

# BRIEFING PAPER

## Universal Periodic Review

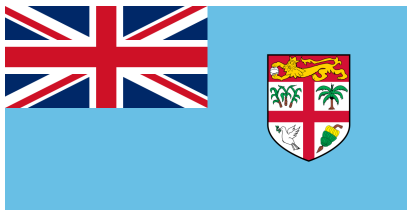
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# THE SITUATION OF HUMAN RIGHTS DEFENDERS IN FIJI

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During the last Universal Periodic Review (UPR) of the Republic of Fiji in October 2014, Fiji accepted 112 of 138 recommendations. Three of those related to the protection of human right defenders (HRDs). One called for the rights to freedom of expression, association, and assembly to be protected. Another called for steps to be taken to ensure a safe and enabling environment for HRDs. While conditions have improved, and HRDs now operate in a relatively free environment; the rights to freedom of expression and assembly continue to be limited and more remains to be done to ensure an enabling environment for HRDs.

#### A. RISKS FACING HUMAN RIGHTS DEFENDERS

- Amnesty reports that in June 2017 on International Day for Victims of Torture a youth leader from the opposition Social Democratic Liberal Party (SOLELPA) was arrested for holding a lone peaceful protest carrying signs of names of victims of torture through the capital Suva.<sup>1</sup>
- On 18 December 2018 police confronted and took for questioning a group of indigenous landowners who had assembled on their property to peacefully protest development in the Tamavua village. This act was viewed as an intimidation tactic by State authorities.<sup>2</sup>
- Amnesty reports that lawyers representing victims of torture are also at risk. A public critic of the Government has had his office broken into twice. His associates were also mysteriously attacked.<sup>3</sup>
- In September 2016, five men were detained for holding a discussion on the Constitution. The men included members of SOLELPA, the National Federation Party (NFP), and a member of the civil society organization Dialogue Fiji. The police also raided the NFP offices and confiscated computers and documents. The police claimed a permit was required for the discussion; however, according to the Public Order Amendment Decree (POAD) permits are only required for public discussions.<sup>4</sup>
- In March 2017, the Fiji Times (one of few remaining independent media) was charged with sedition for printing a letter containing controversial views about Muslims written by a member of the public. While the content of the letter was distasteful, Amnesty International reported that the charges were a form of intimidation to silence independent media. The Fiji Times has a strong record of journalistic independence; this was not their first restriction.<sup>5</sup>
- Journalists occasionally face harassment and intimidation. Short-term media licenses can compromise media freedom and place control with the Government, who sometimes use the legal system to target individual journalists for defamation or contempt of court.<sup>6</sup>

#### B. ATTACKS ON CIVIL SOCIETY ORGANIZATIONS

- While Fiji has an extensive NGO network, laws such as the POAD and the Media Industry Development Decree (MIDD) (discussed further below) can limit Government criticism, placing constraints on initiatives NGOs undertake.<sup>7</sup>
- The Rainbow Pride Foundation expressed concern that resources for civil society organisations (CSOs) are scarce, putting additional strain on their functioning. CSOs tend to be understaffed with heavy reliance on volunteers.

#### C. OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHT DEFENDERS

- The Constitution provides for **freedom of expression**, speech, thought, opinion, and publication. In addition, some restrictions on the media, such as the 2009 Public Emergency Regulations, were lifted in 2012.<sup>8</sup>
- However, some legal and practical obstacles remain. The Constitution provides that these rights can be restricted for a broad array of reasons: maintaining national security, public order, public safety, public morality, public health, the orderly conduct of elections, enforcing media standards and regulating the conduct of media organisations.<sup>9</sup> The MIDD prohibits ‘irresponsible reporting’.<sup>10</sup> Further, the POAD together with the MIDD allow authorities to fine individuals heavily or even imprison them if their work is deemed to be against ‘national interest or public order’. As a result, the media tends to self-censor and not cover issues that may be controversial; this can extend to human rights.<sup>11</sup>
- NGOs have also raised concern about proposed parliamentary powers and privileges bills, which they claim criminalise criticism of the Parliament and could further erode civil space.<sup>12</sup> Under the defamation section of the Privileges Bill, ‘any person whose words or actions defame, demean or undermine the sanctity of Parliament, the Speaker or a committee commits an offence and is liable upon conviction to [...] a fine not exceeding \$30,000 – \$100,000 or to imprisonment for a term not exceeding 5 years.’<sup>13</sup>

