



[Home](#) » [Under Secretary for Democracy and Global Affairs](#) » [Bureau of Democracy, Human Rights, and Labor](#) » [Releases](#) » [Human Rights Reports](#) » [2009 Country Reports on Human Rights Practices](#) » [East Asia and the Pacific](#) » [Fiji](#)

2009 Human Rights Reports: Fiji

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2009 Country Reports on Human Rights Practices

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Fiji is a republic with a population of approximately 837,000. The 1997 constitution provided for a ceremonial president selected by the Great Council of Chiefs and an elected prime minister and Parliament. However, in 2006 the armed forces commander, Commodore Voreqe (Frank) Bainimarama, overthrew the elected government in a bloodless coup d'etat. In 2007 the interim military government was replaced by a nominally civilian interim government headed by Bainimarama as prime minister. Bainimarama and his Military Council controlled the security forces.

On April 9, the Court of Appeal declared the coup and the interim government unlawful. On April 10, the government abrogated the constitution, imposed a state of emergency, and began to rule by decree.

Bainimarama's de facto government denied citizens the right to change their government peacefully. In April the de facto government dismissed the entire judiciary and replaced it with its own appointees. It censored and intimidated the media and restricted freedom of speech and the right to assemble peacefully. Other problems during the year included police and military impunity; poor prison conditions; attacks against religious facilities; the dismissal of constitutionally appointed government officials, as well as elected mayors and town councils; government corruption; deep ethnic divisions; violence and discrimination against women; and sexual exploitation of children.

Public Emergency Regulations (PER), initially promulgated April 10 for a three-month period, were repeatedly extended and remained in effect at year's end.

RESPECT FOR HUMAN RIGHTS

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 during the year.

In March trials were held for military personnel and police officers charged in the 2007 deaths of Nimilote Verebasaga and Sakiusa Rabaka. Eight soldiers and one police officer were convicted of manslaughter in the Rabaka case and sentenced to four years' imprisonment. The lone soldier charged in the death of Verebasaga also was convicted of manslaughter and sentenced to three years and three months in prison. However, in May all those convicted in the Rabaka case were

released from prison after serving only six weeks of their sentences. The soldier convicted in the Verebasaga case also was released, after serving only two weeks of his sentence. All 10 subsequently were reinstated in the military and police forces. The permanent secretary for information, Lieutenant Colonel Neumi Leweni, asserted that the Prisons Act gave the commissioner of prisons the discretion to allow release of prisoners under compulsory supervision orders for good behavior.

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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.

The military in some cases assisted the Fiji Independent Commission against Corruption (FICAC) to investigate allegations of corruption, and there were reports members of the military detained and assaulted civilians to obtain evidence in corruption cases.

Amnesty International reported that security forces beat politician Iliesa Duvuloco and several other men detained in April for distributing political pamphlets critical of the government (see section 2.a.) and forced them to perform military-type drills.

Prison and Detention Center Conditions

Prison conditions did not meet international standards. The national prison system was seriously underfunded, with deteriorating infrastructure and poor delivery of essential services. The system had insufficient beds, inadequate sanitation, and a shortage of basic necessities. There were a large number of prison escapes during the year. The pretrial detention facility at Suva's prison remained closed due to its substandard condition.

There were approximately 1,000 inmates in the country's 14 prisons, of which approximately 100 were pretrial detainees. Of the estimated 900 convicted prisoners, approximately 25 were women and 120 were juveniles. The prisons had a total capacity of 1,080 inmates.

In some cases pretrial detainees and convicted prisoners were held together. Courts released pretrial detainees, including some facing serious charges, on bail to minimize their exposure to an unhealthy and overcrowded prison environment.

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. Family members were routinely permitted to visit prisoners.

d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest and detention, but the government did not always respect this prohibition in practice.

Role of the Police and Security Apparatus

The Ministry of Home Affairs, headed by the minister for defense, oversees the Fiji Police Force, which is responsible for law enforcement and the maintenance of internal security. After the 2006 dismissal of the police commissioner and his

deputy, deputy army commander Captain Esala Teleni was appointed commissioner. Historically responsible for external security, the Republic of Fiji Military Force (RFMF) has maintained since 2005 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 RFMF also participated in the awareness campaign to gain support for the People's Charter for Change, Peace, and Progress, a domestic policy initiative of the Bainimarama government.

Police maintained a network of stations and posts throughout the country. Policing of more remote and smaller islands was done through regularly scheduled visits. There was a joint military and police command center based at the Suva Central Police Station. Military personnel were assigned to accompany police patrols and jointly staff police checkpoints.

