



FIJI: 6-POINT HUMAN RIGHTS AGENDA FOR ELECTION CANDIDATES

**AMNESTY
INTERNATIONAL**



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INTRODUCTION

The upcoming Fiji general elections scheduled for 14 November 2018 provides an opportunity for political parties and candidates to publicly commit to address the severe failings in the protection of human rights in the country.

Fiji's Constitution of 2013 enshrines fundamental human rights protection, albeit with arbitrary limitations and without the necessary guarantees and provisions required under international law¹—including international obligations that Fiji has voluntarily committed to through the ratification of international human rights instruments.²

Amnesty International 2017/2018 annual report³ has pointed out that the government continues to fail to ensure accountability for the torture and other ill treatment of detainees by security forces. It also pointed out the increasing use of sedition charges to continue restrictions on the rights to freedom of expression and peaceful assembly. Human rights defenders remain at risk of persecution and members of the LGBTIQ community continue to face socio-economic discrimination. Women and girls face significant barriers for access to justice, with few effective remedies when violations occur. Environmental justice is hindered by the lack of informed, prior and free consent of Indigenous communities.

Amnesty International calls on all political parties and candidates to firmly commit to a comprehensive human rights agenda, in particular to:

1. Respect, protect and promote the right to expression, peaceful assembly, association and protest;
2. Freedom from torture, abuse and ill treatment;
3. Campaign to prevent violence against women and girls and enhance access to justice;
4. Promote the protection and recognition of human rights defenders;
5. Protect and promote the rights of LGBTIQ people;
6. Strengthen the right to information and participation for communities affected by development and potential environmental degradation.

¹ Section 17, 18 and 19 of *the Constitution of the Republic of Fiji (Promulgation) Decree, 2013*, www.paclii.org/fj/promu/promu_dec/cotrofd2013526/

² OHCHR, *Ratification Status for Fiji, 2017*, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx

³ *Amnesty International Annual Report 2017/18: Fiji, 2017*, www.amnesty.org/en/countries/asia-and-the-pacific/fiji/report-fiji/

1. RESPECT AND PROMOTE THE RIGHT TO EXPRESSION, PEACEFUL ASSEMBLY, ASSOCIATION AND PROTEST

The right to freedom of expression and peaceful assembly continues to be undermined both in law and in practice.

Freedom of expression in Fiji remains criminalized and subject to restrictions inconsistent with international human rights law, under the Fiji's 2013 Constitution and national decrees such as the Public Order Amendment Decree (2012) (POAD), Crimes Decree (2009) and the Media Industry Development Decree (2010) (MIDA).

Moreover, an increasing use of sedition and other criminal provisions to arrest and/or charge protestors and the media continues to perpetuate a climate of fear and censorship. On 26 June 2017, police arrested a youth activist for staging a lone protest on UN International Day Against Torture. He carried a placard with the names of six victims allegedly tortured by the security forces. He was detained for two days and released without charge. He was questioned for sedition and a breach of the POAD.⁴ In April 2018, an opposition MP and the leader of a political party were sentenced to imprisonment for sedition for their alleged role in putting anti-government graffiti in public places in 2011. However, the judgment was quashed in appeal and a re-trial ordered in August 2018.⁵

Media organizations perceived to be critical of the government are repeatedly targeted by the authorities. The Fiji Times Editor-in-chief Fred Wesley, the Publisher and General Manager Hank Art, their vernacular paper *Nai Lalakai*'s Editor Anare Ravula along with letter writer Josaia Waqabaca were charged with sedition and related charges in March 2017.⁶ They were charged for publishing a letter in *Nai Lalakai* written by Waqabaca, which allegedly contained prejudicial statements against Muslims. All the defendants were eventually acquitted, however, on the 24 May 2018, the Office of the Director of Public Prosecutions announced they would be appealing the ruling.

Journalists and media workers perceived to be critical of the government face increasing difficulties since the December 2006 coup in carrying out their work, with some removed from reporting and investigating stories or forced to resign by management due to what they describe as government pressure.

On 18 October 2018, the lawyers of the Prime Minister and Attorney General served a summons on human rights lawyer Aman Ravindra-Singh for a Facebook post he made criticising them and the government.

