



Fiji

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW

20TH SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2014

FOLLOW UP TO THE PREVIOUS REVIEW

Amnesty International acknowledges the steps Fiji has taken to comply with the 2010 UPR recommendations. These include revoking the *Pensions and Retirement Allowances Decree 2009* in 2010,¹ and lifting the *Public Emergency Regulations* (PER) in January 2012.² Regrettably, the PER was replaced with an amended *Public Order Amendment Decree* (POAD)³ which continues to restrict the rights to freedom of expression, association and peaceful assembly.

Fiji promulgated a new Constitution on 6 September 2013. However, the Constitution falls short of international human rights law and standards,⁴ and this runs counter to the commitments made by Fiji at its previous UPR in 2010 to accord the "*utmost importance, in the formulation of the new Constitution to the promotion and protection of human rights and fundamental freedoms*".⁵

Since the 2010 review, despite accepting recommendations to ensure the protection of human rights defenders,⁶ a pattern of abuse and intimidation of media personnel, human rights defenders, trade unionists, and government critics has continued, and the authorities have failed to independently investigate several new allegations of torture or ill-treatment by the security forces, contributing to a culture of impunity.

Fiji accepted recommendations to carry out full investigations into alleged acts of torture and other ill-treatment in custody, to hold to account those responsible, and to put an immediate end to immunity for members of the police and the military.⁷ However, no steps have been taken to address the specific cases raised at the last review.

Fiji also accepted a recommendation to consider favourably the request for a visit by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,⁸ but has subsequently failed to respond positively to the Special Rapporteur's requests to visit.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

The new Constitution

Amnesty International has raised concerns that the Constitution, promulgated in September 2013, falls short on human rights law and standards.⁹ Repeated changes to the drafting process, restrictions on the rights to freedom of expression, association and peaceful assembly during the public consultation process and interference with the work of the Constitutional Commission, undermined the ability of the local population to meaningfully engage and participate in the debate on the Constitution.

The Constitution fails to protect human rights by providing immunity from prosecution for military, police and government officials, who commit human rights violations, including crimes under international law such as torture. The Constitution contains broad limitations on rights which are not consistent with international human rights law and

standards, for example restrictions on the right to a remedy and rights being subject to limitations in subsidiary laws. Workers' rights also continue to be restricted.¹⁰

Independence of the judiciary

Amnesty International continues to be concerned about a pattern of interference in the work of the judiciary, as set out in the September 2009 report, *Fiji: Paradise Lost*.¹¹ A number of more recent reports include claims of executive interference with the independence of the judiciary:

- A 2012 Report by the Law Society Charity cited serious concerns about the independence of the judiciary, the competence and independence of the prosecution service, restrictions placed upon the legal profession, and the inability of citizens to challenge the government decisions.¹²
- In September 2012, a former Court of Appeal Judge, Justice William Marshall QC, claimed interference in the conduct of a number of specific cases by the Attorney General.¹³

The Constitution fails to address existing concerns surrounding the independence of the judiciary including executive interference and lack of security of tenure.¹⁴

International human rights instruments

Fiji accepted recommendations to ratify a number of core human rights conventions and optional protocols,¹⁵ but has since failed to do so.¹⁶ Amnesty International welcomes the signing of the Convention on the Rights of Persons with Disabilities in June 2010;¹⁷ however the Convention has yet to be ratified.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Freedom of expression, association and peaceful assembly

In January 2012, the *Public Emergency Regulations* (PER) were lifted; however other laws, policies and practices continue to unlawfully restrict the rights to freedom of expression, association and peaceful assembly. Some recent examples of such restrictions include:

