid reason for not recognising and citing the decisions of those courts. If we are to have no judges, the commentators do not go on to say how the people of Fiji will obtain justice whilst they await the agreement of the political parties now at loggerheads on how we are to return to the lawful rails. This is because those same academic commentators reside in comfortable jurisdictions which have never suffered a coup, let alone five, and cannot visualise the extreme situation we face.

After the events of 5th December 2006, the 4th coup, the judiciary had to endure challenges from two groups. The first was a very small group of lawyers who were determined to discredit the judiciary as part of a plan to stall the justice system and thereby it was hoped to bring down the interim government. The second group of mostly well intentioned persons, disturbed at events, mistakenly grouped Fiji's institutions with the ruling government. Unless decisions went against the government, regardless of the legal issues or supporting facts, the institutions must be part of the government it was thought. No support was given to the institutions during this time in their attempt to be independent either by the Law Society or by neighbouring States who claimed to be Fiji's friends. Indeed some judges were placed on travel bans by either Australia, New Zealand or the USA. Such steps were a shameful interference

with Fiji's judiciary and with its independence, which would not have been tolerated if such had been imposed upon their own judiciaries.

How Fiji goes forward now is a political issue. Most countries have come to the realisation that longstanding problems can only be cured in-country by continuous dialogue. The courts ought not to be used as battering rams in order to score points in political disputes. As has been seen in Fiji the courts cannot deliver effective remedies for such disputes. Of course, those who wish first to destroy, may still wish to use the courts for such an aim. But many will prefer to keep politics out of the courts. It remains an open question.

In colloquial parlance Fiji has had 5 coups. I was serving as a judicial officer at the time of all five. As a result of such experience my approach to the task of preserving the judiciary and its independence has undergone change. In 1987 after the 2nd coup most of us as serving Magistrates and Judges refused to swear an oath of allegiance in the new order. We felt we did the right thing. All of us were dismissed. Though we felt we held the moral high ground, the ordinary people of Fiji were left abandoned. It took the continuing Chief Justice Sir Timoci Tuivaga many years to restore the numbers and many years more to catch up on backlogs and resources. The departure of the judges then can only be described as disastrous.

I now believe we were wrong to make that stand. We would have done better to have continued to serve and to play a crucial role in curbing excesses and in bringing the country and its institutions back to normality. That is why I and others have decided to stay on and why I believe more should in time offer their services both from within the Fiji Bar and from overseas to re-create the Fiji judiciary. From such efforts will emerge a truly independent judiciary and in time a closer approximation to the Rule of Law than we have had in 20 years or more.
