



**UPR Submission
Fiji
March 2014**

Summary of Main Issues of Concern

Fiji remains a military backed government that restricts fundamental rights such as freedom of speech, association, and assembly. Since 2009 the police have arbitrarily arrested and detained human rights defenders, trade union leaders, journalists, and others perceived to be critical of the government. Impunity for security force abuses remains a major concern. Fiji's military government has seriously compromised the independence of the judiciary. No UN special procedures have been permitted to visit Fiji since 2007—in spite of Fiji having accepted the recommendation to “allow and facilitate the visit of special procedures mandate holders who have asked for it.”

This submission focuses on five core areas: freedom of expression and human rights defenders, impunity for security force abuses, workers' rights, independence of the judiciary, and the 2014 elections.

Freedom of Expression and Human Rights Defenders

Since Commodore Frank Bainimarama took power in a military coup on December 5, 2006, his government has arbitrarily arrested and detained critics, and instituted heavy censorship. Fiji lifted the Public Emergency Regulations on January 7, 2012, and in doing so implemented some of the recommendations it had accepted during the previous UPR session on Fiji. However the military and police have continued to arrest and detain human rights defenders, journalists, and labor leaders, particularly when they take part in any form of public protest, thereby failing to implement UPR recommendations it had also accepted to “establish conditions allowing for freedom of expression, assembly and democratic dialogue, including by ensuring protection from harassment and freedom for political activists and human rights defenders” and to “restore an environment in which all of Fiji's citizens can meet freely and express political opinions without fear or retribution.”

The military government has arbitrarily enforced restrictions on gatherings and meetings of nongovernmental organizations, religious groups, and other civil society organizations. For example:

- On December 31, 2013, approximately 300 resort workers from two hotels in Nadi orchestrated a peaceful strike to protest against their current work conditions. The government deemed the strike illegal, and arrested and charged six unionists in connection to the incident. In a court hearing all six pleaded not guilty as the strike had not been initiated by the union.¹
- On November 8, 2013, police arrested 14 protestors near the Fiji Revenue Customs Authority building because they were wearing t-shirts calling on the government to make the budget public.²
- On September 6, 2013, a group of 30 people protested ahead of the presidential assent to the new constitution outside of the Government House in the capital. The police arrested 14 people for gathering without a permit, but released them after a couple of hours.³
- In May 2012, police revoked a permit for a procession on the International Day Against Homophobia and Transphobia on the day of the march, claiming that the event had been cancelled. This was

¹Repeka Nasiko, “Hotel Strike,” *Fiji Times*, January 1, 2014, <http://www.fijitimes.com/story.aspx?id=255707> (accessed Feb 2, 2014).

²“Arrests during Fiji's budget day labelled juvenile,” *Radio New Zealand International*, November 12, 2013, <http://www.radionz.co.nz/international/programmes/datelinepacific/audio/2575969/arrests-during-fiji-s-budget-day-labelled-juvenile> (accessed Jan 20, 2014).

³“14 arrests in Fiji after anti-constitution protest,” *Radio New Zealand International*, September 6, 2013, <http://www.radionz.co.nz/international/pacific-news/220673/14-arrests-in-fiji-after-anti-constitution-protest> (accessed March 11, 2014).

scheduled to be Fiji's first public lesbian, gay, bisexual, transgender (LGBT) rights event since the government decriminalized homosexuality in 2010.⁴

Fiji also failed to implement its promise to "abolish any policy or decree that restricts the freedom of the media or the rights of freedom of association and movement." The 2010 Media Decree forbids publications that are "against public interest or order," restricts foreign media ownership, and imposes heavy penalties. Media groups are generally issued short-term licenses which require frequent renewals, compelling these groups to rely on continuing government approval for their existence.

In January 2013, the government disbanded a constitutional committee headed by Professor Yash Ghai, an internationally renowned human rights lawyer from Kenya, and instead handed over duties for constitution drafting to the attorney general's chambers and government legal officers. Contrary to important recommendations accepted in the 2010 UPR review by the government of Fiji, the new constitution, promulgated on September 6, 2013, contains several provisions which interfere with rights of freedom of expression, assembly, and association. The constitution sets out overly broad limitations of these rights in the "interests of national security, public safety, public order, public morality, public health, or the orderly conduct of elections."