⁴ Amnesty International, *Fiji: Crack down on torture, not protests* ([News Story](#), 26 June 2017)

⁵ The Fiji Times, *Retrial ordered in Bilitavu, Karunaratne sedition case, 24 August 2018*, www.fijitimes.com/retrial-ordered-in-bilitavu-karunaratne-sedition-case/

⁶ Amnesty International, *Fiji: Drop politically-motivated sedition charges against The Fiji Times* ([News Story](#), 27 March 2017)

Freedom of peaceful assembly, protest and association continues to be compromised. In September 2018, the Fiji Police Force denied, for a second time this year, the permit application by Fiji Trade Unions Congress to march for workers' rights and stronger labour laws.

Fijian activists from the 'Free West Papua Movement' have also been threatened and intimidated by security forces for peacefully protesting and raising awareness on West Papua's human rights violations by the Indonesian military.

Fiji's track record of suppressing freedom of expression, peaceful assembly and association suggests that laws are not applied in a way, which upholds these freedoms.⁷ In addition to this, constitutional restrictions on the role of the courts limit the avenues through which people can realise these rights.

Amnesty International recommends as a matter of priority to:

- Ensure that there are no restrictions on the rights to freedom of expression, peaceful assembly and association in national laws, policies and practices, other than those strictly allowed in international human rights laws. To this effect, review and repeal provisions of the Constitution, Public Order Amendment Decree, Media Industry Development Decree, and the Crimes Decree, which may be used to criminalize freedom of expression, peaceful assembly and association.
- Amend legislations and relevant parts of the Constitution, so as to protect workers' rights in line with international human rights law and standards as well as international labour standards, including the right to form and join a trade union, the right to collectively bargain, the right to strike and the right to seek improved working conditions without penalty or reprisal.
- Facilitate and protect the peaceful exercise of the rights to freedom of expression, assembly and association, with particular vigilance in relation to trade unions and activists advocating for economic, political, civil and cultural rights.

2. FREEDOM FROM TORTURE, ABUSE, AND ILL-TREATMENT

Fiji has ratified the UN Convention Against Torture but it has failed to implement it into national law. Fiji has failed to revoke immunities for security forces and remove obstacles for reporting abuses. Fiji also made several significant reservations to the Convention. Most notably, Fiji purports to define what is and what is not torture and it

⁷ *Amnesty International Annual Report 2017/18: Fiji, 2017*, www.amnesty.org/en/countries/asia-and-the-pacific/fiji/report-fiji/

will not allow the UN Committee Against Torture to review its compliance with its obligations or rule on complaints.⁸ Many states that are party to the Convention have objected Fiji's reservations.

Torture, ill treatment and punishment by the security forces continue to be reported with several cases highlighted in 2018, one of which resulted in the death of a young man.⁹

Investigations into police brutality are carried out by police officers themselves raising serious concerns over the impartiality and independence of the process. This deters victims to report abuses, especially when they are members of vulnerable groups such as LGBTIQ individuals or sex workers. There is no publicly available information on the number of complaints received or on the actions taken against security force officers. The lack of transparency undermines the legitimacy of any investigations.

Amnesty International strongly urges Fiji to:

- Establish an independent and effective mechanism to investigate and address the systematic use of violence by the security forces and to make reports public.
- Remove any barriers to justice, truth and reparation for serious human rights violations, including claims to immunities in the Fiji Constitution and other decrees, and ensure that victims and families can seek and receive reparations, including through national courts.
- Immediately withdraw Fiji's reservations to the Convention Against Torture, and promptly adhere to the Optional Protocol to the Convention Against Torture and the International Convention for the Protection of All Persons from Enforced Disappearance, and implement them fully into national law.

