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# Fiji: Paradise Lost

## A Tale of Ongoing Human Rights Violations

April – July

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

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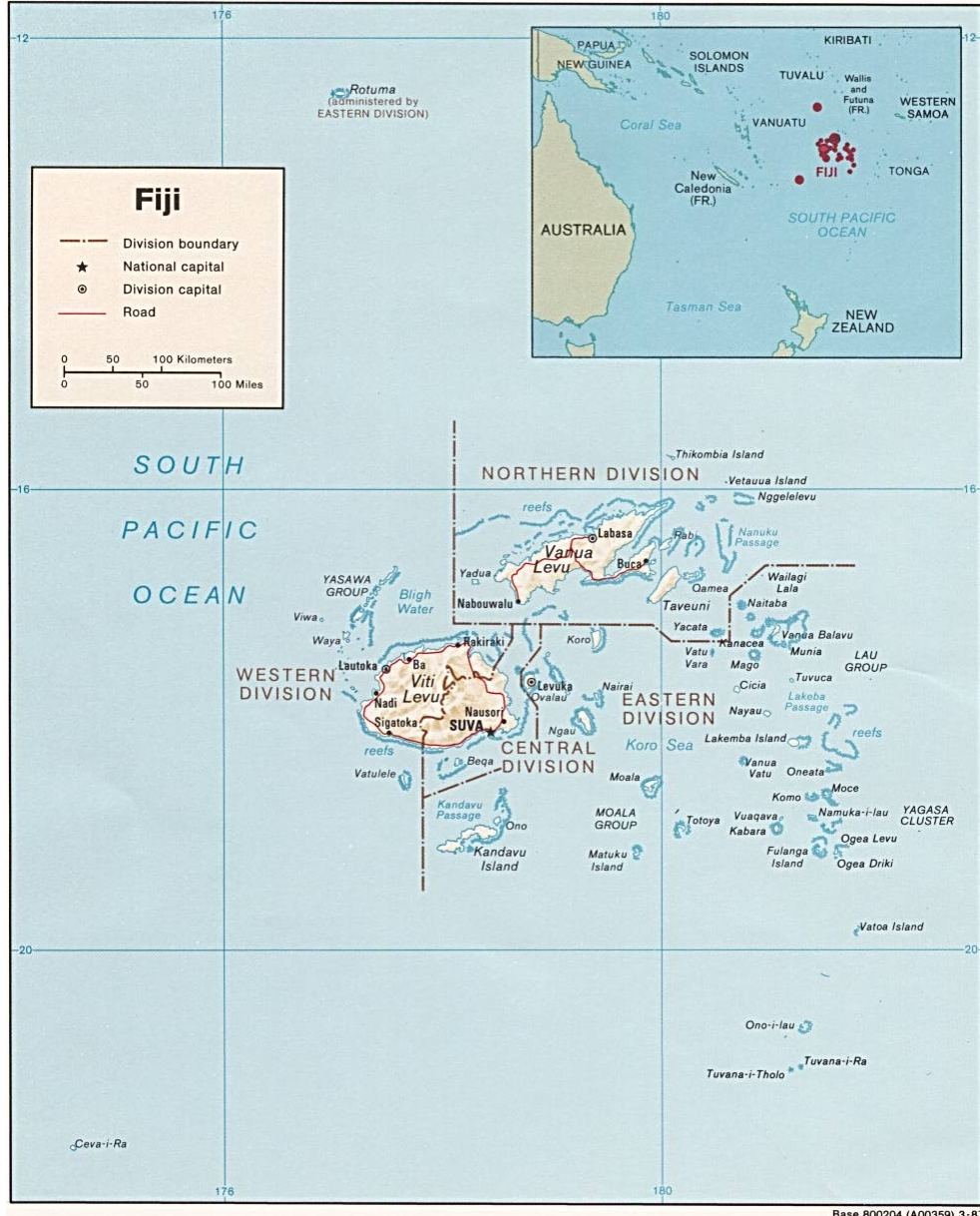


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# MAP OF FIJI



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"COURTESY OF THE UNIVERSITY OF TEXAS LIBRARIES, THE UNIVERSITY OF TEXAS AT AUSTIN."

# 1. INTRODUCTION AND SUMMARY

“There is no Constitution, the entire judiciary was sacked, the Fiji Human Rights Commission has been and continues to be a strong supporter of Bainimarama. The military government has passed a decree which gives them blanket amnesty to do what they want do to ‘enforce martial law’. There is nothing to stop the soldiers from harming or killing us if we try to protest, march or speak out.”

- Prominent Fijian Human Rights Defender, 16 April 2009<sup>1</sup>

This report illustrates Amnesty International’s concerns about widespread human rights violations which followed then President Ratu Josefa Iloilo’s abrogation of the Fiji Constitution on 10 April 2009. These include violations of the rights to freedom of assembly, opinion, expression and movement, the right to a fair trial, and freedom from arbitrary detention.

Amnesty International was present in Fiji during the abrogation of the Constitution and its aftermath and managed to conduct extensive consultations and interviews with activists and stakeholders about the human rights situation there. During the

mission, Amnesty International obtained first hand information about ongoing human rights violations and the Fijian people's prevailing fears about the impunity with which the authorities violate human rights there.

These violations have been facilitated, among other things, by the unilateral and unconstitutional removal by the President of legal safeguards against human rights violations, including human rights provisions in the Constitution; provisions on the independence of the judiciary and of legal professionals in general; and the granting of wholesale impunity to officials who violate human rights when implementing Presidential decrees.

In this report, Amnesty International calls on the government of Fiji to put an immediate halt to all human rights violations by members of the security forces and government officials, including the arbitrary arrests; intimidation and threats; and assaults and detention of journalists, government critics and others. The Fijian government should also immediately repeal the Public Emergency Regulations (PER) in force since 10 April 2009, whose broad and sweeping provisions have enabled officials to violate key human rights with impunity. Finally, the government must ensure that all serious violations of human rights are subject to prompt, independent, effective and impartial investigations and that suspected perpetrators, including those suspected of ordering these acts, regardless of rank, are brought to justice in proceedings which meet international standards of fairness without recourse to the death penalty.

On 9 April 2009, Fiji's Court of Appeal ruled that the government of Frank Bainimarama, Army Commander appointed in the wake of the 2006 coup, was unconstitutional. Bainimarama had led the coup on 5 December 2006, following a protracted public stand-off between the Qarase led multi party government and the Republic of Fiji Military Forces (RFMF). Before the coup Bainimarama had accused then Prime Minister Laisenia Qarase's government of corruption and of institutionalising racism.

In response, President Ratu Josefa Iloilo announced in a nationally televised speech at 11am on 10 April 2009 that he was taking over executive authority of the government and abrogating the 1997 constitution. He also announced that he was revoking all judicial appointments, effectively sacking all members of the judiciary. Furthermore, he stated that a new government was to be sworn in which would work towards holding democratic elections in 2014.

After his 10 April announcement, the President immediately issued public emergency regulations effective for the next 30 days. He stated that he had the backing of Fiji's security forces and had directed Prime Minister Commodore Frank Bainimarama to take all reasonable steps to ensure that peace and order be maintained:

*“...following consultations with the Commander of the Republic of Fiji Military Force, I have decided that we must once and for all and in a decisive manner, map out a smooth path to holding parliamentary elections based on the electoral reforms and other reforms as set out under the Charter.*

*To facilitate the holding of true democratic and parliamentary elections I hereby abrogate the 1997 Constitution.*

*With this abrogation I appoint myself as the Head of State of Fiji under a new legal order. To effect the abrogation I decree the following:*

- *Abrogation of the 1997 Constitution*
- *Appointment of the Head of State*
- *Continuation of Existing Laws; and*
- *Revocation of Appointment of All Judicial Officers*

*I shall be making further decrees in the days to come.”<sup>2</sup>*

Since the December 2006 coup d’etat and the appointment of a military-controlled government, with Bainimarama as both commander of the army and prime minister, the military had been encroaching on Fiji’s political and administrative system, including on the independence of judges and lawyers. In the process, they violated a wide array of human rights. (see Appendices 1 and 2). With the April 2009 abrogation of the constitution and the declaration of emergency, Commodore Frank Bainimarama and the military council consolidated their virtually absolute power in Fiji. Parliament had previously effectively been abolished with the deposing of the Qarase government in December 2006.

The Fiji Constitutional Amendment Act 1997 Revocation Decree<sup>3</sup>, promulgated on 10 April 2009 states that the president is now empowered to make laws which will be observed and enforced:

*“In exercise of the powers vested in me as President and Commander in Chief of the Republic of the Fiji Military Forces, I also hereby decree that all Decrees promulgated under my hand and seal shall be regarded as law and shall be observed and enforced.”<sup>4</sup>*

President Iloilo appointed himself as the president of the country under section 2 of the Executive Authority of Fiji Decree 2009.<sup>5</sup> Section 5<sup>6</sup> prevents any court action that questions the validity of this decree or any other decree that the President promulgates.

As outlined in section 4 of the Executive Authority of Fiji Decree, the president granted himself absolute power from the date of the abrogation to the time when a new constitution is promulgated:

*“Until such time as a Parliament is elected in accordance with a Constitution yet to be adopted, the President of the Republic of the Fiji Islands shall have the*

*following powers:*

- (a) to appoint a Prime Minister by Decree;*
- (b) to appoint other Ministers on the advice of the Prime Minister;*
- (c) to make laws for the peace, order and good government of Fiji by Decree acting in accordance with the advice of the Prime Minister and Cabinet;*
- (d) to exercise the executive authority of Fiji which is hereby vested in the President.”<sup>7</sup>*

After the abrogation of the constitution, the security forces acted swiftly, stepping up their presence in and around government offices and other strategic locations. There was a prevailing sense of panic amongst those in public service, especially the senior officials. Those whom Amnesty International spoke with from the 10 - 13 April feared for the worse as they began comprehend what the abrogation of the constitution would mean in reality.

A planned protest on 14 April in Suva, the capital, by the Fiji Law Society resulted in approximately 10 lawyers turning up at the government buildings where the courts are located. The police had secured the area and did not allow any lawyer to enter the buildings, including lawyers in the Legal Aid Commission who had their offices within the cordoned off area. A senior official of the Legal Aid Commission whom Amnesty International spoke to was visibly distressed and stated that he could not believe that they were being locked out of their own offices. Two prosecutors were in tears as they described the intimidation they and their colleagues experienced at the hands of the authorities as they were locked out of their offices.

The Public Emergency Regulations (PER)<sup>8</sup> as decreed by President Iloilo, included provisions on severe censorship of all Fiji media. Police arrested several journalists, politicians and activists for breaching the PER during the first few weeks that emergency regulations were in place. The abrogation of the constitution, the promulgation of the PER, the dismissal of the judiciary, subsequent political arrests and intimidation of activists have led to a climate of fear and desperation amongst human rights defenders, lawyers, the NGO community and society as a whole.

