Fiji’s economic recovery after the 5 December 2006 coup has been high on the agenda of the Interim Government, and dominates most discussions in Fiji. There are various scenarios that are being debated. The Interim Finance Minister and some other ministers are arguing that the country is on the road to recovery. Other observers, including the Reserve Bank of Fiji, have pointed out (using the government’s own statistics) that the economy is on the decline.

The Reserve Bank’s general assessment of economic decline provides a correct picture of the economy; however, the bank’s earlier projected decline of 2.5 per cent for 2007 was on the conservative side. The latest estimate of GDP for 2007 is a decline in excess of 4 per cent. The purpose of this article is not, however, to indulge in debate about these projections but to concentrate on a very important subject: the rule of law and the economy. This is an important institutional issue that has been given only low levels of attention and has been ignored by governments since that fateful year of 1987 when the first military coup took place. The rule of law and its relationship with economic performance has been a burning issue since 1987 and remains so to this day.

The economy and the rule of law

The founder of modern economic thought, Adam Smith, identified succinctly the nexus between the State, the rule of law and the economy when he said

commerce and manufactures can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts (Smith 1937).

The success or failure of market economies is based on the rule of law. Nobel laureate Douglass North attributed the rise of the western world to the development of the relationship between the State and business enterprises whereby the rule of law defined the relationship between the government and economic agents. North described this changing relationship as the very origin of the modern market economy.

Many studies show clearly that institutions matter for economic performance.
Particularly important today is the quality of those institutions. While there seems to be consensus among economists that the law plays an important role in the process of economic development, what is not being addressed is the effectiveness of the implementation of existing laws. North argued that the emergence of law-enforcement systems to protect business interests and activities played a critical role in the early period of industrialisation. Much of the economic literature today provides a growing body of evidence that institutions, in particular legal institutions, are crucial for the promotion of investment and economic growth.\(^1\)

Many people will recall that democracy was first uprooted in Fiji in 1987 and again in 2000 and 2006. Many in Fiji associate the assault on democracy with a weakening of law and order. It is well documented that democracy is a guarantee of the maintenance of the rule of law; but this is a subject of discussion on its own. In this article, I focus on how the rule of law affects economic policies and performance.

The rule of law has two crucial economic functions: first, it ensures that the State does not intervene arbitrarily in the operation of businesses and other economic activities; its proper role is to regulate market activity and limit discretionary intervention. Second, the rule of law provides a framework for individuals and firms to operate in an economy. This includes ensuring a stable political and economic environment wherein property rights are well protected, where contracts are enforced effectively and without bias, and where personal security and well-being are safeguarded.

The first function of the rule of law—to prevent government arbitrariness—is an important factor in any economy. The difference between the rule of law and rule by law must be considered carefully. An important consideration is the differences in opinion that exist about the laws that should be made by the State. In some situations, rule by law could be tricky. Looking at Fiji’s situation, one could put the attempt by the Soqosoqo Duavata ni Lewenivanua (SDL) government to introduce the Qoliqoli and the Reconciliation, Unity and Tolerance (RTU) bills as attempts to rule by law. Some stakeholders felt that the government was going to intervene arbitrarily in property-rights issues and use the RTU bill to release from jail and pardon those who had broken the existing law. The controversy generated by these actions did not inspire confidence. One could say that investors’ worst nightmares about the bills came true on 5 December 2006.

While the rule of law is the best guarantee for ensuring economic freedom, governments have to be careful about the kind of legislation they propose and its impact on investor confidence. When governments intervene in economic functions in an arbitrary manner or even when there is a perception that this will happen, rational investors hold back on investment and, therefore, the government and the country as a whole lose out.

The second economic function of the rule of law is to empower the State to enforce its laws impartially—these could be contracts, agreements, tariffs and customary laws. The main issues at the forefront of concerns for investors and businesses are not only whether the law is applied effectively but whether it is applied with consistency. There cannot be effective implementation of the law without consistent application of the law.

The effective implementation of the law requires that the government’s discretionary influences on economic activities are limited. Governments can use coercive means to change economic laws, fees and charges, and this could be interpreted as interfering in rational decision making by businesses.
When governments become too interventionist and when economic laws are not implemented effectively or in a timely manner, businesses are enticed to use corrupt means to get their work done. Long delays in getting things done by civil servants can be an incentive for corruption. Civil servants can maximise their rent-seeking behaviour by delaying action unless paid by those who are in a hurry or those who wish to work quickly, efficiently and systematically.

