

I. Background and Framework

A. International obligations

1. Fiji is a party to some, but not all, international human rights instruments¹. Although Fiji has committed to a number of international instruments, domestic implementation of these obligations are not carried out in a manner that gives full realisation to human rights.
2. The government has not invited Special Rapporteurs to Fiji despite assurance that this would occur². The following Special Rapporteur's have requested visitation to Fiji³:
 - i. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;
 - ii. Special Rapporteur on the independence of judges and lawyers;
 - iii. Special Rapporteur on the situation of human rights defenders;
 - iv. Special Rapporteur on the freedom of association and assembly; and
 - v. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

B. Constitutional and legislative framework

5. Since the 2006 coup, the Republic of Fiji has continued to be ruled by the interim military government headed by Prime Minister Josaia Voreqe Bainimarama.
6. The 1997 Constitution was not reinstated despite recommendations made in the Report of the Working Group on the Universal Periodic Review 2010⁴(the first UPR cycle) and the Constitution of the Republic of Fiji 2013 (2013 Constitution) was promulgated in September.
7. Since 2006, law-making has been by presidential decree, governed by the Executive Authority of Fiji Decree 2009 (together with the transitional provisions contained in the 2013 Constitution). Decrees are passed at short notice without public debate or scrutiny. The Administration of Justice Decree 2009⁵, and the transitional provisions contained in the 2013 Constitution, prevents any legal challenge against decrees.
8. The interim Government has set a timeframe to return Fiji to parliamentary rule, and announced that elections will be held by 30 September 2014. In March, the interim Prime Minister stepped down as Commodore from the Fiji military, and announced that he will be campaigning with a new political party.

C. Institutional and human rights infrastructure

9. The Fiji Human Rights Commission (FHRC) was created by presidential decree in 2009, succeeding the entity of the same name established as an independent statutory body under the 1997 Constitution.

II. Promotion and protection of human rights on the ground

A. Democracy and the rule of law

¹ Reservations to the International Convention on the Elimination of All forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women have been removed. Fiji has not signed or ratified the Convention Against Torture and the International Convention on Civil and Political Rights.

² Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 45, 46, 46 and 50.

³ *Country and other visits by Special Procedures Mandate Holders since 1998*, United Nations Human Rights, Office of the High Commissioner for Human Rights. Available at <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx> (accessed 14 March 2014). With the exception of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, it was specifically recommended that the government invite these Special Rapporteurs to Fiji in the Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 48, 49, 50, 51, 52, 53, 54.

⁴ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 12 and 17. On 10 April 2009, the interim government abrogated the Constitution of the Republic of the Fiji Islands 1997 (the 1997 Constitution), dismissed the judiciary and imposed Public Emergency Regulations.

⁵ The Administration of Justice Decree 2009 has been repealed by the Constitution of the Republic of Fiji, cl 164, with the exception of s 5(3), (4), (5), (6) and (7), which has continued to apply under cl 173(5).

Restoring democracy

10. In accordance with recommendations from the first UPR cycle⁶, Fiji has taken some positive steps toward restoring democracy. A constitution has been promulgated, although the constitution making process and the limitations to human rights contained in the 2013 Constitution are concerning. It has been announced that elections will be held by September 2014; however restrictions on freedom of expression, association and assembly seriously jeopardize the path to a credible, free and fair democratically elected government.

Free and fair elections

11. Fiji's return to full parliamentary democracy is threatened by a lack of credible, transparent and inclusive election processes. This is due to a number of decrees restricting the election process itself and placing limitations on freedom of expression, association and assembly⁷.
12. The Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 (the Political Parties Decree) restricts free and fair participation by political parties in the electoral process due to the stringent hurdles required to register and operate under these decrees. For example, it includes provisions that⁸:
 - i. trade union leaders must quit their positions before standing as candidates;
 - ii. parties must gather 5,000 signatures across the country to register,
 - iii. political parties can be deregistered for *any* election offence, which can easily be abused to target particular individuals, and
 - iv. laws may limit the rights and freedoms relating to labour relations, association, movement and expression for the 'orderly conduct of elections'.
13. The Electoral Commission is responsible for registering voters and conducting 'free and fair elections'. The current Prime Minister indirectly controls the appointments of both the Electoral Commission and Supervisor of Elections⁹. Until these appointments are made, the permanent secretary for elections (again appointed by the current Prime Minister) will perform these functions. To date, the Supervisor of Elections has not been appointed.
14. The much anticipated electoral laws are yet to be published. This inhibits registered parties from campaigning and limits civil society organisations from participating in public education and initiatives.

