



FIJI WOMEN'S RIGHTS MOVEMENT

P.O. Box 14194, Suva, Fiji

Tel: (679) 3312 711/3313 156 Fax: (679) 331 3466

info@fwrn.org.fj

www.fwrn.org.fj

NGO Submission to the United Nations Universal Periodic Review on Fiji

1. The Fiji Women's Rights Movement (FWRM) is a multi-ethnic and multicultural non-governmental organization committed to removing discrimination against women through institutional reform and attitudinal change. By means of core programmes, as well as innovative approaches, FWRM practice promotes democracy, good governance, feminism and human rights. The purpose of the Movement is to work towards the elimination of all forms of discrimination against women, promote the equality of women, and support democracy and human rights in all areas of life in Fiji and the Pacific Island region

2. While this submission focuses on five core areas (independence of the judiciary, the Right to an Effective Remedy for the Violation of Rights under the Constitution or the Law; Independence of the Legal Profession, Impunity for the Violation of the Right to Life and Freedom of Expression) FWRM strongly endorses recommendations made in the submission of the Citizen's Constitutional Forum and the Fiji Women's Crisis Centre.

Background

3. On 5 December 2006, the Military Forces headed by Commodore Voreqe Bainimarama removed the democratically elected government of Laisenia Qarase, citing racism, corruption and the need for a country-wide "clean-up campaign" as the basis for its unlawful actions. From that date until June 2007, there were widespread, systematic human rights abuses committed. These included the detention of ordinary citizens and human rights dissidents without warrants. There were also restriction on freedom of movement; foreign journalists were expelled without due process; local journalists were threatened and prohibited from reporting negatively about the interim regime. The military and police also tortured/injured persons at military check points, military barracks and police stations, perceived to have committed common crimes. Singled out were persons suspected of prostitution as well as transgender persons as part of the "clean up" campaign.

4. In addition, members of State bodies, boards or legal tribunals thought to sympathize with the deposed elected government or other individuals with tenuous links to the deposed elected government were dismissed. New members were then appointed to these State bodies, boards and legal tribunals who were either military officers or those perceived to support the military. The Chief Justice was unlawfully suspended without charges and an unlawful tribunal of Inquiry was instigated against him. Appointed to the judiciary and magistracy were those persons who were perceived to support the military. Those persons opposing the regime were banned from traveling outside Fiji, including prominent women's rights defenders and lawyers.

5. Also during this period some prominent women human rights defenders were targeted by name in the media by Commodore Bainimarama, threatened with rape in anonymous phone calls and/or detained overnight, harassed and intimidated. Among other instances, the offices of prominent women's rights NGO were raided in March 2009, and tape recordings of interviews with victims of human rights abuses were stolen. No other items were taken.

6. Since 10 April 2009, the political, legal, and human rights situation of the people of Fiji has deteriorated further. Following the Fiji's Court of Appeal decision in April, which ruled that the actions of Fiji's military in December 2006 were unlawful and unconstitutional, the illegal Fiji President purportedly abrogated the 1997 Constitution and

imposed complete military dictatorship through a series of “decrees” including the draconian Public Emergency Regulation (PER) which take away important civil and political rights. Through these illegal acts, the military declared a State of Emergency; officially gave the military the right to use lethal force with impunity, banned political/NGO meetings, instituted a permit system for all meetings of three persons or more. In addition severe restrictions were imposed on local and international media by putting military censors in all newsrooms, foreign journalists were expelled; curtailed freedom of expression and opinion; and people were arbitrarily detained.

Recommend to the Interim Government to:

7. Restore the 1997 Constitution and proceed to hold free and fair elections no later than 2010 in accordance with the Court of Appeal decision.

8. Restore the Bill of Rights and the full mandate of the Fiji Human Rights Commission to protect all, and issue a clear public commitment that fundamental human rights will be respected, that those who exercise them will be protected and that all civil society groups are free to continue with their work in accordance with international standards of human rights.

9. Engage in an independent and inclusive national dialogue process towards achieving a sustainable return to democracy and constitutional rule. This dialogue process should include addressing the underlying issues which have led to Fiji’s political instability.

10. Rescind decrees made since April 10, 2009, in particular the Fiji Constitution Amendment Act 1997 Revocation Decree 2009 which purportedly abrogated the Constitution, Revocation of Judicial Appointments Decree 2009, the Administration of Justice Decree 2009 and the State Services Decree 2009 which interferes with judicial independence and the Public Emergency Decree (PER).

