

Refugee Review Tribunal

Country Advice Fiji

Fiji – FJI36726 – SDL – Political restrictions – Ted Young – Political activity in Australia 31 May 2010

1. What is the position concerning restrictions on or the banning of the SDL by the Bainimarama Government?

The 5 December 2006 coup, which ousted *Soqosoqo ni Duavata ni Lewenivanua* (SDL) leader Laisenia Qarase (Qarase) and installed the current military regime lead by Frank Bainimarama (Bainimarama), effectively restricted and banned political activity by any political party opposed to the government. Qarase was confined to his home district for several months after the coup. Even when a military state of emergency was lifted in March 2007, government regulations banning public assemblies and intimidation tactics prevented any political opposition against the government from that point forward. The Bainimarama regime organised a People's Charter meeting of political parties on 6 April 2009 to discuss future elections to be held in 2014, but excluded the main challenger SDL¹ from this forum.

A series of events led to a further tightening of the military's control on 9 April 2009, when Fiji's Court of Appeal ruled that Commodore Frank Bainimarama's actions, including declaring a state of emergency and removing Qarase and his ministers from office, were unlawful under Fiji's constitution. The Court of Appeal ordered President Iloilo to dissolve Parliament and appoint an independent interim Prime Minister. On 10 April 2009, President Iloilo dissolved the judiciary and suspended the Fijian Constitution. On 11 April 2009, President Iloilo re-appointed Commodore Bainimarama as interim Prime Minister until 2014.² The Bainimarama government has ruled by decree ever since.

Subsequent efforts to tighten control over any political challenges included the imposition of the Public Emergency Regulations (PER)³ on 16 April 2009, which have been extended every 30 days since inception. The PER prohibits processions and meetings of any organisations perceived to be critical of the government; it prohibits gatherings of three or more people, and gives wide-ranging powers to police to question individuals, enter private property to conduct searches, and to use lethal force in carrying out their duties. While the PER was announced under the guise of ensuring public safety, it is most visibly used to intimidate and threaten citizens from publicly expressing any form of views contrary to the regime, and to prevent the SDL and any other parties from launching a political challenge to the regime. The government

¹ 'Fiji' 2010, *Political Handbook of the World* website, http://library.cqpress.com/phw/document.php?id=phw2010 Fiji&type=hitlist&num=0 - Accessed 31 May 2010 - Attachment 1.

² 'Fiji coup ruled to be unlawful' 2009, *Television New Zealand*, source: *ONE News & Reuters*, 9 April http://tvnz.co.nz/world-news/fiji-coup-ruled-unlawful-2633758 – Accessed 18 June 2009 – Attachment 2; Reporters Without Borders 2009, 'Prior censorship and expulsion of foreign journalists deal "mortal blow" to press freedom', 14 April http://www.rsf.org/Prior-censorship-and-expulsion-of.html – Accessed 18 June 2009 – Attachment 3

³ Republic of Fiji Islands 2009, *Public Emergency Regulations* 2009 (Effective 10 April 2009) PACLII website http://www.paclii.org/fj/legis/num_act/per2009273/ –Accessed 30 March 2010 – Attachment 4.

also placed official censors in all media and print offices in April 2009 to silence any criticism of its actions and to block the printing of opposing viewpoints, or any anti-regime broadcasts.⁴

The PER has effectively outlawed any activities that the SDL and other opposition parties might undertake to challenge the regime, but other strong arm methods of intimidation are also occasionally used against dissenters. For example:

- In early November 2009, the national director of the SDL, Peceli Kinivuwai, a regular critic of the military-led government, was detained and harassed at an army camp in Suva for commenting to overseas media about the expulsion of diplomats. He was held overnight and released on 5 November.⁵
- A September 2009 Amnesty International report titled *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*⁶ provided the following information on the treatment of government critics, reporting that critics are detained, questioned, and monitored:

Government intimidation of its critics is rife. From 10 April until 20 May 2009, the police, military and other government officials arrested approximately 40 people, including journalists, some of whom were then detained, under the PER's broad powers of detention on suspicion of threatening peace and stability in the country. The vast majority of those arrested and detained were questioned without being given the right to see a lawyer, before and during questioning by the police. Although all of them have been released, these short term arrests and surveillance of activists have contributed to the climate of fear in Fiji.

