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# **amnesty international**

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## **Fiji**

### **Submission to the UN Universal Periodic Review**

**Seventh session of the UPR Working Group of the  
Human Rights Council**

**February 2010**



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In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:<sup>1</sup>

- Under section B, Amnesty International raises concern over the abrogation of the Constitution, the introduction of Public Emergency Regulations, the removal of the judiciary, and the lack of independence of the Fiji Human Rights Commission.
- Section C highlights Amnesty International's concerns about human rights violations in the period December 2006 to March 2009 and since the abrogation of the Constitution in April 2009. Human rights violations of concern to the organization include restrictions on the right to freedom of expression, attacks on the media and individual journalists, harassment and detention of critics, activists, and lawyers, torture and other ill-treatment, deaths in detention, and violence against women.
- In section D, Amnesty International makes a number of recommendations for action by the government in these areas of concern.

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<sup>1</sup> Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

# Fiji

## Amnesty International submission to the UN Universal Periodic Review

Seventh session of the UPR Working Group, February 2010

### B. Normative and institutional framework of the State

#### Abrogation of the Fiji Constitution

On 9 April 2009, Fiji's Court of Appeal ruled unconstitutional the government of Army Commander and leader of the 2006 coup Frank Bainimarama, appointed in the wake of that coup. 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).

On 10 April 2009, President Ratu Josefa Iloilo announced 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. The Fiji Constitutional Amendment Act 1997 Revocation Decree,<sup>2</sup> promulgated on 10 April 2009, unilaterally states that the president is now empowered to make laws which will be observed and enforced.

President Iloilo appointed himself as president of the country under section 2 of the Executive Authority of Fiji Decree 2009.<sup>3</sup> Section 5 prevents any court action that questions the validity of this decree or any other decree that the President promulgates.<sup>4</sup>

Following the sacking of the judiciary, there was no Chief Justice, no Supreme Court Judges, and no High Court or Court of Appeal for six weeks. When judges had tried to enter their chambers on 14 April 2009, police prevented them from doing so. The absence of a judiciary for six weeks had an adverse impact on the rule of law in the country. On 22 May 2009, four judges including chief justice Anthony Gates were sworn in by the President.

#### Lack of independence of the Fiji Human Rights Commission

The Fiji Human Rights Commission (FHRC) had been supportive of the military takeover in December 2006 and had published a report in January 2007 providing justification of the military putsch and accusing the deposed government of crimes that were tantamount to 'crimes against humanity'.<sup>5</sup> The report was criticized by human rights defenders in Fiji and the FHRC has subsequently been suspended from both the International Coordinating Committee for National Human Rights Institutions and the Asia Pacific Forum.<sup>6</sup>

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<sup>2</sup> Fiji Constitutional Amendment Act 1997 Revocation (Decree (1) 10 April 2009.

<sup>3</sup> Section 2 Executive Authority Decree 2009 (Decree 2) 10 April 2009

<sup>4</sup> Ibid

<sup>5</sup> *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.*

<sup>6</sup> At its March 2007 meeting, the ICC's Sub-committee concluded 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."

On 20 May 2009, in a move severely criticized by human rights activists in Fiji and overseas, President Iloilo promulgated a decree which limited ability of the FHRC to receive and investigate complaints and to challenge the legality or validity of decrees made by the President.<sup>7</sup>

### **The Public Emergency Regulations**

The Public Emergency Regulations (PER) were issued and came into force on 10 April 2009 immediately after the abrogation of the Constitution.<sup>8</sup> The Regulations were initially valid for 30 days, but have been extended for a further period every month since then. On 1 July 2009, the government announced its intention to extend the PER to December 2009.

The Regulations grant broad powers to the authorities in the name of “maintaining public safety”,<sup>9</sup> including:

- To impose 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”;<sup>10</sup>
- To detain 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 detention may be extended, by a “magistrate or police officer” for up to seven days;<sup>11</sup>
- To grant power to “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 Regulations add 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 cause harm or death to any person”.<sup>12</sup>

The enforcement of the PER has led to numerous human rights violations and to soldiers and police acting under the Regulations enjoying total impunity. Under the guise of maintaining law and order, the authorities have used the PER to deter any public criticism of the government, including by arresting human rights activists, lawyers, judges, and journalists.