After the judiciary was dismissed in April 2009, there was no recourse for people whose rights had been violated. The Fiji Human Rights Commission (FHRC) had come out soon after the President's action to pronounce that the Fijian Constitution's Bill of Rights Chapter continued to exist despite the abrogation of the Constitution by the President. The Commission was also muted in its criticism of the abrogation of the constitution, saying that whilst it was unfortunate and disappointing, it (the FHRC) understood the reasons for Ratu Iloilo's actions.<sup>9</sup>

In a statement following the abrogation of the Constitution in April, the FHRC stated that:

*“While the commission expressed sadness and disappointment at the President's decision to abrogate the Constitution, Dr Shameem said Ratu Josefa's hand may*

*have been forced to take such an action.*

*“The Commission understands that His Excellency felt that the Court of Appeal decision in the Qarase case left him, as Head of State and symbol of the unity of the State, with no option but to abrogate the Constitution,” she said.<sup>10</sup>*

The Commission had been supportive of the military takeover in December 2006 and had published a report in January 2007 providing justification of the military putsch.<sup>11</sup> In its report *The Assumption of Executive Authority on December 5th 2006 by Commodore J.V. Bainimarama, Commander of the Republic of Fiji Military Forces: Legal, Constitutional and Human Rights Issues*, the Commission's then Director justified the military takeover and accused the deposed government of crimes that were tantamount to 'crimes against humanity'. Human rights defenders in Fiji have since ridiculed the report and accused the FHRC of being a coup apologist.<sup>12</sup> Human rights activists whom Amnesty International spoke to in Fiji and abroad had said that the 'bizarre actions' of the Commission in supporting the military coup d'etat had adversely affected the public's perception of its credibility, independence and impartiality.<sup>13</sup>

On 20 May 2009, President Iloilo promulgated a decree which prevented the Fiji Human Rights Commission from receiving complaints against, investigating, questioning or challenging the legality or validity of any Decrees made by the President.<sup>14</sup> Human rights activists in Fiji and overseas heavily criticised this move.<sup>15</sup> Prominent Fiji human rights activist Shamima Ali characterized the action as farcical stating that the action was:

*“... [a] mockery of a national institution on human rights, because the issue that's contained in there are in total contradiction to each other. On one hand, it cannot investigate human rights abuses and the abrogation of the constitution, and on the other hand three commissioners promote human rights in the country. It really doesn't make sense.”<sup>16</sup>*

## 1.1 METHODOLOGY

The information in this report is based on a visit carried out by Amnesty International to Fiji from 4 – 18 April 2009. The initial research aimed at examining the human rights situation in Fiji since the December 2006 military coup d'etat and to look at other human rights related developments there. The dates for the mission were chosen to coincide with the appeal of Laisenia Qarase in the Fiji Court of Appeal against Prime Minister Commodore Frank Bainimarama, President Iloilo and the interim government. The High Court had ruled in October 2008 that the military coup d'etat in December 2006 and the subsequent appointments of a caretaker government by President Iloilo were lawful. The appeal ruling was much anticipated nationally, regionally and internationally, as the decision of the appellate court would have long lasting ramifications for the country. The information in this report is also based on an analysis of the recent legal developments and decrees and on other information gathered since the visit to Fiji.

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During the trip to Fiji, Amnesty International interviewed approximately 80 people representing community, national, regional and international organizations, government departments and faith based organizations. There were also a number of interviews conducted with members of the public who did not represent any organisation. In many cases, the names and other identifying information about these individuals have been deleted for security reasons to prevent reprisals.

## 2. BACKGROUND

The Fiji Islands is a group of more than 320 islands in the South Pacific Ocean with a population of approximately 870,000 people. The two major ethnic groups, Indigenous Fijians who make up 57% of the population and the Indians who make up 37% of the population have often been politically polarised due to the history of colonial leadership in the country. In the last few decades, poor leadership and deteriorating relationships have been caused in part by conflicts about accessibility to land; a deep mistrust of political leadership; and the contentious issue of economic participation of both groups.

### **The Republic of Fiji Military Forces (RFMF)**

The Fijian military forces were established by the colonial government and participated as a Labour Corps in World War I in Europe and in World War II in the Pacific (Solomon Islands and Bougainville). They also helped to quell the communist insurrection in Malaya from 1952 to 1956. Following this and because of the reputation of Fijian soldiers in the war in the Solomons and Malaya, they gained a reputation as being amongst the best jungle fighters in the world. Fijian participation in UN Peacekeeping began in 1978 when the United Nations Interim Force in Lebanon (UNIFIL) was established. Their successful participation in UNIFIL and in the Multinational Observer Force (MFO) in the Sinai Desert became a determining factor in the high demand for the Fijian army in other peacekeeping assignments throughout the world. It was also beneficial to the economy, as it brought much needed foreign exchange to Fiji, leading to massive recruitment drives to fill the quota for UN Missions. As a result participation of the Fijian military in other UN peacekeeping missions have continued today.

### **Fiji Coups**

Fiji's coup culture began in May 1987 when then Lieutenant Colonel Sitiveni Rabuka overthrew the Indian dominated government of the Labour and National Federation Party Coalition. The Rabuka coup and subsequent moves by the interim government set up afterwards saw the rise of ethno-nationalism, culminating in a constitution which preserved political leadership and other constitutional positions for indigenous Fijians only. These changes marginalised the Indian community, descendants of those who had been brought from India by the then British colonial government to work on sugar plantations sometime after Fiji was ceded to Great Britain in 1874.

In 1997, through positive dialogue among the political leaders and a closer working relationship between the government leadership and a group of Fiji Indian

parliamentarians, constitutional amendments were adopted and a new and more balanced constitution was passed by parliament which removed many of the discriminatory provisions in the previous one. In April 1999 the Indian-dominated Labour Party won the general elections. However, on 19 May 2000, a group of men led by George Speight entered parliament and held members of the government hostage. Many parliamentarians were held hostage for more than 56 days before a deal was struck to have them released. Later, the hostage takers were charged and convicted of treason-related charges, including a number of people who had taken oaths after Speight tried to swear in a new government.

In November 2000, a group of men in the counter revolutionary warfare (CRW) unit (some of whose members had participated in the George Speight-led putsch) mutinied against the Commander of the Fiji military, Commodore Frank Bainimarama. Bainimarama was shot at and had to flee for his life. The response of soldiers loyal to Bainimarama was to seize members of the CRW unit, beating and torturing a number of them, resulting in the deaths of eight men. Police later investigated these cases in 2003 to 2006 and were reportedly on the verge of charging Bainimarama with charges relating to the death of these soldiers, including treason related charges, as Bainimarama had allegedly threatened to overthrow the government beginning in December 2003.

On 5 December 2006, following a protracted public stand-off between the Laisenia Qarase- led multi party government and the military, the Republic of Fiji Military Forces (RFMF) led by Commodore Frank Bainimarama executed a military coup d'etat against Qarase's government. Bainimarama had accused then Prime Minister Qarase's government of corruption and of institutionalising racism.

Before it was deposed the Qarase government was about to table in parliament a bill that guaranteed customary fishing rights for indigenous Fijians. The military and some business people argued against it, saying that such a law would adversely affect tourism investments, as the customary owners would demand excessive payments for use of the foreshore. The government had also tabled the Truth and Reconciliation Bill that would provide amnesty to those who were involved in the Speight-led coup, the majority of whom are Indigenous Fijians.

One of the direct consequences of the military takeover in 2006 was extensive human rights violations by the security forces. Prominent political figures including critics of the military government were arbitrarily detained and subjected to torture or other cruel, inhuman or degrading treatment or punishment by members of the Republic of Fiji Military Force. In February 2007, the military admitted to taking more than 1,100 people to the military barracks, who were beaten, otherwise treated inhumanely and forced to do military type drills such as running and being forced to carry heavy loads.

## 2.1. REACTION TO THE DECISION OF THE COURT OF APPEAL IN THE QARASE V BAINIMARAMA APPEAL

The abrogation of the 1997 Constitution by President Ratu Iloilo followed the decision of the Fiji Court of Appeal in the Qarase v Bainimarama Appeal case<sup>17</sup> which was delivered on the afternoon of Thursday 9 April. In their decision, the three judges of the Court of Appeal declared as unlawful the acts of Commodore Frank Bainimarama in assuming executive authority; declaring a state of emergency on 5 December 2006; dismissing Laisenia Qarase from the office of Prime Minister; and appointing a caretaker Prime Minister, Jona Senilagakali. The Court also declared that Frank Bainimarama's subsequent appointment as Interim Prime Minister and the appointment of other members of the interim government by President Iloilo to be unlawful under the 1997 Constitution. They recommended that the President appoint an independent care-taker prime minister; advised the dissolution of parliament; and called for new elections.<sup>18</sup>

Amnesty International met with several lawyers, human rights activists and business people in Suva, the capital, on 9 April after the judgment was delivered. They were very happy with the decision and saw it as a way out of the situation that Fiji found itself in following the military takeover. There was a real sense of hope and people were quietly celebrating. People were greeting each other with hugs and kisses and everyone had a renewed sense of optimism that something positive was going to come out of this ruling.

That evening, Commodore Frank Bainimarama in a live TV address announced that he had briefed the President immediately after the Court of Appeal ruling and said that he respected the decision of the court. He also mentioned that he was returning to the barracks and would be there until the President made the decision on how to move the country forward. People whom Amnesty International spoke to at the time took this as a further cause for celebration.

However, after the constitutional abrogation on 10 April, Amnesty International observed that there was a prevailing sense of dread about Fiji's immediate and long term future. There was also a great deal of frustration with the growing uncertainty and the curtailment of personal freedoms, particularly with freedom of speech.

A human rights defender told Amnesty International:

*"I am so frightened of what they will do to any of us if we speak out. This is not the time to protest as they will surely hurt us. They have no restraint, once they start. I fear for our staff and their families."<sup>19</sup>*

On 11 April 2009 Frank Bainimarama was sworn in as Prime Minister for the second time since January 2007 by President Iloilo under a new legal order and his cabinet ministers were sworn in a few days later. On being appointed, Bainimarama

declared that the public emergency would continue and that elections would not be held before September 2014, according to the President's directive to his caretaker government.<sup>20</sup>

## 2.2 THE PUBLIC EMERGENCY REGULATIONS (PER)

The Public Emergency Regulations (PER) were issued and came into force at midday on 10 April 2009 immediately following the speech by the President. The Regulations were initially valid for 30 days, but have been extended for further periods every month since then. On 1 July, the government announced its intention to extend the PER to December 2009.