...The ongoing harassment and arbitrary detention of journalists, lawyers, clergy and government critics by the authorities under the guise of the PER is a tactic used to suppress freedom of expression, including any form of dissent. Amnesty International is concerned that the PER appears to permit arbitrary detention and is being used for that purpose.

On 18 August 2009 DFAT⁷ was asked to provide information on the Solivakasama Worldwide Movement (SWM), a group challenging the current regime's legitimacy. DFAT responded and provided general advice on the Fijian government's treatment of organisations and individuals that oppose the government. The DFAT response advised that while leaders of anti-coup groups are usually targeted it is possible that members may also be targeted. DFAT provided the following information:

A1. Post does not have specific information on the Fiji interim government's regard for the Solivakasama Worldwide Movement (SWM). In general, however, the interim government reacts strongly against organisations (and individuals) opposed to their regime. The interim government feels threatened by such opposition movements and has actively sought to quash them. Most visibly, it has used the Public Emergency Regulations (PERs) to prevent groups of people meeting without a permit

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⁴ Human Rights Watch 2010, 'UN Rights Council: Demand End to Fiji Abuses', 9 February 2010 http://www.hrw.org/en/news/2010/02/09/un-rights-council-demand-end-fiji-abuses?print - Accessed 31 May 2010 – Attachment 5.

⁵ Amnesty International 2009, 'Harassment of Government Critics Continues in Fiji', 10 November http://www.amnesty.org.au/news/comments/22068/ - Accessed 2 March 2010 – Attachment 6.

⁶ Amnesty International 2009, *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*, September, ASA 18/002/2009, pp.22-24 – Attachment 7.

⁷ DIAC Country Information Service 2009, *Country Information Report No. 09/61- Fiji: Imputed Political Opinion*, (sourced from DFAT advice of 18 August 2009), 18 August – Attachment 8.

and to censor the media, so it has become virtually impossible to express views contrary to those of the regime publicly.

A2. There have been several instances where prominent figures in anti-coup organisations have been harassed, intimidated, banned from travel and arbitrarily detained. According to a leading human rights organisation in Fiji, in the month of April this year, for example, there were over 20 documented cases of people being threatened by interim government representatives, "called to the barracks" for questioning, being under military surveillance and or being harassed by censors. It is likely more incidences went unreported. It appears the leaders of anti-coup organisations are usually the target of these acts, but it is possible acts against members do occur but are more low-level or inconspicuous. Many people now exercise a considerable degree of self-censorship, especially when in public or talking over the phone or by email.

Events Targeting the SDL in 2010

SDL Party members and supporters who criticise the current regime continued to be constrained and harassed by the current regime in 2010. 8 Several notable events are listed below:

- The latest 30-day extension of the Public Emergency Restrictions was announced on 24 May 2010, according to *Radio New Zealand*⁹
- According to a 2 March 2010 ABC Radio Australia broadcast, interim Prime Minister Bainimarama announced that any politician who "played a role" in Fijian politics since 1987 would be banned from running for office in future elections, currently scheduled to be held in 2014. This directive would effectively prevent any experienced SDL politician from contesting the elections and the move is interpreted as a signal that the current regime intends to eliminate any politicians from the SDL and other parties who are not closely allied with the military. ¹⁰
- In February 2010 a decree was issued giving the Prime Minister the power to stop government pensions and benefits to those perceived to criticise/undermine the regime or incite hatred, more than forty SDL members were expected to lose their pensions immediately. On 24 May 2010, the government reversed this decision and announced it was restoring pensions to former members, including SDL parliamentarians.