- On 12 November 2013, 14 women and young people who were having lunch outside in Suva were arrested for wearing t-shirts which called on Fiji to make the budget public. They were detained for several hours and questioned before being released without charge.¹⁸
- On 6 September 2013, 14 activists were arrested for gathering peacefully outside the President's residence on the day he was due to assent to the Constitution. The activists were detained for several hours for questioning, they were verbally abused by police, but were eventually released without charge.¹⁹
- In June 2013, a market seller was arrested and charged with committing a "malicious act" for expressing anti-government views. The market seller allegedly suffers from a psychiatric condition and was beaten by police on arrest.²⁰
- In July 2012, police detained and intimidated staff of the Fiji Women's Rights Movement (FWRM) for holding a private organizational meeting, claiming that a permit was required.²¹
- In March 2012, the permission to hold a peaceful march for International Day against Homophobia, organized by human rights organizations, was revoked by police at the last minute, on the basis that the permission had been given without understanding the purpose of the march.²²
- Amnesty International has also received reports of people being threatened and detained by the military or police for comments made on social media, as well as reports of phone-tapping and monitoring of human rights activists' Facebook activity.

Amnesty International is deeply concerned about criminal charges or court proceedings against government critics. In a number of cases, politically motivated charges have been pursued by the prosecutors. This includes charges against former Prime Minister Qarase relating to events more than 20 years ago,²³ charges against former politician Mere Samisoni for inciting political violence,²⁴ sedition charges against union leader Daniel Urai,²⁵ sedition charges against

five graffiti activists for spreading anti-government messages,²⁶ and criminal charges against human rights lawyer Imrana Jalal in relation to a \$20 restaurant licence.²⁷ In a number of these cases, travel restrictions formed a part of bail conditions.

Contempt of court proceedings have also been used to restrict the right to freedom of expression of the media (*Fiji Times*) and of human rights advocates (Rev. Akula Yabaki and the Citizens' Constitutional Forum).²⁸

Several overlapping laws such as the *Public Order Amendment Decree*, the *Media Industry Development Decree 2010*, the *Crimes Decree 2009* and the Constitution disproportionately restrict and criminalize the rights to freedom of expression, association and peaceful assembly.²⁹ A recent report by the Pacific Media Assistance Scheme stated that 'a culture of self-censorship has become entrenched in media reporting as a result of confusion arising from the implementation of media decrees'.³⁰

Human rights guarantees in the 2014 elections

Amnesty International considers it crucial to guarantee the right to freedom of expression and open political discourse, particularly in the lead up to the elections in 2014.³¹

Four political parties have registered under the *Political Parties (Registration, Conduct, Funding and Disclosures) Decree (PPD) 2013*.³² Elections have been announced to take place before the end of September 2014.

Amnesty International is concerned that the current lack of electoral laws or regulations may hinder the ability of civil society organizations to provide voter education and advocacy on civil and political rights in the lead up to elections, particularly in the context of current limitations on the rights to freedom of expression, association and peaceful assembly.

Workers' rights

Amnesty International is concerned about restrictions of workers' rights and notes the concerns highlighted by the International Trade Union Confederation.³³ In September 2012, the government expelled representatives from the International Labour Organization (ILO) investigating these issues.

The PPD and the *Essential National Industries (Employment) Decree 2011* (ENID)³⁴ severely restrict trade union and labour rights including by removing the right to redress for past, present or future violations of fundamental workers' rights. The PPD excludes trade union officials from being a member of or holding office in a political party, and of expressing support for a political party. The ENID restricts collective bargaining rights, severely curtails the right to strike, bans overtime payments and voids existing collective agreements for workers in key sectors of the economy, including the sugar industry, aviation and tourism. In December 2013, a number of additional sectors were added to those already covered under the decree.

The president of Fiji Trades Union Congress (FTUC), Daniel Urai, was arrested and charged with an 'unlawful strike' in January 2014.³⁵ Previous to this, he had been charged (along with Hotels Union staff member Dinesh Gounder) with holding a meeting without a permit in early August 2012,³⁶ and with sedition after meeting union leaders in Australia and New Zealand in 2011.³⁷

Trade union leaders Kenneth Zinck,³⁸ Daniel Urai and Felix Anthony³⁹ have complained to the police of intimidation and harassment, including physical violence, by the authorities since 2011. Police have refused to investigate Felix Anthony's complaint against Military Commander and Prime Minister Bainimarama.⁴⁰ In 2013, military officers were sent to the Lautoka Sugar Mill during a vote on industrial action in order to intimidate the workers.⁴¹

Amnesty International continues to support the call for a Commission of Inquiry on workers' rights in Fiji, under Article 26 of the ILO Constitution.⁴²

Torture and other ill-treatment

Reports of torture and other ill-treatment by security forces in Fiji continue and a culture of impunity prevails.

