



# Citizens' Constitutional Forum

## Submission for UPR on Fiji

### Introduction

1. The Citizens' Constitutional Forum ("CCF") commenced in 1991 as a forum for discussing constitutional reform and was registered as a charitable trust between 1993 and 2001. After being deregistered as a charitable trust following our involvement in legal proceedings against government to uphold the 1997 Constitution, CCF became incorporated as a not for profit company in 2003. The CCF advocates and educates for the rule of law and the Constitution, democracy, human rights and multiculturalism. The CCF promotes this agenda through community education workshops, radio plays, public lectures, newsletters and other media. The CCF advocates for and protects human rights and good governance by engaging with policy makers, making submissions, and being involved in public interest litigation.
2. This submission deals with the issues encountered by the CCF in the last 4 years. We focus primarily on recent concerns, even though we acknowledge that there have been human rights abuses by previous governments. The CCF will submit information on the removal of constitutional protections of human rights, arbitrary detentions, access to justice, media censorship, discrimination and restrictions on freedom of movement, assembly and association.
3. Our recommendations are endorsed by the Fiji Women's Rights Movement, the Ecumenical Centre for Education and Advocacy and the Young Peoples' Concerned Network and Fiji Women's Crisis Centre. We also endorse the recommendations made by Fiji Women's Rights Movement and the Ecumenical Centre for Education and Advocacy.

### Background

4. Fiji has ratified CERD, CEDAW and CRC, and has a Bill of Rights in the Fiji 1997 Constitution.
5. Fiji has had a history of political instability which has eroded the rule of law and led to violations of human rights under the UDHR. Ongoing problems which have hindered the full realisation of human rights in Fiji include poverty, racial discrimination, and access to land resources.
6. Laisenia Qarase was the elected Prime Minister of Fiji from 2001 until he was removed by a military coup on 5 December 2006. The CCF advocated against some of the Qarase government's policies which we considered discriminatory.<sup>1</sup> Commodore Bainimarama dismissed the elected Prime Minister, dissolved Parliament, and assumed executive authority for Fiji. He assumed the role of Prime Minister since January 2007.
7. On 9 April 2009, the Court of Appeal<sup>2</sup> determined that the interim government was unlawful and unconstitutional. The following day, the President purported to abrogate the Constitution and dismiss the judiciary. Public Emergency Regulations ("PER") were imposed restricting freedom of speech, assembly, association and movement. Despite assurances by the President in his 'Address to the Nation' on 10 April 2009 that basic rights would be protected under the new legal order, human rights violations continue to occur.

### Constitutional Protections of Human Rights and the Rule of Law

8. The Fiji 1997 Constitution guarantees protection of human rights and the rule of law through the Bill of Rights. As a result of the purported abrogation of the 1997 Constitution, current protections of human rights are inadequate.
9. The interim government has issued Decrees since 10 April 2009 which exclude the court's jurisdiction to consider constitutional cases against the interim government or challenging the lawfulness or validity of any

---

<sup>1</sup> The concerns about the Qarase government included the discriminatory application of affirmative action programs, the Qoliqoli Bill which proposed extending fishing rights of indigenous Fijians; and the Reconciliation, Tolerance and Unity Bill which would grant amnesty to perpetrators of the 2000 civilian coup and was perceived as violating the rule of law.

<sup>2</sup> *Qarase v Bainimarama* [2009] FJCA 9; The CCF appeared as Second Amicus Curiae in this case.

## NGO Submission for Universal Periodic Review - Fiji

decree.<sup>3</sup> Under the Fiji Human Rights Commission Decree, the only human rights protected by law are the rights under conventions which have been ratified by Fiji.<sup>4</sup>

