



ASIA-PACIFIC

The UPR Process — an opportunity for Fiji

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Fiji has begun its fourth year of military rule. Human rights abuses remain widespread, the rule of law severely compromised, and democratic elections seem out of the question for the foreseeable future. Commodore Josaia Voreqe Bainimarama, military commander and coup leader, continues to maintain that the 5 December 2006 military coup d'état removing the Laisenia Qarase-led multi-party Government, was justified. This is despite a ruling in April 2009 by the Fiji Court of Appeal which held that the coup was unlawful.¹

Much of the rest of the world swiftly rebuked the coup — the Commonwealth, the Pacific Islands Forum, the United Nations, the European Union, and many countries, including Australia and New Zealand. Bainimarama's response to international pressure to return to democratic rule, protect human rights, and uphold the rule of law has been two-fold. He contends that any criticisms of the current government fail to appreciate the abuses perpetrated by the removed Qarase government, and that international pressure is the work of South Pacific 'bullies', Australia and New Zealand, with their 'extensive diplomatic and financial resources'.²

These defences by Bainimarama are often accompanied by pleas to other governments to engage with Fiji's military government and respect its 'different point of view', and to provide financial and other support for Bainimarama's unilaterally composed 'road map' forward.³ Such pleas ring hollow considering that the government has failed to participate in any form of dialogue about its human rights record and the ongoing repression of free speech in the country.

Fiji's human rights record will be considered by the UN Human Rights Council ('the Council') through the Universal Periodic Review ('UPR') process at its 7th Session in February 2010. The Council has been criticised for failing to take effective action to address human rights crises and for its deliberations being dominated by states with poor human rights records.⁴ Despite its inadequacies, the UPR process presents an opportunity for UN member states to tackle the military government's poor human rights record. It also presents an opportunity for Fiji's military government — should they take it — to reflect upon its conduct over the last three years within a human rights framework. Fiji's military regime should view the forum as neutral territory and genuinely engage in the UPR process. Genuine engagement would involve fully preparing for the UPR, openly responding to the questions that UN member countries pose, and

frankly considering the recommendations that member countries make:

This leaves NGOs and other interested parties with two key challenges. The first is to convince UN member states of the current human rights situation in Fiji. A second challenge is to ensure that member states are prepared for Bainimarama's usual responses, which are that he is 'fixing' democracy in Fiji, removing racial discrimination, and remedying the many wrongs of the Qarase government. As discussed below, before the 2006 coup, the elected government was advancing race-based policies which were appalling — but there was a functioning free press, freely operating NGO network, periodic, democratic elections, and an independent Human Rights Commission and judiciary to hold that government to account. These checks and balances have now been removed. If member states are prepared to ask the Fiji interim government hard questions about this, and make recommendations that reflect the basic principle that a military cannot remove a democratic government and violate fundamental human rights, this UPR process may play a meaningful role.

The human rights situation in Fiji

A once free and vibrant press has been stifled, military officers who have committed violent human rights violations go unpunished, and the previously independent judiciary is a shadow of its former self under Bainimarama's 'new legal order'. Human Rights Watch conducted interviews in April, May, and August 2009 to document these human rights violations.⁵

Presidential decrees of immunity perpetuate impunity. The Public Emergency Regulations 2009, decreed on April 10 and extended for 30 days every month thereafter, contains an immunity clause providing that security forces will not be 'liable in criminal or civil proceedings for having by the use of such force caused harm or death to any person'.⁶ The regulations also purport to provide security forces with broad powers, such as to prohibit processions and meetings and to use such force as considered necessary. These regulations are incompatible with international human rights standards which require states of emergency, and the measures taken under them, to be limited in time and scope strictly commensurate with the necessity of the situation.

Freedom of expression, association, and assembly

The Fiji government is habitually violating rights to freedom of expression, association, and assembly

REFERENCES

1. *Qarase v Bainimarama*, Fiji Court of Appeal, 9 April 2009, Civil Appeal No. ABU0077 of 2008S.
2. JV Bainimarama, statement at the 64th Session of the United Nations General Assembly, 26 September 2009, <un.org/ga/64/generaldebate/Fj.shtml> at 5 February 2010.
3. *Ibid.*
4. See, eg, 'UN: Rights Council Disappoints Again', Human Rights Watch news release, 5 October 2006, <hrw.org/en/news/2006/10/05/un-rights-council-disappoints-again> at 5 February 2010.
5. See Human Rights Watch, UPR Submission, August 2009, <http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/FJ/HRW%20UPR_FJI_S07_2010_HumanRightsWatch.pdf> at 5 February 2010 ('Human Rights Watch Submission').
6. *Public Emergency Regulations 2009* [Fiji], Regulation 3(3), 10 April 2009, <unhcr.org/refworld/docid/49ec8a5d2.html> at 5 February 2010.
7. Human Rights Watch Submission, above n 5, 3.
8. *Ibid.* For example, on 16 May 2009, the police reportedly revoked a permit for the National Farmers Union to hold its annual general meeting.

by arresting and detaining people under the Public Emergency Regulations.⁷ The arbitrary enforcement of restrictions on gatherings and meetings compromises the work of nongovernmental organisations, religious groups, and other civil society organisations. The interim administration has routinely denied organisations meeting permits required under the regulations⁸ and demanded that conference agendas be altered before such permits are granted.⁹

Ministry of Information officers who took over newsrooms, accompanied by police officers following the 10 April abrogation of the Constitution last year, remain in control — censoring broadcast and print publications. The Public Emergency Regulations empower the Permanent Secretary for Information to prohibit the broadcast or publication of any material the secretary believes may result in a breach of the peace, or promote disaffection or public alarm or undermine the government. On 12 May, the Ministry of Information ordered radio and online editors to email their news scripts to the Ministry, before going to air. The Ministry of Information and police have summoned editors, publishers, and journalists to explain or justify stories.