Independence of the Judiciary.

11. Since December 2006, the Fiji Women’s Rights Movement (“FWRM”) has consistently raised concerns which have threatened the right to a fair hearing before an independent and impartial tribunal

12. Appointments to the judiciary made by the regime have been inconsistent with the provisions of the Constitution and international standards on the independence of the judiciary. This has intensified concerns around judicial independence. The interim government had removed those perceived not to support the military and has since appointed and reappointed those perceived to be sympathetic to it, on terms that lack constitutional tenure.

13. Some appointments include: former military lawyer and military appointed magistrate, Ana Rokomokoti who was appointed as the Chief Registrar on April 15, 2009 with greatly expanded powers over the judiciary and lawyers. Other questionable appointments include the re-appointment of Ajmal Khan as the Chief Magistrate on 20 April 2009 and Anthony Gates as Chief Justice on May 27th 2009 in contravention of the Constitution then in place¹. In addition eight other resident magistrates were appointed during this period.

Recommend to the Interim Government to:

14. Ensure that any appointments made to the judiciary must be consistent with the provisions in the Constitution and ensure that “*it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.*”²

¹ 1997 Constitution

² Basic principles of the independence of the judiciary , Adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders held at Milan from 26 August to 6 September and endorsed by the General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

The Right to an Effective Remedy for the Violation of Rights under the Constitution or the Law

15. Under the Administration of Justice Decree 2009, courts are prevented from considering or ruling on the legality of action by the regime in the period between the coup of December 2006 and the purported abrogation of the Constitution. They are also prevented from considering or ruling on the legality of the purported abrogation of the Constitution and any decrees issued subsequently. This decree is in direct contradiction to international law standards prohibiting interference in judicial cases and the right to participate in governance.

16. The Fiji Human Rights Commission Decree 2009 similarly prevents the Fiji Human Rights Commission (“**FHRC**”) from receiving complaints against or investigating the legality of the purported abrogation or any subsequent Decrees. The mandate of the FHRC is severely undermined cut by this decree from all rights in the UDHR to all ratified treaties (two) and rights in decrees (none).

17. The State Services Decree 2009 abolished the Public Services Appeals Board and terminated all pending appeals, violating the rights of affected persons to an effective determination of their legal rights. It also issued on all civil servants to retire at the age of 55 years with the exceptions for the military regime including Commodore Bainimarama.

Recommendation to the Interim Government to:

18 Revoke the Decrees which prohibit the Court and the Fiji Human Rights Commission to consider cases against the Government and to refrain from making any further changes to the structure of the legal justice system.

19 Remove the restrictions that prevent the Fiji Human Rights Commission from receiving complaints about or investigating the legality of actions and decrees of the military regime.

20. Restore the Bill of Rights and the full mandate of the of the Fiji Human Rights Commission to protect all, and issue a clear public commitment that fundamental human rights will be respected, that those who exercise them will be protected and that all civil society groups are free to continue with their work in accordance with international standards of human rights.

21. Reinstate the Public Services Appeals Board to ensure that civil servants have the opportunity to have their appeals heard.

22. Individually and collectively, these decrees undermine the right to an effective remedy for the violation of rights under the constitution or the law.

Independence of the Legal Profession

23. In contravention to the UN standards on the independence of the Judiciary and Lawyers, in May 2009 the right to issue legal practicing certificates was removed from the independent Fiji Law Society to the Chief Registrar of the High Court. Thus the Chief Registrar, a former military lawyer appointed to the position by the interim regime, holds the power to prevent lawyers from practicing. This power may discourage lawyers from asserting the rights of their clients against the regime, so further undermining the right to a fair hearing and the right to an effective remedy for the violation of rights. The decree also stipulates that the Law society may not necessarily participate in the admission or continuing education and training of lawyers contrary to the UN standards on the independence of lawyers.

Recommendation to the Interim Government to:

24. Reinstate the Fiji Law Society by removing all military control and restoring it’s right to issue practicing certificates.

Impunity for the Violation of the Right to Life

25. During the period since December 2006, four persons were killed. They were Josefa Baleiloa, Tevita Malasebe, Sakiusa Rabaka and Nimilote Verebasaga. The suspected and convicted perpetrators (primarily military personnel under the command of Bainimarama and some police officers) who have neither not been brought to trial; or released from custody very early after their sentencing. They were then released on community supervision orders by the civilian Prison Commissioner, put in place by the military regime following the purported abrogation of the Constitution in April 2009.

