

FIJI

EXECUTIVE SUMMARY

Fiji is a republic under a military-led government since armed forces commander Commodore Josaia Voreqe (Frank) Bainimarama overthrew the elected government in a bloodless coup in 2006. In 2009 the interim government headed by Prime Minister Bainimarama abrogated the constitution, imposed a state of emergency, and continued its rule by decree, a situation that remained at year's end. During the year the country had no constitution or parliament. Security forces did not report to civilian authorities.

The leading human rights problems during the year included the government's continued denial of citizens' right to change their government peacefully; the government's targeting of opponents and human rights and labor activists for harassment, arbitrary arrest, and abuse; and continued enforcement of the wide-ranging Public Emergency Regulations (PER) issued in 2009.

The PER imposed a state of emergency that remained in force at year's end, giving the military and police power to arrest and detain persons without a warrant and limiting freedoms of speech and press, assembly, association, and movement. The PER also give military and police authority to use whatever force they deem necessary to enforce PER provisions, resulting in impunity for abuses. Freedom of the press was further restricted by a 2010 media decree. By year's end the government had begun taking steps to ease enforcement of the PER and the media decree. The Essential National Industries Decree implemented in September severely restricts trade union and collective bargaining rights for workers in designated industries and corporations deemed essential to the national economy.

Other human rights problems included poor prison conditions, interference with judicial independence, prosecution of regime critics and human rights activists, restriction of freedom of religion for members of the Methodist Church, attacks against religious facilities, government corruption, deep ethnic divisions, violence and discrimination against women, and sexual exploitation of children.

The government did not take steps to prosecute and punish police and military officials who assaulted persons in custody. The military continued to act with impunity in detaining, and in many cases abusing, persons deemed critics of the government, including journalists, politicians, trade unionists, and Methodist Church officials, ostensibly claiming authority under the PER to do so.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

While the abrogated constitution prohibits such practices, the security forces did not always respect this prohibition in practice. The PER authorize the government to use whatever force is deemed necessary to enforce PER provisions.

During the year military officers threatened and beat a number of politicians and trade unionists at the Queen Elizabeth Barracks outside Suva, the capital. The government took no action to investigate credible reports of such abuses or punish the alleged abusers. For example, on February 21, the military detained at the barracks politician Sam Speight, a cabinet minister in the deposed government of Laisenia Qarase. Soldiers repeatedly beat him until he lost consciousness. He was released on February 24. The military continually denied knowledge of Speight's whereabouts to his wife and other family members during his detention. Others assaulted in military custody included trade unionists Felix Anthony and Maika Namudu and politicians Gaffar Ahmad, Poseci Bune, and Benjamin Padarath.

In December the University of New South Wales in Australia released a report on the commercial sex industry in Fiji that alleged military abuse of prostitutes. According to the report, a number of prostitutes, particularly in the Lautoka area, charged that soldiers took them into custody, brought them to military barracks, and forced them to partially strip and perform humiliating physical activities such as squatting in mud. The government denied the allegations.

Throughout the year various persons detained by police accused police of beating them to obtain confessions. For example, in September five persons arrested on robbery charges earlier that month told the High Court that they were assaulted by

police officers while in custody and made confessions obtained unlawfully by this assault.

Prison and Detention Center Conditions

Prison conditions were harsh and did not meet international standards. The national prison system was seriously underfunded and overcrowded, with deteriorating infrastructure and complaints about delivery of essential services. Prisoners had access to potable water, but the system had insufficient beds, inadequate sanitation, and a shortage of basic necessities. However, there were no reports of inmate deaths during the year due to poor prison conditions.

A June 14 report on Radio Fiji news stated that the number of inmates in the country's prisons exceeded capacity. According to the report, at that time 12 institutions held 1,223 inmates, including both convicted prisoners and pretrial detainees, 156 more than capacity. The number of pretrial detainees continued to rise during the year, in part because the courts generally refused to grant bail (see section 1.d.). According to the prison commissioner, there was capacity for 95 pretrial detainees in the system, but at year's end there were 374 pretrial detainees in detention. During the year authorities continued to hold some pretrial detainees in Naboro and Nasinu prisons, due to lack of adequate capacity at the Korovou pretrial detention center.

In general pretrial detainees and convicted prisoners were separated at shared facilities, although in some cases they were held together.

The Corrections Department started construction of a new remand center for Suva within the Korovou Prison complex. An addition to the Nasinu Prison was completed during the year to hold pretrial detainees when their number exceeded the capacity at the existing Korovou Prison remand center.

Prisoners and detainees were permitted access to visitors, including family members; telephone calls; and religious observance. The law allows prisoners to submit complaints to judicial authorities, but the government reviews all prisoner letters and has the authority to seize them. Authorities did not investigate or document in a publicly accessible manner credible allegations of inhumane conditions.

The government permitted prison monitoring visits by independent human rights observers. During the year the International Committee of the Red Cross (ICRC)

visited official detention facilities and interviewed inmates; such visits were permitted without third parties present.

Although the Ombudsman Act authorizes the ombudsman to investigate maladministration in government departments, decreases in the staffing and budget levels for the Ombudsman's Office since the 2009 abrogation of the constitution greatly reduced its capacity to carry out its statutory duties, which in previous years included investigating allegations of prisoner abuse or neglect, overcrowding, and recordkeeping problems. There were no alternatives to incarceration for nonviolent offenders; however, the Corrections Department conducted a trial program of outside job placements for inmates with less than a year to serve to ease their return to society. The department also continued use of compulsory supervision orders, under which inmates with less than a year to serve can be released into the community to serve the remainder of their sentence performing community service at a local church or other community center.

Various programs initiated in 2010 to build skills and generate income for prison inmates were augmented or continued during the year. The Corrections Department accorded a high priority to prisoner rehabilitation and community reintegration, requiring considerable prison staff retraining to advance these goals. According to the prison commissioner, recidivism declined during the previous two-year period.

d. Arbitrary Arrest or Detention

The abrogated constitution prohibits arbitrary arrest and detention, but the government did not always respect this prohibition in practice. The PER authorize security forces to detain a person for up to seven days before bringing charges. Various persons accused of breaching the PER and the Public Order Act during the year were held up to six days without charge and in some cases were not charged at all.