The PER grants broad powers to the authorities in the name of "maintaining public safety".<sup>21</sup> These powers include:

- the prohibition of and powers to disperse assemblies (sec. 3)
- the closing of roads (sec. 4)
- "control of persons", namely the powers to place them under house arrest and similar restrictions (sec. 5)
- the prohibition, restriction or regulation of movement of persons in and out of towns, districts, islands etc. (sec. 6)
- the imposition of curfews (sec. 7)
- the prohibition of the use of loudspeakers (sec. 14)
- censorship – restrictions on broadcasting or publication, and to this end, obliging the media to submit material for approval in advance and ordering publishers or broadcasters to "cease all activities and operations" (sec. 16)
- declaring areas, including premises, as "protected places" into which persons may enter only by special permission, and from which any person who is there in contravention of the regulation may be forcibly removed, including by "the taking of defensive measures which involve or may involve danger to the life of any person entering or attempting to enter the protected place" – in other words, using lethal force (sec. 17)
- detaining persons, including when police or army personnel are not satisfied "as to the purpose for which he or she is in the place in which he or she is found" and is suspected of endangering "public safety or the preservation of the peace, or is about to commit an offence against these Regulations". Such detentions may be extended, by a "magistrate or police officer" for up to seven days (sec. 18)

- the prohibition of “manufacture, sale, use, display or possession of any flag, banner, badge, emblem, device, picture, photograph, uniform or distinctive dress” (sec. 19)

- the power of “any police officer or member of the Armed Forces” to search any person, vehicle or building on reasonable suspicions, as well as to use force including firearms, in effecting arrest. The Regulation adds that “no police officer nor any member of the Armed Forces nor any person acting in aid of such police officer or member using such force shall be liable in any criminal or civil proceedings for having by the use of such force caused harm or death to any person” (sec. 21)

The Regulation authorizes soldiers “to perform all or any of the duties and functions of a prisons officer or police officer” (sec. 23). Those charged with committing offences under the Regulation may be tried *in camera*. The maximum penalty is two years’ imprisonment and a fine of FJ\$ 1,000 <sup>22</sup>(sec. 25).<sup>23</sup>

The Regulation has enabled the government to violate key human rights, while ensuring impunity for those committing these violations. These rights are enshrined in the Universal Declaration on Human Rights (UDHR) and are largely considered rules of customary international law, (namely international rules derived from consistent state practice and consistent consideration by states of these rules as binding on them - *opinio juris*) which are binding on all states, irrespective of their ratification of relevant treaties. Among them are:

- The right to freedom of opinion and expression (Article 19 of the UDHR)
- The right to freedom of peaceful assembly and association (Article 20 of the UDHR)
- The right to liberty, and freedom from arbitrary detention (Article 9 of the UDHR)
- The right to freedom of movement (Article 13 of the UDHR)
- The right to a fair trial (Articles 10-11 of the UDHR)
- The right freedom from interference with one’s privacy (Article 9 of the UDHR - violated by unwarranted searches provided for the PER)
- The right of anyone whose rights have been violated to effective remedy (Article 19 of the UDHR - violated by the total impunity for perpetrators provided for by the PER)

The fact that soldiers and police acting under the Regulation enjoy total impunity, including for the use of firearms, raises serious concerns that other rights, including the right to life (Article 3 of the UDHR) and to freedom from torture and other cruel, inhuman or degrading treatment or punishment (Article 5 of the UDHR), are also

seriously jeopardized by the Regulation. At particular risk are real or impugned government critics.

As will be discussed below, the enforcement of the PER in practice has led to numerous human rights violations. The authorities have used the PER, under the guise of maintaining law and order, to deter any public criticism of the government, including by the short term detention of human rights activists, lawyers, judges, and journalists. This series of arrests and detentions has had the effect of intimidating members of civil society, engendering a climate of fear among them.

### 2.3. RIGHTS UNDER THE 1997 CONSTITUTION

The abrogation of the 1997 constitution meant that there were no guarantees that the human rights enshrined therein would still be protected. The Bill of Rights chapter of the 1997 Constitution had provided for the protection of a number of human rights. These include:

- the right to life (Article 22)
- protection of personal liberty (Article 23)
- freedom from slave labour or servitude (Article 24)
- freedom from cruel or degrading treatment (Article 25)
- freedom from unreasonable searches and seizure (Article 26)
- fair trial rights (Articles 27-29)
- freedom of expression (Article 30)
- freedom of assembly (Article 31)
- freedom of movement (Article 34)
- freedom of religion or belief (Article 35)
- the right to equality before the law (Article 38)<sup>24</sup>

Not all human rights are protected in the Constitution, nor are all its human rights provisions fully in accord with international law and standards. Nevertheless Amnesty International is seriously concerned that the abrogation of the Constitution removes crucial safeguards against human rights violations at a time when other safeguards, including an independent judiciary, have also been removed. Article 187(3) of the Fiji Constitution had provided for the circumstances in which

emergency regulations could be implemented, which would then allow for the limitations of a number of rights. Certain conditions provided for under section 187 were never met because there was no parliament to ratify the decision of the President nor was there any known formal advice from cabinet to the president to impose martial law. At any rate, the President chose to ignore Section 187(3), the Bill of Rights and the Constitution as a whole in promulgating the Public Emergency Regulations, and instead abrogated the Constitution.

The Fiji courts had consistently ruled that section 43(2) of the Constitution allowed for the application of the International Covenant on Civil and Political Rights (ICCPR) and other international human rights treaties in the interpretation of the Bill of Rights chapter, even though Fiji is not a state party to these treaties.<sup>25</sup> Section 43(2) states:

*“In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter.”<sup>26</sup>*

The abrogation of the Constitution and the dismissal of judges has therefore in effect removed legal protection against human rights violations, whether directly under the Constitution or indirectly through the application of international law in the courts’ interpretation of the Constitution.

# 3. HUMAN RIGHTS VIOLATIONS IN THE WAKE OF THE CONSTITUTION'S ABROGATION

## 3.1 VIOLATIONS OF FREEDOM OF EXPRESSION

Media censorship began immediately after the abrogation of the Constitution as police and government officials entered newsrooms in media outlets to begin scrutinizing and censoring the press. Journalists who failed to adhere to the PER were detained, threatened and intimidated by government and security officials.

The PER gave unprecedented powers to the Permanent Secretary for Information, Lieutenant Colonel Neumi Leweni, to revoke the licence of any media outlet that prints, publishes or broadcasts anything that portrays the government in a negative light.<sup>27</sup> Section 16 of the PER outlined the powers of censorship of the government:

*16.—(1) Where the Permanent Secretary for Information has reason to believe that any broadcast or publication may give rise to disorder and may thereby cause undue demands to be made upon the police or the Armed Forces, or may result in a breach of the peace, or promote disaffection or public alarm, or undermine the Government and the State of Fiji, he or she may, by order, prohibit such broadcast or publication.*

*(2) In order to give effect to subsection (1) above any broadcaster or publisher upon direction by the Permanent Secretary for Information must submit to him or her all material for broadcast or publication material before broadcast or publication.*

*(3) Any person or entity which fails in any way whatsoever to comply with the provisions of this section may be ordered by the Commissioner of Police or Officer Commanding upon advice from the Permanent Secretary for Information to cease all activities and operations.*

The vaguely worded provisions of Section 16, such as “promote disaffection or public alarm” can be interpreted broadly and used to suppress any criticism of the government by the media. The authorities have in fact used these provisions to arrest and deport journalists and severely censor the press, instilling fear amongst journalists. In this regard Article 19 of the UDHR enshrines the right to freedom of expression, including “...freedom...to seek, receive and impart information and ideas through any media and regardless of frontiers”.

On the afternoon of 10 April a few hours after the abrogation of the constitution, Ministry of Information officials met with the senior executives of media outlets in Fiji to advise them of the PER.<sup>28</sup> Ministry of Information officials and plain-clothes police were then placed in all newsrooms to censor all reports before they could be printed or broadcasted.

This censorship has led to a distortion of the news. In an incident involving the European Union (EU), a senior diplomat told Amnesty International<sup>29</sup> that the European Union office in Suva had to demand that a local media outlet correct the news item that it ran saying that the EU is supportive of the Fijian government and that it will give funds to Fiji. The EU statement had in fact announced that no funds would be made available to Fiji.

The censorship of political stories is not limited to Fiji news. Reports of civil disturbances and unrest around the world, for example in Thailand, were also censored. Officials ordered newsrooms to remove such items, prompting a senior journalist to observe that the authorities do not want the public to “get ideas” about resistance or uprising.<sup>30</sup>

### 3.2 ARRESTS AND DEPORTATIONS OF JOURNALISTS

In the aftermath of the constitution’s abrogation, the authorities have used the PER to arrest at least 20 journalists after instituting widespread censorship of the media. None of the journalists arrested was charged and all are released at the time of writing. Nevertheless Amnesty International believes that the authorities are using short-term arrests and intimidation as a tactic to suppress freedom of expression.

Journalists and editors spoke to Amnesty International on the condition of anonymity for fear of their lives and their loved ones. Anonymous attacks on journalists started even before the abrogation of the constitution. Two weeks beforehand, newspaper editor Netani Rika’s home was attacked with home-made petrol bombs, just a few hours after a similar attack was launched against a staunch critic of the military government, Sakiusa Raivoce.<sup>31</sup> Although it has not been established who the attackers were and there were no casualties, the two incidents raised fears amongst journalists about their safety. Raivoce was later arrested and detained for two nights in early August by the security forces for allegedly breaching the public emergency regulations.<sup>32</sup>

On 12 April 2009, the authorities interrogated three non-Fijian journalists who were covering the political and legal developments in Fiji that week, including Australia Broadcasting Corporation Pacific Correspondent Sean Dorney. The three were detained and deported on 13 April. None of the deported journalists was charged with any offences; however the deportation of these journalists is yet another tool used by the authorities to deter criticism by intimidation.

On 15 April police detained Edwin Nand, a local TV journalist, for 24 hours for providing TV footage to Sean Dorney. Nand was held at the Police Academy in Nasese and was questioned by very senior detectives from the Criminal Investigations Department (CID). Police also detained and questioned Kavai Damu, a local journalist, but released him without charge on the same day.

On 16 April police then arrested Pita Ligaiula, a local journalist and stringer for overseas newspapers, for articles that he had written which appeared in Australian newspaper, *The Australian*. He was released the next day. Amnesty International was told that Pita Ligaiula was detained because the Permanent Secretary for Information Lt Col. Neumi Leweni had not been given an opportunity to vet the editorial piece, in accordance with section 16(2) of the PER regulations. During his detention, security officials intimidated and threatened Pita with imprisonment under the PER's provisions.

Also on 16 April Samisoni Pareti and Makereta Komai, two experienced journalists working for the Pacific regional news service Pacnews, were 'invited' to attend a briefing by Ministry of Information officials where they were warned about the way they reported the news. Radio New Zealand International stringer and local freelance journalist Matelita Ragogo was also 'asked' to attend the briefing. The ministry officials told the journalists that they should start practicing 'journalism of hope', meaning they should refrain from any negative reporting about the government, or face tough penalties from the authorities.<sup>33</sup>

On 9 May 2009, police arrested internet news service Fijilive journalists Dionisia Tabureguci and Shelvin Chand, and detained them under the PER about a report they published on the fijilive.com website on the release of several soldiers and a policeman who had been convicted of manslaughter for the death of 18 year old Sakiusa Rabaka in June 2007. The report was pulled off the website after 30 minutes when police visited the fijilive office and arrested the two journalists. Radio New Zealand correspondent, Matelita Ragogo reported that Tabureguci and Chand were released on 11 May 2009 after spending two nights in custody. The journalists were released without charge but were warned by the police to be careful about their reporting.

On 13 May 2009 Lt Col. Neumi Leweni confirmed to Radio New Zealand International that the convicted soldiers had been released a week earlier.<sup>34</sup> He argued that the Prisons Act gave the Commissioner of Prisons the discretion to allow for prisoners to be released on compulsory supervision orders (CSOs) if their record and behaviour warrants it.