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⁸ Amnesty International 2010, 'Fiji Government misrepresents human rights record to UN', 10 February, PRE01/042/2010 http://www.amnesty.org/en/for-media/press-releases/fiji-government-misrepresents-human-rights-record-un-20100210-0 - Accessed 2 March 2010 – Attachment 9. For other recent reports on the treatment of government critics see the Fijian human rights NGO Citizens' Constitutional Forum submission to the United Nations 2010 Periodic Review: Citizens' Constitutional Forum 2009, Citizens' Constitutional Forum Submission for UPR on Fiji, 22 February, p. 2 http://www.ccf.org.fj/about_us/annual_report/UPR.pdf - Accessed 2 March 2010 – Attachment 10; Amnesty International 2010, 'Fiji: Downward spiral continues for human rights following persecution of prominent human rights lawyer', 19 Janaury, ASA 18/001/2010 http://www.amnesty.org/en/library/asset/ASA18/001/2010/en/8fb0dcc2-801c-49d3-855f-f37e8da4f007/asa180012010en.html - Accessed 2 March 2010 – Attachment 11.

⁹ 'Fiji public emergency restrictions extended again' 2010, *Radio New Zealand* 24 May http://www.rnzi.com/pages/news.php?op=read&id=53745 - Accessed 31 May 2010 - Attachment 12.

¹⁰ Fiji to ban established politicians from election' 2010, *ABC Radio Australia*, 2 March 2010 http://www.radioaustralia.net.au/pacbeat/stories/201003/s2834577.htm -- Accessed 31 May 2010 – Attachment 13.

^{11 &#}x27;Fiji's regime stops pensions to 20 former government ministers' 2010, Radio New Zealand International website, 7 February http://www.rnzi.com/pages/news.php?op=read&id=51782 - Accessed 2 March 2010 - Attachment 14

¹² Marau, M. 2010, 'Ban lifts on state penion', *Fiji Times Online*, 24 May http://www.fijitimes.com/story.aspx?id=147047 - Accessed 28 May 2010 – Attachment 15.

- On 27 February 2010, an SDL meeting of members and supporters at the party's headquarters in Suva was raided by soldiers and police. The group, which included two former MPs, was detained at a military camp and released during the night. The raid was believed to be prompted by a 600 000 signature petition calling for the restoration of democracy, delivered to Bainimarama in February 2010.¹³
- In January 2010, the military declared a gathering at the SDL headquarters illegal in violation of the PER and declared that they would not tolerate any secret political meetings. Republic of Fiji Military Forces Land Force Commander Colonel Pita Driti said any gatherings in relation to political activities need a permit. He warned government critics "to keep low and try to cooperate with us...otherwise they will be in for something really hard in terms of how we will treat them this year." 15

2. Was Ted Young a Minister in the Qarase Government and has he been in Australia recently?

Ted Young held the position of Minister for Provincial Affairs in the ousted Qarase government. ¹⁶ No exact dates of his tenure were located.

Ted Young was in Australia in May 2009 and participated in several events, including:

- Participant in the Centre for Democratic Institutions' Political Party Development (PPD) course, which was conducted from 18 to 29 May 2009 in Canberra. This was the fourth occasion the course has been conducted, being held annually since 2006. The two-week course is based at the Crawford School of Economics and Government at the Australian National University¹⁷
- An *ABC Radio*¹⁸ presenter remarked on 2 March 2010 that Ted Young left Fiji in May of 2009 fearing repercussions from the Fiji government over his vocal opposition to the regime and stated that Mr. Young continues his criticism "from his new home in Australia", indicating that he may currently reside in Australia. Information corroborating this could not be located.

3. Is there any information to suggest that Fijians who, while in Australia, express support for the SDL may face harm on their return to Fiji because of their political opinion?

All sources of information located indicated that it is very likely that any other individuals in Australia who openly express support for the *Soqosoqo ni Duavata ni Lewenivanua* (SDL), or

¹³ Lealea, S., 2010, 'Fiji Regime Hits Out at SDL Supporters', Solivakasama website, 28 February http://solivakasama.net/2010/02/28/fiji-regime-hits-out-at-sdl-supporters/ - Accessed 2 March 2010 – Attachment 16; 'Fiji campaigner claims democracy demand has impact' 2010, Radio New Zealand News International, 2 March – Attachment 17.