Role of the Police and Security Apparatus

The Ministry of Defense, headed by the minister for defense, oversees the Fiji Police Force, which is responsible for law enforcement and the maintenance of internal security. Historically responsible for external security, the Republic of Fiji Military Force (RFMF), also under the minister for defense, has maintained since 2005 that it has a broad constitutional responsibility for national security that also extends to domestic affairs. Many constitutional scholars in the country rejected

that assertion. Under the PER soldiers are authorized to perform the duties and functions of police and prison officers.

The police Ethical Standards Unit is responsible for investigating complaints of police misconduct. The Fiji Independent Commission against Corruption (FICAC) also continued to investigate public agencies and officials, including some members of the police and military forces. However, impunity and corruption remained problems. The PER provide immunity from prosecution for members of the security forces for any deaths or injuries arising from the use of force deemed necessary to enforce PER provisions. The government did not investigate credible charges of security force abuse of government opponents or punish the alleged perpetrators (see section 1.c.).

In addition, since the 2006 coup the government has issued three decrees granting immunity to the military and police in certain circumstances. The latest decree, the 2010 Limitation of Legal Liability Decree, extends immunity to the military and the national police against criminal charges or civil liability suits relating to their roles in the 2000 and 2006 coups and the 2009 abrogation of the constitution. The effect of the decrees was to prevent legal challenges to the 2006 coup, the abrogation of the constitution, and the PER, and to enable the government to avoid paying court-ordered compensation to victims of security force violence and their family members.

Arrest Procedures and Treatment While in Detention

By law police officers may arrest persons without a warrant for violations of the 2010 Crimes Decree, which replaced the preexisting penal code. Police also arrest persons in response to warrants issued by magistrates and judges. Under the constitution arrested persons must be brought before a court without “undue delay,” normally interpreted to mean within 24 hours, with 48 hours as the exception. Detainees have the right to a judicial review of the grounds for their arrest. However, these rights were not always observed by the police and military after the constitution was abrogated.

The Bail Act gives accused persons the right to bail, unless it is not in the interests of justice that bail be granted. Under the Bail Act, both police and the courts can grant bail. There is a presumption in favor of granting bail, although this may be rebutted by the prosecution if it objects to bail, and in cases where the accused has been convicted and is appealing or has previously breached bail conditions. Despite these provisions, during the year a magistrate announced that the

government had issued a directive to the magistrates' courts advising against granting bail for indictable offenses and stating that bail applications for such offenses would be handled only by the High Court. The directive requires accused persons to demonstrate why they should be granted bail, in effect negating the Bail Act's presumption in favor of granting bail. Police retained authority to grant bail for nonindictable offenses but during the year refused to grant it to persons charged with drunk driving. Beginning in 2010 the courts made it more difficult for accused persons to apply for bail, requiring this to be by motion and affidavit that required the services of a lawyer.

Detainees generally were allowed prompt access to counsel and family members, but some journalists and others detained by the military for short periods after criticizing the government were denied prompt access to a lawyer. The Legal Aid Commission provided counsel to some indigent defendants in criminal cases, a service supplemented by voluntary services from private attorneys. However, there were delays in the provision of legal aid to some accused persons who requested assistance, due to lack of adequate legal aid staff and resources.

Arbitrary Arrest: There were cases of arbitrary detention. For example, following the flight to Tonga of the former Third Fiji Infantry Regiment commander, Lieutenant Colonel Tevita Mara, the military and police arbitrarily detained and questioned his wife, sisters, and other family members. They were released without charge. Other regime critics also were detained by the military under the PER and the Public Order Act and then released without charge.

Pretrial Detention: In 2010 the number of pretrial detainees approximately doubled compared with 2009 because of a pattern of refusal of bail by the courts. This pattern continued during the year. In addition, the courts had a significant backlog of cases, worsened by the government's 2009 dismissal of the existing judiciary. Processing was slowed by, among other things, a shortage of prosecutors and judges. As a result, some defendants faced lengthy pretrial detention.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, but during the year the government interfered with judicial independence in practice.

There were allegations of politically motivated prosecutions of government critics. A woman charged with drug offenses accused the attorney general of encouraging

her to make rape allegations against her lawyer, the son of former prime minister Mahendra Chaudhry.

The 2009 Administration of Justice Decree prohibits all tiers of the judiciary from considering cases relating to the 2006 coup; all acts of the interim government between December 4, 2006, and April 9, 2009; the abrogation of the constitution on April 10, 2009; and all government decrees since December 2006.

The chief registrar continued to prosecute lawyers for disciplinary breaches. Civil society organizations criticized these additional duties as infringing on the independence of the judiciary.

A 2010 amendment to the Administration of Justice Decree that removed the courts' jurisdiction to hear challenges to government decisions on judicial restructuring, terms and conditions of remuneration for the judiciary, and terminated court cases remained in force. Various other decrees contained similar clauses limiting the jurisdiction of the courts on decisions made by the cabinet, ministers, or government departments.

The government continued to prohibit an International Bar Association delegation from visiting the country to evaluate judicial independence. The government also reiterated its refusal to allow the UN special rapporteur on the independence of judges to visit the country for the same purpose.

Trial Procedures

In most cases defendants have the right to a public trial, and the court system generally enforced this right during the year; however, the PER permit trials for violations of PER provisions to be held in camera. In December the chief magistrate ruled that the trial of five men charged with sedition under the Crimes Decree for an antigovernment graffiti campaign in August would be held in closed court on grounds of national security.