- In February 2013, video footage emerged on the internet showing the physical and sexual torture of two men, apparently by the security forces. One of the men being tortured in the video was 24-year-old Iowane Benedito, who had escaped from the Korovou prison in Suva on 18 November 2012. The authorities have acknowledged their apparent role in the video and claim that they are investigating, however, there is no evidence to suggest that any independent investigation into this incident has commenced.⁴³
- In September 2012, security forces tortured five escapees from Nabaro prison on their recapture⁴⁴. The five prisoners subsequently appeared in court with injuries, but no investigation into their injuries or allegations of torture has been initiated. One of the five prisoners, Epeli Quraniqio, was beaten so severely that his leg had to be amputated.
- In 2011, at least 10 politicians, trade unionists, government critics and others were arbitrarily arrested and subjected to beatings at the hands of the military, before being released.⁴⁵
- Four deaths in custody were reported at the time of the last UPR.⁴⁶ However, in only one of these cases have the perpetrators been Charged and sentenced. In another case, no charges were laid and there is no evidence that the incident has been independently investigated. In the last two cases, the individuals convicted for these offences were subsequently released early from prison by the Attorney-General and allowed to continue their employment with the security forces. Amnesty International is not aware of any deaths in custody since the last review.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Fiji to:

National human rights framework

- Repeal all immunity provisions, including in the Constitution, to ensure that there is no immunity for perpetrators of serious human rights violations, including the rights to life and to freedom from torture and other ill-treatment;
- Review the Constitution and domestic laws to ensure that human rights are fully protected, that victims have access to remedies, and that no restrictions may be placed on human rights, other than those that are consistent with international human rights law and standards.

Ratification of human rights conventions

- To ratify and implement the International Covenant on Civil and Political Rights and its First Optional Protocol, the Convention on the Rights of Persons with Disabilities, the International Covenant on Social, Economic and Cultural Rights and its Optional Protocol, the Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

Cooperation with the UN and other humanitarian and human rights organizations

- Issue an open invitation to all Special Procedures of the UN Human Rights Council, the ILO, and other international observers and co-operate fully with them in implementing recommendations for the restoration of the rule of law, the independence of the judiciary and respect for human rights;
- To ensure full cooperation with and meaningful access by international human rights and humanitarian organizations to Fiji.

Rights to freedom of expression, peaceful assembly and association

- Ensure that there are no restrictions on the rights to freedom of expression, association and peaceful assembly, in the Constitutions, national laws, policy and practice, other than those stipulated in international human rights law and standards;
- Ensure that victims of violations of the rights to freedom of expression, association and peaceful assembly have the right to a timely and effective remedy;
- Review the criminal charges against human rights defenders, and drop those imposed solely for exercising the rights to freedom of expression, association and peaceful assembly;
- Ensure that no one is arbitrarily arrested and detained for exercising their rights to freedom of expression, association and peaceful assembly, and that no one is the subject of threats, violence, harassment, persecution, intimidation or reprisals;
- Facilitate and protect the exercise of the rights to freedom of expression, association and peaceful assembly, with particular vigilance in relation to minority groups and activists advocating for economic, social and cultural rights, who are at greater risk of attacks and stigmatization;
- Ensure that no political parties are discriminated against in relation to their formation, ability to access funding, and to exercise their rights to freedom of expression and peaceful assembly, including through peaceful demonstrations and access to the media.

