

**0808875 [2009] RRTA 404 (5 May 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0808875

**DIAC REFERENCE(S):** CLF2008/130365 CLF2008/130567

**COUNTRY OF REFERENCE:** Fiji

**TRIBUNAL MEMBER:** Gary Ledson

**DATE:** 5 May 2009

**PLACE OF DECISION:** Melbourne

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Fiji, arrived in Australia [in] June 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] September 2008. The delegate decided to refuse to grant the visa [in] November 2008 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] December 2008 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:
  - owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

### *Background*

20. The applicant is a 52 year old, male citizen of Fiji who was born on [date of birth deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant] at [Place A], Fiji. The applicant declares that he is married and his spouse resides in Fiji. The applicant claims no children from this marriage (this was later amended at the hearing where the applicant claimed that he has six children – a son, three daughters and two adopted daughters).
21. The applicant declares his parents but gives no detail where they reside or if they are deceased. The applicant has four brothers, one who resides in Australia and three who all reside in Fiji.
22. The applicant claims that he has completed 15 years of education at the primary, secondary and tertiary levels and can speak, read and write Fijian and English. The applicant was employed as a Community Social Worker prior to leaving for Australia.
23. The applicant travelled to Australia on a valid Fijian Visa and entered Australia on a Subclass 456 Business (Short Stay) visa [in] June 2008.

### *Protection Visa Application*

24. The applicant lodged his claim for a Protection Visa [in] September 2008.
25. His responses to questions in Form 866C as part of his visa application follow.
26. At Question 40 that asks: I am seeking protection in Australia so that I do not have to go back to *Fiji, due to political crises, military regime and economic depression*
27. In response to Question 41 that asks: Why did you leave that country? – the applicant responded *I left the country for a business trip to Sydney on [Company 1] meetings and consultations with my business partner who resides in Sydney, Australia. When I landed on Australia to go with all the arrangements and appointments with my Business Director who came over to Fiji to establish the [type of] work then he did not fulfil all the requirements we made, so he also cheated me and never pay me all the expenses that I used with my air ticket and he flew away to New Zealand.*

28. *Therefore I waited and he never returned and I went to some of our church members home to live in before I came over to my church Pastor in [Place B] to reside with him and attend some of the religious meetings to now.*
29. *Sir, I also decided not to go back to Fiji now and onward because of the big crises in my country and economic problems above all because I hate the military regime which controls the running of the Fiji government.*
30. *Above all I was [involved in politics during the] elections in 2006. Because of my religion to voice up that we do not believe on military regime I can be forced for unforeseen circumstances.*
31. In response to Question 42 that asks: What do you fear may happen to you if you go back to that country? – the applicant responded *The major fear for me if I return to Fiji I will be arrested and forced with many claims from the military because I preached and advised with the community and all the constituency [information deleted: s.431(2)] that should not support and favour any legislation made by the military regime because it is unlawful and only can develop a lot of fears and economic depression to all races living in Fiji. And it will also create a lot of divisions among people living in Fiji.*
32. In response to Question 43 that asks – Who do you think may harm/mistreat you if you go back? – the applicant responded *I think the military can arrest me to the camp to mistreat me or they can use a lot of agents in Fiji in order for them to fulfil their agenda for me because I had condemned their leadership and the Peoples Charter System.*
33. In response to Question 44 that asks – Why do you think this will happen to you if you go back? – the applicant responded *I think that this will happen to me because I already revealed out to the public and the community where I came from about the worst and racist leadership of Bainimarama's military government. And also they that I always support the Qarase's government which is democratic regime.*
34. In response to Question 45 that asks – Do you think the authorities of that country can and will protect you if you go back? If not, why not? – the applicant responded *No sir, because the running of the Fiji government where I come from is not run(ned) by the democracy freedom and the rights of all the people and other races in Fiji.*

*The why not because the operation of Fiji government is now controlled by the military council and then cabinet of Bainimarama is just like a rubberstamp to the military.*

*The coup of the military on Nov, 2006 made a big mess of the people of Fiji*

#### *Primary Decision*

35. [In] November 2008 the delegate decided that the applicant was not a person to whom Australia has protection obligations and refused the grant of a Protection (Class XA) visa.
36. The delegate considered the applicant's claims with reference to Fiji and found that the essential and significant reason for the harm feared by the applicant was for the Convention ground of political opinion.
37. In considering the applicant's claims the delegate referred to country information regarding the political situation in Fiji subsequent to the military coup in December 2006.

38. In considering the applicant's claims the delegate noted that although the applicant has claimed to be politically active, [information deleted: s.431(2)] and he opposes the military government he has not been detained or questioned at the time of and since the coup. The delegate could find no evidence that the applicant had come to the attention of the military government since the coup or that he has been targeted for his political opinion. The delegate found that the applicant had not experienced any harm in the past for his political opinion and on the basis of country information regarding the military government treatment of those who opposed them the delegate was satisfied that the applicant, if returned to Fiji, would not face persecution for his political opinion now or in the reasonably foreseeable future.
39. The delegate also noted that the applicant did not apply for his protection visa until he became unlawful and considered that this demonstrated a lack of immediacy, gravity and credibility of his claims.

#### *Review Application*

40. The applicant lodged his application for review [in] December 2008. This matter was constituted to the Presiding Member [in] January 2009.
41. [In] January 2009 the Tribunal wrote to the applicant stating that it had considered the information before it in relation to his claims and was unable to make a favourable decision on this information alone. As a consequence the applicant was invited to appear before the Tribunal to provide additional information and present oral arguments about his claims. The Tribunal hearing was scheduled [in] March 2009 at 1.30pm. This invitation was sent by Registered Post and a receipt of this postage is held by the Tribunal.

#### *Hearing*

42. Prior to the hearing the applicant forwarded to the Tribunal the following documents in support of his claims:
- A reference for the applicant from [name deleted: s.431(2)], Secretary of [a cultural] Association dated [in] September 2008;
  - A letter of support for the applicant from [name deleted: s.431(2)], Minister of Religion for [Place B] Seventh-day Adventist Church, dated [in] September 2008;
  - A letter of recommendation from [name deleted: s.431(2)], [an employee of] Aboriginal Affairs Victoria, dated [in] March 2009;
  - An uncertified certificate in the name of the applicant attesting to his attendance at a conference held August 1996;
  - A court order in the name of the applicant permitting him to act as a bailiff, dated [in] February 2007;
  - A letter from [a Fijian company] dated [date deleted: s.431(2)] February 2008, confirming the applicant's employment as a casual employee [from] June 2007 to [date deleted: s.431(2)] January 2008;

- A reference from [a construction company] confirming the applicant's employment as a Surveyor's Assistant, date [deleted: s431(2)] January 1994;
  - A letter from [a Fijian publication], dated [in] March 1989 confirming the applicant's employment as an assistant to machinist;
  - A reference from [a development company] dated [in] January 1994 confirming the applicant's employment as a surveyor's assistant between August 1993 and January 1994;
  - A reference from [an insurance company], dated [in] April 1991 confirming the applicant's employment as a Sales Representative since 1989;
  - A reference for the applicant made by [name deleted: s.431(2)] on [date deleted: s431(2)] April 2002
  - A certified birth certificate for the applicant from the registry of Births, Deaths and Marriages Register.
43. The applicant appeared before the Tribunal [in] March 2009 to give evidence and present arguments.
  44. Following is a record of the evidence of the applicant at the hearing.
  45. The applicant told the Tribunal that he was not interviewed by a delegate of the Minister in relation to his claim. He also said that the claims that he has made in relation to his circumstances in his protection visa application are his claims that they are genuine and relate only to his circumstances.
  46. The applicant stated that since he had arrived in Australia he had been supported by members of the Seventh Day Adventist church in [Place B] and relatives on his wife's side of the family.
  47. The applicant confirmed his personal details as provided on his protection visa application – full name, date and place of birth, his ethnicity and nationality. The applicant is competent in the Fijian, Hindi and English languages.
  48. The applicant told the Tribunal that he had converted to Seventh Day Adventist Church from the Methodist church in 1974.
  49. The applicant's wife remains in his family home in [Village A], Fiji along with his six children, one son, three daughters and two adopted daughters
  50. The applicant said that both of his parents are deceased, that he has nine siblings – six brothers (one deceased) and three sisters, the applicant has one brother who lives in Sydney and his other siblings reside in Fiji.
  51. The applicant has completed fifteen years of education undertaking tertiary studies in Community Social Work. The applicant has worked on his family farm and held down a number of part time jobs. His most recent job was with [Company 1] in Nadi. This company assisted clients with [information deleted: s431(2)] travel out of Fiji The applicant said that the Director of the company was an Australian citizen who operated offices in Nadi, Sydney and New Zealand The applicant had held this job for a period of between three and five