The Legal Aid Commission, supplemented by voluntary services of private attorneys, provided free counsel to some indigent defendants in criminal cases. Most cases were heard in the magistrates' courts. The Crimes Decree defines which offenses may be tried in the magistrates' courts and which must be tried in the High Court. Serious offenses, including murder, rape, trafficking in persons, bribery, treason, sedition, and mutiny, can be heard only in the High Court. Trials in the High Court provide for the presence of assessors, typically three, who are

similar to jurors but only advise the presiding judge. Defendants enjoy a presumption of innocence and may question witnesses, present evidence on their own behalf, and access government-held evidence relevant to their cases. The right of appeal exists but often was hampered by delays in the process.

Political Prisoners and Detainees

There were no reports of political prisoners or long-term political detainees. Police detained for short periods and questioned a number of persons critical of the government.

Civil Judicial Procedures and Remedies

Although the law provides for an independent and impartial judiciary in civil matters, the judiciary is prohibited by decree from considering lawsuits relating to the 2006 coup, subsequent actions by the interim government, the abrogation of the constitution, and subsequent military decrees. In the event of a human rights violation, under the abrogated constitution an individual also could complain to the Fiji Human Rights Commission (FHRC), but under a May 2009 decree, the FHRC is prohibited from investigating cases filed by individuals and organizations relating to the 2006 coup and the 2009 abrogation of the constitution.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The abrogated constitution prohibits such actions, but the government frequently ignored these prohibitions in practice. The PER permit military personnel to search persons and premises without a warrant from a court and to take photographs, fingerprints, and measurements of any person. Police and military officers also may enter private premises to break up any meeting considered unlawful.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Status of Freedom of Speech and Press

The abrogated constitution provides for freedom of speech and press, but the government generally did not respect these rights in practice. The PER give the government the power to detain persons on suspicion of “endangering public safety

or the preservation of the peace”; the government used this provision to intimidate and in some cases detain persons who criticized the government. In addition the PER and the Media Decree provide for government censorship of the media.

Freedom of Speech: The Crimes Decree includes criticism of the government in its definition of the crime of sedition. This includes statements made in other countries by any person, who can be prosecuted on return to Fiji. Two former military officers and several labor leaders and graffiti vandals were charged with sedition during the year.

At year’s end the 2010 case of former politician Peceli Rinakama, charged in connection with comments he reportedly made to a passing bystander relating to the conviction of eight persons charged with conspiring to assassinate Bainimarama, had not yet come to trial. Rinakama was charged under the Public Order Act with uttering words calculated to bring death or physical injury to a person or injury to the lawful authority of the government.

Freedom of Press: Independent media could not operate freely. The government published fortnightly supplements in the *Fiji Sun* newspaper. The country’s television news program production was owned and operated by Fiji One, one of two national noncable television stations. A company whose board is appointed by the minister for indigenous affairs (a position held by Prime Minister Bainimarama during the year) on behalf of the provincial councils owned 51 percent of Fiji One; the remainder was privately held. The government owned the Fiji Broadcasting Corporation, which operated six radio stations and launched a television station in November. The Ministry of Information news bulletin was broadcast daily on both the FBC TV station and the third station, Mai TV.

Violence and Harassment: On February 18, the government detained journalist Felix Chaudhry and two trade union officials after the *Fiji Times* newspaper published an article on maintenance problems at Fiji Sugar Corporation’s Rarawi sugar mill. Chaudhry was released the same day. Soldiers warned him not to publish any more articles about Fiji Sugar Corporation or certain other corporations in which the government held a significant share.

Censorship or Content Restrictions: The PER authorize the Ministry of Information, military media cell officers, and police to vet all news stories before publication, resulting in the removal of all stories the government deemed “negative” and “inciteful,” and therefore, according to the government, a threat to national security. All radio stations were required to submit their news scripts to

the permanent secretary for information, a military appointee, before each news bulletin was broadcast, and the print and television media were censored on a daily basis by Ministry of Information and military media cell officers, accompanied by police officers, who were placed in media newsrooms.

The Media Decree penalizes the media for “irresponsible reporting.” Under the decree the directors and 90 percent of the shareholders of locally based media must be citizens of, and permanently resident in, the country. The Fiji Media Industry Development Authority is responsible for enforcing these provisions. The authority has the power to investigate journalists and media outlets for alleged violations of the decree, including powers of search and seizure of equipment. The decree also establishes a media tribunal to decide complaints referred by the authority, with the power to impose jail terms of up to two years and fines of up to F\$1,000 (\$565) for journalists, F\$25,000 (\$14,116) for publishers and editors, and F\$100,000 (\$56,465) for media organizations. The tribunal is not bound by formal rules of evidence. The decree strips the judiciary of power to challenge the decree itself or any proceedings or findings of the Media Authority, the tribunal, or the information minister.

At year’s end the tribunal provided for in the decree had not yet been appointed.

The Media Council, a voluntary private watchdog group of media and academic figures, received and resolved complaints of bias and malfeasance within the media. However, the continuous extension of the PER and the promulgation of the Media Decree gave the government control over media content through censors.

During the year the attorney general initiated a lawsuit against the *Fiji Times* newspaper for publishing a quote from an international soccer official questioning the independence of the country’s judiciary.

Internet Freedom

There were no government restrictions on general public access to the Internet, but evidence suggested that the government monitored private e-mails of citizens. The government monitored Internet traffic in an attempt to control antigovernment reports by anonymous bloggers.

A 2010 decree requires all telephone and Internet service users to register their personal details with telephone and Internet providers, including their name, birth date, home address, and photographic identification. The decree imposes fines of

up to F\$100,000 (\$56,465) on providers who continue to provide services to unregistered users and up to F\$10,000 (\$5,647) on users who do not update their registration information as required under the decree. Vodafone, one of two mobile telephone providers, also required users to register their nationality, postal address, employment details, and both thumbprints.