The police Internal Affairs Unit is statutorily responsible for investigating complaints of police misconduct. FICAC 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 use of force deemed necessary to enforce PER provisions.

Arrest Procedures and Treatment While in Detention

By law police officers may arrest persons without a warrant for violations of the 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 PER permit the government to detain for up to seven days without charge persons suspected of violating PER provisions.

Following the April abrogation of the constitution, the government detained without charge journalists, lawyers, and nongovernmental organization (NGO) activists for periods up to two days. At least 20 journalists were detained overnight before being released. On April 14, the authorities detained Dor Sami Naidu, president of the Fiji Law Society, after he and other lawyers appeared at the Lautoka High Court to pursue their cases and expressed support for judges and magistrates dismissed by the government; he was released without charge on April 15. Another 20 critics were also arrested, detained overnight, and then released without charge.

There was a generally well-functioning bail system.

Detainees generally were allowed prompt access to counsel and family members, but some journalists and others detained 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.

The courts had a significant backlog of cases, worsened by the government's April 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.

The judicial structure is patterned on the British system. The principal courts are the magistrates' courts, the High Court, the Court of Appeal, and the Supreme Court. Except for the Family Court, Employment Court, and various administrative tribunals, there are no special civilian courts. Military courts try members of the armed forces.

On April 9, a panel of three judges of the Court of Appeal ruled that the 2006 military coup was unlawful, and that the appointment of Bainimarama as prime minister in 2007, and the appointment of his interim cabinet, were unconstitutional.

In response, on April 10, President Ratu Josefa Iloilo signed a decree that abrogated the constitution and terminated the appointments of all judicial officers appointed under the provisions of that constitution. The courts closed for three weeks and reopened on a limited basis at the end of May after the government made initial appointments to the lower courts. In June and July, high court judges were appointed. Due to a shortage of judges, some high court judges also were appointed to serve concurrently on the Court of Appeal and the Supreme Court, with different individual justices hearing a case referred from one of these higher courts to another. Sittings of the higher courts were deferred, leading to an even greater backlog of cases. The chief registrar also was dismissed and replaced by an army lawyer who was made a magistrate in 2007.

The Administration of Justice Decree of April 16, which reestablished the courts, 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; and all government decrees. The military-appointed chief registrar issued termination certificates for all such pending cases.

The government had difficulty reconstituting the judiciary, leading to complaints those appointed after the April dismissal of the existing judiciary were not properly qualified, especially in such complex areas of the law as commercial and contract law. Women's NGOs also asserted that some new magistrates made inappropriate comments and exercised poor judgment in domestic violence and sexual assault cases, and that because of media censorship under the PER, the public was not informed about the mistakes made by these magistrates.

On July 16, the government dismissed the chief magistrate after he protested the firing of another magistrate earlier the same month. On December 2, the government appointed the chief registrar to serve concurrently as chief magistrate. On December 30, the government dismissed as "threats to national security" the assistant director of public prosecutions (DPP) and three more junior prosecutors. Also on December 30, the government dismissed the acting DPP and replaced him with a former soldier and FICAC prosecutor. On the same day, the government terminated, with 24 hours' notice, the contracts of three magistrates it had appointed after the April abrogation of the constitution. While the government gave no reasons for the terminations, there were media reports that one of the magistrates had criticized FICAC for prosecuting a critic of the regime for an alleged restaurant licensing violation (see section 4).

After the constitution was abrogated, the chief registrar also assumed responsibility for prosecuting lawyers for disciplinary breaches before a government-appointed judge. Civil society organizations criticized these additional duties as infringing on the independence of the judiciary.

The government continued to prohibit an International Bar Association (IBA) delegation from visiting the country to evaluate the independence of the judiciary. 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. On March 3, the IBA's Human Rights Institute released a report criticizing the government for taking measures "to influence, control or intimidate the judiciary and the legal profession."

Trial Procedures

The abrogated constitution provides for the right to a fair trial. Defendants have the right to a public trial and to counsel, and the court system generally enforced these rights in practice during the year. 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, but a case cannot be tried in a magistrate's court without the defendant's consent. Absent such consent, cases are tried 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.

The law extends these rights to all citizens.

The military court system provides for the same basic rights as the civilian court system, although bail is granted less frequently in the military system.

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 journalists and others 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 constitution an individual also could complain to the Fiji Human Rights Commission (FHRC). Although the government decreed that the FHRC could continue to exist following the constitution's abrogation, it issued a decree on May 20 prohibiting the FHRC from investigating cases filed by individuals and organizations alleging government violations of the constitution and of human rights.