The constitution making process

15. The constitution making process for the 2013 Constitution did not provide for 'full, inclusive and fair participation of all Fijians', one of the Government's 'non-negotiable' principles contained in the Fiji Constitutional Process (Constitution Commission) Decree 2012¹⁰.
16. In 2011 the government appointed a five member Constitution Commission (the Commission). The commission carried out extensive public consultations and over 7100 submissions were received, including from some of Fiji's most remote areas. These submissions were made publicly available, as was a report explaining the Commission's decisions in developing the draft constitution that was presented to the government. In early 2013 the government rejected the Commission's draft.
17. The government released its own draft constitution on 31 March 2013. Deviating from the Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012, and in

⁶ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 11, 25, 18, 19, 20, 21 and 35.

⁷ This is further elaborated in par 23-30 below.

⁸ Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 ss 14, 6, 19 and 3.

⁹ The Electoral Commission is appointed by the Constitutional Offices Commission, a body controlled by the Prime Minister. See cl 76 of the Constitution of the Republic of Fiji 2013.

¹⁰ Constitutional Process (Constitution Commission) Decree 2012, s 3.

defiance of the recommendations made in the first UPR cycle¹¹, the draft was not presented to a constituent assembly and the public was asked to contribute their comments instead. While this was defined as ‘public participation’, the period for public submissions was far too short to enable real participation¹². Further, the government have not made public the 1093 written submissions received by the office of the Attorney-General.

The Constitution of the Republic of Fiji 2013

18. The 2013 Constitution includes a number of concerning provisions. These include, but are not limited to, the following:

- i. *The Bill of Rights*: The Bill of Rights is comprehensive, however the protections of these rights is weak. Parliament is awarded an almost unqualified right to limit the rights and freedoms conferred with the ‘Claw-back’ clause¹³. This states that the rights contained in the Bill of Rights may be limited if the limitation is (i) necessary; and (ii) prescribed by, or permitted by actions taken under the authority of, a law. As such, an act of Parliament that limits a constitutional right will be valid if it can be justified as ‘necessary’. This low threshold creates a dangerous potential for abuse of rights. The Bill of Rights is silent on the rights of women.
- ii. *Immunity Provisions*: The 2013 Constitution includes absolute and unconditional immunity provisions covering both the 1987 and 2006 coups. The only exception is for certain acts defined by the Crimes Decree 2009¹⁴. The immunity provisions are unable to be amended in any way, including by repeal¹⁵. The breadth of these provisions, which seemingly exceed the permissible scope of amnesties under international law, are concerning. They do little to deter future coups and the imposition of broad and unqualified immunities, without adequate public consultation, means that such provisions may well be contrary to popular desires.
- iii. *Certain provisions unable to be amended*: It is impossible to amend immunity provisions, transitional provisions or the amendment process itself. The amendment process itself is difficult and requires super-majorities in Parliament and a referendum. As such, the Constitution will be unable, or very difficult, to modify in keeping with any change in Fijian attitudes, particularly in relation to the immunity provisions outlined above.

Independence of the judiciary

19. Contrary to recommendations made in the first UPR cycle¹⁶, the government has not revoked decrees that prevent the courts from considering the legality of government actions. Even though the Administration of Justice Decree 2009 has been repealed by the 2013 Constitution¹⁷, the provisions that remove the jurisdiction of the courts to hear or determine any challenges regarding the validity, legality or constitutionality of any decree is still in force. The constitution prohibits all tiers of the judiciary from considering cases relating to the 2006 coup, all acts of the government between December 2006-April 2009, the abrogation of the 1997 Constitution, and all government decrees since December 2006¹⁸. This immunity remains in force until the first sitting of a new parliament under the new constitution,

¹¹ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 13.

¹² The government released its draft constitution in August 2013, and a version with amendments was assented to on 6 September 2013 (the 2013 Constitution).