Academic Freedom and Cultural Events

Academic freedom was generally respected, but government work-permit stipulations prohibit foreigners from participating in domestic politics. Contract regulations of the University of the South Pacific effectively restrict most university employees from running for or holding public office or holding an official position with any political party. During the year the university terminated its contract with Wadan Narsey, a prominent Fijian economist and long-time critic of the military government, allegedly at the direction of the government.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The abrogated constitution provides for freedom of assembly, but since the 2006 coup, the government has interfered with this right in practice. The PER allow the government to refuse applications for permits for marches and meetings sought by antigovernment political parties and nongovernmental organizations (NGOs), and to regulate--including by use of such force as deemed necessary--the use of any public or private place by three or more persons for a political meeting. Under the PER police and military officers also may enter any public or private premises to break up any meeting or assembly deemed unlawful. Although some civic organizations were granted permits to assemble, permits for all political demonstrations and marches were denied, as were some permits for meetings of religious groups. For example, the government refused a permit for the Methodist Church, which historically has been associated with indigenous Fijian nationalism, to hold its annual three-day conference during the year and for its 52 divisions to hold their quarterly meetings. Police stated that Christmas parties held in private premises would not need a permit.

In February the government withdrew charges lodged in 2010 against former prime minister Mahendra Chaudhry and five associates for allegedly holding a “political meeting” without a permit in breach of the PER.

Freedom of Association

The abrogated constitution provided for freedom of association, but no decree provides for this right following the constitution's abrogation. During the year the government did not restrict individuals from joining NGOs, professional associations, or other private organizations, but some NGOs were not permitted to hold meetings with their members.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/irf/rpt.

d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The abrogated constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation, but the government frequently restricted or denied these rights in practice.

The government provided nominal cooperation with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

In-country Movement: The PER authorize the government to prohibit, restrict, or regulate movement of persons, but the government did not restrict any person's in-country movement during the year.

Foreign Travel: The government maintained a list of persons banned from leaving the country, including human rights activists and lawyers. Names on the list were not made public; would-be travelers discovered their inclusion when they were turned back by airport immigration authorities.

The government continued to limit the travel of government critics. Former prime minister Laisenia Qarase, charged in 2008 with abuse of office, continued to be subject to strict bail conditions prohibiting him from traveling out of the country, on the grounds that such travel would pose a "threat to national security." At year's end his case remained pending.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, but the government has not established a system for providing protection to refugees. There were no applications for asylum or refugee status during the year.

Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

The country continued to be ruled by a military-dominated government following the 2006 military overthrow of the popularly elected government, and at year's end Parliament, the 12 elected municipal councils, and the Great Council of Chiefs remained suspended. The government denied citizens the right to change their government peacefully, although the abrogated constitution provides citizens the right to do so.

Elections and Political Participation

Recent Elections: The most recent elections, held in 2006, were judged generally free and fair. Party politics was largely race based, although this did not limit participation in the political process. The governing Soqosoqo Duavata ni Lewenivanua (SDL) party was primarily ethnic Fijian, and the Fiji Labour Party (FLP), the second-largest party, was primarily Indian-Fijian, although both had membership across racial lines. After the elections the SDL established a multiparty cabinet with the FLP as required by the constitution. This government was removed by the RFMF under Bainimarama's leadership during the 2006 coup.

At year's end the PER continued in force, and the government continued to rule by decree. Bainimarama has declared that political reforms are necessary before elections can resume and repeatedly postponed national elections. In September the government announced it would start electronic voter registration in 2012 as part of preparations for promised 2014 parliamentary elections and invited tenders from interested companies. A government official also announced in September that political party "manifestos" or published platforms would not be allowed in future elections, and that all competing parties would have to uphold the government's Charter for Peace, Change, and Progress.

Political Parties: In March military personnel raided the SDL party's office in Suva and confiscated its computers. The office closed after the raid but reopened by year's end.

Participation of Women and Minorities: There was one woman in the 11-member cabinet. Indigenous women played important roles in the traditional system of chiefs, and some became chiefs in their own right.

There were two Indian-Fijian ministers in the cabinet and no other minority ministers. Indian-Fijians, who accounted for 37 percent of the population, continued to be underrepresented at senior levels of the civil service and greatly so in the military. Indian-Fijians comprised approximately 35 percent of the civil service overall. The “disciplined services”—the military, police, and prison services—were predominantly ethnic Fijian; however, Indian-Fijians comprised approximately one-third of the police force.

Section 4. Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and it has been a significant problem for post-independence governments. Officials frequently engaged in corrupt practices with impunity.

Despite measures by the government during the year to combat corruption within the bureaucracy, systemic corruption continued. In the absence of parliamentary oversight and other checks and balances, much government decision making was not transparent. The media published articles on the reports and conclusions of the government-appointed Public Accounts Committee and reports of FICAC investigations on abuse of office, but the government censored independent media reporting on some government corruption. In 2008 the auditor general announced that in the absence of a sitting parliament, audit reports would be submitted to the cabinet and would not be made public. This practice continued during the year. The cabinet referred such reports to the Public Accounts Committee for review. Media continued to highlight the reports up to 2005 that had been examined by the committee, but the reports from 2006-11 were not publicized.

Public officials are not subject to financial disclosure laws. FICAC is the primary body responsible for combating government corruption. During the year the former lead prosecutor for FICAC alleged inappropriate interference in FICAC by the attorney general and Military Council. In September the government lost its appeal against the acquittal of government critic Ratu Sakiusa Tuisolia on abuse of office charges and charges relating to licensing of his restaurant business. Tuisolia had maintained that the charges, brought by FICAC, were politically motivated.

The corruption case of former prime minister Qarase, initiated by FICAC in 2008, remained pending at year's end.

Although the abrogated constitution instructed Parliament to enact a freedom of information law as soon as practicable, no such law was enacted. The government was frequently unresponsive to public requests for government information. A 2008 amendment to the FICAC decree allows FICAC to prosecute the offense of "misconduct in public office." The amendment gives FICAC authority to prosecute civil servants who divulge confidential government information to others without authorization.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

The government continued to scrutinize the operations of local and international NGOs, engendering a climate of uncertainty within the NGO community. Most NGOs practiced varying degrees of self-censorship. Government officials were cooperative and responsive only to the views of NGOs that avoided criticizing the 2006 coup and the government.

There were several NGOs that concentrated on a variety of local human rights causes, such as the Citizens' Constitutional Forum, Fiji Women's Rights Movement, and Fiji Women's Crisis Center.