Impunity for Security Force Abuses

The constitution grants "absolute and unconditional immunity" to all members of the public service and security forces, as well as public office holders, from any criminal prosecution or other kind of liability, including through a military tribunal, for actions taken "as a result of any direct or indirect participation in, appointment, or involvement in Government" from the 2006 coup d'état until the new parliament officially starts functioning. While there are some exceptions to this immunity, including for sexual offences or corruption, the grant of immunity does apply to murder, torture, arson, and other violent crimes. It also reinstates immunity from prosecution for the 1987 coup. The immunity provisions also state compensation will not be paid for any offenses falling within their remit. The constitution explicitly provides that these immunity provisions shall never be revoked, altered, or made subject to judicial review.

During its 2010 UPR review, Fiji accepted recommendations to take active measures to investigate and prosecute those responsible for acts of torture and ill treatment, to prevent, investigate, and punish the excessive use of force, arbitrary detention, threats, and harassment directed against human rights defenders by security forces. Fiji also accepted to put an end to impunity for members of the military and police force. Specifically, the government accepted recommendations to align legislation with international standards against torture and ill treatment, and to invite and facilitate a visit by the Special Rapporteur on torture. Since 2009, two notable cases call into serious question Fiji's commitment to ending torture and ill treatment.

- In March 2013, a video surfaced online, allegedly depicting what appear to be soldiers from the Fiji military brutally torturing and beating two men. One of the men was Iovane Benedito, a 24-year-old man who escaped from Korovou prison in Suva on November 18, 2012.⁵ The Fijian police force announced an investigation into the incident depicted in the video, and later fired three prison officers for actions related to the incident. There is little evidence to suggest the investigation resulted in criminal charges against anyone involved. Bainimarama publically announced that he would stand by the military officers implicated in the video, arguing that they were completing their duties to "make sure we sleep peacefully at night."⁶
- On September 17, 2012, five prisoners escaped from Naboro Prison, all of whom were recaptured days later by the security forces and the police. Two of the men appeared before the Magistrates Court on

⁴ "Fiji police cancel gay pride march," *The Australian*, May 17, 2012, <http://www.theaustralian.com.au/news/latest-news/fiji-police-cancel-gay-pride-march/story-fn3dxity-1226359207312> (accessed Jan 15, 2014).

⁵ "Fiji police 'disturbed' by horrific video," *TVNZ*, March 5, 2013, <http://tvnz.co.nz/world-news/fiji-police-disturbed-horrific-video-5360214> (accessed Feb 12, 2013); "PM stands by his men," *The Fiji Times Online*, March 9, 2013, <http://www.fijitimes.com/story.aspx?id=227271> (accessed March 11, 2014).

October 1 with visible injuries and had difficulties walking. The other three men were not brought to court for alleged medical reasons.⁷

Independence of the Judiciary

Questions and recommendations about the independence of the judiciary were raised in Fiji's 2010 UPR review and remain a serious concern today. In 2010, the government of Fiji committed to the Human Rights Council to respond to a request by the UN Special Rapporteur on the Independence of Judges and Lawyers to visit but to date has continued to ignore her request.

The government of Fiji has continually failed to uphold the rule of law and has encroached on the independence of the judiciary. The courts have used broadly defined contempt provisions to limit freedom of expression and silence the media.

In September 2012, William Marshall, a former Fiji Appeal Court judge, issued a petition claiming that Attorney General Sayed-Khaiyum had been interfering with the justice system. Following this allegation, Fiji's three major political parties—the United Peoples Party, SDL Party, and the National Federation Party—issued a joint statement urging the president to conduct an independent judicial inquiry into the claims.⁸

In 2013, the High Court charged the nongovernmental organization, Citizen's Constitutional Forum (CCF), and its director, Reverend Akuila Yabaki, with contempt of court following the reprinting of a report by the United Kingdom Law Society Charity critiquing the rule of law and the independence of the judiciary in Fiji. On August 10, the Fiji High Court found both CCF and Yabaki guilty on the grounds that the publication was intended to scandalize the court and undermine the judiciary of Fiji. The court ordered CCF to pay a fine and court costs of approximately \$US12,000, and Yabaki received a 3 months prison sentence (suspended for 12 months) and was ordered to pay \$2300 (fine and court costs).⁹