- Concern has been raised about the Online Safety Bill that seeks to ‘deter harmful online behaviour’; namely, that the Bill lacks guiding principles to define and determine the scope of powers and discretion of the authority receiving, assessing and investigating complaints.<sup>14</sup>
- The constitution provides for **freedom of association**. Fiji’s 2016 Employment Relations (Amendment) Act provides all workers with the right to join trade or enterprise unions. The Charitable Trusts Act governs the right to freedom of association of CSOs.<sup>15</sup>
- However, the Constitution limits this right in the interests of national security, public order, morality and the orderly conduct of elections.<sup>16</sup> In practice, isolated violations of activists’ rights do take place (as referred to above).<sup>17</sup>
- Under section 115 of the 2014 Electoral Decree, any civil society organisation that receives foreign funding is prohibited ‘to engage in, participate in or conduct any campaign, including organizing debates, public forum, meetings, interviews, panel discussions, or publishing any material that is related to the election’. Failure to comply with this carries a penalty of \$50,000 FJD (\$27,000 USD) and up to 10 years in prison.<sup>18</sup> This restriction violates freedom of expression and undermines civil societies participation in elections, a key pillar of democratic society.<sup>19</sup>
- The constitution protects the right to **freedom of assembly**, however it also gives the government wide latitude to prohibit protests, including on the basis of public safety and public morality.<sup>20</sup>
- In addition to this, the POAD gives the Government power to detain persons on suspicion of ‘endangering public safety’ and to ‘preserve the peace.’ Further, it authorizes the Government to use whatever force it deems necessary to enforce public order.<sup>21</sup>
- We welcome developments regarding this right; specifically that crackdowns on public gatherings in 2016 have eased. We note however that police permits are required for public gatherings and protests, and civil society has reported that the permit process can be lengthy.<sup>22</sup>
- While the constitution guarantees **independent judiciary**, the judiciary is vulnerable to interference and abuse by the executive given it has the power to appoint and dismiss judges on the Supreme Court and other high courts.<sup>23</sup>
- Fiji’s Government prides itself on having ratified the UN Convention Against Torture, but it is failing to bring legislation in line with international standards, revoke immunities for security forces, and clear away obstacles to

accountability.<sup>24</sup> According to Amnesty International, the Government of Fiji fails to hold security forces accountable for the torture and ill-treatment of detainees.<sup>25</sup> Many are beaten and sexually abused, and these assaults are never effectively investigated.<sup>26</sup>

#### D. HRDS FACING PARTICULAR RISKS

- While the 2013 Constitution bans discrimination based on sexual orientation and gender identity or expression<sup>27</sup>, reports of societal discrimination and harassment are not uncommon.<sup>28</sup> Rainbow Pride Foundation report that because of their sexuality or gender identity, many Fijians – including HRDs – were harassed in the workplace or in the field of sports, abused by their neighbours or assaulted on the streets.
- Rainbow Pride Foundation has reported that lesbian, gay, bisexual, transgender and intersex (LGBTI) HRDs continue to face multiple levels of threats and sex harassment in Fiji. The right to non-discrimination and to be free from violence and harassment is usually denied by omitting sexual orientation in domestic laws and in law enforcement. Additionally, LGBTI activists are often criticized for introducing language on ‘LGBTI’ in policy spaces. Further, some LGBTI organizations have been denied registration due to complexities in registration requirements, and have had applications for permits for peaceful assemblies delayed and denied.

#### E. THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHT DEFENDERS

- We welcome Fiji’s ratification of the International Covenant on Civil and Political Rights in August 2018, as pledged when elected to the Human Rights Council in October 2018.<sup>29</sup>
- At the Human Rights Council in June 2010, Fiji pledged that the Government would improve its human rights situation.<sup>30</sup> However, in February of 2018 the former UN High Commissioner for Human Rights Zeid Ra ‘ad Al Hussein stated that civil society groups have been facing a ‘narrow civic space and the suppression of dissenting voices.’<sup>31</sup> Further, in December 2018, UN Special Rapporteur on human rights and the environment visited Fiji. The rapporteur reported that he ‘heard concerns expressed by environmentalists and human rights activists about being threatened... some mentioned government actions that made them feel intimidated’. He called on Fiji to welcome environmentalists and human rights activists with open arms, for their voices are vital to a healthy democracy.<sup>32</sup>

## RECOMMENDATIONS TO THE GOVERNMENT OF FIJI:

- Demonstrate strong, high-level political support for HRDs through public statements by State officials that recognise their important and legitimate work.
- Refrain from criminalising the legitimate activities of HRDs and repeal all laws and policies that restrict their activities and fundamental rights to freedom of expression, assembly and association, including sections of the Public Order Act Amendment Decree (POAD), the Media Industry Development Decree, the 2014 Electoral Decree and the Online Safety Bill.
- Enact laws and policies that give full force and effect to the UN Declaration on Human Rights Defenders, including through a specific national law on the recognition and protection of defenders.
- Investigate and hold security forces accountable for the torture and ill-treatment of detainees.
- Incorporate sexual orientation into anti-discrimination laws and their enforcement to help to reduce targeting and harassment of LGBTI HRDs.