NGOs were constrained in their operations by the Crimes Decree, which includes criticism of the government in its definition of sedition, and the Media Decree, which requires all publications to be vetted by the Ministry of Information (see section 2.a.).

On July 1, police dispersed an internal workshop of the Fiji Women's Rights Movement because it did not have a permit under the PER. The NGO said it did not seek a permit because the workshop was an internal planning meeting of its board and staff members.

UN and Other International Bodies: The ICRC continued to operate in the country. A number of UN organizations concerned with human rights had regional offices in the country and sought to address reports of human rights abuses. The country remained suspended from the Commonwealth of Nations and the major regional organization Pacific Islands Forum (PIF), in response to Bainimarama's failure to address expectations "to return Fiji to democratic governance in an

acceptable time-frame,” in addition to other concerns, including human rights violations, expressed in statements by the PIF and the Commonwealth.

Government Human Rights Bodies: Although the FHRC was reestablished by decree after the abrogation of the constitution, it was not authorized to investigate complaints against the abrogation, other actions of the government, or the 2006 coup. It did not enjoy a high level of public trust.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

The abrogated constitution prohibits discrimination based on race, sex, place of origin, ethnicity, sexual orientation, color, primary language, economic status, age, or disability. The government generally enforced these provisions effectively, although there were problems in some areas. After the constitution’s abrogation, only the 2007 Employment Relations Promulgation (ERP), which came into force in 2008, had similar provisions, but these are limited to workers and industrial relations matters.

Women

Rape and Domestic Violence: Rape, domestic abuse, incest, and indecent assault were significant problems. The Crimes Decree provides for a maximum punishment of life imprisonment for rape; under the decree rape is an indictable offense, which can be tried only in the High Court. The 2010 Domestic Violence Decree recognizes spousal rape as a specific offense. The NGOs Fiji Women’s Rights Movement and Fiji Women’s Crisis Center pressed for more consistent and severe punishments for rape in practice.

The Domestic Violence Decree created a specific domestic violence offense. Police claimed to practice a “no-drop” policy, under which they pursued investigations of domestic violence cases even if a victim later withdrew her accusation. However, women’s organizations reported that police were not always consistent in their observance of this policy. The decree gives the police authority to apply to a magistrate for restraining orders in domestic violence cases, but police often told the victims to apply for such orders themselves. Police officers were not always aware they had the power to apply on the woman’s behalf. As a result, complainants sometimes were obliged to seek legal assistance from a lawyer or an NGO. Courts dismissed some cases of domestic abuse and incest or gave perpetrators light sentences. Incest was widely believed to be underreported. Traditional and religious practices of reconciliation between aggrieved parties in

both ethnic Fijian and Indian-Fijian communities were sometimes taken into account to mitigate sentences in domestic violence cases. In many cases, offenders were released without a conviction rather than jailed on the condition they maintain good behavior. An active women's crisis center sought to raise public awareness of domestic violence.

Four women's crisis centers funded by foreign governments operated in the country. The centers offered counseling and assistance to women in cases of domestic violence, rape, and other problems, such as lack of child support.

Sexual Harassment: The 2009 Human Rights Commission Decree specifically prohibits sexual harassment, and criminal laws against "indecent assaults on females" prohibit offending the modesty of women and have been used to prosecute sexual harassment cases. Under the ERP workers can file complaints on the grounds of sexual harassment in the workplace. The Ministry of Labor reported that one sexual harassment complaint filed with the Employment Relations Tribunal (ERT) under the ERP in a prior year was withdrawn during the year. Two other sexual harassment complaints were filed with the ERT during the year, but information on their status at year's end was not available.

In response to various complaints in 2009 from some indigenous village and provincial councils about a purported breakdown of order in villages, in 2010 the Ministry of Indigenous Affairs drafted a model village bylaw addressing issues raised by the councils, including women's dress. The draft model bylaw included a prohibition on wearing of shorts, t-shirts, and long hair by women. During the year the government announced that the bylaw was a draft only that the councils should not yet enforce. Despite the announcement, councils continued to enforce their own versions of the bylaw, and some village chiefs were charged with assaults on persons judged to be in breach of it.

Sex Tourism: While there is no specific sex tourism offense, sex tourism is illegal under laws prohibiting soliciting for prostitution and commercial sexual exploitation of children. Nonetheless, sex tourism reportedly occurred, particularly in tourist centers such as Nadi and Savusavu, including cases involving children. Taxi drivers, hoteliers, bar workers, and others reportedly acted as middlemen, facilitating the commercial sexual exploitation of children.

Reproductive Rights: Couples and individuals generally have the right to decide freely the number, spacing, and timing of their children. The government provided family planning services, and women had access to contraceptives free of charge at

public hospitals and clinics, and for a nominal charge if prescribed by a private physician. Unmarried and young women generally were discouraged from undergoing tubal ligation for birth control, and public hospitals, especially in rural areas, often refused to perform the operation on unmarried women who requested it. Nurses and doctors often required the husband's consent before carrying out the operation on a married woman, although there is no legal requirement for such consent. Most women gave birth in hospitals, where skilled attendance at birth and essential prenatal, obstetric, and postpartum care were available.

Discrimination: Women have full rights of inheritance and property ownership by law but in practice often were excluded from the decision-making process on disposition of iTaukei (indigenous) communal land, which constituted more than 80 percent of all land. Women have the right to a share in the distribution of iTaukei land lease proceeds, but in practice this right was seldom recognized. Other than a prohibition on working underground in mines, there were no legal limitations on the employment of women, and many women were successful entrepreneurs. Several prominent women led civil society, NGO, and advocacy groups.

The ERP prohibits discrimination on the basis of sex. In practice, however, women generally were paid less than men for similar work. According to the Asian Development Bank, approximately 30 percent of the economically active female population was engaged in the formal economy, and a large proportion of these women worked in semi-subsistence employment or were self-employed.

The Ministry for Women worked to promote women's legal rights.