¹³ Constitution of the Republic of Fiji 2013, Bill of Rights, cl 6(5)(c).

¹⁴ These offences relate to: (i) bribery and corruption; (ii) forgery and perjury; (iii) sexual crimes, and offences relating to prostitution and abortion; or (iv) property. See Constitution of the Republic of Fiji 2013, cl 156-157.

¹⁵ Constitution of the Republic of Fiji 2013, cl 158.

¹⁶ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 90.

¹⁷ Constitution of the Republic of Fiji 2013, cl 164.

¹⁸ Constitution of the Republic of Fiji 2013, cl 173.

but may not have retrospective effect. As a result, there is no lawful method of challenging actions and decisions of the government.

20. The 2013 Constitution does not provide for the 'non-negotiable' principle of an independent judiciary¹⁹. The Prime Minister and the Attorney-General have significant control over the judicial branch, including all the independent legal officers and the Judicial Services Commission (JSC)²⁰, which further politicises the judiciary. These measures are contrary to the recommendations in the first UPR cycle²¹. The judicial officers removed on 10 April 2009 were not restored despite recommendations in the first UPR cycle²².
21. A number of cases in the Fiji courts draw into question the integrity and impartiality of the judiciary. For example, in August 2012, Laisenia Qarase, former Prime Minister and leader of the Soqosoqo Duavata ni Lewenivanua party²³, was sentenced to one year in prison for abuse of office charges. The offences took place over 20 years ago, and the sentence prevents Qarase from contesting the 2014 elections. Fiji Labour Party leader, Mahendra Chaudry, is currently involved in criminal proceedings, which also prevents him from contesting the 2014 elections²⁴. Further, human rights defenders and journalists that have published material questioning the independence of the judiciary have been silenced through charges for contempt of court²⁵.

B. Freedom of expression, association and assembly

Freedom of expression

22. Government censors have been removed from newsrooms however censorship in the media is still a serious concern. The media is now policed by repressive policies introduced by the Media Industry Development Decree 2010²⁶ (the Media Decree) and the Television (Amendment) Decree 2012²⁷ (the Television Decree). This has resulted in media outlets and journalists exercising self-censorship²⁸ and heavily compromised the integrity of the media. These decrees are in direct conflict with recommendations in the first UPR cycle to abolish any decree that places restrictions on the ability of the media to operate freely and independently²⁹.
23. Fiji Media Industry Development Authority³⁰ (the Media Authority), has broad powers to forbid publications that are 'against public interest or order'. It also has wide powers of investigation over journalists and media outlets, including powers of search and seizure. The Media Decree established the Media Tribunal³¹ to decide on complaints referred to by the Media Authority. The Media Tribunal has jurisdiction to impose punitive measures, such as large fines and jail terms³². The State Proceedings (Amendment) Decree 2012 grants immunity to government officials for any statements made to the

¹⁹ Constitutional Process (Constitution Commission) Decree 2012, s 3.

²⁰ The Prime Minister, in consultation with the Attorney general, appoints and determines the remuneration of the two highest judicial offices in Fiji (the Chief Justice and the President of the Court of Appeal). Other judges and magistrates are appointed by the Judicial Services Commission (JSC), which is controlled by the Chief Justice and the Attorney-General. Further, the Chief Justice will be acting President in cases of absence or incapacity of the President (see Constitution of the Republic of Fiji cl 88). The JSC, after consultation with the Attorney-General, appoints and disciplines all other judges and magistrates

²¹ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 21, 85, 86, 91, 84, 87, 88 and 89, 91 and 92.

²² Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 17 and 89.

²³ Now Social Democratic Liberal Party (SODELPA).

²⁴ *Human Rights and Democracy 2012, Foreign and Commonwealth Office Report 2012*, Foreign and Commonwealth Office. Available at <http://www.hrdreport.fco.gov.uk/human-rights-in-countries-of-concern/fiji/?showall=1> (accessed 10 March 2014).

²⁵ See par 25 and 27.

²⁶ Media Industry Development Decree 2010

²⁷ Television (Amendment) Decree 2012

²⁸ Testimonies of Fiji Broadcasting Corporation and Fiji TV, Changing Lenses Workshop, Citizens Constitutional Forum, 28 February 2014.