### **Impact of Public Emergency Regulations (PER) – Art 3, 5, 9, 12, 13, 19, 20**

10. The PER grants a broad immunity to the security forces to use such force as necessary by stating:

... no police officer or any member of the Armed Forces nor any person acting in aid of such police officer or member using such force shall be liable in criminal or civil proceedings for having by the use of such force caused harm or death to any person.
11. A person may also be detained for up to 10 days without charge, affecting the ‘right to life, liberty and security of person’<sup>5</sup>. Since 10 April 2009, at least 23 journalists, lawyers, human rights activists and religious leaders have been subject to arbitrary detention under the PER, for up to 72 hours for exercising their right to peaceful assembly and freedom of expression.<sup>6</sup> The CCF has been informed of other cases of arbitrary detention and police brutality from people who wish to remain anonymous, and fears that there may be many more such cases. Several people were also detained and subjected to cruel and degrading treatment in the months following the 5 December 2006 coup. Four people have died in custody from the brutal treatment of military, police or prison officers since December 2006.<sup>7</sup>
12. The regulations give broad powers of entry, search and seizure to the police or Armed Forces. On 20 May 2009, police executed a warrant issued under the PER to seize computers, files and records from three legal firms where it was alleged that lawyers were “blogging” against the interim government. On the weekend of 23 May 2009, the Chief Registrar forcibly entered the offices of the Fiji Law Society and seized solicitor complaint files.<sup>8</sup>
13. The PER provides the power to prohibit the broadcast or publication of any material which may give rise to disorder, but in effect this has been used to suppress any opposition to government.<sup>9</sup> All local media outlets now have Ministry of Information officers and security forces personnel in their offices to censor any “negative” media. Media releases from the CCF on human rights and good governance issues are rarely published now.<sup>10</sup>
14. Permits are required for public meetings or activities. The regulations are arbitrarily enforced and permits can be, and are revoked at any time. This hinders the work of NGOs in promoting education and awareness of human rights. A number of NGOs have been denied permits and have been unable to speak at public events.<sup>11</sup>
15. We accept that in times of emergency some rights can be restricted, but in the present circumstances the PER are very severe, have been imposed for too long.

### **Independence of the Judiciary – Art 6, 7, 8, 10**

---

<sup>3</sup> Administration of Justice Decree, s23

<sup>4</sup> Human Rights Commission Decree 2009, s2

<sup>5</sup> Article 3 of the Universal Declaration of Human Rights

<sup>6</sup> The President of the Fiji Law Society, Dorsami Naidu was detained for 24 hours for assembling outside the Lautoka court on 14 April 2009. Journalists Edwin Nand (Fiji One TV), Kavai Damu (Fijilive), Pita Liguala (PacNews), Shalvin Chand and Dionisia Tabureguci (Fijilive), Theresa Ralogaivau (Fiji Times) and Kamal Iyer (Fiji Times) were detained for up to 72 hours. Lawyers Richard Naidu, Jon Apted and Tevita Fa were questioned on allegations that they were involved in anti-government blogs. 11 leaders or members of the Methodist Church and Rewa Paramount Chief Ro Teimumu Kepa were detained for trying to arrange the annual Church conference. Some have been charged with breaching PER.

<sup>7</sup> 19 year old Sakiusa Rabaka died after being tortured by army officers and police on 28 January 2007. Nimitote Verebasaga was taken to the military barracks on 5 January 2007 and died from his injuries the following day. Tevita Malesebe died after being assaulted in military custody in June 2007. Josefa Baleiloa, an escaped prisoner died after being beaten by police and prison officials during his recapture in August 2008.

<sup>8</sup> This was purportedly done under the Legal Practitioners Decree 2009, but nothing in that Decree expressly gave such a power to the Chief Registrar. The Fiji Law Society was denied the opportunity to keep records or copies of the files seized by the Chief Registrar.

<sup>9</sup> In the week of 14 April 2009, the Fiji Times published an article stating they were complying with directions of the Ministry of Information which had prohibited the publication of any “negative” material about the interim government.

<sup>10</sup> Two journalists from Fijilive were detained after writing an article that referred to CCF’s Media Release on the early release of soldiers from prison. Several days later these comments were published in the Fiji Times Newspaper, but the article was removed from the website within hours.

<sup>11</sup> Rev Akuila Yabaki (CEO of CCF) Ratu Joni Madraiwiwi (lawyer) and Imrana Jalal (human rights advocate) were refused permission to speak at the Pacific Youth Festival in July 2009. After initial permits were granted, Lawyer Graham Leung and Dr Brij Lal (Professor) were refused permission to speak at the Fiji Institute of Accountants Annual Conference in June 2009 on the basis that they “have a history of making misrepresentative and/or inciteful statements and they engage in skewered analysis of the political and socio-economical conditions thereby seeking to undermine the nations-state of Fiji.” All other speeches and papers to be delivered at the conference were directed to be sent to the Commissioner of Police for vetting before the conference proceeded.