Children

Birth Registration: Citizenship is derived both by birth within the country and through one's parents. Births generally were registered promptly.

Education: School is mandatory until age 15, but the inability of some families to pay for uniforms and school fees limited attendance for some children.

Child Abuse: Corporal punishment was common in both homes and schools, despite a Ministry of Education policy forbidding it in the classroom. Increasing urbanization, overcrowding, and the breakdown of traditional community and extended family-based structures led to an increasing incidence of child abuse and

appeared to be factors that increased a child's chance of being exploited for commercial sex.

Child Marriage: The legal age for marriage is 18, although children between 16 and 18 years of age can marry with parental consent. Some NGOs reported that child marriage was a problem, especially in rural areas, where girls often married at age 16, preventing them from completing their secondary school education. In indigenous villages girls under 16 who became pregnant could begin to live as common-law wives with their child's father after the men presented traditional apologies to the girls' families, thereby avoiding the filing of a complaint to police by the families. The girls frequently married the fathers as soon as legally permissible, at age 16.

Sexual Exploitation of Children: The Court of Appeal has ruled that 10 years is the minimum appropriate sentence in child rape cases; however, in such cases police often charged defendants with "defilement" rather than rape because defilement is easier to prove in court. Defilement or unlawful carnal knowledge of a child under age 13 has a maximum penalty of life imprisonment, while the maximum penalty for defilement of a child between ages 13 and 15 or of an intellectually impaired person is 10 years' imprisonment. Women's NGOs complained that magistrates imposed shorter sentences, from two to eight years, in child defilement cases.

Child prostitution was reported among high school students and homeless and jobless youth. Commercial sexual exploitation of children continued to occur. Under the Crimes Decree, commercial sexual exploitation of children is an indictable offense that must be tried in the High Court. The decree makes it an offense for any person to buy or hire a child under age 18 for sex, prostitution, or other unlawful purpose, punishable by imprisonment for up to 12 years. It is also an offense for a householder or innkeeper to allow commercial sexual exploitation of children in his or her premises, but there were no prosecutions or convictions for these offenses during the year.

The minimum age for consensual sex is 16. The maximum penalty is life imprisonment in the case of a person who has sexual relations with a child under age 13 and 10 years' imprisonment in the case of a person who has sexual relations with a child between ages 13 and 15. In the latter case it is considered a sufficient defense to establish that the perpetrator had "reasonable cause" to believe the child was 16 or older. Despite the maximum penalties under the law, magistrates sometimes imposed sentences as low as two years' imprisonment in such cases.

Child pornography is illegal. The maximum penalty for violators is 14 years' imprisonment and/or a maximum fine of F\$25,000 (\$14,116) for a first offense and life imprisonment and/or a fine of up to F\$50,000 (\$28,232) for a repeat offense, and the confiscation of any equipment used in the commission of the offense. A child welfare decree promulgated in 2010 requires mandatory reporting to police by teachers and health and social welfare workers of any incident of child abuse.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

There was no known Jewish community, and there were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

Under the abrogated constitution, all persons are considered equal under the law, and discrimination against persons with disabilities in employment, education, provision of housing and land, or provision of other state services is illegal. Since the constitution's abrogation, no new decree has addressed specifically the rights of persons with disabilities; however, existing statutes provide for the right of access to places and all modes of transport generally open to the public. Public health regulations provide penalties for noncompliance; however, there was very little enabling legislation on accessibility for persons with disabilities, and there was little or no enforcement of laws protecting them.

Building regulations require new public buildings to be accessible to persons with disabilities, but only a few existing buildings met this requirement. By law all new office spaces must be accessible to persons with disabilities. There were only a small number of disabled-accessible vehicles in the country. The Fiji Disabled People's Association, an NGO, reported that most persons with disabilities were unemployed due to lack of sufficient education and training and negative attitudes of employers. There were no programs to improve access to information and

communications for persons with disabilities, in particular those with hearing or vision impairments, had difficulty accessing public information. There were a number of community organizations to assist those with disabilities, particularly children.

Most persons with mental and intellectual disabilities were separated from society and typically were supported at home by their families. The 2010 Mental Health Decree stipulates that treatment should be provided for persons with mental and intellectual disabilities in the community, public health, and general health systems. Institutionalization of persons with severe mental disabilities was in a single underfunded public facility in Suva. There were a number of special schools offering primary education for persons with physical, intellectual, and sensory disabilities; however, cost and location limited access. Opportunities for a secondary school education for those with disabilities were very limited.

The Fiji National Council for Disabled Persons, a government-funded statutory body, worked to protect the rights of persons with disabilities. Several NGOs also promoted attention to the needs of persons with various disabilities.

National/Racial/Ethnic Minorities

Tension between ethnic Fijians and Indian-Fijians has been a longstanding problem. Indigenous Fijians make up 57 percent of the population, Indian-Fijians comprise 37 percent, and the remaining 6 percent is composed of Europeans, Chinese, and Rotuman and other Pacific Islander communities. The abrogated constitution notes that “the composition of state services at all levels must be based on the principle of reflecting as closely as possible the ethnic composition of the population,” but a nonjusticiable compact in the constitution also cites the “paramountcy” of Fijian interests as a guiding principle. The compact also provides for affirmative action and “social justice” programs to “secure effective equality” for ethnic Fijians and Rotumans, “as well as for other communities.” The compact chiefly benefited the indigenous Fijian majority, although Indian-Fijians dominated the commercial sector. Indigenous Fijians dominated the civil service, including senior positions.

The government publicly stated its opposition to such policies, which it characterized as racist, and called for the elimination of discriminatory laws and practices that favor one race over another; however, as of year’s end, most remained in place. The government’s reform priorities, including reform of discriminatory laws and practices, were part of a political dialogue process with

political parties that stalled and was not reconvened after the constitution's abrogation.