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

The constitution prohibits such actions, but the government frequently ignored these prohibitions in practice. After the April abrogation of the constitution, the government monitored Internet traffic in an attempt to control antigovernment reports by anonymous bloggers.

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Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and of the press, but the government generally did not respect these rights in practice after the abrogation of the constitution on April 10.

On April 26, police arrested politician Iliesa Duvuloco and two other men for distributing antigovernment pamphlets. They were detained and questioned at the Nabua police station for seven days and released without charge on May 3. Police in Lautoka detained three other men for distributing the same pamphlets.

Between January and March, unknown assailants attacked with rocks the homes and cars of several antigovernment civilians, including Saikiusa Raivoce, a former RFMF colonel and vocal antigovernment critic; unionist and politician Attar Singh, head of the New Movement for Democracy; and lawyer Akuila Naco. On March 22, unknown assailants attacked

Raivoce's home and that of *Fiji Times* editor in chief Netani Rika with Molotov cocktails. At year's end police investigations had not resulted in any arrests or prosecutions. On August 3, police arrested and detained Raivoce; he was held overnight and released without charge on August 4.

Prior to April 10, the independent media were active and expressed a wide variety of views, albeit with some degree of self-censorship due to government intimidation. The country's television news program production was owned and operated by Fiji One, one of two national noncable television stations. A trust operated by the Ministry of Fijian Affairs, on behalf of Fiji's 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 also retained a shareholding of less than 20 percent in the *Daily Post* newspaper.

During the year the government harassed, intimidated, and in some cases detained for questioning a number of journalists in response to reporting critical of the government.

On April 10, police raided the *Fiji Times* after a complaint from the chairman of the Public Service Commission, who alleged that the *Times* was in possession of a petition signed by ministry of finance staff against the military-appointed acting permanent secretary, John Prasad, alleging that Prasad was unqualified for the position.

Over the following days, police detained a number of journalists for up to 24 hours, including Edwin Nand, a Fiji TV journalist, on April 13; *Fiji Times* photographer Jai Prasad, Fiji TV reporter Ranbeer Singh, and Fiji TV cameraman Harry Tabanidalo on April 14; and Kawai Damu of online news service Fijilive on April 15. All were released without charge.

On April 16, police arrested Pita Ligaiula, a local journalist and stringer for Agence France Presse, for articles he had written that appeared in *The Australian* newspaper. Ligaiula was released the next day. During his detention security officials intimidated and threatened him with imprisonment under PER provisions. Also on April 16, authorities told three journalists working for regional news organizations (Samisoni Pareti of Radio Australia, Makereta Komai of the Pacific regional news service Pacnews, and Radio New Zealand stringer Matelita Ragogo) to start practicing the "journalism of hope" and refrain from any negative reporting about the government, or face tough penalties from the authorities.

On May 9, police arrested Fijilive journalists Dionisia Tabureguci and Shelvin Chand, and detained them under the PER for a report they published on the fijilive.com Web site regarding the release of several soldiers and a policeman who had been convicted of manslaughter for the death of Sakiusa Rabaka in 2007. The report was removed from the Web site after 30 minutes when police visited the Fijilive office and arrested the two journalists. On May 11, police released Tabureguci and Chand with a warning after they had spent two nights in custody.

The PER authorize the Ministry of Information 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.

On May 14, police in Labasa detained Theresa Ralogaivau, a *Fiji Times* journalist, for seven hours regarding a story published on May 11 about a group of persons who were allegedly growing marijuana in Labasa. Although the story had been vetted by the government censor in the *Times* newsroom, it had quoted a police spokesperson who later denied that he had spoken to Ralogaivau. Police claimed that Ralogaivau was in breach of the PER because she had not spoken with the spokesperson quoted in the story.

The Media Council, a voluntary private watchdog group of media and academic figures, receives and seeks to resolve complaints of bias and malfeasance within the media. However, the continuous extension of the PER ensured government control over newspaper content through censors.

In November the government revoked all broadcasting licenses, ostensibly to allow a review of signal bands. Television and radio stations were issued temporary licenses pending completion of the review, which was in progress at year's end.

Legislation pertaining to the press is contained in the Newspaper Registration Act and the Press Correction Act. Under these acts all newspapers must register with the government before they can publish. The acts give the minister of information sole discretionary power to order a newspaper to publish a "correcting statement" if, in the minister's view, a false or distorted article was published. A newspaper refusing to publish the minister's correction may be sued in court and, if found guilty, fined. Individuals in such cases may be fined, imprisoned for six months, or both. These laws authorize the government to arrest any person who publishes "malicious" material. This would include anything the government considers false, likely to create or foster public alarm, or result in "detriment" to the public. However, this specific authority has never been used.

