



**State, Society and  
Governance in Melanesia  
Program**

ANU College of Asia and the Pacific



PANEL DISCUSSION

**Courts and Coups;**

**Fiji's October 2008 High Court Judgment  
in the Qarase Vs Bainimarama Case**

**21 October 2008**

**2.00 pm - 4.30 pm**

**Law Sparke Helmore Theatre 2  
The Australian National University**

**Chair**

**Duncan Kerr**, Parliamentary Secretary, Pacific Affairs, Federal parliament  
of Australia.

**Speakers**

**George Williams**, Anthony Mason Professor at the Faculty of Law, University of  
New South Wales and Counsel for Chandrika Prasad in the March 2001 Court  
of Appeal case.

**Graham Leung**, is the Managing Partner of Howards Lawyers in Suva, and was  
formerly President of the Fiji Law Society and Chairman of the Electoral  
Commission as well as serving as Judge Advocate in the Fiji Military's Court  
Martial of those soldiers responsible for a mutiny in May 2000.

**Anthony Regan**, Research Fellow, State, Society & Governance in Melanesia  
Program, RSPAS, College of Asia and the Pacific, ANU.

**Jon Fraenkel**, Research Fellow, State, Society & Governance in Melanesia Program,  
RSPAS, College of Asia and the Pacific, ANU.

## Background

On 9<sup>th</sup> October, Fiji's High Court ruled that the President's actions in appointing an interim cabinet in January 2007, and in continuing to rule by decree in the wake of Fiji's December 5<sup>th</sup> 2006 coup, 'were valid and are held to be lawful'. The three-member High Court panel, led by acting Chief Justice Anthony Gates, found that the President held certain 'prerogative powers' not provided for in the constitution, that 'exceptional circumstances existed' and that 'the stability of the State was endangered'. The decision effectively legitimises the post-coup interim order. It is likely to be appealed.

Court judgments in constitutional cases in the wake of previous Fiji coups have generated widespread international debate. In November 2000, Justice Gates, then sitting on the High Court in Lautoka, found that the human rights of Indian sugar cane farmer Chandrika Prasad had been violated by Fiji's 2000 coup and ruled that the post-2000 coup government was illegal. His judgment was upheld by the Court of Appeal in March 2001, a decision which paved the way for fresh elections and a restoration of constitutional democracy in Fiji. Both judgments, which widely explored the applicability of the doctrines of 'necessity' and 'effectiveness', were widely celebrated as exemplifying emergence of a 'new jurisprudence' as regards the judicial handling of coups (see, for example, Hatchard & Ogowewo, *Tackling the Unconstitutional Overthrow of Democracies*, Commonwealth Secretariat 2003). The latest judgment side-steps the precedents set by the Chandrika Prasad judgments, by focussing instead on presidential reserve powers.

This panel brings together eminent legal scholars and politicians and Fiji specialists to discuss the significance of the Fiji High Court's latest judgment.

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