¹⁴ 'Fiji ousted premier's party reported holding "secret meeting" 2010, *BBC Monitoring Asia Pacific*, source: Fiji Village website, 20 January – Attachment 18.

¹⁵ Human Rights Watch 2010, 'UN Rights Council: Demand End to Fiji Abuses', UNHCR website, 9 February http://www.unhcr.org/refworld/country....FJI,4b7a562ac,0.html - Accessed 1 March 2010 – Attachment 19.

¹⁶ 'Ousted Fiji PM launches court action over coup' 2007 ABC News 5 October

http://abc.gov.au/news/stories/2007/10/05/2051372.htm - Accessed 28 May 2010 – Attachment 20.

¹⁷ CDI's 2009 Political Party Development Course 19-29 May' Centre for Democratic Institutions, The Australian National University website http://www.cdi.anu.edu.au/.asia pacific region/2008-09/2009 05 AP PRO PPD.htm - Accessed 28 May 2010 – Attachment 21.

¹⁸ 'Fiji to ban established politicians from election' 2010, *ABC Radio Australia*, 2 March 2010 http://www.radioaustralia.net.au/pacbeat/stories/201003/s2834577.htm - Accessed 31 May 2010 – Attachment 23.

who participate in anti-regime political demonstrations in Australia, will not be harmed, provided they do not continue anti-regime activities in Fiji. Only two instances were located where an individual's anti-regime activities in Australia resulted in any repercussions by the Fijian government upon return. In both cases the individuals were very high-profile persons and the circumstances highly unusual.

The two individuals targeted by the Fiji government for their activities in Australia were the deposed Prime Minister of Fiji who visited Australia and has since been barred from leaving Fiji again, and an Australian academic married to a Fijian co-author of the 1997 constitution, who was refused entry to Fiji. Details of these cases are summarised below:

- The Fijian regime took an interest in the political activities of ousted Prime Minister, Laisenia Qarase during a trip to Australia in March 2009. His activities included attending rallies and fund raising for his legal costs. Claiming that Qarase's activities in Australia had "caused a lot of uncertainty and instability" in Fiji, the regime banned him from traveling again. The regime had kept an eye on Australian media and was aware that Qarase had made anti-government comments during the trip. It called the comments "inciteful". 19
- Dr. Padma Lal, a Fiji-born Australian citizen was deported on 12 January 2010, one day after arriving in Fiji to work on environmental projects. Dr. Padma Lal is married to Professor Brij Lal, also a Fiji-born Australian citizen, who was expelled from Fiji in November 2009 for making public comments critical of the government. Her husband is also one of the authors of the now-abrogated 1997 Fiji constitution. No official reason was given for her expulsion though she claims she witnessed an expulsion order signed by Commodore Bainimarama.²⁰

An April 2010 DFAT²¹ report specifically addressed the treatment of people in Australia who participated in demonstration activity opposing the current regime in Fiji and their treatment on return. The report stated that, separate from the two special cases outlined above, DFAT could not point to any instances of harm or harassment directed at individuals upon their return to Fiji. However, the report comments that if an individual returned from overseas and proceeded to carry out anti-regime activities in Fiji, they would likely come to the attention of the government and could be harassed, questioned, or detained.

The DFAT report specifically addressed the treatment of members of the activist group called Fiji Democracy and Freedom Movement, but also addressed overseas political groups generally, and stated:

According to our contacts, the organisers of the FDFM [the anti-regime group Fiji Democracy and Freedom Movement] have not been targeted specifically on their return to Fiji. Nor have we been able to verify any instances where an individual has been targeted because of their involvement with FDFM. However, if an organiser upon return were then suspected of ongoing anti-regime activity in Fiji, then harassment, persecution and detention would likely follow. We also note there are relatively few Fiji-focused overseas pro-democracy groups. As with FDFM, we are not aware of any specific action having been taken against these groups in Fiji.