On January 22, the High Court fined the *Fiji Times* F\$100,000 (approximately \$51,800) and imposed a three-month suspended prison sentence on its editor in chief, Netani Rika, for contempt of court. A contempt case against the *Daily Post* was still pending at year's end. In November 2008 the interim government had pursued contempt of court proceedings against the *Times* and the *Post* after they published a letter to the editor criticizing a 2008 High Court decision upholding the interim government's legitimacy.

In July the acting chief registrar cancelled pending court cases against the government by the *Fiji Sun* and *Fiji Times* for the 2008 deportations of their respective publishers, Russell Hunter and Evan Hannah, in accordance with the April 16 decree that terminated all pending challenges against the 2006 coup and actions of the interim government between December 4, 2006 and April 9, 2009.

The 1992 Television Decree permits the government to influence programming content. The government did not attempt to use this specific programming authority during the year, but it censored television news program content under the PER.

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 (see section 1.f.).

The International Telecommunication Union reported that approximately 12 percent of the country's inhabitants used the Internet in 2008. The Internet was widely available and used in and around urban centers, and the majority of the population lived in areas with Internet coverage. However, low-income persons generally could not afford individual service, and other public access was very limited. Access outside urban areas was minimal or nonexistent.

After the abrogation of the constitution, the government closed Internet cafes at 5:00 p.m. each evening in an attempt to limit anonymous antigovernment blogging and citizens' access to news items on Fiji in the overseas media. Beginning in July Internet cafes were allowed to remain open beyond 5:00 p.m., after paying a fee to local officials.

On May 21, police executed search warrants at the offices of three prominent lawyers--Tevita Fa, Richard Naidu, and Jon Apted--accused of anonymous antigovernment blogging. Fa was the lawyer for deposed prime minister Laisenia Qarase, while Naidu and Apted had criticized the 2006 coup and represented litigants challenging actions of the interim government. In 2007 the interim government had instructed all government departments, statutory bodies, and companies

to cease giving legal work to Naidu and Apted's law firm, Munro Leys. Police questioned the three lawyers and copied their computer hard drives before releasing them without charge.

Academic Freedom and Cultural Events

Academic freedom was generally respected; however, government work-permit stipulations prohibit foreigners from participating in domestic politics. University of the South Pacific contract regulations effectively restrict most university employees from running for or holding public office or holding an official position with any political party.

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 NGOs, and to regulate--including by use of such force as deemed necessary--the use of any public place by three or more persons. Although some civic organizations were granted permits to assemble, permits for all political demonstrations and marches were denied. Bainimarama and the police commissioner discouraged public dissent and politically oriented public gatherings by warning that security forces would actively enforce public order laws.

Police denied the Fiji Law Society's application for a permit to hold a special general meeting to discuss the April abrogation of the constitution. The provincial administrator of Sigatoka initially granted the permit, but it was later nullified by the commissioner of the Central Division, one of four military officers appointed by Bainimarama to head the country's four geographic divisional administrations (see section 3). The police commissioner also denied the permit. The authorities also refused the Law Society's application for a permit to hold its regular annual general meeting in September.

Police banned three prominent individuals critical of the government, including historian and constitutional scholar Brij Lal, an Australian citizen of Fijian origin and a professor at Australian National University, from speaking at the Fiji Institute of Accountants' annual conference on June 12. Police instructed the institute to remove the three speakers from the conference agenda in order for a permit to be granted to allow the conference to proceed. In November Lal was deported to Australia. The government also refused a permit for the Methodist Church, which historically has been associated with ethnic Fijian nationalism, to hold its annual conference (see section 2.c.).

Freedom of Association

The abrogated constitution provides for freedom of association. During the year the government did not restrict persons from joining NGOs, professional associations, or other private organizations, but some were not permitted to hold meetings with their members.

c. Freedom of Religion

The abrogated constitution provides for freedom of religion. Although the government generally respected this right in practice, during the year there were a number of instances in which the government interfered with this right. Some municipal restrictions on opening hours for businesses during Christmas and Easter were imposed on all communities, not just those that were predominantly Christian.