months before he came to Australia. The applicant said that he travelled to Australia on a Short Stay Business visa to participate in meetings related to the work of [Company 1] The applicant said that the Director left for Australia in May 2008 and he followed in June. The plan was to hold meetings in Sydney and then travel to New Zealand for further talks. When the applicant arrived in Sydney he had met with the Director twice; the last time to attend the New Zealand Consulate to arrange a visa. After this last meeting the Director has disappeared and the applicant has been stranded in Australia without any money or compensation for his travel or payment for his time.

52. After a short period the applicant then left to stay in Brisbane with a friend. After that he decided to return to Sydney and then travelled on to [Place B] He went to [Place B] because he knew elders of the Seventh Day Adventists (SDA) and they had offered to help him whilst in Australia. At the present the applicant is living with the Treasurer of the SDA Church in [Place B].
53. The applicant submitted his valid Fijian passport to the Tribunal as evidence of his nationality.
54. The applicant said that he had previously come to Australia in the mid 1990s as part of the [Christian aid agency] of which he was a director. The applicant described his initiation of a number of community based projects and described how he had been successful in receiving a \$200 000 grant from Japan to enable the construction of a low level crossing near his village to allow greater access of the community to local facilities. He had also received funding through AusAID for other community projects.
55. The applicant then described why he had applied for a protection visa.
56. The applicant said that he had always been active at the local community level in his various leadership roles in his local community. The applicant believes in democracy and because of a number of pressing issues and because of the political instability in Fiji he decided to [become involved with] the National Alliance Party. The applicant said that he was not a politician but he felt it was important to [work within] his electorate so that he could continue to improve his community. The applicant described his party as having a multi racial focus and this was very different to the previous SDL government under Qarase that represented ethnic Fijians. The applicant said that the SDL is a party that represents the interests of indigenous Fijians to the detriment of other ethnic groups in Fijian society. The SDL won the 2006 election in their own right. The applicant [information deleted: s.431(2)] returned to his community and continued his work on his farm but he also continued to attend provincial meetings where he continued to raise issues related to his community and in opposition to the ethnic focussed government.
57. When the military coup occurred in December 2006 the applicant's circumstances became more difficult. The applicant said that although Bainimarama's military coup supported a multi racial approach to politics compared to that represented by the Qarase government, the applicant opposed the coup because he believed that a democratically elected government had been illegally removed. The applicant said that he opposed the military council installed by Bainimarama and continued to raise his concerns at the local level through his participation in local activities and forums.
58. In December 2007 the applicant claims that he was asked by the local authorities to attend a meeting at Parliament House and along with three other community leaders was asked to



make a presentation to the military council on his views of community issues that had arisen since the military coup. The applicant said that he spoke honestly about his concerns, his observations and his beliefs. The applicant claimed that he was taken aside by two senior military officers who threatened him and told him to stop agitating against the military government or he would be called to appear before the Military Council in the barracks. The applicant named the two military leaders who had issued the threat. The applicant said that the other community leaders who addressed the committee were also threatened in the same manner. The applicant said that he believed that he had no choice to attend this meeting; it was made clear that he should attend or there would be repercussions.

59. The applicant said that because of this threat he did back off and returned to his farm and his role in the community. The applicant said that he knew that if he continued his criticism of the government it would come back to haunt him. However, there were still concerns of the activity of the military government and he continued to speak to others at the community level about problems under the military regime.
60. In February 2008 the applicant was told to report the military council again. He was contacted by the Minister of Home Affairs, Ratu Epeli, who had previously been the leader of the National Alliance party, and was told that the military had become aware that he had been critical of the government and he would be required to attend and meet with the military council. This time he was the only person invited. He said that he felt very intimidated and obligated to attend. He believed that he had been called again because he was still attending district meetings assisting with development programs and believed that civil servants also involved in these forums were reporting his criticism of the military government. The applicant said that he always opposed the military representatives at these local meetings. The Tribunal asked the applicant what would happen if he refused to attend this meeting with the military council. The applicant said it was made clear that he had no choice in whether he attended. The applicant said that it was put to him by Ratu Epeli that government workers had reported that he was still criticising the military government on financial, economic and political matters in Fiji.
61. The applicant attended the meeting with the military council and claims he was threatened to back off again but this time he believed that the warning was more threatening. The applicant was told that if he continued to raise issues and confront the government worse things will happen to him and his family. The applicant was threatened with being taken to the barracks. The applicant told the Tribunal that whilst he was invited to attend these meetings he knew that he had no real choice in the matter and felt impelled to attend. Those who had issued the invite had made it clear that his attendance was not only required but expected. The applicant believed that the threats made to him and his family were real.
62. The applicant said at that point he decided that because of these threats and the effect on his family he needed to back off from his community work and his criticism of the government. The applicant then started to seek employment, it was then that he applied and was appointed to [Company 1].
63. The Tribunal asked the applicant why Australia had a protection obligation toward him. The applicant said that he had always had a plan to come to Australia but it never eventuated. He said that because of his criticism of the government, the threats made to him and the generally poor financial circumstances that he was in he was fearful of returning to Fiji. When his work with [Company 1] disappeared and whilst he was in Australia he decided to investigate migration options over the internet. It was then that he decided to seek protection

status. The applicant knew that there were a lot of benefits for his family if he could bring them to Australia. The applicant said that he had found that there were many options in Australia for him to continue to contribute to the community and he was already participating in a number of committees with a focus on indigenous people and other community issues. The applicant said he had been invited to be on a number of committees as a representative of Fijians in the local community around [Place B]. The applicant said that he had an affinity with Koori people and referred to a reference include in his evidence from [name deleted: s,431(2)] from the Aboriginal Affairs Department of Victoria.

64. The Tribunal asked the applicant why he had not applied for his protection visa earlier and had not lodged his application until after he had become unlawful. The applicant responded that he knew that when he had applied for his Business visa he knew that he was making an undertaking to follow the directions under migration law and depart Australia before his visa had expired. The applicant said that he had been left stranded by his partner in Australia and that he had no money because he was unable to work. The applicant said that he had spoken to the Department by phone seeking advice and was scared that he would be taken to detention because he knew that he had broken the law by overstaying his visa. He was afraid that he would be sent back to Fiji. The applicant said that he was very concerned about the situation in Fiji.
65. The applicant said that he had been active in the SAD church in [Place B], he has been involved in the Fijian community and the indigenous community.
66. The applicant said that he had not been physically harmed but he was clearly threatened by the military government because of his political profile. The Tribunal asked the applicant about the status of the police in Fiji and he replied that whilst he could seek police support in the case of a crime against him or his family he could not rely on their support or protection with his problems with the government.
67. The Tribunal asked the applicant how he spoke Hindi. He said that he had attended a school owned by Indians and the language of instruction was Hindi.
68. The Tribunal referred to a claim made in his visa application that he feared that he would be arrested and detained and taken to a camp. The applicant said that he did have a political profile but after the threat made at his last meeting with the government he had decided to reduce his profile. He said that he was not on any 'black list' and this list he believed was for people involved in white collar crime. The applicant said that he did not have any difficulties from migration officials when he left Fiji but he said that he still feared that because of the threats made to him and the government believed that he was still involved in criticising them, he would be detained. He said that he would still want to participate in his community and believed that eventually he would be found by the government to be criticising them and they would follow through with their threats. The applicant said that he was not openly criticising the government, his opposition to the government was through working with the local communities and trying to resolve local issues. The applicant said open criticism of the government was not permitted by the military.
69. The Tribunal asked the applicant about the position of the SDA church. The applicant said that the church opposed the government.
70. The Tribunal asked the applicant how his political activity has impacted on his family. The applicant said that his wife had asked him to take a lower profile for fear of the government's

