

# **Submission to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into International and Regional Human Rights Mechanisms**

## **Introduction**

This submission is made by former Commissioners of the Fiji Human Rights Commission who held office from 1998 to 2007. We are acutely aware of the failure of existing mechanisms to protect the rights of the people of Fiji in the face of recent events in this country. We consider that these events demonstrate the need for an independent regional human rights mechanism, although they are not the only reason for supporting regionalism in human rights frameworks. We support the submissions made by Fijian NGOs (Fiji Women's Rights Movement, Fiji Women's Crisis Centre and the Citizens Constitutional Forum); as well as the submissions made by the Pacific Regional Rights Resource Team (RRRT/SPC) in regard to the need for a regional mechanism to meet the needs of small Pacific Island countries. A regional mechanism should complement national mechanisms if they exist in Pacific island countries and territories, or assist in the setting up of national mechanisms or provide support where there is none.

## **A synopsis of recent events in Fiji**

On 5 December 2006, the head of the Fiji Military Forces Commodore Voreqe Bainimarama removed the government of Fijian Prime Minister Laisenia Qarase who was re-elected for a second term in general elections held in May that year. The Commodore briefly assumed the office of the President and dismissed Qarase from power, appointing a civilian Dr Jona Senilagakali as "caretaker" Prime Minister. Dr. Senilagakali resigned on 4 January 2007 and the Commodore then purportedly 'reinstated' the substantive President Josefa Ilioiilo to his post. The President "ratified" all the actions taken by Bainimarama.

The ousted Prime Minister Qarase filed court proceedings on 20 February 2007, challenging the President's exercise of power in ratifying the actions of the Commodore as to his dismissal, claiming that he had acted unlawfully and unconstitutionally. On 9 October, 2008, a three member panel of Fiji's High Court comprising the then Acting Chief Justice Justice Anthony Gates and Justices Byrne and Pathik ruled in favour of the Bainimarama regime. They basically agreed that the President had been acting under prerogative powers in a situation of emergency and all actions taken by him were lawful.

In March 2009, the International Bar Association issued a lengthy report which concluded that the rule of law was in dire straits and that the judiciary had been compromised.

Qarase then appealed the High Court decision to the Fiji Court of Appeal. On 9 April 2009, the Court of Appeal comprising of Justices Randall Powell, Ian Lloyd and Francis Douglas set aside the decision of the High Court. The Court of Appeal disagreed with the suggestion that the President of Fiji had prerogative powers claimed to have been vested in him, ruling that Bainimarama's regime was illegal. The Court of Appeal suggested the President appoint a caretaker Prime Minister and call for fresh elections.

### **Purported Abrogation of the 1997 Constitution**

On 10 April 2009 President Iloilo purportedly revoked the 1997 Constitution, declared a State of Emergency and appointed himself the Executive Authority of Fiji "by decree." He then reappointed the Interim regime of Commodore Bainimarama that had been in existence before the Court of Appeal ruling for a period of five years, announcing that elections would be delayed until September until 2014.

The abrogation of the Constitution has drawn widespread domestic and international condemnation. The International Commission of Jurists (ICJ), the Commonwealth Lawyers Association (CLA), the UN Security Council, the Pacific Forum and many other organizations issued statements publicly condemning the abrogation of the Constitution and implementation of a so called "new legal order". There have been calls for the President to uphold the Court of Appeal's decision. A requisition for a special general meeting of the Fiji Law Society was circulated to lawyers on 21 April 2009. After initially permitting the meeting to take place, the authorities revoked permission and the meeting was cancelled.

While there is a semblance of order on the ground, the rule of law has effectively been removed by the events of April 10; fundamental rights and freedoms have been curtailed - including freedom of the media, freedom of speech and freedom of assembly. The Judges have all been dismissed and the judiciary rendered more dysfunctional. While limited Magistrates Courts are "open", they are not operating normally but merely adjourning their cases. The perception that the military would crush dissent has had a chilling effect on any opposition to the regime. All the normal checks and balances to be found in a democratic government have now been removed.

### **Freedom of Assembly Curtailed**

As mentioned, the President declared a state of emergency upon revoking the Constitution on April 10; the accompanying Public Emergency Regulations created severely hampers many of the basic rights and freedoms that are in the Bill of Rights.

“[P]owers for maintaining public safety” are provided in Part II of the Regulations. Section 3 gives the police and other authorities the power to disperse assemblies, meetings and processions.

Section 6 empowers police to restrict people’s movement.

Part IV of the Regulations gives the police the power to detain any person who they reasonably suspect to have acted (or are about to act) in a manner prejudicial to public safety or the preservation of peace.

### **Press Muzzled**

There has been wholesale muzzling of the media and army and police personnel now censor both print and electronic news.

News reporters have been occasionally questioned by the police for allegedly producing copy perceived to be critical of the regime.

On 13 April 2009 foreign journalists Sean Dorney, Sia Aston and Matt Smith were deported for allegedly reporting news that were less than favourable about the regime.

Government censors are still present in all major media outlets in Fiji as the state of emergency has been extended to 7 August 2009. It is likely to be extended further.

### **Dissent Quashed**

The censoring of the media by the current regime has created a less than balanced public view of events in Fiji. All the print media have been forced not to cover any news with a political slant.

### **Dysfunctional Judiciary**

Upon revoking the 1997 Constitution on April 10, the President also decreed the revocation of any and all judicial appointments made before April 10 2009. Section 2(2) of the Revocation of Judicial Appointments Decree states that it applies to the Supreme Court, the Court of Appeal, the High Court and all Magistrates Courts, and listed

specifically the offices of Chief Justice, Justices of Appeal, Puisne Judges, Master of the High Court, the Chief Magistrate and all Magistrates.