Police in Labasa detained Theresa Ralogaivau, a Fiji Times journalist, for seven hours on 14 May 2009 over a story published on 11 May about a community in Labasa being terrorised by a group of people who were growing marijuana. Although the story had been vetted by the censor in the Fiji Times newsroom, the initial story had quoted a police spokesperson who later denied that he had spoken to Ralogaivau.<sup>35</sup> Police claimed that she was in breach of the PER because she had not talked to their spokesman who had been quoted in the story.

It is clear from the incidents described above that the PER is being applied to protect the interim government from any criticism or dissent and to suppress any comment or news item that may be critical of the government and the security forces.

Amnesty International met with several journalists who spoke of the intimidation and threats from government officials about what they were allowed to publish, print or broadcast.

One journalist said:

*“This is the worst time to be a journalist. They’re employing Gestapo-like tactics to intimidate us. They threatened us and told us that if we are not careful they can beat us up badly.”<sup>36</sup>*

Others who had also been censored were frightened and saddened by what was happening but chose to remain silent, as did many publishers and editors for fear of either being shut down, or facing further intimidation, threats or even violence from the military. If media outlets were shut down this would in turn put employees’ and their families’ livelihoods at risk. The PER provisions and the subsequent intimidation by the security forces has led to self-censorship among the press corps.

A local TV employee told Amnesty International:

*“They come in around 4pm and they start to look at all the footage and reports that we have collated and edited for the 6pm news. They can order us to cut out anything which may be interpreted as negative. We have always reported the news independently but now, there is absolutely no independence, no free press. It is absolutely disgusting and a violation of our freedom of expression.”<sup>37</sup>*

### 3.3. HARASSMENT, INTIMIDATION AND DETENTION OF CRITICS AND ACTIVISTS

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.

A Fijian activist told Amnesty International:

*“People that we have spoken to are very angry about the way in which the authorities are interfering with their freedoms and are openly threatening people against dissent. They say that it is not good and Fiji has become a dictatorship that will continue to take away their freedoms until nothing is left! People feel helpless!”<sup>38</sup>*

On 15 April, police took Young People’s Concerned Network (YPCN) member and human rights activist Peter Waqavonovono to a police station in Suva, where a senior police officer warned him about the PER and its implications. Police informed him that he had to be very careful as given the current situation, the rule of law and the rights and freedoms of prisoners or detainees were not too important for the authorities. He was released after a few hours of detention and questioning. On 22 May, Talei Tora, one of the military’s censors, contacted Peter Waqavonovono and warned him not to speak to the overseas media as the military were monitoring all overseas media interviews with Fijians.<sup>39</sup>

A number of human rights activists informed Amnesty International that military vehicles often patrol the streets where the known activists live or work. A report filed by the YPCN stated that one of their active members reported seeing a car known to belong to military intelligence parked outside his home early on the morning of the 21 April where the occupants were watching his house.<sup>40</sup>

Fiji Youths United, a new network of youth advocates in Fiji, organised youths to wear black arm bands during April 2009, in protest at the constitution’s abrogation, military dictatorship, judicial appointments, and media censorship. Police arrested four youths on 29 April, two in Suva and two in the city of Lautoka for distributing the black arm bands. The youths were released after being questioned for three hours.<sup>41</sup>

Police arrested 60 year old politician Iliesa Duvuloco and five other men under the PER and detained them on 17 April for four days for distributing pamphlets written in the Fijian vernacular which was highly critical of the leaders of the interim government, including President Iloilo. Duvuloco was released when he needed medical assistance and was examined by doctors at the Suva Private Hospital. Sources told Amnesty International that military officers beat the six men and forced them to undertake military-type drills.<sup>42</sup>

On 20 May, police Criminal Investigation Department (CID) officers questioned three prominent lawyers Richard Naidu, Jon Apted, and Tevita Fa at the Central Police Station over allegations that they had been blogging on a popular anti-government blog site rawfijineews.<sup>43</sup>

Reports indicate that the police seized Naidu, Apted and Fa’s computers and copied their hard drives.<sup>44</sup> All three lawyers were named on a pro-military blog, realfijineews, as anti-regime bloggers.<sup>45</sup> Realfijineews named others, including human rights and women’s rights activist Virisila Buadromo, her partner Arshad Daud, youth activist Peter Waqavonovono, former journalist Imraz Iqbal and entrepreneur Laisa Digitaki.<sup>46</sup> These five were also the group rounded up by the military and

assaulted at the Queen Elizabeth Barracks on 25 December 2006, for publicly criticizing the 5 December military coup.

On 14 May 2009 police officers took in for questioning the former president of the Methodist Church of Fiji, Reverend Manasa Lasaro and detained him for two nights at the police station, following statements he made denouncing the abrogation of the constitution and the public emergency regulations. He had also reiterated the church's opposition to the "oppression" of the interim government.<sup>47</sup> The government's chief censor under the PER Lieutenant Colonel Neumi Leweni had warned the pastors and members of the Methodist church that the government would not hesitate to cancel the much anticipated annual church conference in August 2009 if their statements were deemed to threaten the peace and stability of the country.<sup>48</sup>

On 4 June, the government announced that it had cancelled the annual church conference. Despite the appeal of the leadership of the Methodist Church to Prime Minister Bainimarama to reconsider the cancellation, the government announced that the church conference may be cancelled for the next five years.<sup>49</sup> The authorities insisted that the government would consider allowing the conference to be held if the church sacked two of its most senior ministers who had both served as Presidents of the Methodist Church and were accused by Bainimarama of being too politically active against the government.<sup>50</sup>

On the evening of 20 July, police arrested Adi Teimumu Kepa, paramount chief of Rewa and the powerful Burebasaga confederacy (one of the three Fijian confederacies) from her home and questioned her overnight at the Central Police Station in Suva.<sup>51</sup> Adi Teimumu was arrested because of a letter that she wrote informing the people of her province (which was to host the Methodist Conference this year) that the annual conference would still take place despite the government's announcement that it was cancelled. Amnesty International was informed that after interrogation by police, Adi Teimumu was taken to the military barracks on 21 July for further questioning by senior army officers about her letter. She spent the night of 21 July in the cell at the army barracks instead of a cell at the police station.

On 22 July, Adi Teimumu and four senior members of the Methodist church were charged under the PER. The Methodist ministers who were charged included the President and General Secretary of the Church. On being granted bail by the court, Adi Teimumu and the Methodist ministers were forbidden by the magistrate from holding any meetings or publishing anything that relates to the annual Methodist church conference. They were also forced to surrender their passports.<sup>52</sup>

On 27 July, a further five Methodist Ministers were arrested, questioned and later charged for their alleged roles in organizing the annual church conference. More than 10 Methodist ministers have been arrested and detained since 21 July on similar related charges.<sup>53</sup>

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.

### 3.4 PATTERN OF INTERFERENCE WITH THE INDEPENDENCE OF THE JUDICIARY AND LAWYERS

Judicial independence is fundamental to the protection of all human rights. Article 10 of the Universal Declaration on Human Rights states that:

*“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”*

The military and the interim government began interfering with the judiciary almost immediately after the military takeover in December 2006. Such interference began with the suspension of the former chief justice Daniel Fatiaki in early January 2007 until the the entire judiciary was sacked in April 2009.

For six weeks from 10 April, there was no Chief Justice, Supreme Court Judges, nor any High Court or Court of Appeal. On 22 May, four judges including Chief Justice Anthony Gates were sworn in by the President. Media reports indicate that the Interim Attorney General and Minister for Justice had experienced difficulties in finding qualified people to join the judiciary following the abrogation of the constitution.<sup>54</sup>

On 15 July, Chief Magistrate Ajmal Khan, who had been sworn in on 20 April 2009, was dismissed without any explanation from the authorities. The government website posted a short statement regarding the termination:

*“The Permanent Secretary for Information and Government Spokesperson, Lt Colonel Neumi Leweni has confirmed that a letter of dismissal was issued by the Presidents Office to former Chief Magistrate Mr Ajmal Khan.*

*The letter was issued to Mr Ajmal Khan on Wednesday July 15 2009.”<sup>55</sup>*

The sacking of the judges without any lawful reasons is a violation of Principle 18 of the UN's Basic Principles on the Independence of the Judiciary:

*“Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.”*

The complete lack of judges for six weeks had an adverse impact on the legal profession and the rule of law. Amnesty International spoke to a number of

government and private lawyers who said that the situation was desperate, as business was at a standstill and the rule of law was almost non-existent. Several lawyers expressed their concern at the “constant assaults against the rule of law by the military regime”.

Other lawyers have raised their concern that a number of judges who were perceived to be biased towards the military-led regime prior to the abrogation of the Constitution in April had rejoined the bench in May 2009. They said that this would have a negative impact on the public’s perception of judicial independence.

One lawyer informed Amnesty International:

*“I’ve lost more than 50% of business since the abrogation five days ago. The courts are closed and we don’t know when they will re-open. I can’t get an injunction for my clients nor can I apply for orders to stop payments for another client. If things do carry on like this, then I’m afraid for the worse in the next few months. I might also have to close my practice.”<sup>56</sup>*

Another lawyer said:

*“Investment is at a standstill. No one wants to invest in a place that has no courts. How will investors enforce contracts? There is virtually no confidence in the judicial system. This is bad for Fiji....very bad.”<sup>57</sup>*

A government lawyer told Amnesty International that morale within the legal profession was at an all time low.

On the morning of 14 April, a group of lawyers responding to an email from the Fiji Law Society President (FLS) Dorsami Naidu<sup>58</sup>, urging lawyers to stand up for the constitution and the rule of law and to appear in court, were denied entry into the court. Approximately 10 lawyers turned up at the Suva government buildings where the courts are located and another 20 turned up at the Lautoka courts. Police would not allow access to either these lawyers or a number of judges who tried to get to their chambers. Police later arrested Dorsami Naidu on the morning of 14 May and detained him at the police station in Lautoka. He was questioned and released without charge the next day.

A sacked high court judge told Amnesty International:

*“It was the saddest day of my life. Staff members and clerks of the courts were crying openly as they saw me being refused entry. The police officers who were stopping us were apologetic and sad as well. It was very uncomfortable for them. Interestingly enough, the same police officers who had barred me from entering my chambers saluted me as I left the court house and I could see the sadness and guilt in their faces.”<sup>59</sup>*

In another case police escorted a High Court judge to his home after they would not allow him to enter his chambers. Another judge was refused entry into her chambers

in the Lautoka High Courts by police officers in front of crying court staff members. One of the judges told Amnesty International that he had received an anonymous death threat on the evening of 14 April 2009.

In Suva, police also denied entry to lawyers who had turned up for work in the Director of Public Prosecutions (DPP) head office. A number of lawyers with the DPP's office told Amnesty International that police tried to enter DPP Josaia Naigulevu's office and Senior Prosecutor Pita Bulamainavalu's office to remove certain files believed to belong to military personnel. Josaia Naigulevu was later placed under house arrest for a day on 13 April. In an announcement the next day, the interim government stated that Naigulevu had been sacked once the constitution was abrogated on 10 April 2009.