3. CAMPAIGN TO PREVENT VIOLENCE AGAINST WOMEN AND GIRLS AND ENHANCE ACCESS TO JUSTICE

Violence and discrimination against women and girls remains widespread despite some key steps taken by government to address it.¹⁰ This violence is compounded by the

⁸ Fiji Sun, *Fiji has one of the best laws against torture: PM*, (full copy of Prime Minister's Voreqe Bainimarama's opening speech during the regional workshop on the UN Convention Against Torture and other Cruel, Inhuman or degrading treatment or punishment, delivered at Natadola Fiji), 28 October 2016, www.fijisun.com.fj/2016/10/28/fiji-has-one-of-the-best-laws-against-torture-pm/

⁹ The Fiji Times, *Coalition calls for independent probe*, 18 October 2018, www.fijitimes.com.fj/coalition-calls-for-independent-probe/

¹⁰ Fijivillage, *Fiji has one of the highest statistics in the world on domestic violence - Vuniwaqa*, 29 June 2018, www.fijivillage.com/news/Fiji-has-one-of-the-highest-statistics-in-the-world-on-domestic-violence--Vuniwaqa-r2k59s/?fbclid=IwAR19Wu3IavNRpQBGjCFY1Dg5GWOt8Op8OyxhIaHFoV58QrqHFN3K8rqcOgA

additional discrimination women and girls face on the grounds of ethnicity, sexual orientation, social status, class and age.

Victim blaming remains rampant with ineffective implementation of relevant legislation and significant obstacles preventing women from accessing justice, including inadequate or dismissive responses by police, medical and judicial personnel. For example, a research by the Fiji Women's Rights Movement shows that two in three women surveyed faced difficulties going to the police as the police told them to resolve the issue within the family or village, or the police did not take what they said seriously.¹¹

There is a failure by government agencies to take a holistic and substantive approach to achieve gender equality resulting in measures that do not address the underlying causes of gender-based violence and discrimination.

Amnesty International recommends that:

- Take urgent steps to prevent violence against women and girls by addressing the root causes of such violence through childhood and family based approaches, school based approaches and structural and policy reforms.
- Ensure that all frontline police officers are well versed with the Domestic Violence Decree, and processes are in place to enforce relevant provisions such as applying for urgent domestic violence restraining orders through phone calls.
- Ensure gender mainstreaming of all public policy, and to monitor and evaluate such efforts for effectiveness.
- Train all key stakeholders such as lawyers, judicial officers, police and health workers on explicit and implicit bias and how it impacts access to justice for girls and women, specifically in domestic violence and sexual offences cases.

4. PROMOTE THE PROTECTION AND RECOGNITION OF HUMAN RIGHTS DEFENDERS

Amnesty International has identified a pattern of human rights defenders being targeted by the State and lack of effective measures to ensure a safe and enabling environment for them.¹²

The government has implemented laws such as the Public Order Amendment Decree

¹¹ Fiji Women's Rights Movement, *Balancing the Scales: Improving Fijian women's access to justice, 2017*, www.fwrm.org.fj/images/fwrm2017/publications/analysis/Balancing-the-Scales-Report_FINAL-Digital.pdf

¹² *Amnesty International Annual Report 2017/18: Fiji, 2017*, www.amnesty.org/en/countries/asia-and-the-pacific/fiji/report-fiji/

(2012), Crimes Decree (2009) and the Media Industry Development Decree (2010) which curtails and censors the work of human rights defenders, and unjustly persecutes human rights defenders simply for legitimate activities such as publicly critiquing and disagreeing with government policies and legislation, and publicly advocating for the rights of vulnerable communities.

Many individuals working to defend human rights – including women rights activists, journalists and other media workers, civil society organizations workers, trade union members and lawyers – are not recognized as human rights defenders by the state despite their work to promote and defend human rights for all.

Amnesty International recommends that Fiji:

- Promotes and domesticates the UN Declaration on Human Rights Defenders and guarantees the protection and promotion of the rights of human rights defenders in accordance with the Declaration and other international human rights law and standards.
- Conducts a review of all existing national legislation, policies and practices that curtail or unduly restrict the work of human rights defenders, and amend or repeal such laws where necessary to affirm and enable legitimate activities to promote and defend human rights.