In May the government began a crackdown on Methodist pastors opposed to the government. From May 14 to 15, authorities detained Manasa Lasaro, a former president of the Methodist Church, to which approximately 30 percent of the population belongs, for writing a proposal for peaceful protests against the government. On May 29, the military issued an

unsigned statement declaring that the Methodist Church would not be allowed to hold its 2009 annual conference. On July 19, the church's executive body decided to proceed with the conference despite the permit denial. On July 21, police and military officers detained Ro Teimumu Kepa, minister of education in the ousted Qarase government and the paramount chief of Rewa Province, where the conference was to be held. Police and military officers also detained and questioned the church's president, general secretary, and seven other senior church officials. All were held at military headquarters in Suva until July 23, when Kepa and four of the nine detained Methodist officials were charged with various offenses relating to breach of public order and released on bail. Subsequently five additional church officials also were charged with offenses related to their roles in organizing the conference. All those charged were subjected to strict bail conditions, which prevented them from communicating with each other, traveling, or taking part in church meetings and other church events. At year's end the cases remained pending. In October police and military officers stopped an induction service for senior Methodist Church officials from taking place. The government stated that the ministers could not be inducted while court proceedings were pending against them.

During the year Souls for Jesus, also known as the New Methodist Church, an evangelical Christian group founded and headed by the brother of police commissioner Teleni, spearheaded so-called "crusades" sponsored by the police under Teleni's direct leadership as part of an anticrime campaign. All police personnel and their families, regardless of their religion, were required to attend these evangelical events, and there were reports that non-Christian officers and their families were pressured to convert to Christianity. There also were reports of Hindu and Muslim officers joining the commissioner's church for fear of being denied promotions or losing their jobs.

Societal Abuses and Discrimination

Racial polarization was reflected in religious differences, which were largely along ethnic lines; this contributed to political problems. Most ethnic Fijians were Christians, and most Indo-Fijians were Hindu, with a sizable minority of Muslims. The dominant Methodist Church has closely allied itself with the interests of the pro-indigenous-Fijian movement.

Break-ins, vandalism, and arson directed at houses of worship, predominantly Hindu temples, were common. The attacks were broadly viewed as reflections of intercommunal tensions, although there was often evidence that theft was a contributing motive. There was no known Jewish community, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the 2009 International Religious Freedom Report at www.state.gov/g/drl/rls/irf/.

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 PER authorize the government to prohibit, restrict, or regulate movement of persons.

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. Some persons prohibited from leaving the country challenged the ban in court in 2007, but the chief registrar terminated their cases under the provisions of the Administration of Justice Decree.

A court imposed strict bail conditions on former prime minister Qarase, who was charged with abuse of office, prohibiting him from traveling out of the country on the grounds that such travel would pose a "threat to national security." The government had objected to interviews Qarase gave on Australian television during a 2008 visit to family members in Australia.

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.

The law prohibits forced exile, and the government did not use it during the year.

Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, but until 2008 the law did not specifically provide for the granting of refugee status or asylum. In February 2008 the government published a notice authorizing the entry into force of refugee-related provisions of the 2003 Immigration Act. However, by year's end the government had not established a system for providing protection to refugees. The government does not have an established procedure for providing protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.

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

Although the abrogated constitution provides citizens the right to change their government peacefully, citizens did not have this right in practice. 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 and the Great Council of Chiefs remained suspended. Effective January 31, the government dissolved the country's 12 elected municipal councils, many of which had criticized the government, and replaced them with six government-appointed special administrators who each administer two municipal councils. The administrators each report to the minister for local government. During the year four military officers were appointed as divisional commissioners (for the Central/Eastern, Western, Southern, and Northern Divisions).

Elections and Political Participation

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 Indo-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 the leadership of Commodore Bainimarama during the 2006 coup.

On April 9, when the Court of Appeal ruled that the coup and the appointment of Bainimarama's government were unlawful, Bainimarama resigned the position of prime minister; the president reappointed him on April 10 after abrogating the constitution. 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. On April 10, President Iloilo stated that five years would be necessary to implement the necessary reforms, and that elections (previously promised for 2009) would be held by 2014.

In July President Iloilo resigned, and in October the cabinet appointed Ratu Epeli Nailatikau as president.

There was one woman in the 11-member cabinet. Women played important roles in the traditional system of chiefs and some were chiefs in their own right. The government's suspension of the Great Council of Chiefs removed one forum where women exercised political influence.

At year's end there were two Indo-Fijian ministers in the cabinet and no other minority ministers. Indo-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. Indo-Fijians comprised approximately 35 percent of the civil service overall.

Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption; however, corruption, including within the civil service, has been a significant problem for post-independence governments, and 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 raised numerous allegations of nonaccountability, abuse of office, fraud, nepotism, misuse of public property, financial mismanagement, failure to complete statutory audits, and conflicts of interest regarding officials and ministries during the year. In 2008 the auditor general announced that in the absence of a sitting Parliament, audit reports would be submitted to the cabinet, but would not be made public. This practice continued during the year. The cabinet referred such reports to a government-appointed Public Accounts Committee for review.

Under the Bainimarama government, many military personnel were appointed to positions within government ministries, the diplomatic corps, the police force, and other agencies, ostensibly to improve the inefficient bureaucracy.

Public officials are not subject to financial disclosure laws. FICAC is the primary body responsible for combating government corruption.

In December FICAC charged Ratu Sakiusa Tuisola, a critic of the government and the husband of human rights lawyer Imrana Jalal, with offenses related to operation of a restaurant without a business license, normally a misdemeanor adjudicated by municipal authorities. Jalal was charged with the same offenses on January 1, 2010. Tuisola and Jalal maintained that businesses in Suva typically operated while waiting for license issuance, and that the FICAC charges were politically motivated.

The corruption case of former prime minister Qarase remained pending at year's end, and Qarase remained free on bail. In March 2008 he was charged with abuse of office related to business transactions prior to becoming prime minister, and in May 2008 FICAC charged him with further abuse of office during his tenure as prime minister.

In May UN officials visited the country for three days to assess its compliance with the Convention against Corruption as part of a UN pilot project in which the country volunteered to participate. The project was continuing at year's end.

Although the constitution instructed Parliament to enact a freedom of information law as soon as practicable, no such law has been enacted. The government was frequently unresponsive to public requests for government information. A 2008 amendment to a government 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 noncivil servants.

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 only cooperative and responsive to the views of NGOs that avoided criticizing the coup and the government.

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

There were instances of government harassment of NGOs critical of the interim government. For example, on April 15, police in Suva detained Young People's Concerned Network member and human rights activist Peter Waqavonovono for several hours and warned him about the implications of the PER.

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.

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 work with the government on various human rights issues.

In May the major regional organization Pacific Islands Forum (PIF), whose secretariat is headquartered in Fiji, suspended the country from the organization 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 expressed in a statement by the PIF Leader's Roundtable in January. The government refused to accredit and permit entry to the country of three high-ranking PIF secretariat staff and blocked customs clearance of secretariat supplies.

The Commonwealth of Nations suspended Fiji in September, citing Bainimarama's failure to reactivate a dialogue that would lead to democratic elections by October 2010.

Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The 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 government's Employment Relations Decree had similar provisions, but these are limited to workers and industrial relations matters.

Women

Rape, domestic abuse, incest, and indecent assault were significant problems. The penal code provides for a maximum punishment of life imprisonment for rape; however, most rapes were prosecuted in the magistrates' courts, which have a sentencing limit of 10 years. There were inconsistencies in the sentences imposed for rape by different magistrates; sentences generally ranged from one to six years' imprisonment. The NGOs Fiji Women's Rights Movement and Fiji Women's Crisis Center pressed for more consistent and severe punishments for rape. The Court of Appeal has ruled that 10 years is the minimum appropriate sentence in child rape cases. Women's rights activists continued to press for the formal criminalization of spousal rape, which is not a specific offense; however, in the past husbands have been convicted under the general rape law of raping their wives.

In August the government promulgated a decree creating a specific domestic violence offense; however, the decree had not come into force by year's end, and domestic violence cases continued to be prosecuted as assault. 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. Courts dismissed some cases of domestic abuse and incest or gave the perpetrators light sentences. Women's organizations reported an increase in abuse and violence against women after the abrogation of the constitution in April. They stated that the practices of selecting judges supportive of the government and censoring news stories critical of police and judges had led to poorer handling of abuse cases. Incest was widely believed to be underreported. Traditional practices of reconciliation between aggrieved parties were sometimes taken into account to mitigate sentences in domestic violence cases, and in many cases offenders were released without a conviction on the condition they maintain good behavior, rather than jailed. An active women's rights movement 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.

Prostitution is illegal, but it occurred, particularly in cities. Sex tourism is prohibited by law but 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.

The Human Rights Commission Act 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 2008 Employment Relations Decree, sexual harassment in the workplace is a specific ground of complaint that can be filed by workers. The Ministry of Labor reported that one sexual harassment complaint had been filed under the decree; it was pending before the Employment Relations Tribunal at year's end.