On 15 April, a former army Legal Advisor and magistrate, Major Ana Rokomokoti was appointed acting Registrar of the High Court. The Administration of Justice Decree was promulgated the next day, stating that it would come into force retroactively as of 10 April, and also stating that no action against the government on the abrogation of the constitution will be accepted by the courts.<sup>60</sup> Section 3 of the Decree provides that the President would make all "initial" judicial appointments to all courts. No provisions were made for any form of vetting or consultation leading to such appointments. Amnesty International is concerned that the courts created through this process will lack any independence. Principle 10 of the UN Basic Principles on the Independence of the Judiciary<sup>61</sup> provides that:

*"Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives."*

The appointment of all judges by the President, at his sole discretion without any professional or other criteria, consultation or vetting process clearly fails to meet this basic and essential standard.

Section 5 of the Administration of Justice Decree ensures that the President's abrogation of the Constitution and the Decrees he has promulgated themselves cannot be challenged in any Court.

Section 23 of this Decree prevents the courts from hearing any action challenging acts of the President and government officers retroactively from 5 December 2006 to 9 April 2009:

*"23(3) Any proceeding, of any form whatsoever, commenced....in the Courts established by the Constitution Amendment Act 1997....which purports:*

*(a) to challenge the validity or legality of any Promulgations, Decrees and Declarations made between 5 December 2006 to 9 April 2009, on any ground whatsoever;*

*(b) to challenge any decision of the President and the Head of the State, made between 5 December 2006 to 9 April 2009, on any ground whatsoever;*

(c) to challenge any decision of a Minister made between 5 December 2006 to 9 April 2009, on any grounds whatsoever;

(d) to challenge any decision made by the Minister responsible for Immigration, the Permanent Secretary for Immigration, Director of Immigration & employees of the Immigration Department from 5 December 2006 to 9 April 2009, to remove a person from Fiji, on any ground whatsoever;

(e) to challenge any decision of the President, or the Executive or the Government or employees of the Government to terminate any employment (whether in a public office or not) between 5 December 2006 and 7 January 2007, on any ground whatsoever;

(f) to challenge any decision of the Judicial Service Commission<sup>62</sup> made between 7 January 2007 and 9 April 2009 (including any challenge as to the composition of the Judicial Service Commission) on any ground whatsoever, or any decision made by a judicial officer made in administrative capacity, including the making of Rules of any Court or any directions, on any ground whatsoever; and

(g) to challenge any decision of the Executive or of the Government or of the employees of the Government made between 5 December 2006 and 9 April 2009, on the grounds of being inconsistent with or contrary to the Constitution Amendment Act 1997;

*...shall wholly terminate immediately upon the commencement of this Decree, and a Certificate to that effect shall be issued by the Chief Registrar to all the parties."*

These provisions effectively prevent any criminal proceedings or lawsuits against the government. Senior civil servants who were sacked by the interim government in December 2006 and January 2007 had filed claims against the government, but this decree effectively terminates these proceedings.<sup>63</sup>

The above decree is a violation of Principle 3 of the UN Basic Principles on the Independence of the Judiciary:

*"The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law."*

### 3.5. DECREE ON THE FIJI LAW SOCIETY

The Fiji Law Society (FLS), as an advocate for judicial independence and the rule of law, has borne the brunt of the interim government's wrath because of its constant and vocal criticism, particularly of the Interim Minister for Justice and Attorney General Aiyaz Khaiyum.

On 27 April, the Interim Attorney General Aiyaz Sayed Khaiyum announced that the government was going to set up a body to look at complaints against lawyers by the end of 2009, an apparent attempt to take more control over the affairs of the Law Society. The Law society had announced in 2008 that it was looking at complaints

against Khaiyum and was considering his disbarment.<sup>64</sup>

On 23 May, the newly appointed registrar of the high court, Major Ana Rokomokoti and six government officers raided the Fiji Law Society Office in Suva and removed documents relating to complaints against members of the Fiji Law Society. Rokomokoti informed FLS staff that a decree has been promulgated that would give her the authority to issue practicing certificates, rather than the FLS.<sup>65</sup>

The Legal Practitioners Decree 2009,<sup>66</sup> promulgated on 22 May, was made available to the executives and members of the FLS and the public on Monday 25 May, two days after the raid on the Law Society office. The Decree repeals and replaces the Legal Practitioners Act 1997. (Section 148(1)) of the Decree invests extensive powers in the Chief Registrar of the High Court (appointed, under Decree 9, by the President) and in what is called the “Independent Legal Services Commission”. This “Commission” is in fact composed of one person who is also appointed by the President (Section 84 and 85). Such powers come, among other things, at the expense of the FLS. The Decree removes the FLS’ authority to issue lawyers’ practicing certificates and has empowered the Chief Registrar to do this in its stead.<sup>67</sup>

In addition, the Law Society is no longer part of the Judicial Services Commission (JSC). In the 1997 Constitution, the Fiji Law Society was a member of the JSC which had as one of its functions the appointment of judges. Under section 131 of the 1997 Constitution, the President of the FLS is a member of the JSC:

*“131. (1) This section establishes a Judicial Service Commission consisting of:  
(a) the Chief Justice who is to be its chairperson;  
(b) the chairperson of the Public Service Commission; and  
(c) the person who is from time to time the President of the Fiji Law Society.”*

Section 16 of Decree No. 9 replaces this membership with a Commission comprised of the Chief Justice (Chairperson), the President of the Court of Appeal and two other persons appointed by the President. However, under Section 3 of that Decree this Commission “shall only commence its functions under this Decree at such time as the President so directs by order.”

Under the 1997 constitution, the JSC recommends to the President the names of those to be appointed as judges of the Supreme Court, Court of Appeal (including the President of the Court of Appeal) and the judges of the High Court following consultations with the Minister for Justice and the sector standing committee of the House of Representatives responsible for matters relating to the administration of justice.<sup>68</sup> The JSC is also empowered to investigate complaints against judges and magistrates and can take disciplinary action against them, if appropriate.<sup>69</sup> These functions are preserved by the new JSC established under Decree No. 9 (Section 16).<sup>70</sup>

The President-appointed Commissioner who carries the title “Independent Legal Services Commission” has the power to carry out “disciplinary proceedings” against

lawyers and other legal practitioners, law firms or their employees at the behest of the President-appointed Registrar (Section 109(c); 111-121). Where he or she is satisfied that a lawyer, law firm or employee thereof “has engaged in professional misconduct or unsatisfactory professional conduct,” which includes “failing to comply with any orders or directions of the Registrar or the Commission under this Decree” (Sections 81(1)(g)), the “Commission” has the power to, among other things, bar lawyers, other law practitioners and law firms from practicing (Sections 121(1)(a-b)), pay a fine of up to FJ\$500,000<sup>71</sup> or compensation, not limited by the Decree ((Sections 121(1)(i-f)), and provide the Commission with their “ledgers, books of accounts records, deeds, files and other documents” for inspections (Section 121(1)(k)). The “Commission” may also issue “an order that the legal practitioner or the partner or partners of the law firm do or refrain from doing something in connection with their legal practice” (Section 121(1)(o)).

On 5 May 2009, the Provincial Administrator for Nadroga/Navosa K. Bainivalu issued a permit (reference number PANN 53/1) for an FLS conference at a Fijian resort. The FLS had wanted to call a special general conference so that members could discuss the legal implications of the abrogation of the constitution.<sup>72</sup> On 7 May, K Bainivalu wrote to the FLS President withdrawing the permit that was issued two days earlier without any explanation.<sup>73</sup>

In sum, the President has filled the courts with his own appointees and granted other of his appointees extensive powers over lawyers and other legal practitioners.

Amnesty International is concerned that these decrees and policies, all of which were generated unilaterally by one person acting “as the President and Commander in Chief of the Republic of the Fiji Military” in violation of the Constitution, have greatly undermined the rule of law in Fiji. By these measures, the government is undermining the independence of judges and lawyers, which is vital for the defence of individuals’ human rights, and is seeking to prevent proper judicial oversight and challenges to its policies and practices from lawyers in general and the FLS in particular.

International human rights treaties and other instruments have emphasized the unique role that courts have in safeguarding human rights, and the necessity of ensuring their independence in order to fulfil this role. Article 10 of the Universal Declaration on Human Rights states that:

*“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”<sup>74</sup>*

A similar provision is made in Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).<sup>75</sup>

In 1993, the Vienna Declaration and Program of Action stated that:

*“The administration of justice, including law enforcement and prosecutorial*

*agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.”<sup>76</sup>*

Principle 1 of the UN Basic Principles on the Independence of the Judiciary<sup>77</sup> states, among other things, that:

*“The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”*

Principle 10 states, among other things, that “Any method of judicial selection shall safeguard against judicial appointments for improper motives.”

It is crucial for the human rights of persons facing the legal system that they can be assisted by lawyers of their own choice, independent of the authorities and capable of working without fear that any harm would befall them in protecting their clients’ human rights. Rights that lawyers are crucial in protecting include, among many others, the right to liberty; freedom from torture or other cruel, inhuman or degrading treatment or punishment; the right to reparations for violations of their rights; and fair trial rights. As noted, the Vienna Declaration has emphasized the need for “an independent... legal profession.”

Article 16 of the UN Basic Principles on the Role of Lawyers,<sup>78</sup> states that: *“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”*

Amnesty International is concerned that the situation for lawyers in Fiji is does not conform to Article 16 of the UN Basic Principles on the Role of Lawyers.

### 3.6. CONVICTIONS OF SOLDIERS OVER TWO MURDERS IN 2007 AND THEIR QUICK RELEASE IN 2009

In March 2009, the Fiji High Court handed down four year sentences each to eight soldiers and a policeman for the death of 18 year old Sakiusa Rabaka. Rabaka died in June 2007 after he and two other teenagers were subjected to beatings, sexual abuse and military style training by the soldiers in the outskirts of Nadi.<sup>79</sup> The military had begun subjecting many civilians to beatings and humiliation in the aftermath of the December 2006 coup to intimidate and threaten them. It was normally the pre-cursor to beatings and humiliation of civilians by army officers.<sup>80</sup>

Post mortem results showed that Rabaka died after suffering blunt trauma to the head. On finding the men guilty of manslaughter, the judge stated that they breached their duty of care to Rabaka and that they showed no remorse for his death.<sup>81</sup>

In the week of 30 March, another murder trial involving a soldier was also being concluded. Maika Vuniwawa, the soldier on trial for the murder of Nimilote Verebasaga in January 2007 was later sentenced to three years and three months on 7 April 2009.<sup>82</sup> The Director of Public Prosecution's office had indicated to the court after the sentencing that it would appeal against the 'lenient' sentence.<sup>83</sup>

On 7 May 2009 media reports confirmed that the prison authorities had released the 10 men who had been sentenced on Compulsory Supervision Orders (CSO).<sup>84</sup>

The eight soldiers and one policeman found guilty of 19 year old Sakiusa Rabaka's death had served just six weeks of their four and a half year sentence.

Maika Vuniwawa, the soldier who was found guilty and sentenced to three years for the death of Nimilote Verebasaga on January 2007 had only served less than two weeks of his sentence when he was released on a CSO.<sup>85</sup> Sources informed Amnesty International that all of the convicted soldiers who were released on CSOs have now been reinstated and are back at work in the military barracks in Nadi and Suva.