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¹⁹ McLean, Tamara 2009, 'Fiji's ousted PM may face travel ban', AAP Bulletins, 15 July – Attachment 24 Hill, B. 2010, 'Fiji deports expelled academic's wife', Radio Australia, 12 January http://www.radioaustralianews.net.au/stories/201001/2790869.htm – Accessed 19 May 2010 – Attachment 25

²¹ DIAC Country Information Service 2010, *Country Information Report No. 10/19 – Fji 10150: Fiji Democracy and Freedom Movement*, (Sourced from DFAT advice of 21 April 2010), 21 April – Attachment 26. (CISNET Fiji CX242532)

The same DFAT²² report also stated that there is no information indicating that relatives of individuals engaged in anti-regime protest activity overseas are targeted or harassed by the government:

Post is not aware of any reports of relatives of organisers of overseas pro-democracy groups being harassed, persecuted or detained on their return to Fiji.

While there are no reports that the government is targeting participants in demonstrations in Australia upon their return, DFAT²³ did note in the same report that a new development may portend changes in the future. A February 2010 change in the criminal law now extends jurisdiction to Fijians overseas and there is now the possibility that laws used in Fiji to prevent anti-regime activity may be used against Fijians engaging in political activism abroad, though to date there has not yet been such a case. DFAT comments:

We also note the interim government enacted a Crimes Decree on 1 February 2010 that extends geographical jurisdiction beyond Fiji for the first time. The Decree has yet to be tested, but could be used to prosecute anti-regime protestors for their actions overseas.

DFAT²⁴ also notes that recent comments by a military commander may signal that the government is becoming less tolerant of vocal opposition:

In early 2010, Fiji's media reported comments made by Brigadier Pita Driti (Fiji military's Land Force Commander) in which he publicly threatened human rights defenders. He reportedly said the interim government would "hunt detractors down".

Prior comments by the government about overseas protest activity have been largely dismissive. Following a 24 May 2009 anti-Fiji government protest in Hyde Park Sydney attended by SDL supporters, Fiji Military Land Force Commander Colonel Pita Driti told *Real Fiji News* that such gatherings will not change one thing. In remarks to the press, he stated "Fijians living overseas should not be involved with these things happening at home because they are not staying here to experience it". Other than the two notable exceptions discussed earlier, there is no evidence over the past few years indicating that ordinary Fijian citizens who participate in anti-regime political activism, or who openly support the SDL while in Australia will be targeted or harassed. An August 2008 DFAT report stated it knew of no specific instances where returnees to Fiji were being questioned upon return about their activities in Australia. Australia.

Attachments

1. 'Fiji' 2010, *Political Handbook of the World* website, http://library.cqpress.com/phw/document.php?id=phw2010_Fiji&type=hitlist&num=0 - Accessed 31 May 2010.

²² DIAC Country Information Service 2010, *Country Information Report No. 10/19 – Fji 10150: Fiji Democracy and Freedom Movement*, (Sourced from DFAT advice of 21 April 2010), 21 April. – Attachment 26

²³ DIAC Country Information Service 2010, *Country Information Report No. 10/19 – Fji 10150: Fiji Democracy and Freedom Movement*, (Sourced from DFAT advice of 21 April 2010), 21 April – Attachment 26

²⁴ DIAC Country Information Service 2010, *Country Information Report No. 10/19 – Fji 10150: Fiji Democracy and Freedom Movement*, (Sourced from DFAT advice of 21 April 2010), 21 April – Attachment 26.

²⁵ 'Military will not be moved' 2009, Real Fiji News website, 24 May http://realfijinews.wordpress.com/2009/05/24/military-will-not-be-moved/#comments – Accessed 20 October 2009 – Attachment 27

²⁶ DIMA Country Information Service 2009, *Country Information Report No.08/69 – Fiji political persecution FJI 9361, FJI 9367*, (sourced from DFAT advice of 7 August 2009), 7 August – Attachment 28.