26. The Commissioners for Police and Prisons who are senior member of the military effectively means that the Police Force and Prisons are under the control of the military. The previous office holders were dismissed by Bainimarama and these high ranking military officers appointed.

27. Legal proceedings in cases against human rights violations are seriously delayed or not acted on at all. This has led to cases such as the Baleiloa death in custody case failing to reach court because of a missing file.

Recommend to the Interim Government to:

28. Revoke the release and community supervision orders issued for police and military officials convicted of the Rabaka and Verebasaga death in custody cases and ensure that they serve their full sentence.

29. Ensure that those cases that are brought against members of the military and police including the investigation into the Baleiloa death in custody case , are brought before the court in a timely manner so as to ensure that justice is served.

30. Recognise that the use of excessive force by State security officers is illegal and that all incidences involving the use of excessive force should be investigated and prosecuted.

31. Ensure that no person who has committed a serious legal violation including those convicted of crimes involving torture and death will be employed by the Fiji security forces or the United Nations Peacekeeping or security operations.³

Freedom of Expression.

32. Since 2006, four foreign journalists living in Fiji on legal residence have been deported from the country. These include publisher Robert Wolfgramm who was deported in 2006, publisher Russell Hunter on 26 February, 2008; publisher, Evan Hannah on 2 May, 2008 and his successor, Rex Gardiner on 26 January, 2009. They were all employed in prominent local newspapers that were perceived to be vocal against the interim regime.

33. Since December 2006, legal practitioners critical of the military regime have been arrested, detained, had their property seized and have had their correspondence and information monitored. One example is that of Fiji Law Society President Dorsami Naidu who was arrested and detained overnight at the Lautoka Police Station on April 14th 2009. This was a result of his silent protest outside the Lautoka Court House against the purported abrogation of the Constitution. He was released the next day.

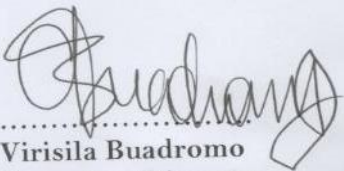
34. On 20 May 2009, human rights lawyers Richard Naidu and Jon Apted were taken in for questioning by police on allegations of blogging against the interim. Later that same afternoon lawyer Tevita Fa was also detained and questioned for the same allegations. Whilst they were all released a few hours later, their computers with privileged correspondence were seized without a warrant by the police.

³ In accordance with the Code of Personal Conduct for the Blue Helmets and the attached principles and guidelines by the UN Department of Peacekeeping Operations Training Unit.

35. Conferences and meetings held in Fiji are closely monitored. This includes the censoring of presentations to be made at conferences and meetings. On June 10 the organizing committee of the Fiji Institute of Accountants conference was told to remove certain speakers in order for the conference to go ahead. This directive was also made to the organizers of the Pacific Youth Festival which was held in Suva on July 11. Speeches and presentations were first vetted by the Ministry of Information and organizers were also told to remove certain speakers from the program. Permits have also been denied for NGOs for any training on human rights.
36. The media is subject to tight censorship with censors present in all newsrooms and all broadcast and publication news text has to be submitted to the Ministry of Information for vetting by censors. Censorship also includes the removal of any “negative” news about Fiji, for example economic forecasts that portray the military government in an uncomplimentary light. This restriction or censorship has been put in place as a result of the Public Emergency Regulations 2009 (“**PER**”) this is of great concern because it restricts the quality of information that is available to the people.

Recommend to the Interim Government to:

37. Immediate removal of the Public Emergency Regulation
38. Refrain from targeting legal practitioners representing person’s alleged pf acts critical of the military regime. Their role as independent lawyers is essential in maintaining law and order and good governance.
39. Immediately cease the harassment and arbitrary detention of journalists, writers, lawyers, human rights defenders and political opponents.
40. Discipline or prosecute as appropriate any officials found to be carrying out any activities restricting the right to freedom of expression.
41. Invite and/or promptly agree to dates to visit Fiji in the near future for the UN Special Rapporteur on the Independence of the Judges and other lawyers, other Special Procedures⁴ of the UN Human Rights Council and other international observers.
42. End government interference of the domestic and foreign media.



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Virisila Buadromo
Executive Director

⁴ Including the Special Rapporteur on the Freedom of Religion or Belief, the Special Rapporteur on the promotion and protection of the right to Freedom of Opinion and Expression, the Special Rapporteur on Torture (who has requested a visit to Fiji) and the Working Group on Arbitrary Detention.