threats. The applicant said that his wife and children are finding things very difficult and need to be supported by his family. The applicant owns some land and he is able to grow a cash crop. The applicant said that his family had not been harmed but his wife witnessed him being directed to attend the second meeting. The Tribunal asked the applicant whether his family had ever been threatened. He said that they had not been directly threatened but he had interpreted the threats made to him as being of a general nature and they could have an impact on his family.

71. The applicant said that the police in Fiji are now monitored by the military. Prior to the coup the applicant said that he would have been able to obtain protection from the police.
72. The Tribunal asked the applicant to details his fears if he were returned to Fiji. The applicant said that once the community is aware that he has returned they would expect his involvement in community issues. Similarly the applicant believes that the government would be aware of his return and he reiterated that he had been threatened by the government to curtail his community involvement twice in the past. The applicant said that he still had a strong wish to work with his local community. The applicant agreed that if he returned to Fiji and curtailed his activities he would not be a target of the government but he would still fear that he will be harmed. The applicant still worried about his family even though he is still in Australia. The applicant said that his family was finding it difficult to manage in his absence.
73. The Tribunal told the applicant that it was required to make findings about harm or persecution that has happened in the past, now but also the likelihood of harm in the reasonably foreseeable future.
74. The applicant said that he had given all the information about his claims.
75. In conclusion the applicant said he came to Australia with a clear purpose to fulfil his commitments to [Company 1] but this had not worked out as had been planned but coming to Australia did give him an opportunity to give consideration to his circumstances back in Fiji.
76. The applicant admitted that he had broken Australian migration rules by overstaying his visa. The applicant said that if he was required to return to Fiji, he asked that the Department give him a visa that would allow him to arrive and depart Australia so that he could maintain contact with his family and friends. The applicant said that he loved Australia and had a lot to offer in return. The applicant said that he was scared to go back to Fiji because of his political profile.

#### *Post Hearing Submission*

77. [In] March 2009 the applicant forwarded a reference written on his behalf by [name deleted: s.431(2)], Indigenous Issues Unit, Department of Justice, Victoria attesting to the applicant's involvement in local issues in the [Place B] community.

#### **COUNTRY INFORMATION**

78. The following documents were among some consulted in relation to the applicant's claims.
79. From CX173225: *FIJI: US State Department Report Says Human Rights Situation Worsened After Coup, 7 March, 2007*, which comments on human rights abuses after the coup of 5 December 2006:

## **FIJI: US State Department Report Says Human Rights Situation Worsened After Coup**

The US State Department Report on Human Rights in 2006 says the human rights situation worsened in Fiji after the December coup.

It says there were some accounts of human rights abuses by police during the year but the military committed numerous abuses after the December 5 coup.

The report says the military detained without warrant and abused persons who had voiced opposition to the coup or who supported a return to democratic government.

It says formal complaints to the Fiji Human Rights Commission did not increase significantly by year's end because of a climate of intimidation and fear of reprisals after the coup.

The report says the Fiji Human Rights Commission director had said she would investigate human rights abuses if complaints were made, but she had also warned the public that not all their rights could be exercised freely under a State of Emergency.

The US State Department report says that the interim government took no action against military personnel alleged to have committed abuses against coup opponents.

80. US Dept of State Country Report on Human Rights 2008 (Released September 2008) reproduced in part that provides the political background and comments on human rights matters in Fiji since the coup:

Fiji is a constitutional republic with a population of approximately 828,000. The constitution provides for a ceremonial president selected by the Great Council of Chiefs and an elected prime minister and parliament, but in December 2006 armed forces commander Commodore Voreqe Bainimarama overthrew the government of Prime Minister Laisenia Qarase of the Soqosoqo Duavata ni Lewenivanua (SDL) party in a bloodless coup d'etat, announced the establishment of an interim military government, and dissolved Parliament. On January 5, the interim military government was replaced by a nominally civilian interim government ("the interim government"), headed by Bainimarama as prime minister. Bainimarama and his Military Council controlled the security forces. There were numerous instances in which elements of the security forces acted independently.

During the year the interim government denied citizens the right to change their government peacefully. A state of emergency in effect for half of the year significantly restricted constitutional provisions for freedom of expression, movement, and assembly and subjected the right to privacy to the military's interpretation without recourse to the courts. The state of emergency was lifted on May 31 but was reimposed for 30 days on September 6 when Qarase returned to the capital from his home island. Under the interim government, the military and police arbitrarily detained and sometimes abused individuals, resulting in three deaths; conducted searches without warrants; engaged in intimidation of the media; and restricted the right to assemble peacefully. Other problems during the year included poor prison conditions; attacks against religious facilities, particularly Hindu temples; government corruption; deep divisions between indigenous Fijians (57 percent of the population) and Indo-Fijians (38 percent); violence and discrimination against women; and sexual exploitation of children. ....

### **Arbitrary Arrest or Detention**

The constitution prohibits arbitrary arrest and detention, but during the year military personnel detained numerous persons without warrants for interrogation and intimidation and, in some cases, brief incarceration. Although military personnel do not have arrest powers under the law, the military and the director of the FHRC cited the state of emergency proclamation and public order statutes as justification for the detentions.

### **Role of the Police and Security Apparatus**

The Ministry of Home Affairs, headed by interim Prime Minister Bainimarama, oversees the Fiji Police Force, which is responsible for law enforcement and the maintenance of internal security. The RFMF is responsible for external security. The RFMF maintained that it has a broad constitutional responsibility for national security that also extends to domestic affairs; many constitutional scholars in the country rejected that assertion. In June the former deputy commander of the RFMF was appointed as police commissioner.

The police maintained a network of 31 stations and 54 police posts throughout the country. Policing of more remote and smaller islands was done through regularly scheduled visits. Military personnel were assigned to accompany police patrols and jointly man roadblocks, blurring the lines of authority between the two forces.

The police internal affairs unit is statutorily responsible for investigating complaints of police misconduct. The interim government created a Fiji Independent Commission Against Corruption with wide-ranging investigative powers. The commission undertook numerous investigations of public agencies and officials, including some members of the police force. Some officers were removed from the force. However, impunity and corruption remained problems.

In most cases the interim government took no action against military or police personnel alleged to have committed abuses against coup opponents and prodemocracy activists. ....

### **Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution prohibits such actions, but the interim government frequently ignored these prohibitions in practice. RFMF forces searched without warrants the homes and offices of a number of persons the military accused of corruption. Soldiers also entered private property without warrants to warn and threaten persons who spoke publicly against the coup. ....

## **Section 2 Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution provides for freedom of speech and of the press, but the government did not fully respect these rights in practice.

### **Freedom of Peaceful Assembly and Association**

#### **Freedom of Assembly**

The constitution provides for freedom of assembly, but under the state of emergency regulations the interim government restricted this right. Although some civic organizations were granted permits to assemble, permits for all political

demonstrations and marches were denied, as was a permit for the annual meeting of the National Federation Party. In March police broke up the annual general meeting of the National Union of Public Workers, citing unspecified public order issues. In July police broke up a peaceful picketing action by striking nurses. ....