²⁹ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 73, 75 77, 78, 79, 80 and 81.

³⁰ Established under the Media Industry Development Decree 2010, s 8(e).

³¹ Media Industry Development Decree 2010 (29 of 2010), s 44(1).

³² Despite this, the Media Tribunal is not bound by formal rules of evidence.

media³³. As such, defamatory statements made by the government can be published without retribution.

24. Under the Television Decree, the minister has the power to revoke or vary a television licence, and the decision to do so cannot be legally challenged³⁴. Short-term licences are often awarded to media groups rendering them dependant on continued approval from the government to operate³⁵. This has seriously compromised the ability of civilians to make fully informed decisions in the lead up to elections.
25. In 2012, the Editor and publisher of the Fiji Times were found guilty of contempt of court for republishing an article that questioned the independence of the Fiji courts³⁶. Heavy penalties were imposed on the newspaper, editor and publisher³⁷.

Freedom of association and assembly

26. The Public Emergency Regulations imposed in 2009 were lifted in 2012, however the restrictive measures imposed by these regulations were replaced with the Public Order (Amendment) Decree 2012, which places serious limitations on the right to public assembly and freedom of expression. This is a deviation from recommendations made in the first UPR cycle to abolish such policies and decrees³⁸. Under this decree the government can refuse to grant a permit for any meeting or peaceful protest deemed to prejudice peace, public safety and good order, or to sabotage or attempt to undermine the economy.
27. This decree has been used to inhibit a number of events. In March 2013, police revoked the permit for the International Women's Day 'Reclaim the Night' march. The event was considered by police forces as a threat to public security³⁹. Various attempts were made by the Citizens Constitutional Forum to continue an annual march in celebration of the Convention on the Elimination of all forms of Discrimination day. In 2012 and 2013, permits were disallowed.⁴⁰ Also, on numerous occasions, protestors calling for greater union rights have been arrested, questioned and intimidated⁴¹.

C. Human rights defenders and civil society

27. Human rights defenders and pro-democracy advocates who speak out against the government continue to face harassment and intimidation for legitimately exercising their rights to freedom of expression, association and peaceful assembly. Civil society organisations, journalists and civilians are silenced in a number of ways. For example:

- i. In May 2013, Citizens Constitutional Forum (CCF), and its director, Reverend Akuila Yabaki, were convicted of contempt of court for publishing an excerpt of the UK Law Society's report in CCF's newsletter in relation to judicial independence. On August 10, Reverend Yabaki was sentenced to pay a fine or serve three months in jail. The jail term was suspended for 12 months. The court also ordered CCF to pay costs to the government and publish an apology to the judiciary in the next newsletter.

³³ State Proceedings (Amendment) Decree 2012, s 2 amending the State Proceedings Act with the insertion of s 18A.

³⁴ Television (Amendment) Decree 2012, s 34.

³⁵ Testimonies of Fiji Broadcasting Corporation and Fiji TV, Changing Lenses Workshop, Citizens Constitutional Forum, 28 February 2014.

³⁶ *Country Reports on Human Rights Practices for 2013*, Bureau of Democracy, Human Rights and Labor, US Department of State. Available at <http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220194.htm> (accessed 10 March 2014).

³⁷ The Fiji Times was fined \$300,000 FJD, the publisher was fined \$10,000, and the editor was sentenced to six months imprisonment, suspended for two years. They were also ordered to pay court costs to the Attorney-General, and draft an apology to the judiciary to be published in the Fiji Times. See *State v Fiji Times Ltd, ex parte Attorney General* [2013] FJHC; HBC343.2011 (20 February 2013).

³⁸ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 28, 33, 34, 40, 73 and 76.

³⁹ In March 2014 the permit for this event was granted.

⁴⁰ Citizens Constitutional Forum Progress Report, December 2013.

⁴¹ See para 27.