In an effort to address the sensitive question of ethnic and national identity, in 2010 the government decreed that the country's citizens would henceforth be known as "Fijians," a term that previously was understood to refer only to the ethnic indigenous population. Indigenous Fiji Islanders would become known as "iTaukei" (literally, "owners" in the Fijian language). The decree requires that anywhere the word "indigenous" or "native" appears in the law and in government publications and communications, it is to be replaced by the term "iTaukei." Some commentators, writing in blogs or overseas publications, observed that the lack of prior consultations with the indigenous community about the change and its promulgation by decree could complicate its implementation, given the historical opposition by indigenous Fijians to making "Fijian" the common name for all citizens. (The 1997 constitution used the term "Fiji Islander" to refer to all citizens.)

Land tenure remained a highly sensitive and politicized issue. Ethnic Fijians communally held approximately 87 percent of all land, the government held approximately 4 percent, and the remainder was freehold land, which private individuals or companies held. Most cash-crop farmers were Indian-Fijians, the majority of whom are descendants of indentured laborers who came to the country during the British colonial era. Virtually all Indian-Fijian farmers were obliged to lease land from ethnic Fijian landowners. Many Indian-Fijians believed that their very limited ability to own land and their consequent dependency on leased land from indigenous Fijians constituted de facto discrimination against them. A pattern of refusals by ethnic Fijian landowners to renew expiring leases continued to result in evictions of Indian-Fijians from their farms and their displacement to squatter settlements. Many indigenous Fijian landowners in turn believed that the rental formulas prescribed in the national land tenure legislation discriminated against them as the resource owners. This situation contributed significantly to communal tensions.

In 2010 the government promulgated the Land Use Decree to improve access to land. The decree establishes a "land bank" in the Ministry of Lands for the purpose of leasing land from indigenous landowning units through the iTaukei Land Trust Board (TLTB, formerly the Native Land Trust Board) and subleasing the land to individual tenants for lease periods of up to 99 years. The TLTB is the legal custodian of indigenous lands under the iTaukei Land Trust Act and holds all indigenous land in trust for the benefit of indigenous landowning units. In

practice, however, the Land Bank began leasing land directly to tenants, without any involvement of the TLTB. The first lease by the Land Bank was granted to Xinfra Aurum, a Chinese mining company, for a bauxite mine in Vanua Levu.

Beginning in January the government changed the existing formula for distributing lease proceeds to indigenous landowners, under which 35 percent of revenues had gone to chiefs and 15 percent was deducted by the TLTB for administrative expenses. The new process abolishes the system of chiefly privilege in land lease income distribution and provides for a “one person, one share” system. This change contributed to an increase in lease renewals, as individual members of landowning units receive a greater share of lease monies than under the previous system.

Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

The Crimes Decree does not criminalize consensual same-sex sexual activity and for the first time recognizes male-on-male rape as a crime. The ERP prohibits discrimination in employment based on sexual orientation.

There was some societal discrimination against persons based on sexual orientation and gender identity, although there was no systemic discrimination. There were no known cases of violence based on sexual orientation or gender identity.

Other Societal Violence or Discrimination

There was some societal discrimination against persons with HIV/AIDS, although it was not systemic. There were no known cases of violence targeting persons with HIV/AIDS.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law gives workers the right to form and join unions, elect their own representatives, publicize their views on labor matters, and determine their own policies. The law also gives workers the right to strike and bargain collectively.

All unions must register with the government, which has discretionary power to refuse to register any union with an “undesirable” name, as well as to cancel

registration of existing unions in cases provided for by law. The ERP allows restrictions on the right of association if necessary in the public interest or to protect national security. Police, military, and prison personnel are prohibited from forming or joining a union.

Freedom of expression and association subsequently were restricted after the abrogation of the constitution. Under the PER unions reported considerable government interference with, and denial of, their right to organize.

The law provides for the limited right to strike, except that police, military, and prison personnel may not strike. Unions can conduct secret strike ballots, but must give the registrar 21 days' notice. More than 50 percent of all paid-up union members--not only paid-up members who actually cast ballots in the election--must vote in favor of a strike in order for the strike to be legal. The Ministry of Labor also must be notified and receive a list of all striking employees and the starting date and location of the strike. This requirement is intended to give organizers, unions, employers, and the ministry time to resolve the dispute prior to a strike. To carry out a legal strike, organizers of strikes in certain "essential services"--including emergency, health, fire, sanitary, electrical, water, and meteorological services; telecommunications; air traffic control; and fuel supply and distribution--must give an employer 49 days' notice. The ERP also permits the minister of labor to declare a strike unlawful and refer the dispute to the ERT; in these circumstances workers and strike leaders can face criminal charges if they persist in strike action after the referral. There were no strikes during the year.

Under the ERP any trade union with six or more members may enter into collective bargaining with an employer. Individual employees, including nonunionized workers as well as unions, can bring a dispute with employers before the permanent secretary for labor for mediation. Individuals, employers, and unions on behalf of their members may submit employment disputes and grievances alleging discrimination, unfair dismissal, sexual harassment, or certain other unfair labor practices to the Ministry of Labor. If mediation fails, the authorities may refer the dispute to the ERT. The ERT's decision can be appealed to the Employment Court (a division of the High Court) and from there to the Court of Appeal and then the Supreme Court. The ERP also gives unions the right to appeal to the ERT against an adverse decision by the trade union registrar.

The Essential National Industries Decree (ENID), published in July, severely restricts trade union and collective bargaining rights for workers in designated industries and corporations deemed essential to the national economy. On

September 9, the government officially designated 11 corporations--in finance, telecommunications (including the Fiji Broadcasting Corporation), the public sector, and the airline industry--as covered by the decree. Once a corporation is designated, collective agreements previously negotiated between the corporation and unions remain valid only for 60 days. Before the end of this period, workers must renegotiate the agreements with their company. The government has the final say on such agreements. The decree excludes professional trade unionists from holding office in unions for these corporations and from representing the workers in negotiations with employers.