Amnesty International is concerned that the practice of granting CSOs to members of the military and authorities convicted of killing civilians exempts those who committed the crimes from criminal responsibility and contributes to a culture where killings can be committed with impunity. Furthermore, the reinstatement of these officers to their former positions puts them in a position where they would have the power to commit further violations of human rights."

### 3.7 REACTIONS TO THE CRISIS IN FIJI FROM THE PACIFIC ISLANDS FORUM AND THE COMMONWEALTH

As expected, the international community reacted strongly to the April 2009 abrogation of the constitution; the sacking of the judiciary; and subsequent human rights violations. Two important regional and international groupings that Fiji belongs to have also suspended Fiji from its membership.

The Pacific Islands Forum suspended Fiji on 2 May 2009, for its failure to abide by the conditions set by the Pacific regional leaders in Port Moresby, Papua New Guinea, in January 2009. In announcing the suspension, Niue Premier Toke Talagi stated:

*"This difficult decision, agreed unanimously between all Forum leaders at our Retreat in Port Moresby on 27 January 2009, responds to Commodore Bainimarama's failure to address constructively by 1 May 2009 the expectations of*

*Forum Leaders to return Fiji to democratic governance in an acceptable time-frame, in addition to responding to a range of other concerns. It is also particularly timely given the recent disturbing deterioration of the political, legal and human rights situation in Fiji since 10 April 2009.*<sup>86</sup>

The decision to suspend Fiji was welcomed by the both international community and human rights activists and lawyers within Fiji. They informed Amnesty International that such a tough stand needs to be made against the military dictatorship.<sup>87</sup>

*“A regime which displays such a total disregard for basic human rights, democracy and freedom has no place in the Pacific Islands Forum.”*<sup>88</sup>

The Forum also noted in its suspension of Fiji that the military regime showed:

*“...through its recent actions, that it rejects fundamental Forum obligations and core principles, as outlined in the Biketawa Declaration<sup>89</sup> and other key guiding documents of the Forum. Reflecting on the Leaders Vision Statement of 2004, this involves cooperation through the Forum to create a Pacific region respected for the quality of its governance, the sustainable management of its resources, the full observance of democratic values and for its defence and promotion of human rights.”*<sup>90</sup>

The Commonwealth had suspended Fiji in December 2006 from the council of the members of the Commonwealth and has maintained the suspension following periodic reviews by its Commonwealth Ministerial Action Group (CMAG) on the Harare Declaration. Full suspension from the commonwealth will come into effect in September 2009.

In its meeting on 31 July 2009, the CMAG made strong statements about the actions of the Fijian government:

*“The Group noted that Fiji’s situation with regard to fundamental Commonwealth values had deteriorated strikingly since March. It deplored the President’s purported abrogation of the Constitution on 10 April 2009, the further entrenchment of authoritarian rule in Fiji outside the Constitution and the rule of law, the ongoing violation of human rights including freedom of speech and assembly, arbitrary detention of opponents of the military regime, and the undermining of the independence of the judiciary and legal system.”*<sup>91</sup>

An interesting development has been the willingness of the Chinese government to provide aid to Fiji, filling a void created by the ending of bilateral assistance to the Fijian government from countries such as Australia and New Zealand. Research by the Lowly Institute on China’s aid in the Pacific suggests that China’s aid to Fiji has increased since the coup in December 2006.<sup>92</sup>

## 4. RECOMMENDATIONS

### 4.1. Recommendations to the government of Fiji

- Ensure that human rights are explicitly protected in domestic law by reinstating the 1997 Constitution.
- Immediately restore the judges and magistrates and other judicial officers who were sacked by President Iloilo on 10 April 2009.
- Put an immediate halt to all violations of human rights by members of the security forces and government officials against the Fijian people, including the arbitrary arrest, intimidation, threats, assaults and detention of journalists, and government critics and other members of the public.
- Immediately repeal the Public Emergency Regulations which have been in force since 10 April 2009.
- Drop all charges against Adi Teimumu Kepa, Reverend Ame Tugae, Reverend Tuikilakila Waqairatu and Reverend Manasa Lasaro and any persons charged solely for peacefully exercising their rights to freedom of expression and assembly. If they were to be convicted and sent to prison, Amnesty International would regard them as prisoners of conscience.
- Ensure that all serious violations of human rights are subject to prompt, independent, effective and impartial investigations and that suspected perpetrators, including those suspected of ordering these acts, regardless of rank, are brought to justice in proceedings which meet international standards of fairness without recourse to the death penalty.
- Ensure that victims of serious human rights violations are provided with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Put an immediate halt to the interference with the independence of the judiciary and lawyers, including the Fiji Law Society, and ensure that the processes governing the qualification and discipline of lawyers and judges are free from political interference as required by international law.
- Invite the Special Rapporteur on the Independence of Lawyers and the Judiciary to visit Fiji and to report to the UN on the situation with regard to the judiciary and lawyers in the country.
- Invite the UN Special Rapporteur on Human Rights Defenders to visit Fiji and to report to the UN on the situation of human rights defenders in the country since December 2006.

- Put an immediate halt to the censorship of the Fijian media and to allow the people of Fiji and the media the right to freedom of expression, which includes the right to publish views critical of the government without fear of arrest or other forms of intimidation or punishment.
- Ensure that all military and police officials involved in arrests and detention and those who have been authorised to use lethal force under the new decrees be instructed that they have the right and duty to refuse to obey any order to participate in violations of international human rights law.
- Ensure that military and police officials follow the UN Code of Conduct for Law Enforcement Officials, which states *inter alia* that officers “may use force only when strictly necessary and to the extent required for the performance of their duty”.
- Ensure full cooperation with and meaningful access by international human rights and humanitarian organizations to Fiji.
- Cooperate fully with the United Nations, Commonwealth Secretariat, Pacific Islands Forum and the international community in implementing recommendations for the restoration of the rule of law, independence of the judiciary and human rights.
- Ratify and implement the International Covenant on Civil and Political Rights and its optional protocols; the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and its Optional Protocol; and the International Covenant on Social, Economic and Cultural Rights.

## **4.2. Recommendations to the International Community**

- Amnesty International urges all members of the international community including the Pacific Islands nations, the Commonwealth and the United Nations to make use of every opportunity in both bilateral and multilateral discussions to ensure that the Fijian Government implement the recommendations detailed above.

## **4.3. Recommendations to the People’s Republic of China**

- Urge the government of Fiji to put an immediate halt to all violations of human rights by members of the security forces and government officials against the Fijian people, including arbitrary arrests, intimidation, threats, assaults and detention, and reinstate the 1997 Constitution and repeal the Public Emergency regulations.

- Put an immediate end to any support for the Republic of Fiji Military Forces in any form or fashion.

#### **4.4. To the Pacific Islands Forum and its members**

- The Secretary General should closely monitor the situation in Fiji and regularly report on the human rights situation to the Pacific Forum Leaders and the international community, including the European Union, the African Caribbean and Pacific (ACP) Group, the Commonwealth Secretariat and the United Nations.
- Continue to demand that the Fijian interim government immediately cease human rights violations against its own people, particularly the ongoing use of the Public Emergency Regulations to arbitrarily detain people and the violation of the right to freedom of expression.
- Cease the transfer of any military, police and security equipment or training to Fijian security forces which may contribute to human rights violations in Fiji.

#### **4.5. To the United Nations**

The Secretary General, through the Office of the High Commissioner of Human Rights should closely monitor and regularly report on the human rights situation in Fiji and engage the Fijian government in working to stop these violations of human rights and restore the independence of the judiciary.

- Continue to press Fiji to cooperate with the United Nations in ending all human rights violations and implementing its recommendations.
- Provide resources and support to local and regional non-governmental organizations that are committed to highlighting human rights violations in Fiji.

# APPENDIX 1

## LEGAL AND POLITICAL BACKGROUND – DECEMBER 2006 MILITARY TAKEOVER AND ITS AFTERMATH

Immediately after the 2006 coup, Bainimarama assumed the Presidency and dismissed Prime Minister Qarase and his cabinet from the government. Bainimarama then appointed military doctor Jona Senilagakali as Interim Prime Minister on 5 December 2006. The next day, Jona Senilagakali advised Bainimarama to dissolve parliament, which the latter did.

On 4 January 2007 Senilagakali resigned as Interim Prime Minister and Bainimarama handed back executive power to President Iloilo. Bainimarama was then appointed as Interim Prime Minister by the President on 5 January 2007 and in the next few days, cabinet ministers were appointed.

President Iloilo's decree on 18 January 2007, known as the Immunity (Fiji Military Government Intervention) Promulgation 2007, granted "full and unconditional immunity from all criminal or civil or legal or military disciplinary or professional proceedings or consequences" to the Disciplined Forces who were involved in the coup and all other persons who acted under their command. The immunity extended from the run-up to 5 December 2006 until 5 January 2007, the day after President Iloilo resumed executive authority over the interim government.

## HUMAN RIGHTS VIOLATIONS FOLLOWING THE DECEMBER 2006 COUP D'ETAT

From December 2006 to May 2007, Bainimarama imposed a state of emergency which suspended, amongst other things, freedom of expression. Critics and members of the press, including several editors, were threatened, warned and intimidated by the military. In February 2007, the military admitted to taking more than 1,100 people to the military barracks, who were beaten, otherwise treated inhumanely and forced to do military type drills such as running while being forced to carry heavy loads. In March, the military detained two senior executives of media outlets and warned them about reports in these outlets. Letter writers to the daily newspapers were also detained, assaulted and subjected to cruel and degrading treatment during the state of emergency period.

Human rights activists in Fiji informed Amnesty International that from December 2006 to July 2007, there were hundreds of cases of detainees being subjected to

torture or other ill-treatment, such as being stripped naked and made to run around a field or forced to touch each other's private parts.<sup>93</sup> There were also many reports of soldiers and police officers beating up detainees. Victims included suspected drug dealers, trade unionists and members of outspoken NGOs. Most victims chose not to make complaints because of a lack of faith in the police force and the Fiji Human Rights Commission. Reports were provided to Amnesty International by human rights groups based in Fiji, some of whom were able to interview victims and other stakeholders about the human rights violations by the military and have kept records of their interviews to be used as evidence in future trials.

Prominent critics of the government and human rights defenders were placed on travel bans (i.e. they were banned from any overseas travel) without being informed by the authorities, often in reaction to their expression of concern or criticism of human rights violations perpetrated by the military or police force. A prominent human rights activist who was critical of the military's assault of members of the public, Angie Heffernan, was threatened with arrest and assault in January 2007 and was forced into hiding from military officers. In July 2007 Graham Everett Leung, a prominent Fiji lawyer, was banned from travel after criticising the interim government. Another strong critic of the Interim government, Tupou Draunidalo was barred from travelling to Hong Kong to attend a conference in August 2007. A human rights activist and prominent Fiji lawyer was also banned from travelling in September of that year. The travel bans against the lawyer/activist and Tupou Draunidalo were later withdrawn. Shamima Ali, prominent women's rights activist and human rights commissioner was also placed on a travel ban for being an outspoken critic of the government. Graham Leung and Shamima Ali received court settlements after filing cases in the courts against the interim government.