### **Freedom of Association**

The constitution provides for freedom of association. During the year the interim government did not restrict persons from joining NGOs, professional associations, or other private organizations, but it targeted for threats and harassment prominent members of the political party of the deposed prime minister and members of NGOs who criticized the coup. ....

#### **Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

Under the interim government, the operations of domestic and international human rights groups were closely scrutinized. Members of the government frequently singled out individual NGO officials for criticism and harassment. Accusations by Bainimarama that NGOs were only doing the bidding of foreign donors, primarily to garner funding, engendered a climate of uncertainty within the NGO community, and most NGOs practiced varying degrees of self-censorship. Government officials were only cooperative and responsive to the views of NGOs that avoided criticizing the coup and the interim government.

There were several NGOs that concentrated on a variety of local human rights causes, such as the Regional Rights Resource Team, the Pacific Center for Public Integrity, the Citizens' Constitutional Forum, the Fiji Women's Rights Movement, and the Fiji Women's Crisis Center. A number of UN organizations concerned with human rights had regional offices in the country and sought to work with the government on various human rights issues. The ICRC continued to operate in the country. The interim government refused to permit a requested visit by the UN Rapporteur on the Independence of Judges and Lawyers.

The interim government directed all those claiming human rights violations to report them to the FHRC. The FHRC received and investigated reports of human rights violations and requests for assistance, some involving alleged abuses by the military, the police, and prison officials. During the year the FHRC director repeatedly failed to publicly object to significant allegations of human rights abuses by the military and police, including three incidents that resulted in the deaths of uncharged detainees. The FHRC's sole remaining pre-coup commissioner strongly criticized the director's statements in support of the coup and her failure to take action in support of persons abused by the security forces, and called for the director to resign. In January the director published a lengthy analysis of the coup that was widely criticized by legal and human rights figures as an attempt to justify the takeover. In a follow-up publication in August, she argued that the overthrow of the Qarase government did not constitute a coup. In July the FHRC director resigned her position when the interim government named her to be the new national ombudsman. As ombudsman, she is a human rights commissioner and chairs the FHRC.

81. From Amnesty International Report 2008 on Fiji states the following:

**Disadvantaged groups continued to be marginalized as a result of high unemployment, widespread poverty and an alarming squatter situation.**

## **Unlawful arrests and detentions, violence, and killings by members of the security forces continued. Freedom of expression was severely undermined.**

### **Background**

A military coup led by Commodore Frank Bainimarama in December 2006 triggered serious human rights violations in 2007. The judiciary was compromised as the interim government sought to constrain its independence.

### **Police and security forces**

#### **Killings and excessive use of force**

- In January, a man died from a brain haemorrhage within hours of being detained by the military. One soldier was charged for the beating, although others were reported to have taken part.
- In June, a young man fell into a coma and died, following assaults by soldiers in Nadi. Eight soldiers were later charged with his killing.
- Another man was killed while being interrogated by police officers in June. The coroner's report concluded that he had died from severe internal injuries. Nine police officers were subsequently charged with his killing.
- In November, several people accused of planning to assassinate key members of the interim government were detained for more than 48 hours without charge. Some were allegedly brutally beaten by plain clothes soldiers.

#### **Cruel, inhuman and degrading treatment**

Prominent political figures including critics of the interim government were arbitrarily arrested, detained and subjected to cruel, inhuman or degrading treatment by members of the army.

Between December 2006 and July 2007, hundreds of people were forced to strip naked, run around fields, or touch each other's private parts. Many were also physically assaulted by soldiers and police officers.

#### **Attacks on freedom of expression and movement**

A state of emergency imposed between December 2006 and May 2007 severely undermined freedom of expression. Prominent critics of the government, including lawyers and other human rights defenders, were intimidated by the military and banned from travelling without prior notice.

- In August, a prominent lawyer filed a writ challenging his travel ban. The case was still pending by the end of the year.
- That same month, the interim government threatened to arrest bloggers and those responsible for facilitating pro-democracy blog sites. One popular site was closed down. The interim government warned public servants against reading the blogs.
- A senior civil servant was suspended without pay in August following allegations that he contributed to anti-military blog sites.

- After publicly criticizing the interim government, deposed Prime Minister Laisenia Qarase was prevented from travelling by sea or air from his home island to Suva.

### **Justice system**

The Chief Justice was suspended indefinitely after being forced to take leave in January.

The President of the Fiji Court of Appeal challenged the legality of the interim government, prompting the interim Attorney General to call for his resignation in June. In September, six prominent judges of the Fiji Court of Appeal resigned after not being invited to sit on the court.

The integrity and independence of the Fiji Human Rights Commission were called into question after it released a report in January which supported the military takeover. ....

82. The BBC News website, last updated on 27 January 2009 reports on the current circumstances in Fiji with the following:

The 800-plus volcanic and coral islands that make up the Pacific nation of Fiji enjoy a tropical climate and are a prime destination for tourists.

However, since 1987 racial and political tensions have been an intermittent source of instability and international isolation. Overview

### **Overview**

In 1987 a coup by indigenous Fijians overthrew the elected, Indian-dominated coalition. This triggered a series of adverse events, including the introduction - and subsequent withdrawal - of a constitution enshrining indigenous Fijian political supremacy.

A further coup in 2000, led by businessman George Speight, saw the country's first ethnic Indian prime minister, his cabinet and several MPs held hostage for several weeks.

These events caused great harm to the economy - the tourism industry in particular - and Fiji's international reputation.

Rancour over the 2000 coup persisted, with bitter divisions over plans to amnesty those behind it. The proposals underlay tensions which culminated in a bloodless military takeover in 2006 - Fiji's fourth coup in 20 years.

Fiji's population, which resides mostly on the two main islands of Viti Levu and Vanua Levu, is divided almost equally between indigenous Fijians and Indo-Fijians, the descendents of indentured labourers brought from India.

Mixing between the two groups is minimal, and informal segregation runs deep at almost every level of society.

There are also very small non-Indo-Fijian, non-Fijian minority communities, such as Chinese and Rotumans.



Although the former British colony relies heavily on the sugar and tourism industries for its foreign exchange, its economy is diverse. Gold, silver and limestone are mined, and there is a strong services sector and some light manufacturing.

Nonetheless, Fiji has been hampered by persistent trade and budget deficits, making it one of the world's largest per capita recipients of aid. ....

## **Leaders**

### ***Interim prime minister: Commodore Josia Voreqe (Frank) Bainimarama***

Fiji's military chief Commodore Frank Bainimarama seized power in the December 2006 coup and first became interim prime minister in January 2007.

He accused deposed prime minister Laisenia Qarase of corruption and of discriminating against Fiji's ethnic Indian minority.

Mr Qarase, who had secured a second term in May 2006, had angered the opposition and the military with his controversial proposal to pardon or amnesty some of those behind the 2000 nationalist coup.

Commodore Bainimarama promised to restore democracy through elections, but said the constitution would have to be revised first, as in his view it enshrined racial divisions.

He maintains that his aim is to create a fairer, multi-racial society, but he has excluded political opponents from discussions on the constitutional reforms.

A move by Fiji's Appeal Court in April 2009 to declare the military government illegal prompted the president, Ratu Josefa Iloilo, to suspend the constitution and reappoint Commodore Bainimarama as interim prime minister for a further five years, leaving the military chief's grip on power apparently stronger than ever.

Commodore Bainimarama insists that he enjoys broad popular support for his elections reform plan, but the events of April 2009 have made Fiji even more of a diplomatic outcast than before.

### ***President: Ratu Josefa Iloilo***

President Ratu Josefa Iloilo was appointed in the aftermath of the May 2000 coup and was re-elected president by the Great Council of Chiefs in March 2006.

In the December 2006 coup, Mr Iloilo lost his executive powers to military chief Commodore Frank Bainimarama, who dissolved parliament and declared a state of emergency.