- 2. 'Fiji coup ruled to be unlawful' 2009, *Television New Zealand*, source: *ONE News & Reuters*, 9 April http://tvnz.co.nz/world-news/fiji-coup-ruled-unlawful-2633758 Accessed 18 June 2009.
- 3. Reporters Without Borders 2009, 'Prior censorship and expulsion of foreign journalists deal "mortal blow" to press freedom', 14 April http://www.rsf.org/Prior-censorship-and-expulsion-of.html Accessed 18 June 2009.
- 4. Republic of Fiji Islands 2009, *Public Emergency Regulations 2009* (Effective 10 April 2009) PACLII website http://www.paclii.org/fj/legis/num_act/per2009273/ Accessed 30 March 2010.
- 5. Human Rights Watch 2010, 'UN Rights Council: Demand End to Fiji Abuses', 9 February 2010 http://www.hrw.org/en/news/2010/02/09/un-rights-council-demand-end-fiji-abuses?print Accessed 31 May 2010.
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- 7. Amnesty International 2009, *Fiji: Paradise Lost: A Tale of Ongoing Human Rights Violations: April-July 2009*, September, ASA 18/002/2009, pp.22-24.
- 8. DIAC Country Information Service 2009, *Country Information Report No. 09/61- Fiji: Imputed Political Opinion*, (sourced from DFAT advice of 18 August 2009), 18 August. (CX231832)
- 9. Amnesty International 2010, 'Fiji Government misrepresents human rights record to UN', 10 February, PRE01/042/2010 http://www.amnesty.org/en/for-media/press-releases/fiji-government-misrepresents-human-rights-record-un-20100210-0 Accessed 2 March 2010.
- 10. Fijian human rights NGO Citizens' Constitutional Forum submission to the United Nations 2010 Periodic Review: Citizens' Constitutional Forum 2009, Citizens' Constitutional Forum Submission for UPR on Fiji, 22 February, p. 2 http://www.ccf.org.fj/about_us/annual_report/UPR.pdf Accessed 2 March 2010.
- 11. Amnesty International 2010, 'Fiji: Downward spiral continues for human rights following persecution of prominent human rights lawyer', 19 January, ASA 18/001/2010 http://www.amnesty.org/en/library/asset/ASA18/001/2010/en/8fb0dcc2-801c-49d3-855f-f37e8da4f007/asa180012010en.html Accessed 2 March 2010.
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- 17. 'Fiji campaigner claims democracy demand has impact' 2010, Radio New Zealand News International, 2 March. (FACTIVA)
- 18. 'Fiji ousted premier's party reported holding "secret meeting" 2010, *BBC Monitoring Asia Pacific*, source: Fiji Village website, 20 January. (FACTIVA)
- 19. Human Rights Watch 2010, 'UN Rights Council: Demand End to Fiji Abuses', UNHCR website, 9 February http://www.unhcr.org/refworld/country,,,,FJI,,4b7a562ac,0.html Accessed 1 March 2010.
- 20. 'Ousted Fiji PM launches court action over coup' 2007 ABC News 5 October http://abc.gov.au/news/stories/2007/10/05/2051372.htm Accessed 28 May 2010.
- 21. 'CDI's 2009 Political Party Development Course 19-29 May' Centre for Democratic Institutions, The Australian National University website http://www.cdi.anu.edu.au/.asia_pacific_region/2008-09/2009_05_AP_PRO_PPD.htm Accessed 28 May 2010.
- 22. Deleted.
- 23. 'Fiji to ban established politicians from election' 2010, *ABC Radio Australia*, 2 March 2010 http://www.radioaustralia.net.au/pacbeat/stories/201003/s2834577.htm Accessed 31 May 2010.
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- 26. DIAC Country Information Service 2010, Country Information Report No. 10/19 Fji 10150: Fiji Democracy and Freedom Movement, (Sourced from DFAT advice of 21 April 2010), 21 April. (CISNET Fiji CX242532)
- 27. 'Military will not be moved' 2009, Real Fiji News website, 24 May http://realfijinews.wordpress.com/2009/05/24/military-will-not-be-moved/#comments Accessed 20 October 2009.
- 28. DIMA Country Information Service 2009, *Country Information Report No.08/69 Fiji political persecution FJI 9361*, *FJI 9367*, (sourced from DFAT advice of 7 August 2009), 7 August. (CX207339)