Rule of Law and the Independence of the Judiciary

Following the 5 December 2006 coup, and particularly following the removal of all judicial officers from office on 10 April 2009, Fiji's interim administration has failed to uphold the rule of law and encroached on the independence of the judiciary. The interim administration has declared its intention to create a new legal order in the country. It has worked toward this goal by reconstituting courts and commissions, intervening in the licensing of lawyers, and legislating to prohibit legal challenge of its actions. The separation of executive and judicial powers has been further compromised by the announcement that the new President of Fiji will be appointed by the Chief Justice, on the advice of Cabinet. The once independent offices of the Solicitor General and the Director of Public Prosecutions have also been compromised.

The Fiji Human Rights Commission has failed to adequately investigate human rights violations since the coup and its independence has been compromised. On 3 January 2007, the Commission published a report justifying the coup d'état.¹⁰

Taken together, these steps severely undermine access to justice and the independence of the judiciary.

A response to the military government's justification of human rights violations

Allegation that those who criticise the coup don't understand Fiji's history

Bainimarama has often stated that this coup, and the necessary eight or so years that he must remain in power following the coup to implement reforms, are necessary to achieve true democracy, justice, and human rights for the country.

The people of Fiji have the right to take part in self-government through free and fair elections. Under international human rights law, democratic processes may only be suspended in the most extreme of

circumstances, where there is an officially proclaimed public emergency which threatens the life of the nation. Even then, any suspension of rights may only occur to the extent strictly required by the exigencies of the situation, and may never be carried out by means that themselves violate those fundamental rights that may never be suspended. No such public emergency existed in Fiji in late 2006.

Any human rights abuses that might have been committed by the Qarase government were not sufficient to justify the suspension of democratic rights. The Qarase led Soqosoqo Duavata ni Lewenivanua (SDL) party was threatening to enact amnesty legislation that appeared to be inconsistent with international human rights standards.¹¹ However, there was no threat to the right to life of the nation, the right to freedom from torture or cruel, inhuman, or degrading treatment, or to any of other non-derogable right.¹²

The Road Map

The military government has received praise for its 'Strategic Framework for Change',¹³ which Bainimarama announced on 1 July 2009.¹⁴ Bainimarama has referred to this as 'a road map intended to lead Fiji to a new Constitution, and elections based on equality, equal suffrage, human rights, justice, transparency, modernity and true democratic ideals'.¹⁵ This may sound attractive, however the 'Strategic Framework for Change' is an undemocratic path toward democracy, violating human rights in order to achieve equality, removing an independent judiciary in order to achieve justice, and suspending transparency for eight years to achieve transparent government.

Allegation that no one has proven the alleged human rights abuses

On the 10th anniversary of the Fiji Human Rights Commission, on 3 October 2009, Permanent Secretary in the Prime Minister's Office, Lieutenant Colonel Pio Tikoduadua, stressed that 'no one has so far proven that their rights have been violated in any way'.¹⁶ In fact, military and police officers have been held criminally responsible for three of the deaths that have occurred under this government¹⁷ — these human rights abuses have been proven. Secondly, this statement fails to appreciate that the usual mechanisms for proving human rights violations, the courts and the national Human Rights Commission, have been compromised. In any event, human rights abuses have been reliably documented by human rights organisations, as can be seen from the variety of NGO submissions made for the UPR.¹⁸

Conclusion

The UPR process provides the international community with an opportunity to show Fiji's military government that the world is monitoring its human rights abuses and that these abuses cannot be justified. It is an opportunity for the UN member states to call Bainimarama's government to account for its human rights violations by asking hard questions and demanding more than the usual responses.

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9. Ibid. For example, on 28 May 2009, the Ministry of Information granted the Fiji Institute of Accountants a permit to hold a conference on 11–14 June. On 8 June, the Commissioner of Police advised that the event would be cancelled unless Professor Brij Lal and lawyers Graham Leung and Richard Naidu were removed from the program and all speeches were vetted by his office in advance.

10. Fiji Human Rights Commission, *Investigation Report on the events of December 6th 2006*, 3 January 2007.

11. The Promotion of Reconciliation, Tolerance and Unity Bill 2005 (Fiji) proposed that those involved in the May 2000 coup and the November mutiny would be able to apply for amnesty. A government appointed reconciliation commission would be empowered to grant amnesty if it held that an individual's actions were motivated by politics rather than criminal intent.

12. This conclusion is reinforced by the 9 April 2009 Fiji Court of Appeal decision, declaring unlawful the coup of 5 December 2006: *Qarase v Bainimarama*, Fiji Court of Appeal, 9 April 2009, Civil Appeal No. ABU0077 of 2008S.

13. Including from the Melanesia Spearhead Group at its 10 July 2009 Special Leaders Meeting; See Joint Communique, copy on file with Author.

14. *Qarase v Bainimarama*, Fiji Court of Appeal, 9 April 2009, Civil Appeal No. ABU0077 of 2008S.

15. Ibid.

16. Fiji Village, 'PS refutes claims of human rights violations,' 10 October 2009.

17. *State v Vulaca* [2008] FJHC 71; *State v Vulaca* [2008] FJHC 98; *State v Nayacalagilagi* [2009] FJHC 73; *State v Vuniwawa* [2009] FJHC 81; *State v Vuniwawa* [2009] FJHC 101.

18. See UN Human Rights, Universal Periodic Review – Fiji – Reference Documents <ohchr.org/EN/HRBodies/UPR/Pages/UPRFStakeholdersInfoS7.aspx> at 5 February 2010.