

Reporters Without Borders

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PACIFIC MEDIA CENTRE
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**REPORTERS
WITHOUT BORDERS**
FOR FREEDOM OF INFORMATION

Written submission by Reporters Without Borders and the Pacific Media Centre on the state of freedom of expression and access to information in FIJI

A - Overview of the 2013 Constitution and press freedom situation

Ranked 107th out of 179 countries in the 2014 World Press Freedom Index of Reporters Without Borders, Fiji has improved its ranking in the past year. It rose 10 places from the previous ranking in 2013. The major reason for this improvement was the adoption of a new Constitution on 6 September 2013, criticized as it was in many quarters during 2013, and promised "free and fair" elections by 30 September 2014. There has been considerable hope among news media and civil society groups that the general election will open the door to a free media climate, one that has been lacking since the military coup in December 2006. Over the past few months there has been a marked improvement in public debate and news media have been relatively more robust in terms of published political comment and debate, particularly in news columns and in letters to the editor.

B - The 2013 Constitution, still an obstacle to freedom of information

The Constitution, described by the government as "coup proof", still restricts freedom of the press in four particular areas. The first criticism is that too much executive power is put in the offices of the Prime Minister and the Attorney-General, as they control nearly all appointments to the judiciary and independent commissions. The Attorney-General has far wider powers than other Commonwealth constitutions. The Constitution does not provide the necessary structural protections for the judiciary to be seen to be independent. Secondly, the Chief Justice and President of the Court of Appeal will effectively be political appointments and there is a risk of abuse of power. Journalists are worried that the judiciary could be used by government officials to their own advantage. Fearing judicial reprisals if they criticize the government when covering its activities, many journalists continue to censor themselves.

Thirdly, the Bill of Rights is weakened by "severe limitations on many rights". For example, future governments will no longer need to justify laws limiting rights before an independent court that they are "necessary in a free and democratic society" (as in the abrogated 1997 Constitution). In what is known as the "claw-back clause", they will simply need to show that a limitation is "reasonable" (s.6.5.c). In the past there has been a state clampdown on independent journalists, bloggers and netizens. This so-called claw-back clause makes them vulnerable to selective

government pressure in the future.

Fourthly, there are also few avenues under the Constitution for citizens to participate and ensure "good and transparent government". While there has been more vibrant debate in online commentaries and letters to the editors in the Fiji national press in recent months in anticipation of the election, there is still a climate of self-censorship that has prevailed for the eight years. The Constitution does not give clear enough guarantees of freedom of expression that cannot be later curbed by an unscrupulous government.

The 2013 Constitution makes provision for the incoming national Parliament of Fiji after the election to pass a law to allow the public to exercise their right to access information (s.150). This Freedom of Information provision is the same as in the 1997 Constitution except there is now no longer any requirement for such a law to be passed "as soon as practicable". As well Freedom of Information, the new Constitution provides some safeguards for a free press in Fiji while "simultaneously allow[ing]" the curtailment of such rights if the government wishes. Chapter 1 proclaims the values of "human rights, freedom and the rule of law", but does not specifically declare freedom of the press. However, s. 17 under the Bill of Rights provides for the "right to freedom of speech, expression, thought, opinion and publication", including "freedom of imagination and creativity". It further specifically states "freedom of the press, including print, electronic and other media" as a right. However, s. 17(3) says the law "may limit, or authorise the limitation" of these freedoms in the interests of national security, public safety, public order, public morality, public health and other circumstances, including the curbing of "ill will between ethnic or religious groups". Under s. 17(4), the right of citizens to be free of "hate speech", whether directed against individuals or groups is endorsed. While a preliminary reading of these media freedom rights may seem in conflict with some of the draconian provisions of the 2010 Fiji Media Industry Development Decree, s. 17(3) may in fact be providing a legal cloak justifying the Decree.

C - Mixed responses by the regime on media freedom issues

In October 2012, the High Court in Suva ruled that the major daily newspaper, The Fiji Times, was in contempt of court over an article republished from a New Zealand Sunday newspaper in November 2011 that questioned judicial independence in Fiji. Chief editor Fred Wesley and former publisher Brian O'Flaherty had been found guilty but were not actually sentenced until February 2013. A High Court judge fined the newspaper FJ\$300,000 (US\$160,000) and ordered it to publish an apology within 28 days, fined publisher O'Flaherty FJ\$10,000 (US\$5300) and also sentenced editor Wesley to six months' imprisonment suspended for two years. The penalties were widely criticised as unreasonably harsh and condemned as politically inspired against The Fiji Times, which is unpopular with the regime.

In June 2013, a prominent Fiji Television sports editor, Satish Narayan, was forced to resign after he had complained on camera that the daughter of the country's regime leader, Prime Minister Voreqe Bainimarama, was playing music too loud at an outdoor event. The high school athletics event was organised by the Fiji Sports Council, whose chief executive was Bainimarama's eldest daughter, Litiana Loabuka. The broadcaster was threatened with losing its licence if the editor did not leave.

In August 2013, the executive director of the Citizens' Constitutional Forum (CFF) was sentenced to three months' imprisonment suspended for one year for contempt of court after publishing an article about the Fiji judiciary in the organisation's newsletter. The article outlined research by the United Kingdom's Law Society, which found that the judiciary in Fiji was not independent. Executive director Reverend Akuila Yabaki, who is also the newsletter's chief editor, and the CFF were ordered to pay FJ\$20,000 (US\$10,700) in fines and court costs.

D - Media Industry Development Decree and Media Industry Development Authority (MIDA)

The Media Industry Development Decree has clearly had an impact on the news industry by promoting a climate of self-censorship that followed the military censorship under the previous 2009 Public Emergency Regulation (PER). According to a national survey of the Fiji media conducted by the PACMAS State of the Media and Communication Report in 2013, power had been delegated under the Media Decree "to the Fiji Media Industry Development Authority (MIDA), which has an ongoing responsibility to censor material that is considered threatening to the public interest or order.

The report added that MIDA "has the power to penalise journalists and media companies that publish content considered unsuitable." However, in September 2013, the new director of MIDA, Matai Akauola, formerly general manager of the regional Pacific Islands News Association (PINA), condemned Australian and New Zealand opposition to Fiji's "homegrown solutions". He told Pacific Media Watch in an interview that Australian and New Zealand media "try to dictate to us how we live our lives". But this is balanced by an acceptance that more vigorous debate has been allowed by the news media. In January 2014, Akauola told Radio New Zealand International: "There is

freedom of expression so anyone and everyone can come on board into a nationally televised discussion on issues; we're talking issues and how to progress this nation rather than going back to the old political rivalries."

RECOMMENDATIONS

Reporters Without Borders and the Pacific Media Centre make the following recommendations to the government of Fiji :

- to modify its Constitution in order to ensure independence of the judiciary and prevent any dissuasive effect or use of the judiciary to intimidate the media;
 - to stop issuing indirect threats and refrain from any editorial interference;
 - to take measures to ensure more transparency and access to information;
 - to enact a Freedom of Information law with some urgency;
 - significantly encourage participation to public debate without hindrance;
 - to revoke the Media Industry Development Decree and its draconian punitive measures against journalists, editors and media organisations and adopt self-regulatory media framework encouraging a free press;
 - to encourage international media reporting and scrutiny lift bans on individual journalists
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