The High Court also charged the *Fiji Times* and its editor, Fred Wesley, with contempt of court after the newspaper published statements by a third party deemed offensive to the judiciary. In February 2013, High Court Justice William Calanchini ordered the newspaper to pay a fine of \$US160,400 for contempt of court, sentenced Wesley to six months imprisonment suspended for two years, and fined the newspaper's former publisher, Brian O'Flaherty, \$5300. The court also ordered the *Fiji Times* to publish a formal apology to the judiciary, which it did on March 27, 2013.¹⁰

Worker's Rights

In September 2012, Commodore Frank Bainimarama expelled an International Labour Organisation (ILO) delegation that was trying to investigate serious violations of worker's rights. The ILO called upon the government of Fiji to reconsider their decision, to no avail. The Fijian authorities prevented the ILO from completing a mission in June 2013 as well.¹¹

In July 2013, the government deployed a heavy police and military presence to Lautoka Mill to intimidate Fiji sugar workers who were voting on whether to go on strike to demand an increase in wages and highlight work safety concerns at the mill. The International Trade Union Confederation (ITUC) reported that the mill

⁷Letter from Amnesty International to Commodore Bainimarama, "Torture of 5 Prisoners," December 7, 2012, <http://www.amnesty.org/en/library/asset/ASA18/002/2012/en/1049b33c-2aa9-44c1-ab83-74b614f90254/asa180022012en.pdf> (accessed March 11, 2014).

⁸"Fiji opposition calls for justice inquiry," *Australia Network News*, September 21, 2012, <http://www.abc.net.au/news/2012-09-21/an-calls-for-inquiry-into-fiji-justice-system/4274462> (accessed March 11, 2014).

⁹"Fiji: Citizens group CCF and Rev Yabaki fined \$20,000 in contempt case," *Pasifika Media Association*, August 9, 2013, <http://pacificmedia.org/archives/2017> (accessed February 7, 2014); and Amnesty International, "New contempt of court ruling, a setback for freedom of expression in Fiji," public statement, August 13, 2013, <http://www.amnesty.org/en/library/asset/ASA18/003/2013/en/7181e6a2-174e-46cb-b343-213d36838676/asa180032013en.pdf> (accessed Feb 11, 2014).

¹⁰"Apology," *Fiji Times*, March 27, 2013, <http://www.fijitimes.com/story.aspx?id=229205> (accessed February 7, 2014).

¹¹International Trade Union Confederation, "Fiji's Expulsion of ILO Mission 'Disgraceful,'" September 20, 2012, <http://www.ituc-csi.org/fiji-s-expulsion-of-ilo-mission?lang=en> (accessed March 11, 2014); "Fiji says 'miscommunication' to blame for ILO expulsion," *Australia Network News*, September 20, 2012, <http://www.abc.net.au/news/2012-09-20/an-ilo-condemns-the-expulsion-from-fiji/4272246> (accessed January 10, 2014).

management threatened to turn workers' names over to the government. Police and military were situated at union polling sites, and threatened and intimidated the workers.¹²

While the new Fiji constitution recognizes workers' rights to join a union and participate in union activities, it simultaneously provides broad limitations for the "purpose of regulating the registration of trade unions" and the "collective bargaining process" that serve to seriously undermine the exercise of those rights. Similarly problematic restrictions are placed on the right to freedom of association, which can be curbed in the interest of "national security, public safety, public order, public morality, public health, or the orderly conduct of elections."

The ILO has publically condemned Fiji's poor record on freedom of association. Juan Somavia, then director-general of the ILO, said in a press statement that the decision to expel the ILO mission from the country only "puts a greater spotlight on the critical situation of freedom of association in Fiji and only fuels international solidarity with the Fiji Trade Union Congress, the Fiji Islands Council of Trade Unions, and the Fiji Teachers' Association."¹³

2014 Elections

The military government has scheduled elections for September 2014. At the time of writing, four political parties have registered for the election. On March 5, 2014, Bainimarama resigned as prime minister and military commander to begin campaigning as the leader of a new political party.

To date, the government has not published the electoral law, which outlines the rules for electoral participation, thereby inhibiting opposition parties' ability to campaign and undermining civil society efforts to monitor the campaigns and to participate in campaign initiatives.