## **C. Promotion and protection of human rights on the ground**

### **I. Human Rights Violations since the abrogation of the Constitution in April 2009**

#### **Violations of freedom of expression**

Media censorship began immediately after the abrogation of the Constitution as police and government officials entered news rooms to scrutinize and censor the press. Journalists who fail to adhere to the PER are detained, threatened and intimidated by government and security officials. The Regulations also give 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>13</sup>

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<sup>7</sup> Human Rights Commission Decree 2009 accessed on 29 June 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> *Ibid.*, Part II.

<sup>10</sup> Section 16

<sup>11</sup> Section 18.

<sup>12</sup> Section 21

<sup>13</sup> Section 16 of the PER outlines the powers of censorship of the government:

(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

Amnesty International is concerned that the vaguely worded provisions of Section 16, such as “promote disaffection or public alarm”, can be used to suppress criticism of the government by the media.

### **Arrests and deportations of journalists**

In the aftermath of the abrogation of the Constitution, the authorities used the PER to arrest at least 20 journalists. None of them was charged and all are released at the time of writing. Nevertheless these short-term arrests and intimidation are used to suppress freedom of expression.

On 15 April 2009, police detained local TV journalist Edwin Nand for 24 hours for providing TV footage to an overseas journalist who had been deported on 13 April. Nand was held at the Police Academy in Nasese and questioned by very senior detectives from the Criminal Investigations Department.

On 9 May 2009, police arrested and detained internet news service *Fijilive* journalists Dionisia Tabureguci and Shelvin Chand because of a report they had published on the website about the release of several soldiers and a policeman who had been convicted of manslaughter of 18 year old Sakiusa Rabaka in June 2007. The report was pulled off the website after 30 minutes. The journalists were released on 11 May without charge, but were warned by the police to be careful about their reporting.

### **Harassment, intimidation and detention of critics and activists**

From 10 April to 20 May 2009, the police, military and other government officials arrested approximately 40 people, including journalists, under the PER’s broad powers of detention, on suspicion of threatening peace and stability in the country. Most of them were questioned without the right to a lawyer. Although all of them have been released, these short term arrests and surveillance of activists have contributed to a climate of fear in Fiji.

On 17 April 2009, police arrested 60 year old politician Iliesa Duvuloco and five others under the PER and detained them for four days for distributing pamphlets, written in the Fijian vernacular, which were highly critical of the leaders of the interim government, including President Iloilo. Sources confirmed to Amnesty International that Duvuloco and the other men were beaten by military officers and forced to undertake military-type drills.

On 20 May, Criminal Investigation Department 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*. Reports indicate that the police seized and copied Naidu, Apted and Fa’s computers and hard drives. All three lawyers were named on a pro-military blog, *realfijineews*, as anti-regime bloggers.

On 14 May 2009 police officers took the former president of the Methodist Church of Fiji, Reverend Manasa Lasaro in for questioning and detained him for two nights at the police station, following statements he made denouncing the abrogation of the Constitution and the PER. He had also reiterated the church’s opposition to the “oppression” of the interim government. On 4 June, the government announced that it had cancelled the annual Methodist church conference. In response to appeals by church leaders to the prime minister to reconsider the cancellation, the government announced that the church conference may be cancelled for the next five years. More than 10 Methodist ministers have been arrested and detained since 21 July charged for their alleged roles in organising the annual church conference.

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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.

### **Intimidation of and interference with lawyers**

On 14 April, lawyers and judges were forbidden from entering the courts and chambers, respectively, in Suva and Lautoka. Police later arrested and detained overnight Dorsami Naidu, president of the Fiji Law Society. He was released without charge the next day.

In Suva, police also denied entry to lawyers who had turned up for work in the Director of Public Prosecutions (DPP) head office. Some of the lawyers told Amnesty International that police tried to get into the offices of Director Josaia Naigulevu and Senior Prosecutor Pita Bulamainavalu to remove certain files. Josaia Naigulevu was 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 when 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 promulgated the next day stating that it would come into force retroactively as of 10 April and that no action against the government on the abrogation of the Constitution would be accepted by the courts.<sup>14</sup> Section 3 of the Decree further provided 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.<sup>15</sup>

## **II. Human rights violations from December 2006 to March 2009**

From December 2006 to May 2007, the military-led interim government imposed a state of emergency which suspended, amongst other things, freedom of information. Critics and media personnel were threatened, warned and intimidated by the military. By February 2007, the military had admitted to taking more than 1,100 people to the military barracks for what they termed “re-education”. In March 2008, two senior executives of media outlets were detained by the military and warned about reports in these outlets. Letter writers to the daily newspapers were also detained during this period.