## NGO Submission for Universal Periodic Review - Fiji

16. The independence of the judiciary is fundamental to the rule of law and its role in protecting the rights of all citizens. There have been concerns about the independence of the judicial and legal system since 2006.<sup>12</sup> Since 10 April 2009, there has been substantial interference with the legal and justice system including:
- The dismissal of all judicial officers on 10 April 2009;<sup>13</sup>
  - The appointment or re-appointment of some judicial officers under a different oath of office;<sup>14</sup>
  - The dismissal of the Chief Magistrate Ajmal Khan on 15 July 2009. The position of Chief Magistrate currently remains vacant;
  - Executive interference with court cases, by summarily dismissing court cases by Decree and acting in direct contravention of court decisions;<sup>15</sup>
  - The release of convicted military and police officers on Community Supervision Orders shortly after being sentenced for manslaughter;<sup>16</sup>
  - The removal of the jurisdiction of the courts to consider the scope of executive or legislative power. This effectively places the interim government above the law;<sup>17</sup>
  - The appointment of former military lawyers<sup>18</sup> to the judiciary compromising its independence;
  - The licensing and disciplining of lawyers is now controlled by government<sup>19</sup> which may deny access to justice through suitable legal representation; and
  - The issuance of 3 month temporary practising certificates to a number of lawyers, denying them due process in the handling of complaints.
17. The Director of Public Prosecutions, the Director of the Legal Aid Commission, the Ombudsman, and the Director of the Fiji Human Rights Commission have all been dismissed since 10 April 2009. Some of these positions continue to remain vacant. These positions provide essential protections for the right to a fair trial (Art 10). The powers of the Fiji Human Rights Commission have been substantially curtailed by Decree<sup>20</sup> and there cannot be any investigations regarding the purported abrogation of the Constitution or any other Decree issued or to be issued by government.
18. The reconstitution of the Courts has decreased the number of experienced judicial officers; this is an issue that needs to be addressed urgently.<sup>21</sup> The delays in appointing judicial officers and the fact that the courts continue to be understaffed is likely to increase unreasonable delays in civil and criminal proceedings.<sup>22</sup> This could be addressed if interim government demonstrates a clear commitment to the rule of law and refrains from interfering with the legal and justice system. On 1 July 2009, Bainimarama said that his interim government was committed to "*providing actual adherence to the principles of the rule of law*".
19. The interim government refused to allow the International Bar Association and the UN Special Rapporteur to visit Fiji to investigate the independence of the legal and justice system.<sup>23</sup>
20. On 31 August 2009, the CCF was served with a "Certificate of Termination of Proceedings"<sup>24</sup> signed by the Chief Registrar, purporting to terminate the appeal from the High Court in the *Qarase v Bainimarama* case (for

<sup>12</sup> Including by the EU, LawAsia, The Forum Eminent Persons Group Report, and the International Bar Association Human Rights Institute.

<sup>13</sup> Revocation of Judicial Appointments Decree 2009, s2

<sup>14</sup> Administration of Justice Decree, Schedule, s19

<sup>15</sup> The purported abrogation the Constitution occurred one day after the Court of Appeal in *Qarase v Bainimarama* determined the President has no powers outside the Constitution. On 24 March 2009, a temporary stay order was made by the Court of Appeal preventing the reduction of retirement age in public service from 60 years to 55 years. This was overturned by the State Service Decree 2009, made on 14 April 2009 which reduced the retirement age in public service to 55 (with exceptions for the Commander of the RFMF, Commissioner of Police and Commissioner of Prisons).

<sup>16</sup> The 8 military officers and 1 police officer convicted for the manslaughter of 19 year old Sakiusa Rabaka were released in May 2009, approximately one month after receiving 4 year sentences. A military officer convicted for the death of Nimilote Verebasaga was also released in May 2009 shortly after sentencing.

<sup>17</sup> The Administration of Justice Decree 2009 and the Fiji Human Rights Commission Decree 2009

<sup>18</sup> High Court Judge William Calanchini and Chief Registrar Ana Rokomokoti were both former military lawyers.

<sup>19</sup> Legal Practitioners Decree 2009

<sup>20</sup> The FHRC Quarterly newsletter for June 2009 stated "the Commission greatly welcomes the issuance of Decree 11" and "thanked the government" for showing its commitment to the promotion and protection of human rights. Comments about the Decree not changing much were misleading and failed to identify the removal of the Bill of Rights. It is unclear who the "Commission" consists of when there are currently no Commissioners or Chairperson appointed.

<sup>21</sup> Only 2 of the 14 sitting Magistrates have more than 2 years experience as judicial officers.