- ii. In January 2014, six union leaders⁴² were arrested and charged due to an 'unlawful strike' that took place on New Year's Eve 2013 in relation to resort hotels in Nadi. This consisted of 300 workers engaged in a peaceful protest against the unilateral removal of their staff benefits. Security forces intervened this gathering and forced workers to disperse and return to work.
 - iii. During the Presidential assent of the Constitution in November 2013, protesters objecting to the 2013 Constitution gathered outside the government complex where the assent was taking place. A special intelligence branch of the police ceased 14 of the protestors and took them for questioning. They were later released without any charges, although civilians involved in the process were monitored⁴³.
28. The powers conferred to the military, security forces and the government under the Public Order (Amendment) Decree 2012 allows this type harassment, intimidation and arbitrary arrest of human rights defenders⁴⁴, in direct opposition of the recommendations made by the working group in the first UPR cycle to guarantee the full legitimacy of human rights defenders.

D. Torture and ill-treatment

29. Fiji is not a party to the International Convention on Civil and Political Rights or the Convention against Torture. Torture, degrading treatment and punishment is prohibited by the 2013 Constitution and the Crimes Decree⁴⁵, although the Public Order (Amendment) Decree⁴⁶ increases the powers of the government to use whatever force is deemed necessary to enforce public order. This decree creates a dangerous culture of abuse of power and there have been a number of reported incidents in which this has happened. Even more concerning is that these incidents are often not followed up by investigations and due process.
30. In March 2013 graphic footage was released on Youtube showing an escaped prisoner in handcuffs and his accomplice being savagely beaten and assaulted by security personnel. The attackers are clearly identifiable on the video, and have been fired, although no charges have been laid. The interim Prime Minister publicly stated that he stood by the security personnel and to date, there has been very little evidence of an investigation taking place.
31. In September 2012, five men escaped from prison and the military assisted in their recapture. On being caught, the men were severely beaten and tortured.⁴⁷ There is no evidence that these allegations were investigated.
32. In 2011, it was reported that the military detained a number of sex workers for up to 24 hours. During this time they were sexually assaulted, forced to strip, abused and humiliated. These acts were carried out without due process or regard for human rights⁴⁸.
33. Human rights defenders from various civil society organisations, media outlets, union leaders and civilians have reported being forcibly transferred and held against their will in military camps for up to two days. It has been reported that they have been intimidated and questioned about seditious

⁴² Union leaders from the National Union of Hospitality Catering and Tourism Industries

⁴³ Citizens Constitutional Forum Progress Report, December 2013.

⁴⁴ Public Order (Amendment) Act 2012, in particular s 4 amending the Public Order Act by inserting Part 2 and Part 4A.

⁴⁵ Crimes Decree 2009, s 87.

⁴⁶ Public Order (Amendment) Act 2012, in particular s 4 amending the Public Order Act by inserting Part 2 and Part 4A.

⁴⁷ Three of the men could not appear in court due to the extent of their injuries, and the two that appeared had visible signs of abuse, and required assistance to walk. One prisoner had his leg amputated due to an infection caused by an open fracture. Letter to Commodore Voreqe Bainimarama dated 7 December 2012, Amnesty International, 7 December 2012 (Ref: TG 18/2012.005). Available at http://www.amnesty.org.nz/files/121212_Fiji_Open_Letter_Concerning_Reports_of_Torture_of_Recaptured_Prisoners_web.pdf (accessed 10 March 2014).

⁴⁸ *Fiji sex workers forced to parade with traffic cones on head*, J. Pearlman, The Telegraph; see <http://www.telegraph.co.uk/news/worldnews/australiaandthepacific/fiji/8950815/Fiji-forces-sex-workers-to-parade-with-traffic-cones-on-heads.html> (accessed 12 March 2014).

comments against the government⁴⁹. Although it seems the situation has improved, such incidents have continued to occur.

34. This is in direct conflict with recommendations in the first UPR cycle to provide independent investigation into human rights abuses and ensure those in detention have the right to habeas corpus and due process⁵⁰. It is clear that such acts of brutality are not followed up by independent and transparent investigations, and the needs of the victims are not adequately looked after. This furthers immunity for members of the police and the military and prevents perpetrators being brought to justice.