Commodore Bainimarama reinstated Mr Iloilo as president in January 2007.

Mr Iloilo endorsed the December 2006 coup, saying general elections would be held once the political and economic conditions were suitable.

When the Court of Appeal declared the military government illegal in April 2009, Mr Iloilo responded by assuming governing power, suspending the constitution and dismissing the judiciary.

He then reappointed Commodore Bainimarama as interim prime minister and said that elections would not be held until 2014.

He is seen as a close ally of the military chief, but denied that he was acting at the behest of Commodore Bainimarama.

Now in his late eighties, he is said to be in poor health. ....

## **Media**

Fiji's private press was long noted for its vigorous reporting, but the authorities imposed strict media censorship in April 2009, allowing nothing critical of the military-led government to be published.

Radio has always been a key source of information, particularly on the outer islands. There are publicly and privately-owned stations. The BBC World Service and Radio Australia are normally available via FM relays, though the transmitters for the latter were shut down after a 30-day state of emergency was imposed following the suspension of the constitution.

Several foreign correspondents based in Fiji were expelled from the country and some internet cafes were closed as part of the media crackdown.

83. The following relates to the treatment of supporters of SDL, Immigration and Refugee Board of Canada but also gives an insight into the manner in which opponents to the military government have been treated, *Fiji: Treatment of members and supporters of the Soqosoqo Duavata ni Lewenivanua (SLD) [United Fiji Party], in particular treatment of non-elite indigenous Fijians*, 6 February 2008 states:

### **Fiji: Treatment of members and supporters of the Soqosoqo Duavata ni Lewenivanua (SLD) [United Fiji Party], in particular treatment of non-elite indigenous Fijians**

In December 2006, the commander of Fiji's military forces, Commodore Voreqe Bainimarama overthrew the government of Prime Minister Laisenia Qarase, leader of the Soqosoqo Duavata ni Lewenivanua (SLD) [United Fiji Party] (UK 5 Sept. 2007; US 13 Dec. 2007). The SLD party, led by Qarase, won elections held in 2001 and 2006 (UK 5 Sept. 2007).

### **Treatment of critics of the regime**

According to *From Election to Coup in Fiji*, a book published by the Australian National University (ANU), critics of the coup have been "effectively silenced" by the military (2007, 434). The book, which includes contributions by various academics and other experts, states that the military regime has targeted politicians, civil society activists and outspoken lawyers (ANU 2007, 436). It provides several examples of specific individuals who were detained at the Queen Elizabeth Barracks (QEB) (ANU 2007, 343 and 436) and "subjected to intimidation and harassment" (ibid., 436). One man named was allegedly beaten to death (ibid.).

*Country Reports on Human Rights Practices for 2006* corroborates that the Republic of Fiji Military Forces (RFMF) have detained and mistreated those who opposed the coup, sending them to the QEB (US 6 Mar. 2006 Sec.1.c.). Media sources also corroborate that some critics of the regime have been taken to military camps (Fiji Times Online 11 Dec. 2006; *Lawyers Weekly* 22 Feb. 2007) where they have been

"abused and intimidated" (ibid.). Moreover, Human Rights Watch (HRW) has called for an investigation into reported allegations of "arbitrary detentions, beatings, and harassment of more than a dozen individuals" as well as the death of one man in custody (5 Feb. 2007). HRW reports that activists, members of the business and media community and private citizens have been detained, apparently without warrants (5 Feb. 2007). The United Kingdom (UK) Foreign and Commonwealth Office reports that there have been numerous accounts of human rights violations taking place in the barracks, specifically mentioning that journalists have been detained and human rights activists largely silenced (5 Sept. 2007). The same source states that, as a result of these detentions, journalists are now practising self-censorship (UK 5 Sept 2007). Some of those who made statements against the regime have also been subject to a travel ban (*Lawyers Weekly* 22 Feb. 2007).

### **Treatment of SDL members/supporters**

A Research Fellow at Australian National University (ANU) who wrote a chapter on the aftermath of the coup for the book *From Election to Coup in Fiji* commented on the treatment specifically of SDL members in 16 January 2008 correspondence with the Research Directorate. His comments are contained in the following paragraph.

The Research Fellow stated that after the coup, SDL leader Laisenia Qarase travelled to his home island of Vanuabalavu and was prevented by the military from returning to Suva [the capital]. The Research Fellow reported that that other members and supporters of the SDL have been harassed. He cited specific examples of senior SDL members, such as Peceli Kinivuwai [SDL National Director], Ted Young [SDL Acting National Director] and Mere Samisoni, Member of Parliament (MP). He said Peceli Kinivuwai had been taken at least six times to the QEB where he was beaten. Ted Young had been beaten on several occasions, as had Mere Samisoni. The ANU Researcher further stated that those SDL MPs "who have remained silent, acquiesced or jointed the new interim government" have not experienced harassment.

Media sources corroborate the detentions of Peceli Kinivuwai, Ted Young (*Fiji Times Online* 11 Dec. 2006; ibid. 21 May 2007) and MP Mere Samisoni (*Islands Business* 14 Dec. 2006).

In a 16 January 2008 interview conducted by the Research Directorate, a professor of economics at Acadia University with a research interest in Fiji likewise stated that various members of the SDL, including Mere Samisoni, have been taken to the barracks, beaten, intimidated, and forced to do physical exercises (16 Jan. 2008).

### **Treatment of non-elite SDL members/supporters who are indigenous Fijians**

According to the Research Fellow from ANU, poll results from May 2007 indicate that around 80 percent of indigenous Fijians support the SDL (16 Jan. 2008). *From Election to Coup in Fiji* states that authoritarian rule has been directed at both indigenous Fijians and Indo-Fijians, but stated that indigenous Fijians have "felt the brunt of military repression" since they are the group most opposed to the new regime (ANU 2007, 436). The ANU Research Fellow commented on the intimidation of non-elite indigenous Fijians as follows:

There has not been any systematic harassment of indigenous Fijian SDL supporters ... although there have been many cases of harassment of ordinary citizens (including SDL supporters) for speaking out in opposition to the coup, for alleged offences at the military checkpoints, for alleged "corruption" and as part of the wider "clean up" campaign targeting bootleggers, nightclubs, drug dealers, prostitutes etc.... Many

were taken to the RFMF [Republic of Fiji Military Forces] barracks in the first few months after the coup, but this seems to have abated. (Research Fellow 16 Jan. 2008)

The Acadia University Professor corroborated the information that while people were taken to the barracks after the coup first happened, this is occurring less frequently (16 Jan. 2008). He voiced his opinion that people are now practising "self-censorship" (Professor 16 Jan. 2008).

The ANU Research Fellow commented that the government is seeking to build support among indigenous Fijians by means of its National Council for Building a Better Fiji initiative (16 Jan. 2008). According to a statement from the prime minister's office, the government of Fiji intends to use this initiative "to rebuild Fiji into a non-racial, culturally vibrant and united, well-governed, truly democratic nation..." (Fiji 21 June 2007).

84. On the basis of a DFAT report CX173021: *FIJI: Persons involved with or having relatives involved with election of May 2006 and/or members of SDL Coup related harassment, threats, and human rights abuses, 7 March, 2007* states the following

#### BACKGROUND

The applicant worked as a polling clerk over the two week election period in May 2006. Her brother was an assistant district officer during the election and her brother has been a member of the Soqosoqo Duavata Ni Lewenivanua (SDL) since 2000. The applicant claims that her brother was taken in for questioning by the army in December 2006; he was bashed and detained and members of the family were threatened; her brother has fled to another part of Fiji and has not returned since being questioned; and her sister in law told her that the army was asking after her [the applicant] because she was involved in the elections. The applicant fears she will be detained and tortured by the army.

#### QUESTIONS: [1/3/2007]

Q1. Is Post aware of information which would indicate that a person with the above profile would be at risk of detention by the Fijian army?

