



UPR Submission

Fiji

August 2009

Summary of main issues of concern

Fiji remains a military dictatorship that denies its citizens the right to take part in self-government through free and fair elections, as well as the freedoms of speech, press, assembly, and religion. Since the December 5, 2006 coup d'état, the military and police have arbitrarily arrested and detained human rights defenders, journalists and others perceived as critical of the administration. Four people have died in military or police custody and dozens of people have been intimidated, beaten, sexually assaulted, or subjected to degrading treatment. Fiji's interim administration continues to fail to uphold the rule of law and has seriously compromised the independence of the judiciary. No UN special procedures have visited since the 2006 coup. A visit by the UN Special Rapporteur on the independence of judges and lawyers is pending, though the Fiji government has failed to advise a suitable time for this visit. The government has not responded to the request to visit of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

These abuses have continued despite the promise of then President Ratu Josefa Iloilovatu Uluivuda, in his April 10, 2009 address to the nation, that basic rights would be protected.

This submission focuses on five core areas: the declaration of a state of emergency, impunity for violations of the right to life, human rights defenders, freedom of expression, and rule of law and the independence of the judiciary.

1. State of Emergency

The Public Emergency Regulations 2009, decreed on April 10 and extended for 30 days every month thereafter, purports to empower security forces to prohibit processions and meetings, to use such force as considered necessary, including use of arms, to enter and remain in any building where there is reason to believe three or more people are meeting, and to regulate the use of any public place. It further provides for the detention of suspects for up to seven days without charge. Regulation 3(3) provides:

[n]o police officer nor any member of the Armed Forces nor any person acting in aid of such police officer or member using such force shall be liable in criminal or civil proceedings for having by the use of such force caused harm or death to any person.

The Public Emergency Regulations, and in particular, the absolute immunity that Regulation 3(3) provides, are incompatible with international human rights standards which require states of emergency, and the measures taken under them, to be limited in time and scope strictly commensurate with the necessity of the situation.

2. Impunity for Violations of the Right to Life

Four people have died in custody since the coup as a result of being severely assaulted by police, prison and/or military officers. Impunity for these deaths in three of the cases has followed.

- Mr Josefa Baleiloa, 41, died on September 16, 2008, as a result, according to multiple witnesses, of injuries sustained eight weeks earlier when he was detained and severely beaten by at least six police and prison officers at Suva.

- Mr Tevita Malasebe, 31, was pronounced dead on June 5, 2007, the morning after he was taken into police custody at the Valelevu Crime Office. A pathologist found evidence of assault with wooden planks, and torture marks on the soles of his feet.
- Mr Sakiusa Rabaka, 19, died on February 24, 2007, as a result of injuries sustained three weeks earlier when he was detained and beaten at Black Rock Military Base in Nadi on January 28, 2007. Eight military officers and a police officer forced Rabaka to strip and do military type physical exercises such as crawling with his hands behind his back, whilst continuously kicking, punching and hitting him.
- Mr Nimilote Verebasaga, 41, died on January 5, 2007, approximately six hours after being taken into military custody at Nausori. Verebasaga died of hemorrhagic shock due to injuries to vital organs as a result of the beating by military officers.

There is no indication that the police have investigated those responsible for Baleiloa's death. The lawyer representing Baleiloa's father has written to the Criminal Investigation Department of the police force detailing the assault, after interviewing witnesses. He has received no response.

On March 17, 2009, the High Court sentenced eight soldiers and a former policeman to four years imprisonment for the manslaughter of Rabaka and four months for each of five counts of assault occasioning bodily harm. On April 7, 2009, the High Court sentenced army corporal Maika Vuniwawa to three years imprisonment for the manslaughter of Verebasaga. In May 2009 the acting Minister for Justice directed that the men convicted for the deaths of Rabaka and Verebasaga be released from prison under compulsory supervision orders.

On April 22, 2008, two police officers were convicted of the murder of Malasebe and another police officer was found guilty on an accessory to murder charge. The three officers held responsible for Malasebe's death are serving their sentences in prison. This is the only case of the four where members of the security forces have been convicted and remained in prison to serve their sentence.

On January 18, 2007, the President issued the Immunity (Fiji Military Government Intervention) Promulgation 2007, which provides:

I do irrevocably grant full and unconditional immunity to all [police, military and prison officers, and persons acting under the directions of such officers] from any prosecution and for any civil liability and all other legal or military, or disciplinary or professional proceedings or consequences as a result of directly or indirectly or pertaining to or arising from the acts and omissions of the Fiji Interim Military Government from 5th December 2006 until the restoration of executive power of the State in me the President...

The High Court has held that, "the immunity only extends to those acts that led to the ousting or removal of the Officials... It surely does not immune anyone from prosecution for an offence of murder allegedly committed in [that] process..." Officers have referred to this "amnesty" when assaulting people in their custody, advising them that any complaints would be futile.

The wide-ranging powers and immunity provided in the Public Emergency Regulations contribute further to impunity for members of the security forces.

