



December 5, 2012

Commodore Josaia Voreqe Bainimarama
Office of the Prime Minister
4th floor Govt. Bldgs. New Wing
Suva, Fiji

Dear Commodore Bainimarama,

We write in response to your public commitment to hold democratic elections in 2014 and to urge you to ensure the process towards drafting a new constitution is free, fully participatory, inclusive, and transparent.

Fiji's interim government has begun consultations about a new constitution, which all recognize as an important step towards the 2014 elections. However, the interim government has unfortunately failed to protect key human rights essential if this consultation process is to be free, fully participatory, inclusive, and transparent. As outlined below, your government continues to deny Fiji's citizens their rights to freedom of speech and expression, a free press, assembly, and association. The military and police have arbitrarily arrested and detained human rights defenders, including trade union leaders and journalists, and others perceived to be critical of the government. Media remains heavily censored and rule of law is hampered by a judiciary that is highly politicized and not independent.

Human Rights Watch is also concerned by both the content and form of the government's process for drafting a new constitution. The Constituent Assembly is tasked with reviewing and adopting the provisions of the draft constitution as drafted by the Constitutional Commission. Yet the Assembly, which lacks political independence because your government controls its size and composition, has the authority to unilaterally amend or delete proposed provisions of the draft through two-thirds majority vote.¹

¹ See *Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012*
http://www.fiji.gov.fj/index.php?option=com_docman&task=doc_details&gid=569&Itemid=158

Furthermore, your government has required the inclusion of provisions that grant immunity to the government officials and security forces involved in toppling the democratically elected Qarase government in December 2006. Provisions are also included that reaffirm the established immunity granted under Chapter XIV of the Constitution of the Sovereign Democratic Republic of Fiji (Promulgation) Decree 1990, as preserved by the Constitution (Amendment) Act 1997, as well as that provided in the Limitation of Liability for Prescribed Political Events Decree (2010). Your government also mandated that any provision included in the draft for immunity cannot be “reviewed, amended or revoked by the New Parliament or any subsequent Parliament;” and cannot be subjected to challenge in court. These requirements raise particular concerns that your government is determined to evade accountability for rights abuses committed in the course of these coups.

Restrictions on Freedom of Speech, Assembly, and Association

Under your leadership, Fiji’s interim government continues to enforce strict restrictions on freedom of expression, assembly, and association. In January, your government – just weeks after repealing the Public Emergency Regulations (PER) – announced regressive revisions to the Public Order (Amendment) Decree 2012 to further restrict citizens’ rights to freedom of speech and assembly. The new amendments establish broad and ambiguous definitions of ‘terrorism,’ expand the power of security personnel to arbitrarily arrest those in alleged violation of these laws, and provide security force personnel immunity from civil or criminal liability for actions undertaken pursuant to the law. In short, the new provisions exaggerate and permanently codify some of the most abusive provisions of the emergency laws. Your government has used the regressive Public Order (Amendment) Decree to control those it perceives to be critical of the government, particularly representatives of civil society groups, trade unions, and political parties.

The decree stipulates that a permit is required for meeting in a public place, or in any place or building open to the public. The decree also states that a private gathering may be dispersed by the police if such action is necessary for securing the public safety or for the maintenance of public order, or for maintaining supplies and services essential to the life of the community.

This decree should be immediately rescinded and provisions made to protect the right to freedom of expression, association, and assembly in Fiji.

On July 11, police arrested Vyas Deo Sharma, a Fiji Labour Party (FLP) official and former member of Parliament, together with 14 Vuda residents and supporters of the Fiji Labour party. Police detained them at the Lautoka Police Station and questioned them overnight. They were released the next day at 5.30 p.m. No charges were filed.

In July, the interim government lifted the permit requirements for public meetings for the duration of the consultation process. While this is an important step, the Public Order (Amendment) Decree should be repealed in its entirety as part of the commitment of the

government for the consultation process to aspire to meet international standards. Furthermore, as discussed below, actions by the police continue to be a serious source of concern because they have continued to monitor, disrupt, and prevent public meetings since July.