Q2. Is Post aware of information which would indicate that a person with the above profile, if detained by the Fijian army, would be at risk of human rights abuses by the army?

#### ANSWERS: [6/3/2007]

A1. There are numerous members of the Soqosoqo Duavata ni Lewenivanua (SDL) Party and there were also many individuals who worked as polling officials during the May 2006 elections. Post has no information to suggest, however, that SDL members or election officials are being, or have been, specifically targeted by the Republic of Fiji Military Forces (RFMF). There have been many instances of harassment, threats, intimidation and abuse by the RFMF, but these have been primarily targeted at individuals who publicly expressed opposition to the 2006 coup and/or the formation and actions of the interim Government, rather than people who were simply SDL members or election officials. In response, the interim Government stated recently that it would take measures to ensure there were no further human rights abuses. Despite this, Post notes there continues to be allegations of the RFMF and police committing human rights abuses particularly in relation to RFMF involvement in standard policing issues (for example, narcotics, illegal gambling) as

well as against those critical of the RFMF and the interim Government. There would however, appear to be limited risk at present to SDL members or polling officials who do not speak out publicly against the interim Government or the RFMF.

A2. Post has received information that many of those detained by the RFMF - regardless of the reason - have been subjected to physical and mental intimidation and humiliation, including assaults and beatings; verbal abuse and threats; guns pointed at victims; and guns fired near blindfolded victims. The risk of abuse remains high, despite claims by the interim Government that human rights would be respected.

85. The following are examples of how the military government treats those who are deemed to be opponents

**FIJI: Army watchful of demagogues: Driti**

The Fiji military's Land Force Commander Colonel Pita Driti says army intelligence have their eyes on demagogues trying to destabilize the country.

And he says that the military will continue to take them up to the barracks for questioning because it is a matter of national security.

Col Driti said unionist Taniela Tabu was detained by the military last week because "he is a demagogue".

"He is trying to appeal to Fijian nationalist prejudices and fears to destabilize the country," said Col Driti, referring to Tabu's accusation of ethnic Indian leader and interim Finance Minister Mahendra Chaudhry as the reason for the interim Government's tough stand against the striking public sector unions.

"The unionist Taniela Tabua is a demagogue. That is very clear.

"We know that there are others out there waiting for the opportunity to incite people."

Tabu claims that he was stripped to his underwear at the army camp and later told he would be killed if he ever returned.

The military has denied the claims.

Tabu has been considerably quiet since his release on Wednesday night. CX182251: *FIJI: Army watchful of demagogues: Driti, Fiji Live, 4 August, 2007*, <http://www.fijilive.com/news/show/news/2007>

**FIJI: Watch what you say: Vuataki told**

The military has released lawyer Kitone Vuataki but with one condition to watch what he says.

Speaking from his Lautoka home yesterday, Mr Vuataki said he was glad to be free but gave an assurance to the military he would be careful of what he says publicly.

He said he reassured the military he would not incite trouble as claimed in certain media reports which he claims were misquoted.

"I have made an undertaking that I will be careful," he said. .... CX178347: *FIJI: Watch what you say: Vuataki told, 31 May, 2007*.

86. The following articles illustrate to the current circumstances in Fiji:

**FIJI: Rights Groups Warn Fiji Heading Towards Civil Unrest**

Amnesty International is predicting civil unrest and conflict with Fiji's military government, as army commanders continue to tighten their grip. The international human rights organization claims conditions in the troubled South Pacific nation are getting worse by the day. Army chief Commodore Frank Bainimarama was reinstated as interim prime minister, earlier this month, following the president's decision to abrogate the constitution. Amnesty International is painting a serious picture of life in Fiji, as the military continues to increase its authority.

Army extends grip on power

The armed forces' grip on power now extends into almost all corners of the civil service, while a compliant police service is also supporting the army chief, Commodore Frank Bainimarama.

Amnesty claims the military is using intimidation to quell dissent.

The group's Pacific analyst, Apolosi Bose, says, as Fiji's fragile economy continues to crumble, the prospects of a public backlash against the military government will increase.

"The crime rate will definitely increase and there is a possibility of a greater law-and-order situation in Fiji," Bose said. "There are also soldiers who are going to be losing their jobs because of the decree to lay off people who've reached 55. So, couple that with the fact that people are not generally happy with the way things are happening, you could have a situation where there could be civil conflict."

Bloodless coup leads to 'new order'

Commodore Bainimarama seized power in a bloodless coup in December 2006, unseating an elected government the army strongman says was racist and corrupt. His actions were declared illegal by Fiji's Court of Appeal, earlier this month, a ruling that prompted the country's president - a close ally of the army commander - to dismiss the judiciary and abandon the constitution.

Creating what he called a "new order", President Ratu Josefa Iloilo reappointed the military government with even greater powers.

Commodore Bainimarama has insisted democracy will only be restored only when he has rewritten the constitution and changed electoral laws that he claims are biased against the country's ethnic Indian minority.

Political turmoil leads to economic woes

As the army's controversial reform program inches forward, Fiji's economy, which depends on tourism and the sugar cane industry, continues to stutter, putting at risk thousands of jobs.

The United Nations Security Council said Monday the military's grip on Fiji is "a step backwards" and demanded the restoration of democracy and fair elections, as soon as possible.

Since his reappointment, Commodore Bainimarama has shown scant regard for such international condemnation.

He has imposed emergency restrictions, including censorship of the media, and refuses to hold elections before 2014. CX224870: *FIJI: Rights Groups Warn Fiji Heading Towards Civil Unrest*, Voice of America (VOA), 21 April, 2009.

87. From the Economist, 16 April 2009 comments on the current constitutional problems in Fiji and illustrates the response of Bainimarama to a recent decision by the Court of Appeal that declared the military regime installed after the coup in December 2006 as being illegal:

### **Fiji's constitutional coup - Puppet show**

#### **Digging in for the long haul**

FLEETINGLY, on April 10th, Fiji's armed forces commander, Frank Bainimarama, seemed to lose his other job as prime minister. President Ratu Josefa Iloilo announced the abrogation of the country's constitution, the sacking of the judiciary and the postponement of elections until 2014. Calling the president's decision deeply regrettable, Mr Bainimarama resigned and said he was heading back to barracks. Yet the next day, he and his cabinet were back in their offices, as if nothing had happened. Belying the pretence of normalcy, however, soldiers were sent into the newsrooms of the country's newspapers, and television and radio stations to prevent "negative" publicity; several foreign journalists were booted out of the country.

Mr Bainimarama said he had nothing to do with Mr Iloilo's decision. In truth, the 88-year old head of state is a puppet of the army, which is said to dose him with medication before he appears on television. Mr Bainimarama also regularly claims to be subject to the dictates of a shadowy military council. But in reality he is in charge, having purged his opponents and cultivated loyalty through rapid promotions and big pay rises for both officers and rank-and-file. Even so, at press conferences held after the abrogation of the constitution, he judiciously chose to be flanked by his most loyal naval officers, not the high-ranking army officers.

The trigger for the jettisoning of Fiji's constitution was a ruling by the Court of Appeal declaring illegal Mr Bainimarama's interim regime, which took power in a coup in 2006. The court demanded that a neutral caretaker be appointed prime minister, pending the dissolution of parliament and a general election.

Mr Bainimarama was already resisting foreign pressure to go to the polls. He claims that Fiji's electoral system needs to be reformed, to escape the race-based politics that generated coups in 1987 and 2000. In fact, whatever the electoral system, politics would remain polarised between ethnic Fijians and the Indian minority.

Fixing the economy may be even harder than mending the political system. Even before the latest political crisis, the central bank had lowered its forecast of GDP growth for 2009 from 2.4% to -0.3%. Declining exports had left foreign-exchange reserves equivalent to 2.7 months of imports, and shrinking tax revenue had forced the prime minister to impose a 50% cut in government operating expenditure. This week the Fiji dollar, which is pegged to a basket of currencies, was devalued by 20%.