### ABOUT THIS BRIEFING PAPER

ISHR and the Rainbow Pride Foundation in Fiji encourage States to consult UPR submissions by local activists and make recommendations to Fiji regarding the protections of HRDs. This paper is a result of compiling public information and direct experience in the protection of HRDs. Readers should consult sources provided for additional information.

<sup>1</sup> Amnesty International, 'Fiji: Crack down on torture, not protests', 26 June 2017, <https://bit.ly/2t9LH2h>

<sup>2</sup> CIVICUS Monitor, Fiji, 28 February 2019, <https://bit.ly/2ukcY12>

<sup>3</sup> Amnesty International, 'Fiji, A darker side of paradise', 4 December 2016, <https://bit.ly/2g1oRPY>

<sup>4</sup> Amnesty International, 'Fiji: Release five men detained for discussing constitution', 10 September 2016, <https://bit.ly/2fxlZt1>

<sup>5</sup> Amnesty International, Fiji: Drop politically-motivated sedition charges against The Fiji Times, 27 March 2017, <https://bit.ly/2o9NuiU>

<sup>6</sup> CIVICUS Monitor, 'Tracking civil society space', 1 January 2017, <https://bit.ly/2Fexqpg>

<sup>7</sup> Freedom House, 'Freedom in the World 2018', 2018 <https://bit.ly/2Tixqti>

<sup>8</sup> CIVICUS Monitor, 'Tracking civil society space, Expression', 1 January 2017, <https://bit.ly/2Fexqpg>

<sup>9</sup> Constitution of the Republic of Fiji, 2013, <https://bit.ly/1Pwd78Z>

<sup>10</sup> US State Department, Fiji 2016 Human Rights Report, <https://bit.ly/2FnMgLB>

<sup>11</sup> Freedom House, 'Freedom in the World 2018', 2018 <https://bit.ly/2Tixqti>

<sup>12</sup> Freedom House, 'Freedom in the World 2018', 2018 <https://bit.ly/2Tixqti>

<sup>13</sup> Parliamentary Powers and Privileges Bill, 2016, <https://bit.ly/2ujbmF4>

<sup>14</sup> CIVICUS, FIJI: 'In a democracy, the power of the people doesn't begin and end at the ballot box', 8 November 2018, <https://bit.ly/2Jt4EGW>; CIVICUS, Online safety law raises fear of increases censorship in Fiji following hotly contested election, 28 February 2019, <https://bit.ly/2ukcY12>

<sup>15</sup> CIVICUS Monitor, 'Tracking civil society space, Association', 1 January 2017, <https://bit.ly/2Fexqpg>

<sup>16</sup> Constitution of the Republic of Fiji, 2013, <https://bit.ly/1Pwd78Z>

<sup>17</sup> CIVICUS Monitor, 'Tracking civil society space, Association', 1 January 2017, <https://bit.ly/2Fexqpg>

<sup>18</sup> Electoral Act, Fiji, <https://bit.ly/2TXim8Z>

<sup>19</sup> CIVICUS, FIJI: 'In a democracy, the power of the people doesn't begin and end at the ballot box', 8 November 2018, <https://bit.ly/2Jt4EGW>

<sup>20</sup> Constitution of the Republic of Fiji, 2013, <https://bit.ly/1Pwd78Z>

<sup>21</sup> US State Department, Fiji 2016 Human Rights Report, <https://bit.ly/2FnMgLB>

<sup>22</sup> Freedom House, 'Freedom in the World 2018', 2018 <https://bit.ly/2Tixqti>

<sup>23</sup> Freedom House, 'Freedom in the World 2018', 2018 <https://bit.ly/2Tixqti>

<sup>24</sup> Amnesty International, 'Fiji: Crack down on torture, not protests', 26 June 2017, <https://bit.ly/2t9LH2h>

<sup>25</sup> Amnesty International, 'Fiji Report', 2017-2018, <https://bit.ly/2W4Tr0C>

<sup>26</sup> Amnesty International Public Statement, Fiji: Call for justice for Fiji's torture victims on global anti-torture day', 26 June 2017, <https://bit.ly/2Foxy6S>

<sup>27</sup> Constitution of the Republic of Fiji, 2013, <https://bit.ly/1Pwd78Z>

<sup>28</sup> Amnesty International, 'Fiji Play a fair game, a human rights Agenda', 2014, <https://bit.ly/2Fqqh6o>

<sup>29</sup> OHCHR, Ratification status by country of treaties, <https://bit.ly/2uhaxfS>

[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=115&Lang=EN](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=115&Lang=EN)

<sup>30</sup> Human Rights Watch, <https://www.hrw.org/news/2011/12/02/fiji-end-rights-abuses>

<sup>31</sup> CIVICUS, 'Unions weakened and NGOs attacked as Fiji joins the Human Rights Council', 22 October 2018 <https://bit.ly/2TnlHIW>

<sup>32</sup> CIVICUS Monitor, Fiji, 28 February 2019, <https://bit.ly/2ukcY12>