E. Freedom of religion

35. In accordance with the 2013 Constitution, Fiji is a secular state. The legislative framework allows for religious belief and worship of all religions, although some domestic religious activity has been restricted. For example, the annual conference of Fiji's Methodist Church was cancelled by the government for the third consecutive year after church leaders defied a government directive to step down from their positions⁵¹. The restriction on annual meetings has now been partially lifted and conditional permits are granted. The police have also ceased their practice of requiring permits for religious worship at Hindu temples that were not registered⁵².
36. It has been reported that implementation of this legislative framework is inadequate. The police force have not yet been provided with training to ensure respect for the right to freedom of religion in accordance with recommendations⁵³ in the first UPR cycle.

F. National human rights institution

37. The Fiji Human Rights and Anti-Discrimination Commission (FHRADC)⁵⁴, established under the Human Rights Commission Decree (2009), is the primary human rights institution in Fiji. Contrary to recommendations made in the first UPR cycle, the Human Rights Decree was not revoked⁵⁵. Under the 2013 Constitution, the President, after consultation with the Prime Minister appoints the chairperson and other members of the FHRADC⁵⁶, although it has operated without a chairperson or commissioners since 2009. The government also controls the general policy responsibility for the management of the FHRADC⁵⁷. While the FHRADC can take cases to court, it is unable to challenge the legality or validity of decrees, or investigate complaints relating to the abrogation of the 1997 Constitution, actions of the government, or the 2006 coup⁵⁸. This does not align with the recommendations of the first UPR cycle to reinstate the full independence of the Human Rights Commission⁵⁹ and is clearly in defiance of the Paris Principles.

G. Women's rights

⁴⁹ Civil Society Organisations Universal Periodic Review roundtable discussions, 5 March 2014.

⁵⁰ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 70 and 94.

⁵¹ *The Methodist Church in Fiji – an oppressed Church*, J. Roberts, Methodist Church of New Zealand, 18 July 2012; *Fiji Police Deny Permit for Methodist Church Meeting*, M. Gonedua, Pacific Island Report. Available at <http://pidp.org/archive/2012/February/02-29-02.htm> (accessed March 10, 2014).

⁵² *Permit Requirements for Hindu Prayers Unwarranted*, Citizens Constitutional Forum, August 16, 2011. Available at <http://news.ccf.org.fj/permit-requirements-for-hindu-prayers-unwarranted-2/> (accessed March 9, 2014).

⁵³ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 72.

⁵⁴ Formerly referred to as the Fiji Human Rights Commission prior to cl 45(1) of the Constitution of the Republic of Fiji 2013.

⁵⁵ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 36.

⁵⁶ The Constitution of the Republic of Fiji 2013, cl 6.

⁵⁷ The Constitution of the Republic of Fiji 2013, cl 15.

⁵⁸ The Constitution of the Republic of Fiji 2013, cll 11 and 52.

⁵⁹ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendations 21, 36, 37, 38, 39 and 40.

38. Women continue to be suppressed in Fiji and are underrepresented in all levels of decision-making, including the political arena⁶⁰. A number of provisions encouraging participation of women in parliament in the draft constitution presented by the Constitutional Commission were removed by the government in drafting the 2013 Constitution⁶¹. As such, the rights of women are completely omitted in the 2013 Constitution. This is contradictory to recommendations made in the first UPR cycle to combat discrimination against women in all sectors of society⁶².
39. A high level of physical and sexual violence is reported to police and women's organisations. Despite the 'no drop' policy of police in cases of domestic violence, very few cases are taken to court. The cases that are reviewed by the courts are often dismissed or given very light sentences. While the government has issued decrees relevant to gender violence, the shortcomings of the legislation and its implementation are cause for concern and judgements of courts seem to not be in line with legislative development⁶³. Unfortunately, this does not adequately address violence against women as recommended in the first UPR cycle⁶⁴.