5. PROTECT AND PROMOTE THE RIGHTS OF LGBTIQ PEOPLE

Discrimination against LGBTIQ+ (Lesbian, gay, bisexual, transgender, intersex and queer) people continues in both law and in practice. In 2016 the Prime Minister told same sex couples that “Fiji does not need that rubbish” and for them to move to Iceland.¹³

Two brutal murders of a queer gay student and a transwoman student have raised concern of intensifying homophobia and transphobia resulting in targeted hate crimes.¹⁴

Stigma, discrimination and violence prevent LGBTIQ communities from accessing employment, school and health services. Restrictive interpretations of culture and religion act to stigmatize and exclude LGBTIQ people from society and prevent them from realizing their full potential.

¹³ Radio New Zealand, *Fiji PM's gay marriage comments shock*, 6 January 2016,

www.radionz.co.nz/international/pacific-news/293597/fiji-pm-s-gay-marriage-comments-shock

¹⁴ ABC News, *Murdered on International day against Transphobia: fears Fiji killing is a hate crime*, 23 July 2018, www.abc.net.au/news/2018-07-23/trans-woman-murdered-in-fiji-in-suspected-hate-crime/10026188

Amnesty International recommends that:

- Fiji Police to promptly investigate all cases of violence against the LGBTIQ community and bring all those suspected of criminal responsibility to justice in fair trials.
- Use affirmative and targeted approaches to address barriers to employment, education and health for the LGBTIQ+ community.

6. STRENGTHEN THE RIGHT TO INFORMATION AND PARTICIPATION FOR COMMUNITIES AFFECTED BY DEVELOPMENT AND POTENTIAL ENVIRONMENTAL DEGRADATION

The State has failed to uphold the obligation of obtaining free, prior and informed consent (FPIC) of Indigenous peoples affected by development and extractive activities.¹⁵ This obligation is linked to the right to self-determination and to non-discrimination affirmed in international human rights agreements and in general recommendations. The Committee on the Elimination of Racial Discrimination highlighted the obligation of States to ensure the right of Indigenous peoples to free, prior and informed consent is respected in the planning and implementation of projects affecting the use of their lands and resources.

Indigenous peoples have expressed concern of being excluded in government decision-making processes related to the extractive resource industry, including seabed mining.¹⁶ Villagers have been arrested by the police for setting up roadblocks to protest against prospecting licences issued by the government.¹⁷

Communities have spoken out on issues around hyper development¹⁸ resulting in cutting down of iconic and old trees and clearing of mangroves without involving communities in the decision-making process.

Amnesty International recommends that the government:

- Ensure the meaningful involvement and participation of all communities in decisions related to development projects and extractive activities

¹⁵ Pacific Network on Globalisation, *Resource Roulette: How Deep Sea Mining and Inadequate Regulatory Frameworks Imperil the Pacific and its Peoples*, 6 January 2016, www.cer.org.za/wp-content/uploads/2016/08/Resource-Roulette-Deep-sea-Mining-and-Inadequate-Regulatory-Frameworks.pdf

¹⁶ The Fiji Times, *State grants lease*, 28 August 2015, www.fijitimes.com.fj/state-grants-lease/

¹⁷ The Fiji Times, *Villager allegedly erects roadblock*, 15 January 2015, <https://fijitimes.stage.pagesuite.com/villager-allegedly-erects-roadblock/>

¹⁸ The Fiji Times, *Hundreds sign petition opposing park development*, 3 September 2014, www.fijitimes.com/hundreds-sign-petition-opposing-park-development/

- Respect the right of Indigenous people to free, prior and informed consent in decisions affecting their lands, territories and resources, including prior to issuing mining and exploratory licences.

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FIJI: 6-POINT HUMAN RIGHTS AGENDA FOR ELECTION CANDIDATES

Since the last general elections in 2014, human rights situation in Fiji has remained under attack. In particular, the government has failed to respect and protect the right to freedom of expression and peaceful assembly. Torture and other ill treatment by security forces has continued with no independent investigation process put in place. LGBTIQ+ communities and human rights defenders have also experienced violations of their rights. Violence against girls and women remain widespread and the right of Indigenous peoples to free, prior and informed consent is violated. On top of the new government's agenda should be to address the status of human rights in Fiji and to act on pressing concerns, including those in this agenda.

Ahead of general elections in Fiji on 14 November 2018, Amnesty International calls on all election candidates to respect, protect, fulfil and promote human rights for all, and to publicly commit to meeting Fiji's international human rights obligations.