In August 2007, the government stepped up its campaign to arrest bloggers and those responsible for facilitating the blog sites, led by the Director for IT Services, Naval Officer Lieutenant Commander Eliki Salusalu. One of the popular pro-democracy blog sites was closed down. Public servants were warned via a circular that anyone found reading the blogs would be suspended or terminated from the service. A senior civil servant was suspended without pay on allegations of being a blogger on one of the anti-military blog sites.

### **Torture or other cruel, inhuman or degrading treatment or punishment**

Human rights defenders in Fiji have reported to Amnesty International that from December 2006 to July 2007, there were hundreds of reported and unreported 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. There were also many reports of detainees being beaten up by soldiers and police officers. Victims included trade unionists and members of outspoken NGOs. Most of the victims chose not to make complaints because of lack of faith in the police force and the Fiji Human Rights Commission.

### **Deaths in custody**

In January 2007, Nimilote Verebasaga was taken from his home by a group of soldiers and died from brain haemorrhage within an hour of being detained. The soldier convicted of his death in April 2009 was later released on a compulsory supervision order within two weeks of his serving a 3 year sentence.

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<sup>14</sup> Administration of Justice Decree (Decree 9) <http://www.fiji.gov.fi/publish/decrees.shtml> accessed 20 April 2009

<sup>15</sup> Section 5 of the Administration of Justice Decree ensures that the President’s abrogation of the Constitution and the Decrees he has promulgated cannot be challenged in 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.

In June 2007, Sakiusa Rabaka, an 19 year old man died from haemorrhage caused by blunt trauma, after being beaten by soldiers and forced to run around a field with his friends, having been detained on allegations of smoking marijuana. Eight soldiers and one policeman were convicted of his death in March 2009, but were released on compulsory supervision orders within a few weeks of their four year sentences. The soldiers have returned to the same work they were doing before their imprisonment.

In June 2007, another young man, Tevita Malasebe was killed while being interrogated by police officers over a spate of robberies. The coroner's report concluded that Malasebe died from internal injuries. In April 2008, three police officers were convicted of offences relating to Malasebe's murder.

### **Violence against women**

Violence against women continues to be a major human rights issue in the country. In August the government promulgated a decree to address domestic violence. While this is a relatively positive achievement for women, it is regrettable that there was little or no consultation with the women's organisations in Fiji regarding this decree.

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on the government:**

#### *National legislation and national institutions*

- To ensure that human rights are explicitly protected in domestic law, including by reinstating the 1997 Constitution;
- To immediately repeal the Public Emergency Regulations in force since 10 April 2009;
- To ensure the full independence and effective functioning of the Fiji Human Rights Commission.

#### *Ratification of human rights treaties*

- To 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.

#### *Independence of the judiciary*

- To immediately restore the judges and magistrates and other judicial officers that were removed by President Iloilo on 10 April 2009;
- To 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.

#### *Violations of freedom of expression*

- To 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.

#### *Harassment, intimidation and detention of critics and activists*

- To put an immediate halt to all violations of human rights by members of the security forces and government officials against members of the public, including the arbitrary arrest, intimidation, threats, assaults and detention of journalists, critics and other members of the public;
- To drop all charges against Adi Teimumu Kepa, Reverend Ame Tugae, Reverend Tuikilakila Waqairatu and Reverend Manasa Lasaro, who, if convicted, Amnesty International would regard as prisoners of conscience, imprisoned solely for peacefully exercising their rights to freedom of expression and association.

*Torture or other cruel, inhuman or degrading treatment or punishment and deaths in custody*

- To ensure that all serious violations of human rights are subject to prompt, 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;
- To ensure that victims of serious human rights violations are provided with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- To ensure that all military and police officials involved in arrests and detention and those 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;
- To ensure 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”.

*Violence against women*

- To put in place a consultative process to address violence against women.

*Cooperation with the international community*

- To 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;
- To invite the Special Rapporteur on the independence of judges and lawyers to visit Fiji and to report to the UN Human Rights Council on the situation with regard to the judiciary and lawyers in the country;
- To Invite the UN Special Rapporteur on human rights defenders to visit Fiji and to report to the UN Human Rights Council on the situation of human rights defenders in the country since December 2006;
- To ensure full cooperation with and meaningful access by international human rights and humanitarian organisations to Fiji.