<sup>22</sup> Persons arrested over Easter were remanded in custody for at least 10 days because there were no Magistrates or Judges to hear bail applications.

<sup>23</sup> UN Special Rapporteur on the Independence of Judges and Lawyers requested a visit to Fiji by letter dated 18 January 2007 and 26 June 2008. See the IBA Report March 2009 for details of their requests to enter Fiji and the response from the interim government.

## NGO Submission for Universal Periodic Review - Fiji

which the CCF appeared as Second Amicus Curiae). These proceedings were already finalised by the Court of Appeal decision on 9 April 2009, and the Chief Registrar has no authority to overrule or terminate a decision which has already been made by an appellate Court.<sup>25</sup>

### **Discrimination based on Racism and Religion – Art 2, 17, 18, 22, 25,**

21. The CCF notes that successive governments have failed to remove inappropriate reservations<sup>26</sup> to the Convention on the Elimination of Racial Discrimination and enact laws against racial discrimination as recommended. Racism and ethnic division continues to be an ongoing problem being one of the root causes of political instability in Fiji.
22. Politicians have engaged in hate speeches<sup>27</sup> in order to appeal to their constituents. Discrimination is institutionalised with some government bodies<sup>28</sup> having little or no representation of minority ethnic groups.
23. Access to land is an ongoing source of tension between ethnic groups and hinders economic and social development, contributing to the rising levels of poverty. Steps need to be taken in Fiji to improve access to land in a manner that equally respects the rights of all ethnic groups.
24. Since May 2008 there have been at least 10 reported attacks of sacrilege,<sup>29</sup> including theft and burning of religious places of worship. The CCF is concerned about this ongoing problem, and believes that not enough is being done to discourage such attacks.
25. The Commissioner of Police, Esala Teleni (a member of the New Methodist Church) has created a “Christian Crusade” within the police force.<sup>30</sup> This has included compulsory participation by officers in the New Methodist Church regardless of their religion. The CCF is concerned that this marginalises officers from minority religious groups (including Muslim and Hindu) and denies freedom of religion. The “Christian Crusade” could be a subtle form of racial discrimination as it would marginalise those who are mostly from a non-indigenous Fijian background. The policy has exacerbated religious division in Fiji, and at least one of the sacrilege attacks seems to be a retaliation against the “Christian Crusade”.<sup>31</sup>

### **Democracy, good governance and participation in government – Art 21**

26. The CCF has advocated for electoral reform for a long time, in particular the need to remove the race-based communal voting system and to move to a proportional representation electoral system. The CCF believes such changes should take place after wide and inclusive public consultations and through a legal and legitimate process.
27. The interim government has not publicly released reports which ensure accountability (such as the annual report of the Auditor-General on budget expenditure<sup>32</sup>). Major law reforms are implemented without any public consultation<sup>33</sup> and there is no opportunity to make submissions on proposed legislation. The national budget is not passed in an open and transparent manner.

---

<sup>24</sup> This document was signed and dated 21 August 2009, on paper with an embossed seal and a watermarked.

<sup>25</sup> In spite of the Chief Registrar not complying with s23(3) of the Administration of Justice Decree 2009 which states that only proceedings commenced but not yet determined can be dismissed by the Chief Registrar, the Administration of Justice (Amendment) (No. 2) Decree 2009 states that Certificates issued by the Chief Registrar is not subject to challenge in any Court or Tribunal.

<sup>26</sup> Fiji has made reservations for CERD with respect to laws for elections, ownership of land and education. The CCF believes that laws should be amended accordingly to meet the requirements of CERD for elections and education and the reservations on these issues should be removed.

<sup>27</sup> Qarase and the Leader of the Opposition, Mahendra Chaudry have repeatedly made cross allegations of engaging in hate speech in Parliament. In a program on Al Jazeera “101 East” aired on 30 July 2009, the National Director of the deposed SDL party stated that it was a God-given right for indigenous Fijians to govern their own country.

<sup>28</sup> The Native Land and Trust Board, the Great Council of Chiefs or BLV, the military and some areas of the public service.

<sup>29</sup> In May 2008, there was an arson attack on the Hindu Field 40 Gangaiyamman Temple. In May 2008 there were 4 break ins of a temple in Lautoka. In October 2008, 3 temples were broken into, including one which was partially burnt in Korociriciri and Raralevu outside Nasouri. On or around 17 October 2008, a hindu temple at Nadi was burnt. On 24 February 2009 an indo-Fijian man was charged with vandalism of a Christian Church.