H. Rights of the child

40. The government has taken steps to combat child abuse and exploitation by enacting a comprehensive legal framework. However, there have been some difficulties with the implementation of this. It has been reported that although the Ministry of Education has banned corporal punishment in schools, it is still widely practiced and many children do not feel safe at school⁶⁵. The Child Welfare Decree⁶⁶ requires mandatory reporting of incidents of child abuse by police, teachers and health and social welfare workers, although it is unclear if this is practiced.
41. Reports of sexual exploitation of children have been increasing, with children as young as 10 being involved in sex work. Although the Crimes Decree prohibits trafficking⁶⁷, this is found to still occur. There have been two cases heard by the Fijian courts so far, with a third in early stages of investigation⁶⁸. Anti-trafficking advocacy and training has been provided to police and has been supported by the community. Given the alarming rates of child trafficking⁶⁹, it is apparent that a more holistic approach is required to prevent and withdraw children from sexual exploitation, as requested by the International Labour Organisation Committee of Experts, and referred to in the first UPR cycle⁷⁰. The government has made efforts to eliminate child sex and labour trafficking, although there has been insufficient progress in widely implementing formal procedures, and proactively identifying victims of trafficking among vulnerable populations⁷¹.
42. It has been reported that children are not attending school due to lack of access to resources and transport. Children exhibit high rates of nutritional deficiency, especially in rural and regional areas. Foods with a high nutritional value are often sold for income generation. Lack of transportation creates difficulty in accessing health centres and seeking medical attention. As such, many children in Fiji are unable to have full enjoyment of rights recognised in the Convention on the Rights of the Child, as recommended in the first UPR cycle⁷².

⁶⁰ This topic is further elaborated in the Fiji Women's Rights Movement Universal Periodic Review Submission 2014.

⁶¹ *An Analysis: 2013 Fiji Government Constitution*, Citizen's Constitutional Forum, 17 September 2013.

⁶² Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 55.

⁶³ This topic is further elaborated in the Fiji Women's Crisis Centre Universal Periodic Review Submission 2014.

⁶⁴ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 56, 66 and 67.

⁶⁵ Submission to the Universal Periodic Review 2014, Save the Children, 14 March 2014.

⁶⁶ Child Welfare Decree 2010, s 10

⁶⁷ Crimes Decree 2009, Div 6.

⁶⁸ (*Sold for Sex!, 12-year olds in Fiji's second domestic human trafficking case*, D. Tabureguci, Island Business, February 2014. Available at <http://www.islandsbusiness.com/2014/2/fiji-business-cover-story/sold-for-sex/> (accessed 14 March 2014).

⁶⁹ The 2013 Trafficking in Persons Report, June 2013, U.S Department of State.

⁷⁰ Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 69.

⁷¹ The 2013 Trafficking in Persons Report, June 2013, U.S Department of State.

⁷² Report of the Working Group on the Universal Periodic Review, Fiji, A/HRC/14/8, 23 March 2010, recommendation 10.

I. Relevant issues unrelated to recommendations made in the first cycle of Universal Periodic Review

Workers rights

43. The exercise of workers' rights are restricted by the Essential National Industries (Employment) Decree 2011. This severely limits the right to strike, bans overtime payments and voids existing collective agreements for workers in key sectors of the economy⁷³. The 2013 Constitution is silent on the right to strike and allows for limitations to be placed on the right to bargain collectively⁷⁴.
44. There have been a number of reports of arrest, detention, and physical assault of trade unionists. Additionally, arbitrary decisions by the Ministry of Labor have been made against trade unionists⁷⁵. In 2011, the government interfered with a proposed Australia Council of Trade Unions/New Zealand Council of Trade Unions fact finding mission to Fiji by not granting permits to hold the meeting⁷⁶.
45. In 2012, the International Labor Organisation was asked to leave Fiji by the Ministry of Labor⁷⁷.

Land

46. *Consultation*: There is no requirement that the government and proponents consult with affected land owners and communities in respect of proposed developments, including land and sea bed mining⁷⁸. As a result, there is a lack of participation in the consultation process. In the Provinces, there is very little knowledge of the Land Use Decree 2010 and there have been reports of threats and intimidation by the military. Communities also presented a lack of awareness of environmental impact processes⁷⁹. If consultation takes place, it will target a particular group of people for approval to access land. This is limited to clan members at district level and is often directed to male leaders. Information about mining that is being disseminated outlines the positive impact of mining, such as scholarships, compensation and employment, and does not identify the negative consequences⁸⁰.
47. *Royalties*: Of concern is the description from the Social Education and Empowerment Program (SEEP) in relation to a report from the government assessment team, which contained details of compensation payments to a community and funds used to develop the community. On entering the Province, SEEP found that there were no developments taking place in the community, and that relatives had not received any compensation.
48. *Idle Land*: The Land Use Decree 2010 establishes the Land Use Bank⁸¹, which administers 'idle land'. Communities believe that the current framework for administering idle land does not consider the cultural context of land that is communally owned, such as the fact that land may appear idle but could very well be in use. Also, land that is historically tied to a community can appear idle due to conflict among clans⁸².

