

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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New contempt of court ruling, a setback for freedom of expression in Fiji

The sentencing of Citizens' Constitutional Forum (CCF), a non governmental organization which promotes human rights, and Reverend Akuila Yabaki, its director, for contempt of court is a major setback for the right to freedom of expression in Fiji. The charges followed the organization's publication of an accurate summary of a United Kingdom Law Society Charity report. On 10 August 2013, CCF was fined \$20,000 FJD and ordered to pay costs of \$2,500 FJD and Reverend Yabaki was sentenced to 3 months in prison suspended for 12 months, and a fine of \$2,000 FJD plus costs of \$2,500. CCF and Reverend Yabaki were also ordered to publish an approved apology in the CCF newsletter. CCF and Reverend Yabaki have commenced an appeal of the decision to convict them, which was handed down on 3 May 2013.

Amnesty International is calling for the case against CCF and Reverend Yabaki to be dropped immediately and for charges of contempt of court not to be used in Fiji to restrict the important work carried out by human rights defenders and other civil society actors in the country.

On 3 May 2013, the Fiji High Court found CCF and Reverend Yabaki guilty of contempt of court. In the March 2012 edition of *Tutaka*, the organization's quarterly newsletter, Citizens' Constitutional Forum had published a summary of a January 2012 report published by the Law Society Charity. The report stated, among other things, that "there is no rule of law" in Fiji and that "the independence of the judiciary cannot be relied upon". The High Court judgement against CCF stated that the organization had publicised the summary "to scandalise the Court and judiciary of Fiji."

Amnesty International is concerned that this verdict has had a chilling effect on civil society organizations in Fiji and may act to discourage individuals and organizations from raising legitimate concerns about the rule of law and independence of the judiciary in the future. Further, Amnesty International notes with alarm that the Fiji Times, Fiji's leading newspaper, and its Editor in Chief have also been prosecuted for similar contempt charges in 2009 and 2012 after accurately reporting the comments of others on the Fiji judiciary. On 21 February 2013, the Fiji Times received a fine of \$300,000 and the Editor in Chief was sentenced to six months imprisonment, suspended for two years.

Under international human rights law and standards, the right to freedom of expression is protected. This right includes being allowed to make comments that may be regarded as critical, or even deeply offensive of government institutions, including the judiciary.

In its General Comment on Article 19 of the International Covenant on Civil and Political Rights, which provides for freedom of expression, the Human Rights Committee, which is the UN body charged with overseeing the implementation of the Covenant explains that:

"Contempt of court proceedings relating to forms of expression may be tested against the public order (ordre public) ground. In order to comply with paragraph 3, [providing for restrictions on this right] such proceedings and the penalty imposed must be shown to be

warranted in the exercise of a court's power to maintain orderly proceedings. Such proceedings should not in any way be used to restrict the legitimate exercise of defence rights.”¹

“The maintenance of orderly proceedings” includes the protection of the rights of the accused and responding to acts which amount to obstruction of, and interference with, the judicial process. Such powers must not be exercised in a manner that restricts the right to freedom of expression beyond those restrictions provided for in international human rights law.

Amnesty International opposes the use of ‘contempt of court’ powers for acts deemed to amount to ‘scandalizing the court’ because it is inconsistent with the right to freedom of expression. Restrictions on acts that are alleged to amount to ‘scandalising,’ bringing into disrepute or lowering the authority of a court, judge or the judicial process are not necessary for legitimate public interests (including the orderly proceedings of a court or the judicial process). Where the comments directly and personally affect the reputation of specific individual officials, they can take recourse to civil remedies like any other person.

Citizens’ Constitutional Forum is one of many human rights organisations which included references to the judiciary in their submissions to the Universal Periodic Review (UPR) at the United Nations Human Rights Council in 2010. Among other things, the Fiji government promised to the Human Rights Council in 2010 to respond to the request by the UN Special Rapporteur on the Independence of Judges and Lawyers to visit Fiji. However, such a visit has yet to take place.

In order to protect the right to freedom of expression and the important work carried out by human rights defenders and other civil society actors in Fiji, Amnesty International recommends that the Fiji authorities:

- Withdraw immediately the contempt of court charges against Citizens’ Constitutional Forum and Reverend Yabaki;
- Ensure that charges of contempt of court are not used to restrict the legitimate exercise of the right to freedom of expression;
- Abolish the common law charge of contempt for ‘scandalising’ the court;
- Commit publicly to respecting the right to freedom of expression and to protect the important work carried out by human rights defenders; and
- Invite the Special Rapporteur on the Independence of Judges and Lawyers to visit Fiji before the end of 2013, fully co-operate with their investigations and take their recommendations into serious consideration.

¹ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, 12 September 2011, para. 31. Available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>