In 2012 police arrested former prime minister and vocal critic of the military government, Laisenia Qarase, and charged him with abuse of office. On August 3 the High Court sentenced Qarase to one-year in prison.¹⁴

On July 11, 2012, police arrested Vyas Deo Sharma, a Fiji Labour Party official and former member of Parliament, together with 14 Vuda residents and supporters of the Fiji Labour Party, who were meeting at a private location. Police detained them at the Lautoka Police Station and questioned them overnight before releasing them.¹⁵

Recommendations to the Fiji Government

- Issue an open invitation to all Special Procedures of the UN Human Rights Council, and swiftly facilitate the visits of Special Procedures who have requested access, and allow representatives of the International Labor Organization, and other international observers, to visit.

Regarding Human Rights Defenders and Freedom of Expression

- End government interference with the media.
- Immediately cease the harassment and arbitrary arrest of its citizens, particularly human rights defenders, journalists, labor organizers, and opposition party members.
- Publicly declare and ensure that civil society organizations can operate free of government interference.

¹² "Fiji: sugar workers ballot on strike action despite military and police intimidation," *IUF*, July 29, 2013,

<http://cms.iuf.org/?q=node/2646> (accessed Jan 10, 2014); and http://www.ituc-csi.org/IMG/pdf/circular_no_02_-_fiji-ilo_2014_en.pdf

¹³ International Labour Organisation, "ILO mission to Fiji aborted," *press release*, September 19, 2012,

http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_189933/lang--en/index.htm (accessed February 13, 2013).

¹⁴ "Fiji's former prime minister Laisenia Qarase jailed over corruption," *Guardian*, August 3, 2014,

<http://www.theguardian.com/world/2012/aug/03/fiji-laisenia-qarase-jailed> (accessed February 7, 2014).

¹⁵ Amnesty, "Annual Report 2013," 2013, <http://www.amnesty.org/en/region/fiji/report-2013> (accessed March 11, 2014); Letter from

Human Rights Watch to Commodore Bainimarama, "Democratic elections," December 5, 2012,

http://www.hrw.org/sites/default/files/related_material/Dec2012_Fiji_JointLetter.pdf.

- Independently investigate and discipline or prosecute, as appropriate, any officials found to be carrying out any activities restricting the right to freedom of expression or threatening, harassing, or committing crimes against human rights defenders.
- Review all cases of people facing criminal investigations on account of exercising their rights to freedom of expression, assembly, or association, and discontinue proceedings against them.
- Revise the constitution, and all laws, to ensure that the rights of individuals and organizations to defend and promote human rights are protected, including the right to peacefully criticize and protest government policies *vis-a-vis* public protest assemblies and labor strikes.
- Reform media ownership and licensing rules to allow media organizations to function freely and without fear of government reprisal for their reporting.

Regarding Impunity for Security Forces Abuses

- Order the Criminal Investigation Department of the police to conduct an independent investigation into allegations of torture and ill-treatment of persons held in police custody, and hold accountable those found responsible.
- End excessive use of force by the police or military and ensure that any and all incidents where excessive force has been used are investigated, and perpetrators prosecuted to the full extent of the law.

Regarding Rule of Law and the Independence of the Judiciary

- Publicly commit to uphold the fundamental principles of independence of the judiciary and prosecutors, and desist from taking any actions that undermine those principles.
- Respond immediately and positively to the UN Special Rapporteur on the independence of judges and lawyers' request to visit the country which was made on January 18, 2007, and reiterated on June 26, 2008. On November 9, 2008, the Permanent Mission of Fiji articulated strong support for this request before the UN General Assembly.
- Following the elections, the newly elected government should implement key reforms to provide for a judiciary independent of the government and the military.

Regarding Worker's Rights

- The government of Fiji, having ratified core ILO conventions 29, 87, 98, 100, 105, 111, 138, and 182, should commit to securing the realization of these rights to freedom of association and collective bargaining, and prevention of discrimination, forced labor, and child labor in both Fijian law and practice.
- The government of Fiji should amend article 20 on "employment relations," in the constitution and bring it into line with international labor rights standards. While the article recognizes the right to form and join trade unions, it permits limitations on freedom of association and the right to collectively bargain for the purposes of regulating "the registration of trade unions" and the "collective bargaining process." These provisions undermine the ability of trade unions to fully defend the fundamental right of workers on the job.

Regarding the 2014 Elections

- Review voter registration lists to correct any irregularities and ensure that all eligible persons are able to exercise their right to vote.
- Ensure that civil society is provided access and protection to participate in and monitor the conduct of the elections, as set forth by the ICCPR in Article 25 which expressly states the right to take part in the conduct of public affairs.
- Invite international, independent election observers to monitor the election.