In January 2007, military commander Frank Bainimarama ordered air and sea transport companies not to allow deposed Prime Minister Laisenia Qarase to travel to Suva from his home island of Vanuabalavu.

In August 2007, the military and the government stepped up their campaign to arrest bloggers and those responsible for facilitating the blog sites. This was led by the military-appointed Director for Information Technology Services, Naval Officer Lieutenant Commander Eliki Salusalu. They managed to successfully close down one of the popular pro-democracy blog sites. Public servants were warned via a circular that anyone found reading the blogs would be either suspended or terminated from the service. Also in August, a senior civil servant in the Finance Ministry was suspended without pay on allegations of blogging on one of the anti-military blog sites.

## APPENDIX 2

### BACKGROUND OF INTERFERENCE WITH THE JUDICIARY

Section 138 of the Fiji Constitution of 1997 stipulates that only the President has the power to remove a judge from office for misbehaviour, and even then, only after the matter has been referred to a properly constituted tribunal.

On 3 January 2007, Chief Justice Fatiaki and Chief Magistrate Naomi Matanitobua were both ordered by the interim government to take leave to allow for an inquiry into numerous complaints against the judiciary. Justice Fatiaki was told that if he refused to go on leave, the Commander of the Fiji Military Forces would remove him from office immediately. Under these circumstances, Justice Fatiaki agreed to go on leave. In February 2007 Amnesty International raised its concerns with the Fijian authorities about the blatant disregard of the rule of law through the forced leave of Chief Justice Fatiaki and Chief Magistrate Matanitobua.<sup>94</sup> Chief Magistrate Matanitobua was later recalled by the Judicial Services Commission and resumed work on 12 March 2007.

On 15 January 2007, Justice Nazhat Shameem, acting as the Senior Substantive Judge of the High Court, reportedly chaired a meeting of the Judicial Services Commission (JSC) which was convened at the request of the Interim Attorney General Aiyaz Sayed Khaiyum. Those present at the meeting agreed to appoint Justice Anthony Gates as acting Chief Justice. This meeting has been the subject of much debate and the Fiji Law Society filed a case in the High Court challenging the legality of the purported meeting of the JSC.

On 16 January 2007 Justice Shameem, describing herself as "Chair, Judicial Services Commission", informed the President that Justice Fatiaki was voluntarily on leave and recommended that Justice Gates was appointed as acting Chief Justice. On 17 January 2007 Justice Gates issued instructions to the Acting Chief Registrar that Justice Fatiaki was not to be allowed into his office and that there was to be no communication with Justice Fatiaki while he was on leave.

On 18 January 2007, Justice Fatiaki attempted to resume official duties and was forced to leave the office by then acting Police Commissioner Jahir Khan, who was acting under the instructions of the RFMF Commander and Interim Prime Minister. On the same day, Chief Justice Fatiaki was formally suspended by the interim government which announced that a Tribunal would be established to decide on Fatiaki's alleged misbehaviour. A Presidential Notice on a Tribunal that was to try Chief Justice Fatiaki was published in the Extraordinary Government Gazette of the Republic of the Fiji Islands.<sup>95</sup> However, at the time of the suspension, the charges against the Chief Justice were not specified nor were the members of the Tribunal.

Eleven months after Justice Fatiaki's suspension, the Tribunal was finally constituted in November 2007. The Tribunal had its first preliminary hearing on 26 November 2007. Justice Fatiaki filed a case against the members of the Tribunal, questioning its legality. The interim government had applied for a stay on the proceedings until the Constitutional Redress case filed by the members of the deposed government of Laisenia Qarase was completed.<sup>96</sup> The court granted the stay. In December 2008, the interim government in an agreement with Justice Fatiaki, settled the matter outside of court, opting to compensate him FJ\$275,000.<sup>97</sup> Justice Fatiaki in return had agreed to drop all lawsuits against the interim government.

On 4 September 2007, six internationally renowned expatriate judges of the Court of Appeal resigned, citing the acting Chief Justice's handling of administrative matters. Justices Sir Thomas Eichelbaum, Ian Barker, Tony Ford, Bruce McPherson, Peter Penlington and Robert Philip Smellie issued a statement outlining the reasons why they resigned. They complained that acting Chief Justice Gates had taken the administration of the court out of their hands and that they were not consulted about the August 2007 sitting of the Court of Appeal, nor were they asked about their availability. The judges said it was apparent to them that their services were no longer wanted and they decided the appropriate course was to resign.<sup>98</sup>

## LACK OF RESPECT FOR JUDICIAL AUTHORITY

In 2007 and 2008, several senior officials in the interim government had repeatedly shown a lack of respect for the rule of law and the independence of the judiciary. Such attitudes have often been demonstrated by instances in which court orders have been ignored.

For example, High Court Orders for a stay in the deportations of two expatriate newspaper publishers Russell Hunter and Evan Hannah in February and April 2008 respectively were ignored by immigration and police officials. The circumstances surrounding the deportations were very similar. The Fiji Sun and Fiji Times, employers of Hunter and Hannah, had published articles which were critical of a senior member of the interim regime. Deportation orders were issued by the relevant Minister on the grounds of "threats to national security", which gave them seven days each to leave the country. However, they were both taken from their homes on the same night the orders were issued and transported to Nadi International Airport where they were forced to board flights leaving Fiji the following day. Both their lawyers had managed to get orders from the High Court stopping their deportation and in both instances, the court orders were ignored by the authorities.

In another case in October 2007, High Court Justice Gerard Winter recommended to the Director of Public Prosecutions that Commissioner of Police and former Fiji Military Forces Deputy Commander Esala Teleni, be investigated for contempt of court and attempting to pervert the course of justice.

This matter arose in a case before Judge Winter where Francis Kean, former Fiji Navy Commander and brother in law of RFMF Commander and Interim Prime Minister Frank Bainimarama, was charged with murder. Kean's lawyer petitioned the court that the judge remove himself from hearing the case because he '*did not support the military takeover and would therefore be biased*'. To support his case, Kean annexed to his affidavit a confidential letter by the Police Commissioner Teleni, himself a former senior Navy officer, to the Permanent Secretary for Justice Lieutenant Colonel Pio Tikoduadua and Solicitor General Christopher Pryde. In the letter dated 10 September 2007, Commissioner Teleni had requested that no cases involving RFMF personnel be given to Judge Winter because he and another judge had engaged in talks against the army.

## FIJI HUMAN RIGHTS COMMISSION

Numerous institutions and individuals have called into question the impartiality and independence of the Fiji Human Rights Commission (FHRC) which was established under the 1997 Fiji Constitution. Its functions, powers and operations are outlined in the Fiji Human Rights Commission Act 1999.

In January 2007, the FHRC had released a report justifying Commodore Frank Bainimarama's overthrow of the Qarase government. This report attracted a great deal of controversy and impacted negatively on the public's perception of the Commission.

A report commissioned by the FHRC which was published in March 2008 called for greater regulation of the media in Fiji which would have the effect of further curtailing freedom of expression. The Interim government had announced on 14 August 2008 its intention to set up a media tribunal which was also recommended in the FHRC's Report. In June 2008, in response to a complaint by the deposed Fijian Opposition leader, against the deportation of two publishers of the local dailies (see above), the FHRC published a report stating that the deportations were justified and 'long overdue'. The report also attacked three human rights NGOs and recommended against the renewal of the work permits of expatriate staff working in local media outlets.<sup>99</sup>

Amnesty International is seriously concerned about the lack of independence and impartiality the FHRC has shown by supporting the interim regime and its lack of response to the human rights violations that have been carried out by the authorities since December 2006. The FHRC has been suspended from both the International Coordinating Committee for National Human Rights Institutions (ICC) and the Asia Pacific Forum (APF) because of its actions following the coup. The ICC's Sub-committee which considered the FHRC's Report on the December 2006 Coup concluded in its March 2007 meeting that the FHRC report "*validates the military government to the extent that the Sub-Committee considers that the ability of the Commission to implement its human rights mandate in an independent manner has been compromised.*"

The Pacific Islands Forum's Eminent Persons Group (EPG) also found that the FHRC's ability to fulfill its mandate was undermined by internal disputes and politicization and raised concerns that the removal of New Zealand funding from the FHRC would make the commission entirely dependent on the state and further encourage political interference.<sup>100</sup>

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# <sup>1</sup> ENDNOTES

Amnesty International's communication with Fijian human rights defender, Suva, Fiji, 16 April 2009.

<sup>2</sup> Abrogation speech by President Ratu Josefa Iloilo, 10 April 2009. See <http://www.fijitimes.com/extras/Fiji-president-speech-annulling-constitution-judiciary.pdf>, accessed 1 May 2009.

<sup>3</sup> Fiji Constitutional Amendment Act 1997 Revocation (Decree No.1), 10 April 2009.

<sup>4</sup> Fiji Constitutional Amendment Act 1997 Revocation (Decree No.1), 10 April 2009.

<sup>5</sup> Section 2 Executive Authority Decree 2009 (Decree 2), 10 April 2009.

<sup>6</sup> Section 2 Executive Authority Decree 2009 (Decree 2), 10 April 2009.

<sup>7</sup> Section 2 Executive Authority Decree 2009 (Decree 2), 10 April 2009.

<sup>8</sup> [www.fiji.gov.fj/uploads/PEREG\\_2009.doc](http://www.fiji.gov.fj/uploads/PEREG_2009.doc), accessed 10 July 2009.

<sup>9</sup> [http://www.fijisun.com.fj/main\\_page/view.asp?id=17811](http://www.fijisun.com.fj/main_page/view.asp?id=17811), accessed on 15 April 2009.

<sup>10</sup> [http://www.fijisun.com.fj/main\\_page/view.asp?id=17811](http://www.fijisun.com.fj/main_page/view.asp?id=17811), accessed on 15 April 2009.

<sup>11</sup> [www.humanrights.org.fj/publications/2007/Investigation%20Report%20on%20Events%20of%20December%206%202006.pdf](http://www.humanrights.org.fj/publications/2007/Investigation%20Report%20on%20Events%20of%20December%206%202006.pdf), accessed 18 August 2008.

<sup>12</sup> [www.radiofiji.com.fj/fullstory.php?id=3362](http://www.radiofiji.com.fj/fullstory.php?id=3362), accessed 18 August 2008.

<sup>13</sup> Amnesty International's discussions with activists, Suva, Fiji, between April 14 – 18, 2009, and several discussions with activists in Auckland, Sydney, Melbourne and London during 2008 and 2009.

<sup>14</sup> Human Rights Commission Decree 2009.

<sup>15</sup> <http://www.rnzi.com/pages/news.php?op=read&id=46664>, accessed 20 July 2009.

<sup>16</sup> <http://www.rnzi.com/pages/news.php?op=read&id=46657>, accessed 20 July 2009.

<sup>17</sup> Civil Appeal No ABU077 of 2008S.

<sup>18</sup> Civil Appeal No ABU077 of 2008S.

<sup>19</sup> Amnesty International's communication with Fijian human rights defender, 17 April 2009.