3. Human Rights Defenders

Since December 5, 2006, the interim administration has arbitrarily arrested and detained dozens of people, including human rights defenders, and subjected them to inhuman and degrading treatment. Human rights defenders have also been subjected to other forms of harassment, including military surveillance, threats, travel bans and targeted burglaries.

- On December 24, 2006, six people, including human rights defenders, were arbitrarily arrested and taken to the Queen Elizabeth Barracks. They were all severely beaten and subjected to inhuman and degrading treatment. One person was sexually assaulted.

- On March 28, 2009, a human rights NGO's office was broken into. An item used for documenting human rights violations was the only thing stolen. Whilst the police took the statements of witnesses, no charges have been filed.
- Homes and cars of human rights defenders have been attacked. For example, on March 15, 2009, the home and car of Unionist Attar Singh and former Suva City Councilor and Board Member of Fiji Women's Rights movement, Priscilla Singh, was attacked with large stones. Whilst the police took statements from the Singhs, no charges have been filed.

4. Freedom of Expression

The Fiji government is habitually violating rights to freedom of expression, association, and assembly by arresting and detaining people under the Public Emergency Regulations.

- On August 4, 2009, police questioned Colonel Sakiusa Raivoce, a retired military officer, about an email apparently sent to him. He was released without charge. Police arrested him again later that day and over the following two days security forces kept him in military and police detention and questioned him, amongst other things, about his involvement with the prodemocracy movement. He was released on August 6, without charge.
- At around midnight on July 21, 2009, an estimated 16 uniformed soldiers arrested Ro Teimumu Kepa, Fiji's highest-ranking chief, from her home. Over the following two days, security forces kept her in military and police detention and questioned her, before charging her with violating the Public Emergency Regulations on July 23 for publishing a letter on the internet.
- From July 22-28, 2009, security forces arrested and detained at least ten Methodist Church leaders in a number of separate incidents for trying to hold a Methodist Church annual conference. At least four of them were later charged with contravening the Public Order Act and the Public Emergency Regulations.
- On May 23, 2009, police arrested Surendar Lal, an executive of the National Farmers Union, for allegedly defying the cancellation of a permit to meet for its annual general meeting in Lautoka. Mr Lal was detained for almost 24 hours before releasing him without charge.

The arbitrary enforcement of restrictions on gatherings and meetings, provided for in the Public Emergency Regulations, compromises the work of nongovernmental organizations, religious groups, and other civil society organizations. The interim administration has:

- Routinely denied organizations meeting permits required under the regulations. For example, on May 16, 2009, the police reportedly revoked a permit for the National Farmers Union to hold its annual general meeting.
- Demanded that conference agendas be altered before such permits are granted. For example, on May 28, 2009, the Ministry of Information granted the Fiji Institute of Accountants a permit to hold a conference on June 11-14. On June 8, the Commissioner of Police advised that the event would be cancelled unless Professor Brij Lal and lawyers Graham Leung and Richard Naidu were removed from the program and all speeches were vetted by his office in advance.

Ministry of Information officers who took over newsrooms, accompanied by police officers following the April 10 abrogation of the Constitution, remain in control—censoring broadcast and print publications. Military officers often accompany these officers. The Public Emergency Regulations empower the Permanent Secretary for Information to prohibit the broadcast or publication of any material the secretary believes may result in a breach of the peace, or promote disaffection or public alarm or undermine the government. On May 12, the Ministry of Information ordered radio and online editors to email their news scripts to the Ministry, before going to air. The Ministry of Information and police have summoned editors, publishers, and journalists to explain or justify stories. For instance, on May 9, police arrested and detained Shelvin Chand and Dionisia Turagabeci for two days for reporting, on *Fijilive*, an online news service, the release of eight soldiers and a police officer convicted of manslaughter.

5. Rule of Law and the Independence of the Judiciary

Following the December 5, 2006 coup, and particularly following the removal of all judicial officers from office on April 10, 2009, Fiji's interim administration has failed to uphold the rule of law and encroached on the independence of the judiciary. The interim administration has declared its intention to create a new legal

order in the country. It has worked toward this goal by reconstituting courts and commissions, intervening in the licensing of lawyers, and legislating to prohibit legal challenge of its acts. The separation of executive and judicial powers has been further compromised by the announcement that the President of Fiji's replacement, upon his imminent retirement, will be appointed by the Chief Justice, on the advice of Cabinet.

- On April 16, the President issued the Administration of Justice Decree, which terminates all pending cases that challenge the actions of the interim administration since the coup. It also removes the President of the Law Society from the Judicial Services Commission, a Commission which recommends judicial appointments and investigates complaints against judges and judicial officers. The President has appointed Magistrates and High Court Judges pursuant to this Decree.
- Ana Rokomokoti, a former military lawyer who was appointed a magistrate by the interim administration in May 2007, was appointed Acting Chief Registrar on April 15 by the Public Service Commission, reconstituted under the State Services Decree 2009. The Chief Registrar is the most senior administrator of the courts in Fiji.