Workers' rights

- Amend current legislation, including the *Essential National Industries (Employment) Decree 2011* and relevant parts of the Constitution, or pass new laws to protect workers' rights in line with international human rights law and international labour standards, including the right to form and join a trade union, the right to collectively bargain, and the right to seek improved working conditions without penalty or reprisal.

Torture and other ill-treatment

- Publicly condemn all acts of torture and other ill-treatment, ensure that such practices cease immediately, and make clear to all officers involved in arrest, detention and interrogation that torture and other ill-treatment will not be tolerated under any circumstances;
- Ensure that all those suspected of being responsible for torture or other ill treatment, including those who committed the violations and those in positions of responsibility who ordered or allowed others to commit them, are brought to justice in proceedings that meet international fair trial standards, without recourse to the death penalty;
- Immediately invite and facilitate a visit by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and fully co-operate with the Special Rapporteur, including by providing him with a copy of all investigation records and medical reports relating to the torture and ill treatment of escaped prisoners.

Independence of the judiciary

- Ensure the executive immediately ceases all 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 human rights law and standards;
- Review the Constitution, decrees and other laws to ensure that all judges have security of tenure and that they can only be appointed or removed through an independent and transparent process consistent with international human rights law and standards;
- Immediately invite the Special Rapporteur on the independence of judges and lawyers to visit Fiji and to fully co-operate with the Special Rapporteur.

ENDNOTES

¹ A/HRC/14/8, para 71.97 (Spain).

² A/HRC/14/8, para 71.21 (Norway), 28 (United Kingdom), 31 (United States), 34 (Australia), 76 (Netherlands).

³ Public Order (Amendment) Decree 2012 (Decree 1), Government of Fiji, available at: http://www.paclii.org/fj/promu/promu_dec/pod2012226/ [accessed 19 September 2013].

⁴ Amnesty International, *Fiji's Draft Constitution Falls Short on Human Rights Standards* (Index:

ASA 18/001/2013), 25 April 2013; Amnesty International, *Fiji: New constitution fails to protect fundamental human rights*, Press Release (Index: PRE 01/443/2013) 4 September 2013; and Amnesty International, *Another court ruling, another setback for freedom of expression in Fiji* (Index: ASA 18/003/2013), 13 August 2013.

⁵ A/HRC/14/8, para 71.16 (Philippines).

⁶ A/HRC/14/8, para 71.61 (Netherlands), 62 (Norway), 63 (Spain), 93 (Canada).

⁷ A/HRC/14/8, para 71.93 (Canada), 94 (UK).

⁸ A/HRC/14/18, para 71.48 (Norway).

⁹ Amnesty International, *Fiji's Draft Constitution Falls Short on Human Rights Standards* (Index:

ASA 18/001/2013)

¹⁰ Amnesty International, *Fiji's Draft Constitution Falls Short on Human Rights Standards* (Index:

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¹¹ Amnesty International, *Fiji: Paradise Lost, a Tale of Ongoing Human Rights Violations April – July 2009*, (Index: ASA 18/002/2009), September 2009.

¹² The UK Law Society Charity, *Fiji: the Rule of Law Lost*, January 2012, available at: <http://www.lawsociety.org.uk/about-us/law-society-charity/documents/lsccharity-fiji-report/> [accessed 20 February 2014].

¹³ Fiji Today, *Political Parties call for Judicial Inquiry*, 21 September 2012, available at: <http://fijitoday.wordpress.com/2012/09/22/press-release/> [accessed 19 September 2013].

¹⁴ Amnesty International, *Fiji's Draft Constitution Falls Short on Human Rights Standards* (Index:

ASA 18/001/2013), 25 April 2013.

¹⁵ A/HRC/14/8 para 71. 1 (Algeria, Maldives), 2 (Republic of Korea, Mexico, Brazil, Philippines), 3 (Slovenia), 4 (Hungary) 5 (Spain, Germany, Argentina), 6 (Norway), 7 (Chile, Japan, Canada, Netherlands, Switzerland).