<sup>20</sup> <http://www.fijitimes.com/extras/Bainimarama-speech-reappointment.pdf>, accessed 30 May 2009.

<sup>21</sup> <http://www.fijitimes.com/extras/Bainimarama-speech-reappointment.pdf>, accessed 30 May 2009, Part II.

<sup>22</sup> Equivalent to USD 500.

<sup>23</sup> [www.fiji.gov.fj/uploads/PEREG\\_2009.doc](http://www.fiji.gov.fj/uploads/PEREG_2009.doc), accessed 3 September, 2009.

<sup>24</sup> Ss21-43 Fiji Constitutional Amendment Act 1997.

<sup>25</sup> For example *Yaya v Attorney General & Director of Public Prosecutions [2007] FJHC 136 in Pacific Human Rights Law Digest (Vol 2)*.

- <sup>26</sup> S43(2) Fiji Constitutional Amendment Act 1997.
- <sup>27</sup> Section 16(2) of the Public Emergency Regulations.
- <sup>28</sup> Amnesty International's discussion with editor of media outlet, Suva, Fiji, 16 April 2009.
- <sup>29</sup> Amnesty International's discussion with diplomat, Suva, Fiji, 17 April 2009.
- <sup>30</sup> Amnesty International's interview with senior journalist, Suva, Fiji, 17 April 2009.
- <sup>31</sup> <http://www.radioaustralia.net.au/pacbeat/stories/200903/s2523762.htm>, accessed 12 April 2009.
- <sup>32</sup> <http://www.rnzi.com/pages/news.php?op=read&id=48247>, accessed 10 August 2009.
- <sup>33</sup> Amnesty International's interview with journalist, Suva, Fiji, 17 April 2009.
- <sup>34</sup> <http://www.rnzi.com/pages/news.php?op=read&id=46535>, accessed 15 May 2009.
- <sup>35</sup> <http://www.rnzi.com/pages/news.php?op=read&id=46555>, accessed 16 May 2009.
- <sup>36</sup> Amnesty International's interview with newspaper journalist, Suva, Fiji, 16 April 2009.
- <sup>37</sup> Amnesty International's interview with journalist, Suva, Fiji, 17 April 2009.
- <sup>38</sup> Amnesty International's communication with Fijian activist, 24 April 2009.
- <sup>39</sup> Amnesty International's communication with Fijian journalist, May 26 2009.
- <sup>40</sup> Amnesty International's communication with Fijian activist, 20 May 2009.
- <sup>41</sup> Amnesty International's communication with Fijian activist, 20 May 2009.
- <sup>42</sup> Amnesty International's communication with military officer, 18 May 2009.
- <sup>43</sup> [rawfijiinews.wordpress.com](http://rawfijiinews.wordpress.com)
- <sup>44</sup> [rawfijiinews.wordpress.com](http://rawfijiinews.wordpress.com)
- <sup>45</sup> <http://realfijiinews.wordpress.com/2009/05/20/imraz-iqbal-named-as-blogger/>, accessed 20 May 2009.
- <sup>46</sup> <http://realfijiinews.wordpress.com/2009/05/20/imraz-iqbal-named-as-blogger/>, accessed 20 May 2009.
- <sup>47</sup> <http://www.rnzi.com/pages/news.php?op=read&id=46545>, accessed 30 July 2009.
- <sup>48</sup> <http://abcnews.go.com/International/wireStory?id=7602618>, accessed 30 July 2009.
- <sup>49</sup> <http://au.christiantoday.com/article/fiji-methodist-church-last-effort-to-lift-regime-5-year-conference-ban-failed/6656.htm> and <http://www.rnzi.com/pages/news.php?op=read&id=46865>, accessed 29 June 2009.
- <sup>50</sup> [http://www.fiji.gov.fj/publish/page\\_15424.shtml](http://www.fiji.gov.fj/publish/page_15424.shtml), accessed 1 July 2009.
- <sup>51</sup> <http://www.rnzi.com/pages/news.php?op=read&id=47868>, accessed 23 July 2009.
- <sup>52</sup> <http://www.rnzi.com/pages/news.php?op=read&id=47910>, accessed 23 July 2009.
- <sup>53</sup> <http://www.rnzi.com/pages/news.php?op=read&id=47972>, accessed on 27 July 2007.
- <sup>54</sup> The Australian, Sydney Morning Herald, Radio NZ International, 22 May 2009.

- <sup>55</sup> [http://www.fiji.gov.fj/publish/page\\_15512.shtml](http://www.fiji.gov.fj/publish/page_15512.shtml), accessed 20 July 2009.
- <sup>56</sup> Amnesty International's communication with lawyer, Suva, Fiji, 15 April 2009.
- <sup>57</sup> Amnesty International's interview with lawyer, Suva, Fiji, 16 April 2009.
- <sup>58</sup> Dorsami Naidu's email to all FLS members on 13 April 2009 stated that the Fiji Law Society does not support the President's statement regarding the abrogation and in light of this, it requests all its members to treat Tuesday 14 April 2009 as a normal Court day and turn up to Courts in which they have matters to attend to and lend their support to all judicial officers and magistrates who are present at the Courts and whose appointments have purportedly been revoked.
- <sup>59</sup> Amnesty International's interview with former high court judge, Suva, Fiji, April 15 2009.
- <sup>60</sup> Administration of Justice Decree (Decree 9), <http://www.fiji.gov.fj/publish/decrees.shtml>. accessed 20 April 2009.
- <sup>61</sup> Endorsed by the UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
- <sup>62</sup> The Judicial Services Commission (JSC) is provided for in the 1997 Constitution and is tasked with the appointment and removal of judges. Similar provisions for the JSC are also provided for in the Administration of Justice Decree 2009.
- <sup>63</sup> Amnesty International's communication with former senior civil servant who was the plaintiff in such a case, which was being deliberated upon in April 2009.
- <sup>64</sup> <http://www.fijitimes.com.fj/story.aspx?ref=archive&id=108488> and <http://www.rnzi.com/pages/news.php?id=43597&op=read>, accessed 10 May 2009.
- <sup>65</sup> <http://www.thenewlawyer.com.au/article/Fiji-law-society-attack-angers-Aus-lawyers/482580.aspx>, accessed 15 July 2009.
- <sup>66</sup> [www.fiji.gov.fj/publish/page\\_15122.shtml](http://www.fiji.gov.fj/publish/page_15122.shtml), accessed July 30 2009.
- <sup>67</sup> Section 42, [www.fiji.gov.fj/publish/page\\_15122.shtml](http://www.fiji.gov.fj/publish/page_15122.shtml), accessed July 30 2009.
- <sup>68</sup> Section 132 Constitutional Amendment Act 1997.
- <sup>69</sup> Section 131 (2) Constitution.
- <sup>70</sup> Administration of Justice Decree 2009 (Decree 9), <http://www.fiji.gov.fj/publish/decrees.shtml>, accessed 14 April 2009.
- <sup>71</sup> Equivalent to USD 250,000.
- <sup>72</sup> Copy of this permit was given to Amnesty International by the Fiji Law Society.
- <sup>73</sup> Copy of the withdrawal of the permit was given to Amnesty International by the Fiji Law Society.
- <sup>74</sup> <http://www.un.org/en/documents/udhr/>, accessed 10 July 2009.
- <sup>75</sup> <http://www2.ohchr.org/english/law/ccpr.htm> accessed 10 July 2009.
- <sup>76</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, para. 27.
- <sup>77</sup> Endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

<sup>78</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>79</sup> <http://www.fijitimes.com/story.aspx?id=57762> & <http://www.fijitimes.com.fj/story.aspx?ref=archive&id=115326>, accessed 12 July 2009,

<sup>80</sup> Amnesty International was sent reports of human rights violations from human rights defenders in Fiji from December 2006 to present.

<sup>81</sup> <http://www.fijidailypost.com/news.php?section=1&fijidailynews=22636>, accessed 20 May 2009.

<sup>82</sup> [www.rnzi.com/pages/news.php?op=read&id=45806](http://www.rnzi.com/pages/news.php?op=read&id=45806), accessed 20 May 2009.

<sup>83</sup> Amnesty International's discussion with DPP lawyers, 8 April 2009.

<sup>84</sup> Compulsory Supervisory Orders are orders issued by the Commissioner of Prisons in Fiji allowing a serving prisoner to serve his or her sentence extra-murally i.e. serving their sentences at home.

<sup>85</sup> <http://www.rnzi.com/pages/news.php?op=read&id=46429>, accessed on 10 May 2009.

<sup>86</sup> <http://www.forumsec.org.fj/pages.cfm/newsroom/press-statements/2009/forum-chair-on-suspension-of-fiji-military-regime-from-pif.html>, accessed 8 June 2009.

<sup>87</sup> Amnesty International's discussion with Fijian lawyers and activists on 3 – 4 June 2009.

<sup>88</sup> Amnesty International's discussion with Fijian lawyers and activists on 3 – 4 June 2009.

<sup>89</sup> [http://www.forumsec.org.fj/\\_resources/article/files/Biketawa%20Declaration,%2028%20October%202000.pdf](http://www.forumsec.org.fj/_resources/article/files/Biketawa%20Declaration,%2028%20October%202000.pdf), accessed 9 June 2009.

<sup>90</sup> [http://www.forumsec.org.fj/\\_resources/article/files/Biketawa%20Declaration,%2028%20October%202000.pdf](http://www.forumsec.org.fj/_resources/article/files/Biketawa%20Declaration,%2028%20October%202000.pdf), accessed 9 June 2009.

<sup>91</sup> <http://www.thecommonwealth.org/news/211610/280709cmagfiji.htm>, accessed 11 August 2009.

<sup>92</sup> "CHINA: STUMBLING THROUGH THE PACIFIC", Lowy Institute for International Policy, July 2009, <http://www.lowyinstitute.org/Publication.asp?pid=1084>, accessed 3 September 2009.

<sup>93</sup> Amnesty International's communications with Fiji-based activists between December 2006 and October 2007.

<sup>94</sup> Amnesty International, *Fiji: Human rights protections must be upheld* (Index: ASA 18/001/2007), 16 February 2007, <http://www.amnesty.org/en/library/info/ASA18/001/2007/en>

<sup>95</sup> Presidential Instrument of Notice of Suspension of Chief Justice Upon Establishment of a Tribunal to Investigate Serious of Allegations of Misbehaviour Made Against Him.

<sup>96</sup> *Qarase v Bainimarama* [2007] FJHC 41; HBC60.07.

<sup>97</sup> Approximately USD 137,500.

<sup>98</sup> <http://www.smh.com.au/news/World/Australian-NZ-judges-quit-Fiji/2007/09/04/1188783211333.html>, accessed 20 October 2008.

<sup>99</sup> [www.fijitimes.com/extras/media/fhrcmediarpt2007.pdf](http://www.fijitimes.com/extras/media/fhrcmediarpt2007.pdf), accessed 20 August 2009.

<sup>100</sup> [http://archives.pireport.org/archive/2007/February/EPG\\_Report\\_2007.pdf](http://archives.pireport.org/archive/2007/February/EPG_Report_2007.pdf), accessed 20 August 2009.