⁷³ Essential National Industries (Employment) Decree 2011, Pt 5.

⁷⁴ The Constitution of the Republic of Fiji 2013, cl 20(5)(e).

⁷⁵ Press Release No. 11/2011, Fiji Trade Unions Congress, 18 November 2011 (Ref Pub/01). See also par 27.

⁷⁶ Press Release No. 16-03/2012, Fiji Trade Unions Congress, 16 January 2012 (Ref Pub/01).

⁷⁷ Country Reports on Human Rights Practices for 2013, Bureau of Democracy, Human Rights and Labor, US Department of State. Available at <http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220194.htm> (accessed 10 March 2014).

⁷⁸ Legal Opinion on the Application of the Precautionary Principle to Deep Seabed Mining in the Pacific Region, E. Mitchell, Environmental Law Alliance Worldwide, August 2012.

⁷⁹ Even though in certain cases seven companies had been exploring the area for copper for 40 years. *Community Report 2012-21013*, Social Empowerment Education Programme.

⁸⁰ Scholarships are provided to children in the village of the clan for education in exchange for use of land. *Community Report 2012-21013*, Social Empowerment Education Programme.

⁸¹ Land Use Decree 2010, s 7.

⁸² *Community Report 2012-21013*, Social Empowerment Education Programme.

Transparency and accountability

49. The interim government has failed to publicly disclose full details of the national budget. The Open Budget Survey 2012 has assessed Fiji as well below average in transparency of its budget documents⁸³. Results from the survey indicated that the government, in particular the Ministry of Finance and the Auditor General's Office, have not been publishing key budget documents. This raises concerns about the government's accountability to its citizens on how it allocates and uses public funds. Further civilians cannot verify whether funds are being utilised for its intended purpose, and are inhibited from being able to fully participate in the budgeting process. While this is an improvement from the 2010 survey⁸⁴, it is still a poor performance.

III. Recommendations to the Fiji government

Regarding democracy and the rule of law

50. Reinstate the draft constitution compiled by the Constitution Commission that reflects the democratic aspirations of the people of Fiji. In the alternative, make the following amendments to the 2013 Constitution (i) remove the Claw-back Clause that undermines the entire Bill of Rights; (ii) involve Parliament in appointing judges and 'independent' commissions and offices; and (iii) allow flexibility in the amendment procedure.
51. Amend the legislative and constitutional framework to restore independence and impartiality of the judiciary. Immediately welcome the Special Rapporteur on the independence of judges and lawyers to Fiji, in accordance with the commitment given in the first UPR cycle.

Regarding freedom of expression, association and assembly and human rights defenders

52. Amend laws restricting freedom of expression, association and assembly and refrain from prosecuting and intimidating human rights defenders, trade union leaders and pro-democracy advocates for exercising this right. This must include protection for those who may be critical of government or government institutions.
53. Welcome the Special Rapporteur on the freedom of association and assembly and the Special Rapporteur on the situation of human rights defenders to Fiji, in accordance with the commitment given in the first UPR cycle.

Regarding torture and ill-treatment

54. Provide independent, transparent and timely investigation into alleged acts of brutality and hold those responsible accountable. Put an immediate end to immunity for military, police and security forces. Ensure that due process is afforded to all civilians, including those in detention.
55. Sign and ratify the International Convention on Civil and Political Rights and the Convention against Torture, and carry out full domestic implementation. Immediately invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to Fiji.

Regarding the national human rights institution

56. Restore the independence and impartiality of the Fiji Human Rights and Anti-Discrimination Commission, and ensure effective compliance with the Paris Principles.

⁸³ Fiji has scored 6 out of 100 in its transparency rating for 2012. *Open Budget Survey 2012*, International Budget Partnership.

⁸⁴ Fiji scored 0 out of 100 in its transparency rating for 2010. *Open Budget Survey 2010*, International Budget Partnership.