The Fiji government has failed to respect the independence of lawyers, and police have directly harassed lawyers. On April 14, police detained Dorsami Naidu, the President of the Fiji Law Society, after Naidu attempted to enter the Lautoka High Court Building with fellow lawyers and High Court Judge Gwen Phillips to deal with cases as usual. Naidu was released the next day. On May 20, police questioned lawyers Richard Naidu, Jon Apted, and Tevita Fa concerning alleged involvement in writing blogs. The lawyers' computers were seized and computer files were copied. The three lawyers were released later that day.

On May 22, the President issued the Legal Practitioners Decree 2009, which provides the Chief Registrar, rather than the Law Society, with the power to issue legal practicing certificates and requires all lawyers to re-apply for their certificates. The Legal Aid (Amendment) Decree 2009, issued on June 22, removes the role of the Law Society in nominating Legal Aid Commissioners; instead the Commission is to be constituted by the Solicitor-General, the Registrar, and persons appointed by the Minister.

The once independent offices of the Solicitor General and the Director of Public Prosecutions have also been compromised. On April 10, 2009, the President revoked all constitutional offices, including the Office of the Solicitor-General and of the Director of Public Prosecutions. He reappointed Christopher Pryde Acting Solicitor General, an interim government appointee who represented Commodore Bainimarama in the *Qarase v. Bainimarama* proceedings, on April 21. On June 8 he appointed John Rabuku, who had been appointed a Magistrate by the interim government, the Acting Director of Public Prosecutions. Rabuku dismissed the Assistant Director of Public Prosecutions, Andie Driu, within weeks of his appointment.

The Fiji Human Rights Commission has failed to adequately investigate human rights violations since the coup and its independence has been compromised.

- On December 13, 2006, Bainimarama, then self-installed President, appointed Rodney Acraman as Ombudsman and thereby the Chairperson of the Commission. Shaista Shameem replaced Acraman on July 16, 2007. These appointments were made in contravention with the Constitution.
- On January 3, 2007, the Commission published a report justifying the coup d'état (Fiji Human Rights Commission, *Investigation Report on the events of December 6th 2006* (3rd January 2007)).
- The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and the Committee on the Elimination of Racial Discrimination have noted that the Commission may no longer comply with the Paris Principles.
- The Human Rights Commission Decree 2009, promulgated on May 12, 2009, further compromises the Commission's independence, providing, "the functions, powers and duties of the Commission do not extend to receiving complaints against, or investigating, questioning or challenging, the legality or validity of the Fiji Constitution Amendment Act 1997 Revocation Decree 2009, or such other Decrees."

Taken together, these steps severely undermine access to justice and the independence of the judiciary.

Human Rights Watch's Recommendations

The Fiji government should:

- Immediately cease the harassment and arbitrary detention of its citizens, particularly human rights defenders, journalists, church leaders, political opponents, and lawyers.
- Take immediate steps toward holding elections by appointing an independent civilian caretaker Prime Minister to promptly direct the issuance of writs of election.
- Issue an open invitation to all Special Procedures of the UN Human Rights Council and other international observers.

Regarding the state of emergency, the Fiji government should:

- Immediately revoke the Public Emergency Regulations 2009.
- Recognize that even under a state of emergency the government must protect and uphold fundamental human rights and any restriction on rights should be the minimum necessary.

Regarding impunity for violations of the right to life, the Fiji government should:

- Order the Criminal Investigation Department of the Police Force to conduct an independent investigation into Baleiloa's death as a matter of urgency.
- Immediately revoke the compulsory supervision orders pursuant to which those responsible for the deaths of Rabaka and Verebasaga and require those officers to complete their sentences of imprisonment.
- Publicly declare that excessive use of force by the police or military is illegal, incidences where excessive force has been used will be investigated and perpetrators will be prosecuted.

Regarding human rights defenders, the Fiji government should:

- Publicly declare that human rights organizations will be allowed to operate free of government interference.
- Ensure that all crimes committed against human rights defenders are fully and independently investigated.
- Discipline or prosecute as appropriate any officials found to be threatening, harassing or committing crimes against human rights defenders.

Regarding freedom of expression, the Fiji government should:

- End government interference with the domestic and foreign media.
- Discipline or prosecute as appropriate any officials found to be carrying out any activities restricting the right to freedom of expression.

Regarding rule of law and the independence of the judiciary, the Fiji government should:

- Return immediately to constitutional rule, annul decrees made since April 10, 2009, in particular the Fiji Constitution Amendment Act 1997 Revocation Decree 2009, Revocation of Judicial Appointments Decree 2009, the Administration of Justice Decree 2009, and the State Services Decree 2009, and recognize the legal system as it stood prior to April 10, 2009.
- Publicly commit to upholding the fundamental principles of independence of the judiciary, the prosecutorial service and lawyers, and desist from further undermining these principles.
- Abide by the *Qarase v. Bainimarama* decision; any discontent with the decision should be addressed through the ordinary course of appeal.
- Respond immediately and positively to the UN Special Rapporteur on the independence of judges and lawyers' request of January 18, 2007, and reiterated on June 26, 2008, for a country visit to Fiji. On November 9, 2008, the Permanent Mission of Fiji articulated strong support for this request before the UN General Assembly.