Since the constitution was scrapped, soldiers have detained or placed under house arrest local journalists, judges and, reportedly, the director of public prosecutions. In addition, Savenaca Narube, the long-serving governor of the central bank, has been forced from office, and soldiers stationed in the bank building. The motive may be

not just to avoid the flight of capital, but also to have done with Mr Narube's urging for restraint in public spending. The government may be hoping it can buy back some of its tarnished legitimacy.

## **FINDINGS AND REASONS**

88. The applicant claims to be a national of Fiji and arrived in Australia on a Fijian passport. The Tribunal accepts, on the evidence before it, that the applicant is a Fijian national and, for the purposes of the Convention, has assessed his claims against Fiji as his country of nationality.
89. The Tribunal has found the applicant to be a highly credible witness who has responded to its enquiries respectfully, calmly, thoughtfully and without exaggeration or overstatement of his circumstances or his claims.
90. The Tribunal acknowledges that the applicant has advanced additional material and evidence of his political circumstances for the first time at the hearing but at the same time observes that the applicant had not been afforded the opportunity to expand on his original claims in his visa application at an interview with the Department. The claims made to the Department by way of his visa application have been clearly enhanced by the oral evidence of the applicant to the Tribunal
91. The Tribunal does not consider that the additional information provided at the hearing for the first time necessarily diminishes the claims made by the applicant and is of the view that this evidence is an outcome of the opportunity provided by the Tribunal for the applicant to provide additional evidence about his claims as per its hearing invitation. The Tribunal accepts that the oral evidence of the applicant to the Tribunal is credible and measured and not inconsistent with his original claims.
92. The following from USSD report 2008 provides some background to the political situation in Fiji:

Fiji is a constitutional republic with a population of approximately 828,000. The constitution provides for a ceremonial president selected by the Great Council of Chiefs and an elected prime minister and parliament, but in December 2006 armed forces commander Commodore Voreqe Bainimarama overthrew the government of Prime Minister Laisenia Qarase of the Soqosoqo Duavata ni Lewenivanua (SDL) party in a bloodless coup d'etat, announced the establishment of an interim military government, and dissolved Parliament. On January 5, the interim military government was replaced by a nominally civilian interim government ("the interim government"), headed by Bainimarama as prime minister. Bainimarama and his Military Council controlled the security forces. There were numerous instances in which elements of the security forces acted independently.
93. The applicant claims that because of his political profile he has been a target of the military government in Fiji. The applicant claims that for many years he has been active at the local level in trying to improve the lot of his community. The applicant has led or participated in many local committees and forums designed to raise the standard of living in his community and he has initiated community based projects funded and facilitated through groups including AusAID and Adventist Development Relief Agency (ADRA)
94. The applicant claims to have [been involved with] the National Alliance Party in the [location deleted: s.431(2)] electorate in which he lives. The applicant informed the Tribunal that the



National Alliance Party had a multi-racial focus and advocated representation for all ethnicities in Fiji. [Information about the applicant's political activities deleted: s.431(2)]

95. The applicant claims that he opposed the military coup conducted by Commodore Bainimarama in 2006 and the activities and programs of the military government installed after the coup. The applicant observed that the military coup was designed to remove the ethnic Fijian focused SDL party to enable, among other objectives, appropriate representation for all ethnicities in Fiji. The applicant claims that although the National Alliance had a similar focus to that proposed by Bainimarama the applicant opposed the manner in which a democratically elected government had been removed from office.
96. The applicant continued his work in his local community after the election and as a consequence he claims he has been inevitably critical of the military government and that this criticism or opposition to the military government has been reported back to members of the military government.
97. The applicant claims that he has been called before the military council twice and warned that he was to cease agitating and criticising the military government. The applicant further claims that in the face of this intimidation and the threats made directly to him and the implied threats to his family, if he did not cease to advocate against the military government, he has chosen self censorship, in relation to his political opinions. As a consequence and in consultation with his wife the applicant has ceased his community work for fear that he may be open to further accusations of opposing or criticising the military government and the subsequent repercussions to himself and or his family.
98. The applicant fears that he will be arrested, detained and taken to a camp and be mistreated. The country information at [110] gives some validity to his fears. On the basis of these claims the Tribunal finds that the essential and significant reason for the harm feared by the applicant is for the Convention reason of imputed or actual political opinion.
99. The applicant claims that if he returned to Fiji and continues his opposition to the military government he would be arrested, detained and taken to a camp. He fears that agents of the government would report him to the military. Additionally, the applicant claims that as a consequence of the intimidation of the military he has been denied the freedom to speak out about his opposition to the military regime. The Tribunal finds that the claimed loss of his freedom of speech as a consequence of intimidation and the threats that he may be arrested, detained and taken to a camp amounts to persecution that involves serious harm and systematic and discriminatory conduct as outlined in s.91R.
100. The Tribunal refers to extensive country information (cited above) that describes the circumstances in Fiji since the military coup of 5 December 2006 and the current developments that occurred on 10 April 2009. On the basis of this information the Tribunal has formed the view that Fijians who oppose the military regime, regardless of their political persuasion, have been singled out by representatives of the military government and openly or covertly warned to desist their activities. There is significant evidence of individuals with political profiles having been arrested, detained and taken to the military barracks. There is also evidence of ordinary citizens being intimidated and threatened because of their opposition to the regime. The actions of the military in suppressing opponents of their regime have created an environment in Fiji where it appears that ordinary citizens are unwilling to speak out for fear of the response of the military.

101. The recent developments in Fiji in April 2009 and Bainimarama's response to the Court of Appeal decision in relation to the legality of his military coup in December 2006 highlights his disregard for Fiji's constitutional processes and his strong resolve to undertake the reformation of the electoral system in Fiji. Bainimarama continues his strong hold on Fiji despite the opposition within Fiji and from foreign countries. His response to this latest judicial outcome has been typical of his response to any opposition to his military regime from the outset. It appears to the Tribunal that any opposition to the military regime and to Bainimarama's political agenda is met with a strong response that has often led to serious harm, media censorship and deportation of foreign correspondents and at the very least encouraged an environment in which Fijian citizens are intimidated to the extent that they adopt self censorship.
102. On the basis of this information the Tribunal accepts that for any Fijian who speaks out against the military regime, regardless of ethnicity or political persuasion, that there is a more than a real chance that they would be subject to harassment, threats, arrest and that this is serious harm amounting to persecution
103. In the case of the applicant, in considering his evidence in its entirety, the Tribunal is satisfied that he has a political profile such that he has been a target of threats from the military regime in the past and is likely to continue to be so if he were to return to Fiji.
104. The evidence of the applicant is that he has had a strong commitment to improving the living standards and the lot of his local community and in so doing has become a recognised leader at the local and provincial levels. His evidence to the Tribunal is that he has been involved in community development projects since the mid 1990's, at times accessing foreign funding for local projects. The applicant claimed that he was not a politician but simply a person who wished to represent his community on issues that affect them directly and this has led him to be critical of the military regime since the coup in December 2006. The Tribunal accepts that, not only because of his [political involvement within] his local community, but his leadership of this community over time, the applicant has developed a political profile as a consequence.
105. The evidence of the applicant is that after [his political work for] the election in 2006 he returned to his community and continued his community work. Inevitably he was critical of the manner in which the previous government had been deposed and their actions since taking power.
106. As a consequence in December 2007 the applicant was summoned along with three others to parliament house to speak to the military council about local issues. The applicant is convinced that local officials had reported his activities to the government and this was the reason that he was summoned to the military council. The applicant delivered his feedback and was subsequently taken aside by two senior military officials and warned to stop agitating. The applicant provided the names and rank of these two officers to the Tribunal.
107. In February 2008 the applicant was summoned by local police to again report to the military council. Again the applicant believes that he was a victim of local officials informing the military about his local activities. The evidence of the applicant is that it was made very clear that it was "in his best interests" to attend and believed that he had no option but to comply. The applicant met with the military council and he was again advised very strongly that he should desist in his community activities and from being critical of the government or there would be consequences for both the applicant and his family. The evidence of the applicant to the Tribunal is that he felt intimidated by what was said to him and he took these threats

seriously to the point where he knew that he would have to “lay low” for fear that the threats would be carried out.