The cost of doing business in Fiji has increased since 1987 due to the lack of adherence to the rule of law and effective implementation of regulations. For example, the World Bank (2005) pointed out that it took 64 days to start a business in Fiji compared with two days in Australia; and that one had to go through six different steps before starting a business: 1) verifying the uniqueness of the name of the company; 2) registering the company; 3) registering for income tax and value-added tax (VAT); 4) applying for a business licence; 5) registering as an employer with the Fiji National Provident Fund; and 6) opening a bank account. Because the laws and regulations are not implemented effectively and efficiently, the transaction costs of doing business increase.2 A one-stop shop for all these processes would significantly reduce the cost of doing business in Fiji.

It is always a challenge for governments to implement the law in an impartial manner, and there are many mistakes made in the process; this also includes the judiciary, where the element of impartiality is paramount. Therefore, it is vital that individuals and business entities have the right to challenge the government about laws, regulations and judgments and to sue the government if necessary. Governments that do not facilitate this and do not allow themselves to be scrutinised in terms of their policies and decisions do not have much credibility. The situation could be infinitely worse if we had a corrupt judiciary.

The rule of law and the coups

The first serious attack on the rule of law and the judiciary in Fiji began after the 1987 coups. The military at that time sacked prominent members of the judiciary and appointed its own judges—judges who would be sympathetic to the coup. The forceful removal of the Commissioner of Police and others associated with the maintenance of the rule of law in 1987 was bad enough; to replace them with less than competent people was a disaster that established a precedent for laws and regulations to be circumvented at will for the benefit of a few people in power and their cronies.

The conventional association of democracy, the constitution, the rule of law, property rights and economic performance was destroyed in Fiji in 1987; and instead of returning to that association, we have continued to fray the links. The abrogation of the 1970 Constitution and the implementation of the racially weighted 1990 Constitution further demonstrated that Fiji was moving away from accepted norms of democratic behaviour.

The 1990 Constitution was a source of disagreement and discontent among the major ethnic communities. Investment was delayed or redirected because its legality was in serious doubt. Some of these opportunities were lost to Fiji forever—setting back progress by many years.

The amendment to the 1990 Constitution in the form the 1997 Constitution provided hope that democracy would be restored and that all parties, including the military, would adhere to the rule of law.

Unfortunately, the coup culture and the culture of intolerance for the rule of law had already been transplanted into corrupt politicians, businessmen and some of those who lost out in the 1999 election, and, above all, into elements within the military.
The 2000 coup unleashed another reign of terror and intimidation, with backing from elements of state institutions, such as the police and the military. The eviction of farmers accompanied by violence set in motion a process of farmers moving out of the agricultural sector. To this day, farmers cannot guarantee that the crops they plant will not be stolen; this is one reason why many have stopped planting. Yee Wah Sing (2007) has estimated that farmers have to make allowance for up to 20 per cent of their produce being stolen. Road-blocks, daily intimidation of farmers by thugs and criminals and the lack of respect for contracts with the Native Land Trust Board (NLTB) have added to the decline in the agricultural sector.

In urban areas, the crime rate has also become a serious issue. Violent crime, including home invasions, is now commonplace and is accepted with resignation. The police force was totally ineffective in curbing these criminal activities before the coup and remains so since the coup. Unless the police can provide regular patrols and respond to reports of crime, the force will remain ineffective.

The rise in criminal activity has added to the cost of doing business in Fiji. Security costs are escalating. On average, families are prepared to spend F$25–30,000 on burglar-proof bars, fencing and other security measures. People now build fences before they begin building their homes. Gated households and communities could become a common feature in urban areas.

The economic cost of criminal activity in urban areas is huge, with many business investments not implemented because of concerns about the level of crime. This is very damaging for a small country such as Fiji, which desperately needs increased levels of investment.

The 2006 coup has brought new dimensions to the issue of the rule of law and its impact on the economy. There are two different perceptions. At the national level, there is a feeling that the overthrow of democracy is a bad omen for the constitution and the rule of law. Some of the actions of the Interim Government, including sackings and disregard for contractual obligations made with previous governments, have given the wrong signal to investors. There is a perception—even fear—that the current regime can intervene arbitrarily not only in government bodies but in negotiations and contracts beyond government.

At the micro-level, there is a perception that criminal activity has declined and people feel safer in their homes. This is one reason why there seems to be a perception in the Indo-Fijian community that the coup has been good. I would like to believe that many of these people still hold the virtues of democracy dear to their hearts, even though the support by the Labour Party and its leader for the coup muddies the water for many of them.

The future of the rule of law in Fiji and its economic prospects

In 1987 and 2000, the coups were staged in the name of indigenous Fijians; the 2006 coup, however, was undertaken in the name of a ‘clean-up’ of government. The 2006 coup was not the first in the world staged to remove corruption, but examples from around the world have shown that a coup, regardless of the reasons for it, rarely, if ever, achieves the objectives claimed for it. Rabuka’s 1987 coups are remembered for the National Bank of Fiji scandal, for setting back economic progress and development for at least two decades and for not for improving the lives of indigenous Fijians.