The authorities did not always respect fundamental labor rights in practice. Since the constitution was abrogated, unions have reported that the government used the mediation process to punish unions deemed insufficiently cooperative with government policies, interrupting the collective bargaining process, interfering with mediation, and denying appeals for unrelated political reasons. In addition, under provisions of the ENID, preexisting trade unions at the 11 corporations designated in September ceased to exist 60 days after the companies' designation. Groups that had at least 75 members were able to set up new bargaining units to negotiate with management. Such units were not registered as trade unions under the ERP and did not enjoy the other rights and protections accorded trade unions under the ERP; registered trade unions may not undertake negotiations in companies covered by the ENID. For groups of at least 75 workers who formed bargaining units under the ENID and renegotiated agreements with their employers by year's end, in most cases the companies and government entities appeared to have preserved the majority of benefits provided under previous collective bargaining agreements.

In September, after the ENID was issued, the government denied permits to the two trade union umbrella bodies, the Fiji Trades Union Congress (FTUC) and the Fiji Islands Council of Trade Unions, to hold their council meetings.

While not promoted by the ERP, individual contracts were common. Employers tended to offer advantageous packages to new employees, particularly skilled labor, to promote individual contracts, which according to labor groups reduced the possibilities for collective bargaining and weakened unions. Under the former Compulsory Recognition Act, only unions with 30 percent workforce membership could negotiate with an employer. However, the ERP allows any six individual employees to form a union and start negotiating with an employer--another provision seen by existing unions as weakening worker unity and hence bargaining power.

In August two unionists were charged with breach of the PER for holding a meeting without a permit. The two individuals--Daniel Urai, president of the FTUC and general secretary of the hotel workers union, and union organizer Nitin Goundar--had met with two workers fired from an island resort. At year's end the case had not come to trial. In November Urai was arrested again and charged with sedition; the government alleged he urged certain persons to overthrow the government. He was released on bail and was awaiting trial at year's end.

Under the ERP it is an offense for an employer to victimize any worker or make it a condition of employment for a worker not to belong to a union, but union organizers were occasionally vulnerable to dismissal or other interference by employers, particularly when operating on company premises. Labor groups reported continuing difficulties organizing workers in the Tax Free Zones due to fear of employer reprisals.

Major trade unions reported instances of the government using the ERP in a biased fashion to shut down negotiations and appeals.

In 2010 the Fiji Sugar Corporation ceased the so-called check-off facility (direct deduction of union dues) for two registered unions: the national farmers' union (Kisan Sangh) and the Fiji Cane Growers' Association. As of year's end this check-off facility had not been reinstated.

In May the government ceased the check-off facility for civil service unions. An August decree excluded civil servants from the ERP and its tribunals, courts, and mediation services. Under the decree the check-off facility is not a right but a service, which the government can choose not to provide. This greatly hampered the ability of civil service unions to represent their members. In June another decree gave civil servants the same rights to equality and nondiscrimination as other workers covered by the ERP.

b. Prohibition of Forced or Compulsory Labor

The ERP prohibits forced or compulsory labor, but there were reports that such practices occurred. The Labor Inspectorate is responsible for enforcing the law but did not have sufficient inspectors for full enforcement.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

Under the law children under age 12 may not be employed except in a family-owned business or agricultural enterprise. Any such employment must not interfere with school attendance and is to be of limited duration. Although the law provides that education is compulsory up to age 15, children between 12 and 15 may be employed on a daily wage basis in nonindustrial “light” work not involving machinery, provided they return to their parents or guardian every night. Children between ages 15 and 17 may be employed in certain occupations not involving heavy machinery, hazardous materials, mines, or heavy physical labor; however, they must be given specified hours and rest breaks. The ERP provides for imprisonment of up to two years, fines of up to F\$50,000 (\$28,232), or both for employers who violate these provisions.

The Ministry of Labor deployed inspectors nationwide to enforce compliance with labor laws, including those covering child labor. However, enforcement of existing child labor regulations was inadequate. The government established a multiagency task force led by the Ministry of Labor to work toward the elimination of the worst forms of child labor.

Increasing poverty led to more children working as casual laborers, often with no safeguards against abuse or injury. During the year migration of rural youth to urban areas continued, and youths continued to find employment in the informal sector, including work as shoeshine boys, casual laborers, and prostitutes. Children as young as age 11 worked as full-time laborers in the sugar cane industry. Children also worked in the production of other agricultural products, including coconuts and root vegetables.

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. Acceptable Conditions of Work

There was no single, national minimum wage, although the Wages Councils, comprising representatives of both workers and employers, set minimum wages for certain sectors. The 11 corporations designated by the ENID are excluded from the ambit of the Wages Councils. There was no current official poverty-level income figure, but minimum wage levels in regulated industries and entry-level

wages in unregulated and informal sectors did not provide a decent standard of living for a worker and family.

There is no single national limitation on maximum working hours for adults, but there are restrictions and overtime provisions in certain sectors. The ENID bans overtime payments for work in the 11 designated corporations unless agreed upon by the employer.

There are workplace safety laws and regulations, including the Health and Safety at Work Act and the Workman's Compensation Act. The law accords employees the right to remove themselves from a hazardous worksite without jeopardizing their employment, and safety standards apply equally to both citizens and foreign workers.

The Labor Ministry uses its Labor Inspectorate to enforce minimum wages, but the inspectorate did not have sufficient capacity to enforce the law fully. The ERT and the Employment Court adjudicate cases of employers charged by the Labor Inspectorate with violating minimum wage orders and decide on workmen's compensation claims filed by the inspectorate on behalf of workers. The Occupational Health and Safety Inspectorate in the Ministry of Labor monitors workplaces and equipment and investigates complaints from workers. Although mines are excluded from the Health and Safety at Work Act, the Mining Act empowers the director of mines and his inspectors to enter and inspect all mines with a view to the health, safety, and welfare of the employees.

Unions generally monitored safety standards in organized workplaces, but many work areas did not meet standards, and not all were monitored by the Ministry of Labor for compliance. Workers in some industries, notably transportation and shipping, worked excessive hours. Government enforcement of safety standards suffered from a lack of trained personnel and delays in compensation hearings and rulings. Few workers chose to leave the workplace, even if it posed hazards to their health, out of fear of dismissal.