108. The evidence of the applicant is that, in the interests of his and his family’s well-being, he decided to stop speaking out against the government and to lay low in an attempt to reduce his profile so that he was no longer of interest to the government. In considering this evidence the Tribunal refers to *Appellant S395/2002 v MIMIA* for guidance. This judgement of the High Court stated that persecution does not cease to be persecution for the purposes of the Convention because those persecuted can eliminate the harm by taking avoiding action. Where an applicant has acted in the way he or she did only because of the threat of harm, the well founded fear of the applicant is the fear that unless he or she acts to avoid harmful conduct he or she will suffer harm and that this harm amounts to persecutory conduct.
109. The evidence and the actions of the applicant indicate to the Tribunal that he has had a strong commitment to local welfare issues for many years and he has continued to demonstrate this commitment since he has resided in [Place B]. The Tribunal accepts that if the applicant were returned to Fiji and the current political circumstances were to remain, which it appears will be the case until elections are held in 2014, that despite his decision to lay low there is the inevitability that he will eventually speak out about local issues and again run the risk of attracting the interest of the government. The Tribunal accepts that even if the applicant were to lay low and reduce his profile, this is a decision taken as a consequence of threats and intimidation by representatives of the military government as opposed to him exercising his freewill to reduce his political profile. Independent country information would indicate that Fijians generally are reluctant to be critical of the military government if they are critical this invites an immediate response from the military.
110. The Tribunal refers to independent country information that indicates the response of the military government to those who opposed it and cites here a few of many examples of the nature of the military response to its opponents :

- From CX173225: *FIJI: US State Department Report Says Human Rights Situation Worsened After Coup, 7 March, 2007*

The US State Department Report on Human Rights in 2006 says the human rights situation worsened in Fiji after the December coup.

It says there were some accounts of human rights abuses by police during the year but the military committed numerous abuses after the December 5 coup.

The report says the military detained without warrant and abused persons who had voiced opposition to the coup or who supported a return to democratic government.

- From USSD 2008:

Under the interim government, the military and police arbitrarily detained and sometimes abused individuals, resulting in three deaths; conducted searches without warrants; engaged in intimidation of the media; and restricted the right to assemble peacefully .....

The constitution prohibits arbitrary arrest and detention, but during the year military personnel detained numerous persons without warrants for interrogation and intimidation and, in some cases, brief incarceration. ....

**Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution prohibits such actions, but the interim government frequently ignored these prohibitions in practice. RFMF forces searched without warrants the homes and offices of a number of persons the military accused of corruption. Soldiers also entered private property without warrants to **warn and threaten persons who spoke publicly against the coup.**

- From , Fiji: Treatment of members and supporters of the Soqosoqo Duavata ni Lewenivanua (SDL) [United Fiji Party]

According to *From Election to Coup* in Fiji, a book published by the Australian National University (ANU), critics of the coup have been "effectively silenced" by the military (2007, 434).

The book .....states that the military regime has targeted politicians, civil society activists and outspoken lawyers (ANU 2007, 436). It provides several examples of specific individuals who were detained at the Queen Elizabeth Barracks (QEB) (ANU 2007, 343 and 436) and "subjected to intimidation and harassment"

Country Reports on Human Rights Practices for 2006 corroborates that the Republic of Fiji Military Forces (RFMF) have detained and mistreated those who opposed the coup, sending them to the QEB

HRW reports that activists, members of the business and media community and private citizens have been detained, apparently without warrants (5 Feb. 2007). ....

There has not been any systematic harassment of indigenous Fijian SDL supporters ... although there have been many cases of harassment of ordinary citizens (including SDL supporters) for speaking out in opposition to the coup

- From CX173021: *FIJI: Persons involved with or having relatives involved with election of May 2006 and/or members of SDL Coup related harassment, threats, and human rights abuses, 7 March, 2007*

There have been many instances of harassment, threats, intimidation and abuse by the RFMF, but these have been primarily targeted at individuals who publicly expressed opposition to the 2006 coup and/or the formation and actions of the interim Government, rather than people who were simply SDL members or election officials.

111. When the applicant's claims are considered in their entirety and in the context of the country information, the Tribunal accepts that the applicant has a strong subjective fear of serious harm if he were to return to Fiji. The Tribunal finds that the applicant's fear of serious harm or persecution is for reason of the Convention ground of political opinion due to his political profile and that this is the essential and significant reason for the harm feared
112. Whilst the applicant states that he has not suffered any physical harm from the military in Fiji to this point in time, the Tribunal is left in no doubt that, on the basis of all of the evidence before it in relation to the political profile of the applicant and the clear evidence of the response of the military in Fiji to those who oppose it and the recent political events in Fiji, that the applicant faces a real chance of serious harm amounting to persecution from the military if he were to return to Fiji for reasons of his real or imputed political opinion.
113. The matter of the capacity of the applicant to avail himself of state protection in Fiji is vexed. The applicant has claimed that since the coup in 2006 the police have acted in concert with the military which in the view of the Tribunal obviously limits the capacity of the applicant to

obtain any form of protection for the harm feared. Whereas in the past, prior to the coup in December 2006, the evidence of the applicant is that he was readily and willingly able to seek the support and protection from the local police this is not the case after the coup.

114. The Tribunal again refers to the USSD 2008 report which highlights the difficulty in delineating between the police and the military:

**Role of the Police and Security Apparatus**

The Ministry of Home Affairs, headed by interim Prime Minister Bainimarama, oversees the Fiji Police Force, which is responsible for law enforcement and the maintenance of internal security. The RFMF is responsible for external security. The RFMF maintained that it has a broad constitutional responsibility for national security that also extends to domestic affairs; many constitutional scholars in the country rejected that assertion. In June the former deputy commander of the RFMF was appointed as police commissioner.

The police maintained a network of 31 stations and 54 police posts throughout the country. Policing of more remote and smaller islands was done through regularly scheduled visits. Military personnel were assigned to accompany police patrols and jointly man roadblocks, blurring the lines of authority between the two forces.

115. It would appear to the Tribunal that because of the “blurring” between the police and the military, those who may reasonably be expected to afford the applicant a degree of protection are potentially his persecutors. Country information would also indicate that since the coup in 2006 the military and police have at times acted independently and with impunity.
116. In the current context in Fiji and the recent tightening of control by the Bainimarama government and given the Tribunal concerns about the unclear delineation of the military and the police, the Tribunal is not satisfied that the applicant would be able to seek adequate State protection from the harm feared if he were to return to Fiji.
117. A further consideration for the Tribunal is whether the applicant would be reasonably able to relocate to another part of Fiji. In light of the Tribunal’s findings in relation to the applicant and his political profile and its assessment of the current political situation in Fiji, the Tribunal is not satisfied that the applicant could safely relocate in Fiji in order to avoid the harm feared.
118. There is no evidence before the Tribunal that the applicant has a right to enter and reside in a safe third country.
119. In considering all of the circumstances of this case the Tribunal is satisfied that the applicant has a well-founded fear of serious harm that amounts to persecution for a Convention reason and the Tribunal is further satisfied that, if he were to be returned to Fiji, there is a real chance, now or in the reasonably foreseeable future, that he would face persecution for a Convention reason

**CONCLUSIONS**

120. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

## DECISION

121. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.  
Sealing Officers ID: RCHADW