Repressive Labor Decrees and Harassment of Trade Union Movement

Your government issued several labor-related decrees in 2011 that have had a significant negative impact on trade unions in both the public and private sectors. Following the implementation of the highly criticized Essential National Industries Decree, the government deregistered unions and forced workers to form new bargaining units. Collective bargaining agreements were abrogated and the legal authority to collect dues was removed in the new law. In some cases, new bargaining units were formed but with no relationship to the pre-existing unions. Only a few new collective agreements have been negotiated under the decree, and all contain terms inferior to the prior, pre-decree agreements. The net result has been a steep drop in union membership and organized labor's financial resources in industries covered by the decree. Some employers not covered by the decree have also used it as an excuse to break existing collective agreements. This decree should be immediately repealed.

In September 2012, the government stopped the International Labour Organization (ILO) from carrying out a direct contact mission to verify workers' complaints about violations of freedom of association. The government unilaterally presented the mission with new terms of reference that differed significantly from those agreed prior to the mission. When the ILO objected, the government ordered the mission, which included a former justice of the International Court of Justice, to leave Fiji immediately. The mission was undertaken pursuant to the recommendations of the ILO Committee on Freedom of Association as well as a resolution of the 15th ILO Asia and Pacific Regional Meeting in December 2011.

In 2012, some unions have been denied permits to hold public meetings under the Public Order (Amendment) Decree, particularly when officials from the Fiji Trades Union Congress (FTUC) were invited to attend. Even when permits were granted, in numerous cases union members report that police officers either attended the meetings or listened in from outside. Such systematic and unjustified restrictions on trade union activity should cease immediately.

In October 2012, the management of a resort hotel refused to allow the union to meet with its members on the premises on the basis that the union held no permit under the decree. The most outrageous example of police interference in trade union activity occurred on October 19, 2012, when trade union leaders were in the middle of discussions with the executives of Pacific Fishing Company (PAFCO) in the company's boardroom. At 11:15 am, an hour into the meeting, police officers forcibly entered the boardroom, interrupted the meeting and explained that they were under orders to bring the meeting to a close. The police stated that the only way the meeting would be allowed to go forward was if the police

were present during the negotiations between management and the union. The unions refused. The government should end such arbitrary interference in bargaining between employers and workers, and ensure that employers do not refuse to meet with unions on the basis of the government decree.

Criminal charges filed in 2011 against Daniel Urai, President of the FTUC, for purportedly “inciting political violence by urging to overthrow government,” remain pending. To date, the criminal justice authorities have been unable to produce required disclosures that would substantiate their claims against him. However, the case remains open in an apparent effort to harass Urai. Given the lack of evidence presented to Urai, we urge the charges be immediately dropped. Earlier, Daniel Urai and Nitin Goundar were arrested and charged under the now-repealed PER for meeting with trade unionists at the hotel where they worked to prepare for collective bargaining. This case also remains pending despite the lack of required disclosures.

On November 15, the ILO Governing Body took the unusual step of issuing a tripartite resolution, which “deeply regret[ted]... the actions of the Fiji Government” and called upon the government to allow the aborted direct contacts mission to return. The resolution also called on your government to ensure that its laws and practices are brought into conformity with the principles of freedom of association.² While we understand the government has informed the ILO that it will invite the mission back in April 2013, it appears the agreement is not on the basis of the previously agreed terms of reference – as called for in the tripartite resolution – but instead leaves those details to be resolved next February. The ILO has indicated that the mission should happen sooner so that the results can be discussed at the March 2013 Governing Body. On the same day, the ILO Committee on Freedom of Association designated Fiji as a “serious and urgent” case, one of five cases so designated this year.³

Eroding the Independence of the Judiciary and Rule of Law

Your government has continually failed to uphold the rule of law and support an independent judiciary. Beginning with the 2006 coup and the subsequent removal of all judicial officers from office on April 10, 2009, your government has consistently interfered in the workings of the courts, intervening in the licensing of lawyers and legislating to prohibit legal challenge of government acts.⁴

