

# ABSTRACTS

## **Revolution in the Court: Fiji's Court of Appeal declares Coup d'état to have failed**

By *Jörg Menzel*, Bonn

The Republic of Fiji is experiencing turbulent political times. Just two years after the country's return to full democracy in 1998 and its subsequent re-admission to the British Commonwealth the new Basic Law again came under fire. In May 2000 George Speight, a "failed businessman", kidnapped most of the members of government (including the prime minister and the deputy prime minister). Speight claimed to be acting in defense of the rights of the indigenous Fijian population, which he and many other Fijians considered endangered by a government, led – for the first time in Fijian history – by an "Indo-Fijian" prime minister (the "Indo-Fijians" are descendants of immigrants brought into Fiji by the British authorities about a hundred years ago mainly to work in the sugarcane-fields; they form almost half of Fiji's current population). Although Speight was viewed officially as a criminal and later charged with treason, the military made use of the difficult situation not only to declare martial law but also to declare the final abrogation of the Constitution. Preparatory work was initiated on a new Constitution, designed to safeguard the paramount interests of the indigenous Fijians. An interim civilian government was installed.

The legitimacy of this government was challenged in the courts by an "ordinary" Indo-Fijian, who was concerned about his legal status. As a result, both the High Court and subsequently the Court of Appeal declared the abrogation of the Constitution to have been illegal and invalid. Fiji's post-coup-government has promised to abide by the ruling (which appears to be without precedence in constitutional history); fresh elections are due to be held in the summer of 2001.

The article recounts the background and summarizes the content of the Court rulings in more detail. Some reflections on the treatment of revolutionary changes of government in Constitutional Law, the general Theory of State ("*Allgemeine Staatslehre*") and Public International Law are added. Despite the prevailing dogma of "efficacy" it is suggested that the legitimacy of a government and of a revolutionary change is of significant importance in this context. The overthrow of a system dedicated to democracy and human rights has become difficult in a world which is increasingly concerned about legitimate governance within states. The recent events in Fiji also demonstrate, that under special circumstances independent domestic courts can play a decisive role in a revolutionary process.

## **Autonomy versus Secession – The Right of Self-Determination of Peoples of the Sri Lanka-Tamils in the Discussion on a New Constitution for Sri Lanka**

*Frank-Florian Seifert, Würzburg*

The Article corresponds with the first article of the author in volume I of *Verfassung und Recht in Übersee (VRÜ)*. It focuses mainly on the inner dimension of the conflict over the Right of Self-Determination of Peoples of the Sri Lanka-Tamils. Special emphasis is given to the attempts of the changing governments in Sri Lanka to solve the conflict on the basis of law by initiating constitutional changes directed towards autonomy.

This political approach is aimed at avoiding the threat of secession by force and the separation of the island into two states. The author tends to be critical whether the solutions presented up to now would be sufficient to ease the conflict.

## **The Changes in the Judicial System in the light of the Constitutional Reform of 1996**

*By Jean-Calvin Aba 'a Oyono, Ngaoundéré*

The constitutional amendment of 18 January 1996 emphasized institutional reforms, namely the creation of the Senate as second Chamber to cooperate with the National Assembly within the Legislative, the institution of a Constitutional Council as supreme judicial organ in constitutional affairs, the institution of an Audit Bench of the Supreme Court for final decisions in cases decided by the audit courts, and the introduction of Regional Councils in the Regions. These changes, inter alia, strengthened the judiciary to a large extent.

The Preamble of the Constitution now affirms the attachment of the People of Cameroon to fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto. The list encompasses in particular the Principle that every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence, a fundamental norm as part of the Rule of Law. The Constitution now guarantees the status of the Judiciary as third power, not merely a plain "authority". The article highlights these aspects regarding the question, whether these changes will suffice as first steps towards full independence of the judiciary – not only in cases of criminal justice – in Cameroon. The author critically scrutinizes constitutional provisions, such as the duty of the President of the Republic to guarantee the independence of judicial power. The author critically reviews the fact that the constitution does not follow the integrated model giving the Supreme Court the power to

constitutional jurisdiction. Instead, the constitution follows the French model of a separate Constitutional Council. The changes introduced by the 1996 constitutional reform give rise to hope for a big step towards Rule of Law in Cameroon.

## **How It Began: External Actors in the Early Phase of the Democratic Transition in Malawi**

By *Heiko Meinhardt*, Hamburg

Malawi is one of the few examples of a successful transition from authoritarian one-party rule to a relatively stable democratic system. After almost three decades of dictatorship under President Hastings Banda who ruled the country with an iron fist, his regime came under pressure to introduce comprehensive democratic reforms. He finally lost the Presidential and Parliamentary Elections in May 1994 to the democratic opposition party United Democratic Front chaired by Bakili Muluzi. The international actors, namely the Western donor community - played a major role in the democratisation process. This essay focuses on the political interests, strategies and effects of the international actors in the transitional process in Malawi.

It is remarkable with which insignificant costs the international donor community was able to initiate, support and guard the democratic transition process in Malawi. This process was almost exemplary without disasters and many human victims. Although there are similar structural conditions (small and poor agrarian country dependent on development aid) in other African states it is not possible to call Malawi's transition a model for other countries because there are untransferable ideosyncratic factors which determined the course of the transition. However, Malawi is an interesting case of a from external actors successfully promoted democratization process.