The coup makers, who put themselves in positions of absolute power, often hijack the objectives of the coup—noble as they
might be. Absolute power, as we all know, is a dangerous thing, and a military coup is an extremely serious undertaking. It means breaking the rule of law as provided for in the constitution. If Fiji’s Interim Government is not careful, it could fall into the same trap as previous governments that have ignored the national good by pandering to sectional interests.

There have already been allegations of nepotism in appointments to government positions and to the boards of statutory organisations. In addition, there is a perception that there are politically motivated objectives behind economic policies and budgetary measures—for example, in the selective nature of increases and decreases in customs duties. There is also a perception of policy manipulation by some political party representatives in the Interim Government to promote party objectives.

Table 1 shows a stocktake of Fiji Times reports between December 2006 and July 2007 of cases where the rule of law has not been followed or is perceived to have been ignored. Indeed, since July 2007, there have been several other cases of laws being circumvented to deliver the desired outcome for the Interim Government. The two most highly publicised cases include the deportation of the Fiji Sun publisher, Russell Hunter, and the publisher of the Fiji Times, Evan Hannah. In Hannah’s case, questions remain as to whether the law was followed and implemented by those involved. As long as these perceptions remain, it will be very difficult to create a better environment for foreign investment.

While these reports could be disputed and some of the cases might have merit, the perception that there is arbitrary intervention by the State can only hurt the investment environment.

On the other hand, strict adherence to the rule of law by the interim regime could help to change the now deeply rooted idea that it is appropriate to circumvent the law to get things done in Fiji.

Freedom of choice and respect for individual freedoms are fundamental to economic and social progress. The future of Fiji does not lie in having more coups: democracy, whatever its imperfections, cannot be compromised. We cannot take a recess from democracy to improve its functioning; we can only improve it by practising it.

Once democracy is restored, the government should work with firm commitment towards establishing a culture of respect for the rule of law. This can be done only if the apparatus of the State, such as government, the police force, the military and the judiciary, are executing their responsibilities impartially, as established under the constitution.

<table>
<thead>
<tr>
<th>Theme</th>
<th>Rule of law/ processes not followed</th>
<th>Corruption</th>
<th>Investment</th>
<th>People removed</th>
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<td>26</td>
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<td>FICAC, police, military investigations</td>
<td>Negative reports</td>
<td>By the military and/or the Interim Administration</td>
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Concluding comments

Countries that have developed a culture of respect for the rule of law have been the most successful and progressive in the world. Fiji is a small island country faced with many challenges as a result of developments in the global economic environment. The imperatives of international trade and commerce require that we have an effective set of institutions.

The development of appropriate laws conducive to international trade and commerce is vital for our survival. Adherence to the rule of law is a prerequisite for economic progress. If we look at the binding constraints to our economic progress since 1987, the lack of respect for the rule of law must be seen as a significant one.

The Interim Administration can do something positive while in power. While it cannot make changes to legislation that require parliamentary approval, it can help to improve and enforce economic laws and regulations that can facilitate better economic performance. These could include border-control regulations and their enforcement, investment rules, and improving investment-related services such as the Titles Office, customs, immigration and native land services. The Interim Government has an opportunity to change the way things are done in these offices so that investment and economic activities are not hindered. It has an opportunity to remove obstacles to investment and economic growth.3

Institutions such as the Fiji Law Society have to become more vigilant in ensuring that the rule of law is enforced at all levels. There are perceptions that lawyers are part of an élite group that extracts as much in fees as possible and is complicit in the delays in the administration of justice, while remaining silent about all kinds of delays in enforcing the contracts, rules and regulations governing society and especially commerce.

While there is no research in Fiji into whether lawyers help or impair economic growth by raising the costs of economic transactions, the cost of lawyers’ services as a percentage of the total cost of undertaking business transactions might reveal interesting figures on their impact on the economy and investment. A vibrant economy needs the law and lawyers, but how effectively lawyers help to shape the structure of the economy is an important issue. There is no doubt that lawyers consume economic surplus, which can sometimes evoke complaints from clients. Some suggest that clients often view lawyers’ efforts as ‘superfluous make work’. Institutions such as the Fiji Law Society need to research these issues to make the services provided by lawyers more efficient. This is important not only for the economy, it is important more generally to defend the community’s social and political rights.

Provided that Fiji’s interim regime can bring democracy back to our shores as soon as possible, and provided the clean-up campaign is not merely a convenient slogan to retain power illegally, we can breathe a sigh of relief and look forward to economic growth through observation of the rule of law.

Notes


3 See Duncan (2007) for a discussion of a ‘clean-up’ of the economy.
References


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