Your government should cease interfering in the judiciary, and repeal the interim governments’ proclamation of various broad immunity provisions, including for the 2006

² http://www.ilo.org/gb/decisions/GB316-decision/WCMS_193325/lang--en/index.htm

³ http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_193200/lang--en/index.htm

⁴ <http://www.unhcr.org/refworld/country,,,LEGISLATION,FJI,,49ec85ae2,o.html>

and earlier coups, which have raised increasing concerns that your administration is determined to evade legal accountability for rights abuses.⁵

Media censorship

Fiji's military government has consistently sought to limit public criticism through censorship of the press. While your government no longer employs censors, it continues to assert control over published media through intimidation and criminalization.

The Media Industry Development Decree 2010 strengthens the state's mechanism of censorship, restricting foreign media ownership and forbidding publications which are "against public interest or order, against national interest, offends good taste or decency, or creates communal discord." Repercussions for publishing such material include hefty fines and/or jail time. Additionally, the decree requires domestic media outlets to be at least 90 percent locally owned. This provision was widely seen as targeting The Fiji Times, and its long-time editor, Netani Rika, who subsequently left the Times after the passage of the decree after a campaign of targeted pressure from the government.

In June, your government passed an amendment to the 1992 Television Decree that requires television licensees to operate in line with the restrictions outlined in the Media Code of Ethics and Practice under the Media Industry Development Decree 2010.

Your government should end these overly broad restrictions on freedom of the media.

Recommendations

Human Rights Watch and the International Trade Union Confederation believe it is critical that your government address these longstanding restrictions on rights so as to ensure that the drafting of the new constitution proceeds with the full participation of all stakeholders. Sadly, rather than embracing the important role that civil society, human rights defenders, trade unions, and a free media play in promoting good governance, your government has systematically repressed such groups. As international human rights and labor organizations, we urge you to publicly commit to meet Fiji's international human rights obligations and ensure your government takes all necessary measures to promote real democratic reform and protect human rights in Fiji.

In order to facilitate an enabling environment for democratic reforms and to uphold human rights, we urge your government to take the following steps:

⁵ See *Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012* http://www.fiji.gov.fj/index.php?option=com_docman&task=doc_details&gid=569&Itemid=158; See *Limitation of Liability for Prescribed Political Events Decree 2010* <http://api.ning.com/files/ZV97pClr2aUxowem-jt5xsMDahAoCJFhNsEjw24yYoj3wdLRnuOwOWeNqTC1Kv8L2avdBeyCXA3Z9KFHRm3otYDg2Z4RcoMc/LimitationLiabilityDecreeforPrescribedPoliticalEvents2010.pdf>

- Revise *Fiji Constitutional Process (Constituent Assembly and Adoption of Constitution) Decree 2012* to ensure that the composition of the Constituent Assembly is transparent, and that appointments are open to public debate.
- Revise all government decrees to remove language that offers immunity to members of your government involved in committing rights abuses during or after the 2006 coup.
- Repeal the Public Order (Amendment) Decree 2012 and ensure government policies and actions fully comply with international human rights standards for freedom of expression, assembly, and association.
- Repeal all rights-restricting labor decrees, including the Employment Relations Amendment Decree of 2011 and the Essential Industries Decree of 2011, and, through a tri-partite process, ensure that the nation's labor laws comply with your international obligations to the ILO.
- Repeal the Media Industry Development Decree 2010, and other decrees that severely inhibit or control the media, and encourage international press organizations to work with the Fiji media to establish a sustainable mechanism for self-regulation in line with international best practices.
- Cease political interference in the judiciary, and publicly commit to respect the independence of the judiciary.
- Publicly order security personnel to respect and uphold human rights, in particular fair trial and due process rights, the prohibition on torture, and the right to free assembly and association.
- Investigate and prosecute all security force personnel who engage in arbitrary arrest and detention, attacks on journalists and human rights defenders, and physical abuse of detainees.

Sincerely,



Brad Adams
Asia Director
Human Rights Watch



Sharan Burrow
General Secretary
International Trade Union Confederation (ITUC)