¹⁶ The core human rights conventions include: the International Covenant on Civil and Political Rights (ICCPR), the First Optional Protocol to the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of Persons with Disabilities (CRPD).

¹⁷ UN Convention on the Rights of Persons with Disabilities, New York, 13 December 2006, *Convention and Optional Protocol Signatures and Ratifications*, available at: <http://www.un.org/disabilities/countries.asp?navid=17&pid=166> Signed: Fiji 2 June 2010.

¹⁸ Radio New Zealand, *Arrest over luncheon protest during Fiji's budget day labeled 'juvenile'*, 12 November 2013, available at: <http://www.radionz.co.nz/international/pacific-news/227506/arrests-over-luncheon-protest-during-fiji-s-budget-day-labelled-'juvenile'> [accessed 28 January 2013].

¹⁹ ABC News, *Protestors arrested as Fiji's President prepares to give assent to new Constitution*, 6 September 2013, available at: <http://www.abc.net.au/news/2013-09-06/an-protesters-arrested-outside-fiji-constitution-ceremony/4940326>, [accessed 19 September 2013].

²⁰ Pacific Freedom Forum, *Police State attack in Fiji (PFF)*, 12 July 2013, available at: <http://www.pacificfreedomforum.org/2013/07/police-state-attack-in-fiji-pff.html>, [accessed 20 February 2014]; see also Shanai Sivan, *Market Vendor appears on Malicious Act charge*, Fiji Broadcasting Corporation, 11 July 2013 <http://www.fbc.com.fj/fiji/11917/market-vendor-appears-on-malicious-act-charge> [accessed 10 March 2014].

²¹ Amnesty International Annual Report 2013, *The State of the World's Human Rights* (Index: POL 10/001/2013), 2013, available at: <http://www.amnesty.org/en/region/fiji/report-201>, [accessed 31 January 2013]

²² Amnesty International Annual Report 2013, *The State of the World's Human Rights* (Index: POL 10/001/2013), 2013, available at: <http://www.amnesty.org/en/region/fiji/report-201>, [accessed 31 January 2013]; see also News.com.au, Fiji Police Cancel Gay Pride March, 17 May 2012, <http://www.news.com.au/breaking-news/fiji-police-cancel-gay-pride-march/story-e6frfkuo-1226359207312> [accessed 10 March 2014].

²³ Amnesty International Public Statement, *Fiji's former prime minister imprisoned on politically motivated charges*, 8 August 2012, (Index: ASA 18/001/2012), available at: <http://www.amnesty.org/fr/library/asset/ASA18/001/2012/fr/a7c317fc-8c28-4638-8e2b-61bb3cc3670f/asa180012012en.pdf> [accessed 20 February 2014]; see also ABC Radio Australia, *Fiji judge upholds guilty charges against former PM Qarase*, 1 August 2012, available at: <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/fiji-judge-upholds-guilty-charges-against-former-pm-qarase/990622> [accessed 7 February 2014].

²⁴ ABC Radio Australia, *Fiji to charge former MP with trying to overthrow the government*, 2 January 2012, available at: <http://www.radioaustralia.net.au/international/radio/onairhighlights/fiji-to-charge-former-mp-with-trying-to-overthrow-the-government> [accessed 7 February 2014].

²⁵ Read Daniel Urai's response to sedition charges: ABC Radio Australia, *Fiji unionist calls sedition charge a joke*, 11 November 2011, available at: <http://www.radioaustralia.net.au/international/radio/onairhighlights/fiji-unionist-calls-sedition-charge-a-joke> [accessed 28 January 2014].

²⁶ *State v Raicebe* [2011] FJHC 729, available at: <http://www.paclii.org/cgi-bin/sinodisp/fj/cases/FJHC/2011/729.html?stem=&synonyms=&query=sedition> [accessed 20 February 2014]

²⁷ Pacific Islands News Association, *Fiji lawyer says prosecution meant to shut her up*, 11 January 2010, available at: <http://www.pina.com.fj/index.php?p=pacnews&m=read&o=10319519884b4a874dc7527936d22b> [accessed 7 February 2014].