Couples and individuals 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 physician. However, 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 obstetric and postpartum care were available. Women had equal access to diagnosis and treatment for sexually transmitted infections, including HIV.

Women have full rights of property ownership and inheritance rights, but in practice often were excluded from the decision-making process on disposition of communal land, which constituted more than 80 percent of all land. Many women were successful entrepreneurs. Other than a prohibition on working in mines, there were no legal limitations on the employment of women. The Employment Relations Decree prohibits discrimination on the basis of gender. 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 semisubsistence employment or were self-employed.

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

Children

Citizenship is derived both by birth within the country and through one's parents.

The government devoted approximately 25 percent of the national budget to education and also worked to improve children's health and welfare. School is mandatory until age 15, but the inability of some families to pay for uniforms, school fees, and bus fares limited attendance for some children.

Corporal punishment was common both in homes and in 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 prostitution was reported among high school students and homeless and jobless urban youth.

Commercial sexual exploitation of children continued to occur during the year. Under the penal code, commercial sexual exploitation of children is a misdemeanor, punishable by sentences of up to two years' imprisonment. 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 under this provision during the year. Children's rights advocates criticized existing law as inadequate and called for more severe criminal sanctions.

Under a July decree, the marriage age for girls was raised from 16 to 18, the same as for boys.

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 girl under age 13, and five years' imprisonment in the case of a person who has sexual relations with a girl between age 13 and age 15. However, in the latter case it is considered a sufficient defense to establish that the perpetrator had "reasonable cause" to believe the girl was age 16 or older. Despite the maximum penalties provided for, magistrates have sometimes imposed sentences as low as two years' imprisonment in such cases.

Child pornography is illegal under the Juveniles Act. The maximum penalty for violators is 14 years' imprisonment and/or a maximum fine of F25,000 (approximately \$12,950) for a first offense and life imprisonment and/or a fine of up to F\$50,000 (approximately \$25,900) for a repeat offense, and the confiscation of any equipment used in the commission of the offense.

Increasing urbanization led to more children working as casual laborers, often with no safeguards against abuse or injury.

Trafficking in Persons

The law prohibits trafficking in persons, with penalties of up to 20 years' imprisonment and fines of up to F\$750,000 (approximately \$388,600) for convicted traffickers. Several citizens of China who entered Fiji on student visas and were arrested for prostitution may have been trafficked. However, no further investigations were conducted before the women were deported to their country of origin. During the year there were some reports of commercial sexual exploitation of children within the country.

Although the government expressed an intention to combat trafficking in persons more vigorously, during the year it did not sponsor or provide assistance to any programs specifically designed to combat or prevent such trafficking. The government has pursued criminal charges against some persons it termed trafficking victims, jailing some and deporting alleged victims with no effort at rehabilitation.

The Department of State's annual *Trafficking in Persons Report* can be found at www.state.gov/q/tip/.

Persons with Disabilities

Under the constitution abrogated in April, 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. Under the Health and Safety at Work Act, all new office spaces must be accessible to persons with disabilities. There were only a small number of disabled-accessible vehicles in the country. There were a number of community organizations to assist those with disabilities, particularly children.

Most persons with mental disabilities were separated from society and typically were supported at home by their families. Institutionalization of persons with severe mental disabilities was in a single overcrowded, underfunded public facility in Suva. There were a number of special schools for persons with physical, cognitive, and sensory disabilities; however, cost and location limited access. Opportunities for a secondary school education for those with disabilities were very limited.

The government-funded Fiji National Council for Disabled Persons 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 Indo-Fijians has been a longstanding problem. Indigenous Fijians make up 57 percent of the population, Indo-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. 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 abrogation of the constitution.

On September 8, the cabinet approved implementation of a new intake policy for the Fiji School of Nursing, under which considerations of geography and disadvantaged status would replace existing ethnicity-based entry quotas.

Prior to the 2006 coup, most postindependence governments pursued a policy of political predominance for ethnic Fijians. 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 may hold.

Ethnic Fijians' traditional beliefs, cultural values, and self-identity are closely linked to the land. Most cash-crop farmers were Indo-Fijians, the majority of whom are descendants of indentured laborers who came to the country during the British colonial era. Virtually all Indo-Fijian farmers were obliged to lease land from ethnic Fijian landowners. Many Indo-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 Indo-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.

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

The abrogated constitution prohibits discrimination on the basis of sexual orientation. The preexisting penal code criminalizes homosexual acts between males, but the judiciary has held these provisions to be unconstitutional. The Employment Relations Decree prohibits discrimination in employment based on sexual orientation.