On 16 April, 2009, the President issued the Administration of Justice Decree which seeks to re-establish the court system, declaring that the initial appointments of judges would be by the President.

On 20 April 2009, the President appointed nine Magistrates, including the Chief Magistrate.

Several High Court judges have been re-appointed. However some of the ones that were dismissed have not been reinstated and there is a perception that the regime has "handpicked" judges that might be sympathetically disposed towards it. It was reported in the media late this week that the country's Chief Magistrate had been sent home. No explanations for the reason behind this were forthcoming.

Earlier speculation that the regime will remove the statutory power of the Fiji Law Society to issue practicing certificates to lawyers and assume that responsibility has come to pass. Under changes to the Legal Practitioners Act, the power to grant licenses to practice has now been vested in the Chief Registrar of the High Court. The de facto head and Acting Registrar of the High Court is a military appointed major who happens also to be a lawyer. The majority of lawyers applied for and were granted their licences to practice law under the changed regime. Many reportedly did so under duress for reasons of pragmatism.

#### **Under new 'law', regime cannot be challenged/sued for actions done since December 2006**

One of the most serious concerns since the purported abrogation of the Constitution of Fiji has been the attempt at ousting the jurisdiction of the courts. Section 23(2) of the Administration of Justice Decree seeks to terminate all proceedings that were before the courts prior to 9 April 2009 concerning:

- the validity or legality of any of the Promulgations, Decrees or Declarations
- any decision by the President and Head of State,
- any decision by any Minister,
- any decision by Immigration officials on deportation of certain persons, and
- any challenges to any act done by a member of the government on the grounds of inconsistency with the Constitution

for the period 5 December 2006 to 9 April 2009.

The section also terminates any proceedings challenging decisions made by the Executive or the Government in ending the employment of any individual between 5 December 2006 and 7 January 2007.

It also terminates any proceedings challenging decisions made by the Judicial Services Commission (including challenges to its composition) made between 7 January 2007 to 9 April 2009.

### **Other Concerns**

Eight soldiers and one police officer were tried and convicted of killing a civilian Sakiusa Rabaka. In March 2009 they were sentenced to 4 years 4 months imprisonment and released under a Compulsory Supervision Order in May 2009.

The Fiji economy is in serious decline. The Fiji dollar was devalued by 20% on 15 April 2009. The regime has imposed a 50% cut on public expenditure. Additionally it has enforced a new compulsory retiring age for civil servants who have reached the age of 55 years old.

### **Freedom of Assembly/worship**

The Methodist Church, the largest Christian denomination in Fiji (to whom more than 60% of the indigenous population belong) has been advised by the interim regime that their annual conference which is held in August each year, cannot be held and that a permit under the public emergency regulations will not be granted to its organizers.

### **Freedom of Conscience/speech**


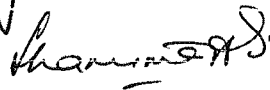
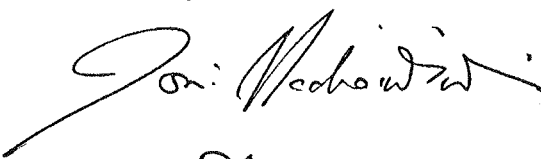



This has been strongly curtailed with the media still under heavy censorship. Known critics of the regime are singled out for character assassination in blog sites known to be sympathetic to the regime. This has added to a climate where dissent and political criticism of the regime is gradually being reduced and removed. These techniques of 'intimidation' and 'harassment' have added to a growing suspicion and distrust in Fiji society generally at many levels.

### **The Need for a regional Human Rights Mechanism**

With the Fiji Human Rights Commission being effectively moribund and non functional, coupled with recently announced changes to its jurisdiction limiting its ability to investigate human rights complaints in Fiji, the country's citizens lack and have now been deprived of any credible mechanism to register complaints of human rights abuses and or violations by the State or state entities or actors. The situation is

compounded by the fact that there is a widespread perception that the courts are not independent, competent or effective. All indications suggest that as the regime tightens its grip on power, the situation is unlikely to improve in the immediate to long term. Public statements by key players in the regime suggest on the contrary that the undermining of fundamental rights and freedoms of citizens could in fact worsen rather than improve. In these circumstances, a compelling case can be mounted that serious consideration needs to be given towards the establishment of a regional human rights mechanism with a broad mandate to investigate human rights abuses and violations within the Forum region where it has been demonstrated that domestic avenues of redress are either failing or have collapsed. This would be in consonance with the values of the Forum in supporting democracy, human rights and the rule of law.

This submission has focused on the situation in Fiji. Given its relative size and state of development, Fiji should have been a Pacific leader in the protection of human rights. Although everyone hopes that the Fijian example will be not followed elsewhere, concerns remain as to whether all the other states in the Pacific possess the capacity to develop national institutions with sufficient resources and independence from government to be effective advocates for and defenders of human rights. A regional mechanism could both support national institutions where they are established, and fill the void where, like Fiji, the national institutions fail.

| Names                 | Signatures   | Date           |
|-----------------------|--|----------------|
| P. I. Tatal           |   | 27 July 2009   |
| SHAMIMA ALI           |   | 27 JULY 2009   |
| Joni Madrciwini       |  | 27 July 2009   |
| Walter Rigamoto       |   | 28 July 2009   |
| SEVULONI VALENITABOA. |   | 28 July, 2009. |
| Graham E. Leung       |   | 28 July 2009   |