<sup>30</sup> On 17 February 2009 in a speech to senior Indo-Fijian officers, the Commissioner of Police accused them of being “cowards” for apparently highlighting the discrimination they faced to the media and threatened to remove them from the police force. Police Spokeswoman Ema Mua confirmed that a nationwide crusade had begun and that it was compulsory for all police officers to attend church crusades. Deputy Director of Operations Superintendent Erami Raibe told Legend FM radio station on or around 15 August 2009 that police are to answer phones with “Praise the Lord” as part of the “Jesus strategy”.

<sup>31</sup> The vandalism of a Christian Church on 24 February 2009 included comments against Police Commissioner Teleni.

<sup>32</sup> On 17 December 2008, the CCF wrote to the Auditor General calling for the public release of the Annual Reports since 2006. The CCF later requested the public release of the reports from the Minister for Finance. By letter dated 6 March 2009, we were advised that the reports would be released to the public only after Parliament has reconvened.

<sup>33</sup> The interim government has recently called for submissions and held public consultations for review of the Rotuma Act and the Rotuma Lands Act. This is the only law reform since December 2006 where calls for public submissions have been made.

## NGO Submission for Universal Periodic Review - Fiji

28. Since December 2006, there has been limited ability for civil society to take part in government due to the dissolution of parliament (Art 21). The Constitution creates a connection between the people and government and since its purported abrogation there is no mechanism to hold the government accountable. There is an urgent need to return to democratic governance and constitutional rule to ensure that Fiji has a government which is representative of and accountable to the people.
29. There has been a substantial increase in the number of military officers holding high offices within government with more than half<sup>34</sup> of all government Ministries now having military personnel in senior positions.

### Recommendations

In order to address the human rights concerns above, the Citizens' Constitutional Forum recommends the Interim Government should:-

1. 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.
2. Expediently return to constitutional government.
3. Remove the Public Emergency Regulations 2009.
4. Refrain from arbitrary detention of dissidents and any other acts of harassment.
5. Recognise that use of excessive force by the Military, Police, or Prisons officers is illegal and that all incidences involving the use of excessive force should be investigated and prosecuted.
6. Respect freedom of expression, association and assembly and refrain from censoring the media.
7. Refrain from making further military appointments to the public service and the judiciary.
8. Take steps to disassociate the Fiji Police Force from any religion and remove any requirements for officers to participate in religious activities.
9. Encourage the vigorous prosecution for charges of sacrilege.
10. Respect freedom of religion and treat all religions equally.
11. Abide by the rule of law and clearly and fully comply with all orders made or to be made by the Courts.
12. Revoke the Decrees or parts of Decrees which remove or interfere with the jurisdiction of the Courts and the Fiji Human Rights Commission to consider certain cases against government<sup>35</sup> and refrain from making any further changes to the structure of the legal and justice system.
13. Invite and/or promptly agree to dates to visit Fiji in the near future for the UN Special Rapporteur on the Independence of Judges and Lawyers, other Special Procedures<sup>36</sup> of the UN Human Rights Council and other international observers.
14. Enact anti-discrimination laws after wide and inclusive public consultations and through a legal and legitimate process.
15. Refrain from promulgating or decreeing any substantial law reform unless this is done after wide and inclusive public consultations and through a legal and legitimate process.
16. Initiate meaningful and independently facilitated cross-community dialogue to address the displacement of tenant farmers in rural areas and improve access to land, taking into account the recommendations of the NLTB Taskforce Report 2002.
17. Ensure that no person who has committed a serious legal violation including those officers convicted of crimes involving torture and death will be employed by the Fiji security forces or the United Nations Peacekeeping or security operations.<sup>37</sup>
18. Return to adherence of Article 1 of the Charter of the United Nations and the spirit of the Charter regarding peace and security, equal rights, self-determination and respect for human rights.

<sup>34</sup> 58% as at 27 August 2009.

<sup>35</sup> Including the Administration of Justice Decree 2009 and the Fiji Human Rights Commission Decree 2009.

<sup>36</sup> Including the Special Rapporteur on Freedom of Religion or Belief, the Special Rapporteur on the promotion or 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.

<sup>37</sup> In accordance with the Code of Personal Conduct for Blue Helmets and the attached principles and guidelines by the UN Department of Peacekeeping Operations Training Unit.