The gay, lesbian, bisexual, and transgender NGO "Equal Ground Pasifik" operated in the country. There were no reports of impediments to its operation.

There was some societal discrimination against persons based on sexual orientation, 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. The Right of Association

The constitution and law protect the rights of workers to form and join unions, elect their own representatives, publicize their views on labor matters, and determine their own policies, but the authorities did not always respect all of these rights in practice. After the constitution was abrogated, unions reported considerable government interference with, and denial of, their right to organize.

An estimated 31 percent of the work force was unionized. While some unions were ethnically based, most were not, and both Indo-Fijians and ethnic Fijians held leadership roles in the trade union movement. All unions must register with, but are not controlled by, the government. The Employment Relations Decree gives unions the right to appeal to the Employment Relations Tribunal (ERT) against an adverse decision by the trade union registrar. Major trade unions reported instances of the government using the ERT in a biased fashion to shut down negotiations and appeals.

The law allows restrictions on the right of association if necessary in the public interest or to protect national security, and police, military, and prison personnel are prohibited from forming or joining a union.

The law provides for the right to strike, except in the case of police, military, and prison personnel; their working conditions are covered under separate laws. Unions can conduct secret strike ballots, but must give the registrar 21 days' notice. 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, for example, emergency, health, fire, sanitary, electrical, and water services; telecommunications; air traffic control; and fuel supply and distribution--must give an employer an additional 28 days' notification.

The law 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.

There were strikes during the year, some of which were declared unlawful by the government and at year's end were in arbitration proceedings.

b. The Right to Organize and Bargain Collectively

Workers have the right to organize and bargain collectively. However, wage negotiations generally were conducted at the level of individual companies rather than industrywide. Traditional key sectors of the economy, including sugar and tourism, were heavily unionized. Although the law allows unionization, union organizers' jobs were not protected, resulting in low unionization in some sectors.

Under the Employment Relations Decree, any trade union with six or more members may enter into collective bargaining with an employer. The decree allows individual employees, including nonunionized workers, as well as unions to bring a dispute with employers before the permanent secretary for labor for mediation. Nonunionized workers made up the majority (approximately 70 percent) of the work force. 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.

Since the constitution was abrogated, unions 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.

Under the Employment Relations Decree, 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 to other interference by employers, particularly when operating on company premises.

Export processing zones (EPZs) are subject to the same laws as the rest of the country. Labor groups reported continuing difficulties organizing workers in the EPZs, however, due to fear of employer reprisals. With the decline of the garment industry in the country, the number of workers employed in the EPZs also declined significantly.

c. Prohibition of Forced or Compulsory Labor

The constitution prohibits forced or compulsory labor, but there were reports of commercial sexual exploitation of children.

d. Prohibition of Child Labor and Minimum Age for Employment

Enforcement of existing child labor regulations was inadequate and failed to protect children fully from workplace exploitation. Under the law children under age 12 may not be employed except in a family-owned business or agricultural enterprise. Although the law provides that education is compulsory up to age 15, children between ages 12 and 15 may be employed on a daily wage basis in nonindustrial work not involving machinery, provided they return to their parents or guardian every night. Persons between ages 15 and 17 may be employed in certain occupations not involving heavy machinery; however, they must be given specified hours and rest breaks. The Ministry of Labor deployed inspectors nationwide to enforce compliance with labor laws, including those covering child labor. However, there was no comprehensive government policy to eliminate the worst forms of child labor. 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.

e. Acceptable Conditions of Work

There was no single, national minimum wage, although the Wages Councils set minimum wages for certain sectors. The councils comprise representatives of both workers and employers and are required to publish wage proposals and provide the public, unions, and employers 30 days to comment on the proposals. Once the councils have prepared a final wage order, it must be approved by the minister of labor. The Labor Ministry enforced minimum wages through its Labor

Inspectorate. On July 1, minimum wage increases went into effect in nine industrial sectors. Entry-level wages in unregulated sectors, especially service industries, provided a sparse and often only marginally adequate standard of living for a worker and family.

There is no single national limitation on maximum working hours for adults; however, there are restrictions and overtime provisions in certain sectors. Workers in some industries, notably transportation and shipping, worked excessive hours.

There are workplace safety laws and regulations, and a worker's compensation act. Safety standards apply equally to citizens and foreign workers; however, government enforcement suffered from a lack of trained personnel and delays in compensation hearings and rulings. 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. The law accords employees the right to remove themselves from a hazardous worksite without jeopardizing their employment, but most feared the loss of their jobs if they did so.