²⁸ Amnesty International, *New contempt of court ruling, a setback for freedom of expression in Fiji* (Index: ASA 18/003/2013), 13 August 2013.

²⁹ Amnesty International, *Fiji's Draft Constitution Falls Short on Human Rights Standards* (Index: ASA 18/001/2013), 25 April 2013.

³⁰ Pacific Islands Media Assistance Scheme, *Fiji: State of Media & Communication Report 2013*, available at: http://www.pacmas.org/wp-content/uploads/2013/10/14.-Fiji-PACMAS-Country-Report_FINAL.pdf [accessed 20 February 2014]

³¹ ICCPR Article 19, General Comment no. 34, UN Doc. CCPR/C/GC/34, 12 September 2011.

³² Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013, Government of Fiji, available at: <http://fijilive.com/archive/showpdf.php?pdf=209.pdf>, [accessed 19 September 2013].

³³ International Trade Union Confederation, *A Commission of Inquiry for Fiji*, January 2014, available at: http://www.ituc-csi.org/IMG/pdf/circular_no_02_-_fiji-ilo_2014_en.pdf [accessed 28 January 2014].

³⁴ Essential National Industries (Employment) Decree 2011, Government of Fiji, available at: http://www.paclii.org/fj/promu/promu_dec/enid2011463/ [accessed 19 September 2013].

³⁵ International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), *Fijian union leaders arrested after a strike at Starwood hotels*, 14 January 2014, available at: http://www.iuf.org/cgi-bin/campaigns/show_campaign.cgi?c=833 [accessed 28 January 2014].

³⁶ Amnesty International Annual Report 2013, *The State of the World's Human Rights* (Index: POL 10/001/2013), 2013, available at: <http://www.amnesty.org/en/region/fiji/report-201>, [accessed 31 January 2013]

³⁷ Read Daniel Urai's response to sedition charges: ABC Radio Australia, *Fiji unionist calls sedition charge a joke*, 11 November 2011, available at: <http://www.radioaustralia.net.au/international/radio/onairhighlights/fiji-unionist-calls-sedition-charge-a-joke> [accessed 28 January 2014].

³⁸ Amnesty International Annual Report 2013, *The State of the World's Human Rights* (Index: POL 10/001/2013), 2013, available at: <http://www.amnesty.org/en/region/fiji/report-201>, [accessed 31 January 2013]

³⁹ Torture Watch, *Trade unionist reports beatings and torture by military*, 31 July 2012, available at: <http://www.thetorturewatch.com/1/post/2012/07/trade-unionist-reports-beatings-by-military.html> [accessed 19 September 2013].

⁴⁰ ABC Pacific Beat, *Fiji unionist names Bainimarama in police complaint*, 7 August 2012, available at: <http://www.radioaustralia.net.au/international/radio/program/pacific-beat/fiji-unionist-names-bainimarama-in-police-complaint/994914> [accessed 20 February 2014].

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⁴² Amnesty International, *Fiji: ILO Commission of Inquiry should be set up to protect workers' rights*

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⁴³ Amnesty International, *Fiji: "Shocking" video depicts alleged torture prisoners*, 5 March 2013, available at: <http://www.amnesty.org/en/news/fiji-shocking-video-depicts-alleged-torture-prisoners-2013-03-05> [accessed 19 September 2013].

⁴⁴ Amnesty International, *Fiji: Open letter concerning reports of torture of recaptured prisoners*

(Index: ASA 18/002/2012), 12 December 2012.

⁴⁵ Amnesty International, *Urgent Action: Torture and detention of activists in Fiji*, (Index: ASA 18/002/2011) 1 March 2011.

⁴⁶ Amnesty International, *Fiji: Submission to the UN Universal Periodic Review: Seventh Session of the UPR Working Group of the Human Rights Council February 2010* (Index: ASA 18/001/2009), 1 September 2009.